

DANUTA W.,
Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION,
Appellee

BEFORE THE
MARYLAND
STATE BOARD

Opinion No. 09-02

OPINION

INTRODUCTION

In this appeal, Appellant challenges the Montgomery County Board of Education's (local board) decision that the principal of Westbrook Elementary School (Westbrook) complied with and enforced the school system's policy concerning dogs on school property, and that he appropriately handled Appellant's complaints on the issue. The local board has filed a motion to dismiss the appeal, or alternatively a motion for summary affirmance. Appellant has responded to the motion.

FACTUAL BACKGROUND

Appellant's son attends Westbrook Elementary School in Montgomery County. During the 2007-2008 school year, Appellant raised a variety of concerns with school staff about dogs on the school property. Primarily, she maintained that Mr. Ewald, the Principal of Westbrook, had failed to provide and implement a consistent policy governing the presence of dogs on school property during the school day.

In response to Appellant's concerns, Mr. Ewald informed parents of the rules concerning dogs on school property. He stated the following in the school newsletter, in part:

Montgomery County Code specifies that it shall be unlawful for any owner to permit a dog to be on school ground (sic) on any day school is in session or on any public recreation area when an organized activity is being conducted, unless such dog is controlled by a leash or similar restraining device.

I am also requesting that dogs not be brought to the asphalt area during morning line-up. Also, as our student enrollment has increased, our kindergarten students are now lining up on our front lawn. I am requesting that dogs be kept at the back of our front lawn, closer to our front bus circle than to our building, during morning line up.

He also urged parents to clean up after their dogs on school property. (Westbrook Weekly, 9/7/07). Mr. Ewald included similar information in the November newsletter. (Hearing Officer Memorandum).

In January 2008, Appellant filed a Complaint from the Public maintaining that dogs on Westbrook's property were posing a health and safety threat to the students. Appellant perceived that there was dog waste in the playground area and that dogs were permitted to be on school grounds unleashed during the school day. She alleged that Mr. Ewald had failed to comply with and enforce Montgomery County Public Schools (MPCS) Regulation ECJ-RA - Animals on School Grounds. That regulation directs the principal or principal's designee to call the Department of Animal Control when an uncontrolled dog or other animal is discovered on school property. Regulation ECJ-RA(II)(A). Appellant also requested that additional signs be placed on the school grounds reminding people to leash and clean up after their dogs. (Complaint).

Mr. Ewald met with Appellant to discuss her concerns. During the meeting, he reiterated his commitment to the safety and security of the students and indicated that he would continue to take appropriate action when there was a loose dog on school grounds during the instructional day. He explained the following information to Appellant during their meeting:

- Dogs are expected to be leashed while on school grounds;
- Dogs are not allowed on the upper asphalt area during morning line up;
- Staff supervision of students begins at 8:35 a.m.;
- Dogs are expected to stay in the area in front of the bus circle and away from students during line up;
- Dog owners are expected to clean up after their dogs;
- School staff will contact Montgomery County Animal Control if an unleashed dog is on school grounds during the instructional day;
- Neighbors are encouraged to contact the school office and Animal Control if they see unleashed dogs on school grounds during the instructional day;
- School staff will review school system policy and expectations regarding dogs on school grounds; and
- School staff will investigate the possibility of additional signs.

(Ewald Letter, 12/6/07).

Dissatisfied with the outcome of the meeting, Appellant appealed to the local superintendent. Larry A. Bowers, the superintendent's designee, referred the matter to a hearing officer for review. The hearing officer conducted an investigation and found as follows:

(1) There are three signs communicating the rules regarding dogs on school property which are posted outside the school building in various areas. Each sign addresses the need for dogs to be leashed and for owners to clean up after them. Similar signs are posted in the public park adjacent to the school. The County Department of Animal Control reported that the posted signs are appropriate and more than adequate. The MCPS safety supervisor concurred with that assessment.

(2) The school has effectively communicated to parents the policies and procedures regarding dogs on school property during the instructional day. The school newsletter addressed this issue in both the September 2007 and November 2007 issues, and will do so again at a future date.¹

(3) Mr. Ewald is aware of MCPS Regulation ECJ-RA. He has responded to phone complaints of unleashed dogs on school property by personally investigating the situation, but he has never personally observed an unleashed dog and had to call the Department of Animal Control. School staff is also aware of the protocol to be implemented when unleashed dogs are present.

(4) Mr. Ewald and school staff monitor the outside school area when the morning buses arrive to make sure that parents with dogs keep the animals at the requested distances from the students.

(5) School staff inspect the school fields each morning and remove any animal waste.

The hearing officer recommended that the appeal be denied. (Hearing Officer Memorandum, 1/15/08). Mr. Bowers adopted the hearing officer's recommendation that Mr. Ewald acted appropriately in dealing with Appellant's concerns. (Bowers' Letter, 1/16/08).

Appellant appealed to the local board. In her appeal, she told the board that (1) she wanted a sign regarding leashed dogs by the bridge to Green Acres neighborhood located behind the school; (2) she felt communications between the school and parents concerning dogs on school property has been inconsistent; (3) she continued to see unleashed dogs on school property; (4) local policy is unclear when police are to be called for an unleashed dog; (5) she was unaware of communications discouraging students from touching dogs; and (6) all of her requests have not been answered. (Appeal to Local Board, 2/11/08). The superintendent responded to the appeal, specifically addressing each of Appellants concerns. (Weast

¹It was later addressed in the January 2008 newsletter.

