

KRISTINA E.,

Appellant

v.

CHARLES COUNTY BOARD  
OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-01

## OPINION

### INTRODUCTION

Appellant maintains that the school system failed to appropriately handle her complaint that her son was being bullied by another student. The local board filed a Motion for Summary Affirmance maintaining that its decision should be upheld because it is not arbitrary, unreasonable or illegal. The Appellant did not respond to the motion.

This is the second time that this case is before the State Board. In the original appeal that resulted in MSBE Opinion No. 15-27 (2015), the State Board found that the Appellant had standing to appeal the alleged violation of school system protocol in dealing with bullying complaints, but remanded the case to the local board for a decision to explain the manner in which the school system applied its policy and procedure on bullying to the Appellant's case. The local board issued a decision on remand and this is an appeal of that decision.

### FACTUAL BACKGROUND

This case arose out of an incident that took place during the 2014-2015 school year when the Appellant's son, C.W., was in the 7<sup>th</sup> grade at Benjamin Stoddert Middle School.<sup>1</sup> According to the Appellant, her son was bothered by the "aggressive behavior" of Student B. He reported that he told his teacher, Ms. Qawiyy, about it during the week of September 22, 2014, and that she said she would talk to the student. C.W. complained again to the Appellant. On October 3, 2014, Appellant wrote to Ms. Qawiyy to inform her that C.W. was being bullied or taunted by Student B who was trying to get C.W. to fight. (MSBE Op. No. 15-27).

The local board maintains that this was the first time that bullying concerns had been raised by the Appellant. *Id.* Ms. Qawiyy called the Appellant and left a message for her to call her back. She also spoke with C.W. and Student B that same day and believed that any conflict between the two had been resolved. *Id.* Even though Appellant's note stated that she would contact Ms. Qawiyy and schedule a meeting with the principal, she did not return Ms. Qawiyy's phone call or contact the principal to arrange a meeting. *Id.*

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<sup>1</sup> Although some of the facts set forth in MSBE Opinion No. 15-27 are already incorporated herein, we adopt the entirety of those facts as set forth in the "Factual Background" section of the Opinion.

On October 3, Mr. Baker, the school counselor, also attempted to contact the Appellant. He left her a phone message but she did not return the call. *Id.* Mr. Baker intended to discuss Appellant's bullying concerns with her and provide her with information about submitting a *Bullying, Harassment, or Intimidation Reporting Form*. *Id.*

On October 6, 2014, Mr. Baker informed Ms. Qawiyy that he had not heard back from the Appellant. He visited the classroom and observed that the two students were on task and working at the same table without any problems. Mr. Baker returned to the classroom the following day, October 7, and again observed no problems between the two students. Ms. Qawiyy had not observed any problems either. Mr. Baker took no further action that day given that the two students had been spoken to regarding any issues between them, calls had been made to the parents, and no further problems were observed between the students. *Id.*

At the end of the day on October 7, C.W. remained in Ms. Qawiyy's classroom instead of leaving to board his bus. Other students not taking bus transportation also remained in the classroom. The following incident occurred, as described in the local board's decision:

[C.W.] walked over to [Student B], and Student B asked "Are we cool?" [C.W.] said yes and they shook hands. [C.W.] then threw a binder at [Student B.] The binder missed that target and instead hit another student, cutting her lip. At the same time, [C.W.] started hitting [Student B], and [Student B] hit back. Ms. Qawiyy, who was monitoring the room, yelled three times for them to stop fighting, but they did not. She stepped in between the students to separate them, and [Student B] unintentionally hit her in the face. At that point, the fight stopped. [C.W.] later wrote several apology letters accepting his responsibility for the incident.

(Local Board Decision at 3). As a result of the incident, C.W. received a 45 day suspension. Appellant initially appealed the suspension to the local board, but later withdrew it.

Appellant wrote to school system officials on October 11, November 4, and November 13 complaining that school staff had not handled the bullying problem appropriately and failed to follow proper procedures. She requested an investigation. On December 30, 2014, she wrote to the local board asking to file a complaint against the three school staff she believed had not acted appropriately. The local board forwarded that letter to the local Superintendent, Kimberly A. Hill, for a response. (MSBE Op. No. 15-27).

On January 21, 2015, Dr. Hill responded to Appellant's complaint. She stated:

Charles County Public Schools takes all bullying and harassment concerns seriously and investigates any complaints made by parents, students, and staff. If any improper conduct by any student is found, it is addressed with that student and that student's parents. However, the school administrators are prohibited from sharing with the accuser any disciplinary actions taken against another student.

