

SUSAN H.,

Appellant

v.

HOWARD COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-22

OPINION

INTRODUCTION

Appellant filed an appeal with the State Board concerning the transfer of her daughter to a new school. The Howard County Board of Education (local board) filed a Motion to Dismiss the appeal. The Appellant filed a reply to the motion.

FACTUAL BACKGROUND

The appeal arises out of a serious incident that occurred at Mayfield Woods Middle School on September 6, 2012. On that day, Appellant's daughter, age 12, was sexually assaulted and sexually harassed by another seventh grade student who several times during the course of the day touched her breast and buttocks, did the bump and grind, and from first period to third repeatedly made sexual comments to Appellant's daughter, M.H. According to the Appellant, the school staff were not as responsive as they could have been. Specifically, although a teacher took M.H. to the guidance office after her 3rd period class, she was told that M.H.'s guidance counselor was not available and that M.H. should return to her 4th period class. After that class, M.H. had some discussion with the guidance counselor and an administrator. According to the Appellant, M.H. asked them several times to call Appellant, but they did not. After lunch, M.H. was sent back to her classes where other students commented on the sexual assault and implied it was M.H.'s fault. At 1:15 p.m., a school administrator finally called the Appellant about the incident.

On September 12, 2012, M.H. decided not to return to Mayfield Woods, and the Appellant applied for a reassignment of her daughter to a new school. On September 19, 2012, the specialist for Residency and Student Reassignment notified the Appellant that her daughter would be transferred to Hammond Middle School. The letter stated:

The conditions of this placement are as follows:

- Parents are expected to provide transportation to and from school.
- If the student does not maintain prompt and regular attendance, does not engage in learning, or becomes involved in excessive behaviors

requiring disciplinary action, he/she will be returned to the geographical school in the district where the parents are residing.

- Students need not reapply for enrollment on a yearly basis; however, continued placement will be subject to an annual review.

(Motion, Ex. 1).

Apparently, no one at the school spoke to the Appellant about the placement at Hammond. The Appellant was not in a position to provide transportation to Hammond. Through her lawyer, on September 21, 2012, Appellant asked for a new placement with transportation. The request was considered an appeal to the local board.

On October 1, 2012, the Appellant picketed the school. Her placard said "Parents/Staff of MWMS, Did you know that on 9/11/12 someone was charged with a 4th degree sex offense and is still roaming the halls with other students." (Motion Ex. 5). She handed out flyers also. On that same day, the principal wrote to the school community apologizing for the picketing incident, stating that the allegations Appellant made were not true, but that the student at issue had been disciplined.¹

The local board met on October 22, 2012 to consider the transfer appeal.² On November 8, 2012, the local board issued its decision stating:

Given that the Designee found that the Student's special circumstances warrant her reassignment to a different middle school, and those circumstances were not of the Student's or the Appellant's own making, the Board believes that it is reasonable and appropriate that the Student be provided with transportation services to and from the reassigned school. In light of this decision, the Board directs staff to determine the particular school to which the Student will be reassigned and to provide transportation for the Student to and from that school. In making the determination as to which middle school this particular student will be reassigned, staff are hereby advised that they are not restricted by overcapacity concerns.

(Motion, Ex. 3 at 3).

The school system thereafter met with the Appellant several times. They offered transfers with transportation to Hammond, Lime Kiln, and Patapsco. M.H. currently attends Ellicott Mills Middle School, which is one of the placements that Appellant requested.³

¹ The student was charged as a juvenile with Sex Offense 4th Degree.

² In the meantime, since October 1, 2012, the school system provided M.H. with Home and Hospital instruction.

³ On February 25, 2013, staff to the Board requested information from local board counsel about current school placement.

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.01.05.05A.

LEGAL ANALYSIS

The local board makes three legal arguments to support its Motion to Dismiss the Appeal. It claims the appeal is moot; that the Appellant failed to exhaust her administrative remedies; and that she lacks standing to pursue some of the remedies she seeks.

Before addressing the local board's legal arguments, we offer some observations. In our view, the school system acted in a clinical, procedurally sterile way citing the rules, sticking to the formal legal process, and showing little or no compassion for the child. For example, the letter transferring M.H. to Hammond ignored the circumstances for the transfer. It was a bureaucratic response. It placed additional burdens on the family. Instead of focusing on the needs of the child, the school system staff focused on their rules and procedures.⁴

In contrast, we commend the local board for responding to the Appellant's appeal with a decision focused on the needs of the child and family. We note, too, that the Appellant offers some good suggestions about dealing with sexual assault in school. With those observations, we turn to the legal arguments.