Memorandum with Attachment, 3/6/08).

In a unanimous decision, the local board dismissed the appeal, finding that all issues were either appropriately addressed and successfully resolved or were within the purview of other County agencies. (Local Board Decision).

This appeal followed.

STANDARD OF REVIEW

Because this appeal involves a decision of the local board involving a local policy, the local board's decision is considered prima facie correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.03E(1).

ANALYSIS

In her appeal, Appellant maintains that Mr. Ewald failed to provide and implement a consistent school policy regarding dogs on school grounds, that he violated MCPS Regulation ECJ-RA, that he should have placed additional signs on school grounds addressing the issue of unleashed dogs, and that he should have banned dogs from the playground.

The record is clear that there is a school policy pertaining to pets on school property which Mr. Ewald communicated to the parents. In accordance with the Montgomery County Code, Mr. Ewald explained in several school newsletters that unleashed pets are prohibited on school property while school is in session and that owners are required to clean up after their pets.² In the newsletters, Mr. Ewald communicated his expectations regarding the areas where parents are to keep their pets during the morning line up and before and after school in order to provide a safe distance from the students. (School Newsletters 9/07 and 1/08). Mr. Ewald also communicated this information personally to the Appellant. (Ewald Letter, 12/6/07). In addition to Mr. Ewald's efforts to communicate the rules, there are signs posted in several locations on the school property informing the public of the County Code requirements.

Although Appellant asserts that the policy has not been enforced to her liking by school personnel, the evidence shows that Mr. Ewald made significant efforts to ensure that the policy was consistently carried out. He regularly communicated the policy to school staff at staff meetings and team meetings throughout the school year. (Hearing Officer Memorandum; Superintendent's Memorandum). He also followed up with various staff members upon receipt of complaints from the Appellant regarding their enforcement of the policy. (E-mails 1/17/08, 2/19/08, 2/20/08). In addition, school staff regularly inspected the playground area for dog waste

²The Montgomery County Code requires dogs to be leashed or otherwise restrained while on public school grounds on a day when school is in session. §5-203(a)(7). The Code also requires individuals to clean up after their pets on public property. §5-203(a)(2).

but never reported a problem with dog waste being found there. (Ewald Affidavit).

Appellant alleges that Mr. Ewald violated MCPS Regulation ECJ-RA which directs the principal or his designee to call the Department of Animal Control when an uncontrolled dog or other animal is discovered on school property. Mr. Ewald was aware of this requirement. (See Ewald Letter, 12/6/07). Although he responded to complaints of unleashed dogs by personally going to the reported area and investigating the situation, at the time of the Hearing Officer's investigation Mr. Ewald had never observed an unleashed dog on school property during school hours. (Hearing Officer Memorandum at 2). Mr. Ewald encouraged Appellant to contact the Department of Animal Control directly upon seeing an unleashed dog on school grounds during the instructional day. (Ewald Letter, 12/6/07).

Although Appellant claims that additional signs regarding pets on school property are needed, Mr. Ewald appropriately responded to Appellant's request and determined that no additional signs were necessary. There are three signs on the school property and additional signs at the adjacent public park advising owners to leash and clean up after their dogs. Mr. Ewald consulted with an officer at the Department of Animal Control who advised him that the current signs were appropriate and satisfactory. Based on this information and his own review of the signs, Mr. Ewald concurred.

In her appeal to the State Board, Appellant also seeks to have dogs banned from the school playground. (Appeal, p. 1). Yet in her response to the local board's motion, she states that she "never expressed any desire to ban dogs 'any time of day or night' and there is no available evidence that [she] ever called for that." (Response to Motion, p. 1). By her own admission, Appellant has failed to raise this issue before the local board. Thus, Appellant has waived her right to raise it now before the State Board. See *Craven v. Board of Educ. of Montgomery County*, 7 Op. MSBE 870 (1997); *Hart v. Board of Educ. of St. Mary's County*, 7 Op. MSBE 740 (1997).

As part of her appeal, the Appellant has submitted additional evidence that was not a part of the record before the local board. In an appeal such as this, involving a policy or regulation of the local board and the proper administration of a local school system, the State Board considers only the record made before the local board. COMAR 13A.01.05.06. The State Board will not consider the additional evidence as it was not reviewed by the local board when it rendered its decision in this case. In addition the State Board will not consider Appellants arguments concerning matters that occurred subsequent to the local board's decision.

CONCLUSION

Because we find the local board's decision was not arbitrary, unreasonable or illegal, we affirm.


James H. DeGraffenreidt, Jr.
President

Blair G. Ewing

Blair G. Ewing
Vice President

Dunbar Brooks

Dunbar Brooks

Charlene M. Dukes

Charlene M. Dukes

Mary Kay Finan

Mary Kay Finan

Rosa M. Garcia

Rosa M. Garcia

Richard L. Goodall

Richard L. Goodall

Karabelle Pizzigati

Karabelle Pizzigati

absent

Ivan C.A. Walks

Kate Walsh

Kate Walsh

January 27, 2009