The concerns you raised in your letter about the altercation involving your son and another student were investigated by Dr. Sylvia Lawson, Assistant Superintendent of School Administration. Dr. Lawson determined that the staff members at the school handled the matter appropriately. Any bullying or harassment of your son by the other student involved was addressed with that student and that student's parents. The school system will not share with you information about the student or any actions taken in dealing with that student's behavior. Rather, the school system will encourage you and your son to report any further incidents directly to a teacher or school administrator.

Those employees you name in your letter took steps they deemed appropriate under the circumstances in dealing with actions taken by your son and the other student, both before and after the altercation that occurred. Dr. Lawson has determined that they acted properly, and I support that decision.

(Hill Letter, 1/21/15).

The Appellant wrote to the local board on January 21, 2015, explaining her disagreement with Dr. Hill's response. She claimed that there was no explanation of the basis for Dr. Hill's determination that staff handled the bullying complaint appropriately. She indicated that she planned to pursue the matter at the State level. (Local Bd. Decision).

After receiving information from MSDE about the appeals process, Appellant wrote to the local board on February 13, 2015 and requested a hearing. Appellant maintained that she sought to hold school staff accountable for inappropriately handling the bullying issue. The local board's appeal specialist advised Appellant that she could not appeal personnel matters to the local board.

Appellant appealed directly to the State Board. On July 28, 2015, this Board found that Appellant had standing to appeal her claim that school staff failed to follow proper protocol in handling her bullying complaint and remanded the matter to the local board for review and a decision consistent with its Opinion. *See* MSBE Op. No. 15-27. The Board specifically requested that the local board explain the manner in which the school system's policies and procedures on bullying were applied to the Appellant's complaint. The Board stated as follows:

We acknowledge in this case that the Superintendent communicated to the Appellant that the Assistant Superintendent had conducted an investigation and determined that staff handled the matter appropriately. However, no further information about the process or investigation was disclosed. In remanding this case, it is our view that the local board elaborate on how the Assistant Superintendent's decision was reached in light of the school system's policy and procedures for handling bullying complaints. It is not axiomatic that divulging additional information about the

handing of Appellant's complaint would result in the disclosure of confidential personal or student information.

(MSBE Op. No. 15-27).

On September 9, 2015, the local board issued a decision upholding Dr. Hill's decision. The decision sets forth the school system's policies and procedures on bullying and explains why the local board found that the actions of school staff were appropriate and reasonable in light of those policies and procedures.

This appeal followed.

### STANDARD OF REVIEW

In cases involving a local board's policy, or a controversy and dispute regarding the local board's rules and regulations, the local board's decision is considered *prima facie* correct. The State Board may not substitute its judgment for that of the local board unless the decision was arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A. The burden of proof lies with the Appellant. COMAR 13A.01.05.05D.

The State Board exercises its independent judgment on the record before it in the explanation and interpretation of the public school laws. COMAR 13A.02.05.05E.

### LEGAL ANALYSIS

Appellant maintains that school staff failed to appropriately handle her complaint that her son was being bullied by another student. She claims that the incident that led to her son's suspension could have been avoided had the complaint been dealt with properly. The local board maintains that school staff acted appropriately in light of school system policies and procedures.

In order to address the Appellant's claim, we first review the school system's policies and procedures on bullying.

#### *Charles County Board of Education Policy 5117 and Superintendent's Rule 5117*

Charles County Board of Education Policy 5117 prohibits bullying, harassment or intimidation of any person on school property or at school-sponsored functions. The policy defines bullying, harassment or intimidation as follows:<sup>2</sup>

Intentional conduct, including verbal, physical or written conduct or an intentional electronic communication, that creates a hostile educational environment by substantially interfering with a student's educational benefits, opportunities or performance or with a student's physical or psychological well-being and is:

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<sup>2</sup> This mirrors the definition set forth in State law. See Md. Code Ann., Educ. §7-424(a)(2).

- motivated by an actual or a perceived personal characteristic including race, national origin, marital status, sex, sexual orientation, gender identity, religion, ancestry, physical attributes, socioeconomic status, familial status or physical or mental ability or disability; or
- threatening or seriously intimidating; and,
- occurs on school property, at a school activity or event or on a school bus; or,
- substantially disrupts the orderly operation of a school.