A. Is this Case Moot?

The Appellant prevailed in her case before the local board. She sought transportation and a transfer to another school without consideration of capacity. M.H. is back in school at Ellicott Mills Middle School, one of the schools the Appellant wanted her daughter to attend. We agree with the local board, that, as to that issue, there is no remaining case or controversy. That issue is moot.

B. Has Appellant Failed to Exhaust Her Administrative Remedies?

In this appeal, the Appellant seeks 12 specific remedies including placement of her daughter:

...

1. At either Ellicott Mills Middle School,
2. Or placed at Dunloggin Middle School,

⁴ We point out also that Md. Educ. Code Ann. §7-303(g) directs superintendents to consider whether to transfer a student who is arrested for a "sexual offense" to a school different from the one victim is attending. From the record, it appears that the student was charged with a fourth degree sexual offense.

3. For the 2012-2013 school and for the 2013-2014 school year.
4. Transportation provided from our current home and once we move to that home also, for both school years of 2012-2013 and 2013-2014.
5. The transportation not be on a special needs bus. That would even demoralize M.H.'s self-esteem even further.
6. That if we still live in the districting for Long Reach High School once M.H. reaches 9th grade that she be transported to another high school of our choice with transportation, for the entire four years.
7. If M.H. is not eligible for an Individualized Educational Plan, then a 504 Written Individual Plan.
8. Crisis counselor with her school for the first 60 days (school days), and that counselor should be available should M.H. need their assistance while attending school. I want a specialized counselor not a school guidance counselor.
9. Better training for staff and administration on a yearly basis of recognizing the indicators of sexual assaults and handling the victim and predator accordingly. Teaching staff members, guidance/student services staff and administrators not to classify sexual assault as bullying, intimidation or harassment.
10. That any administrator, staff member anyone within the school systems turns a blind eye to a crime of sexual assault be immediately terminated. Since they are placing a student in harm's way of a predator.
11. An Equity Assistance Coordinator position designed for student or student sexual assault crimes. Unlike Ms. Selerno who is in a position of Equity Assurance Coordinator for staff to staff, or staff to student Title IX investigation.
12. A program designed for the various levels of school, elementary (starting at the fifth grade), middle and high school to teach students what appropriate behavior and what actions are actually crimes. This program should managed by an outside provider, not the school system.

See Appeal.

As to remedies 1-4, we have concluded that those issues are moot. As to remedies 5-12, the Appellant did not raise any of those issues in her appeal to the local board. The State Board has frequently held that failure to raise an issue before the local board constitutes a waiver of the right to raise the issue before the State Board. *Regan v. Frederick County Bd. of Educ.*, MSBE Op. No. 02-21 (2002); *Kemp v. Montgomery County Bd. of Educ.*, MSBE Op. No. 01-14 (2001); *Stewart v. Bd. of Educ. of Prince George's County*, 7 Op. MSBE 1358 (1998); *Jackson-Nesmith v. Bd. of Educ. of Charles County*, 7 Op. MSBE 1320 (1998).

C. Does the Appellant Have Standing To Raise Certain Issues?

Remedies 8-12 cited above address staffing issues and personnel actions. We agree with the local board that the Appellant has no standing to raise those types of issues. See, e.g., *Schlamp v. Howard County Bd. of Educ.*, MSBE Op. No. 04-04 (2004).

CONCLUSION

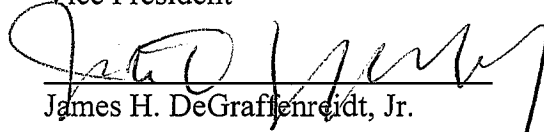
For all the reasons stated here we are required by law to dismiss this appeal



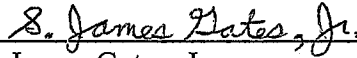
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President



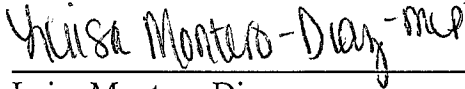
Mary Kay Finan
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James H. DeGraffenreidt, Jr.



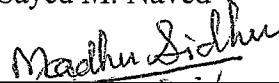
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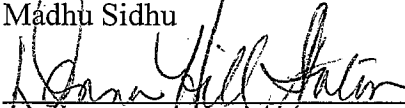
Luisa Montero-Diaz



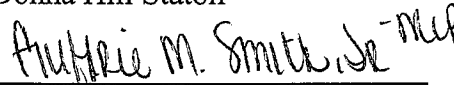
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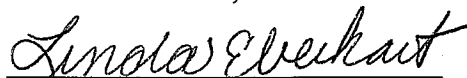
Madhu Sidhu



Donna Hill Staton



Guffrie M. Smith, Jr.



Linda Eberhart

April 23, 2013