Superintendent’s Rule 5117 sets forth the procedures that implement that policy. It addresses prevention, intervention, and consequences for dealing with bullying and harassment, and lists various administrative responses to such incidents. The administrative responses are as follows:

- Immediate steps to stop any wrongful behavior.
- Investigation into the bullying complaint.
- Protection of the victim by taking action designed to prevent further bullying or retaliation and providing support as necessary.
- Action to deal with the wrongdoer designed to prevent further bullying and any retaliation, including education, counseling, and discipline where appropriate.
- Parental notification of the victim and wrongdoer subsequent to the investigation, typically no later than the end of the same school day of the incident/complaint if the investigation is on-going.
- Notification of legal authorities and the Department of Social Services when appropriate.

(Rule 5117(A)). The procedures also require follow-up conferences with the victim and offender to determine if the behavior has continued and whether additional consequences are needed. (Rule 5117(D)(7)).

Superintendent’s Rule 5117 also refers to the *Bullying, Harassment, or Intimidation Reporting Form* (“Reporting Form”) that is available in a school’s main office or counselor’s office, and on the school system’s website. This is an MSDE-created standard form that is used by school systems which was designed to help track incidents of bullying, harassment and intimidation against students in school. *See* Md. Code Ann., Educ. §7-424(c). Although the law states that a student, parent, guardian, close relative, or school staff member may report an incident of bullying, harassment or intimidation, it does not specifically require use of the form. *See* Md. Code Ann., Educ. §7-424(b). Consistent with this, Superintendent’s Rule 5117 states that the school system “encourages the use” of the form. However, the Superintendent’s Rule does require school staff to assist with completion of the Reporting Form when necessary or upon request from the complainant. (Rule 5117(C)).<sup>3</sup> Nevertheless, despite the manner in which

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<sup>3</sup> For each Reporting Form that is submitted, the school administration must fill out a corresponding *Bullying, Harassment, or Intimidation Incident Investigation Form*. (Rule 5117(C)).

a school system collects its data, State law requires each public school in Maryland to report to MSDE incidents of bullying, harassment and intimidation. In addition, while the law defines bullying, harassment or intimidation, whether or not behavior rises to the level of bullying, harassment or intimidation is a matter left to the school system's discretion.

#### *Application to Appellant's Complaint*

The local board's procedures require a timely investigation into the bullying claim and parent notification. The local board maintains that, prior to receiving Appellant's note on January 3, Ms. Qawiyy had not observed behavior between C.W. and Student B that she believed rose to the level of bullying. When she received the Appellant's note that C.W. was a victim of bullying, Ms. Qawiyy immediately investigated the complaint by speaking to both of the students. She determined that any conflict that may have existed between the two had been resolved. She attempted to contact the Appellant but was unable to get in touch with her and left a message. Ms. Qawiyy involved the school counselor, Mr. Baker, who also attempted to contact the Appellant, but was unable to reach her. Student B's parents were also contacted.

Despite their attempts to contact the Appellant, neither Ms. Qawiyy nor Mr. Baker heard back from her. Had they spoken with her they would have been able to discuss the bullying claim and could have advised her of the availability of the *Bullying, Harassment, or Intimidation Reporting Form*. Thereafter, both Mr. Baker and Ms. Qawiyy observed the two students during class on January 6 and 7. Neither staff member noticed any conflict between them. Although the Appellant believes that school staff should have taken additional steps as outlined in the bullying procedures, neither Ms. Qawiyy nor Mr. Baker observed any further problems between the two students or had other information that would have led them to believe that additional steps needed to be taken. Indeed, there is no evidence in the case that Student B engaged in any bullying of C.W. after being spoken to by Ms. Qawiyy on January 3. Instead it was C.W. who initiated the fight at the close of the school day on January 7.

Although the local board's procedures require follow-up meetings to ensure that a bullying concern is fully addressed, C.W. was removed from school due to the fight prior to when follow-up conferences would have been held. Since C.W.'s return to school, there have been no reported bullying incidents between the two students. Thus, it appears that the underlying bullying concern between C.W. and Student B was effectively resolved.

Appellant maintains that school staff violated protocol for responding to bullying complaints by failing to complete a *Bullying, Harassment, or Intimidation Reporting Form*. Neither State law nor the school system's policy and procedure requires school staff to complete the form on their own. Rather, school staff are listed as one of several who "may" complete the form. Appellant was free to complete one herself, as was C.W. While Superintendent's Rule 5117 requires staff members to assist with the completion of the form when necessary or upon request from the complainant, there was no need to assist because Appellant and C.W. did not attempt to fill out a form.

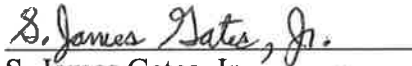
Appellant disagrees with the local board's decision and remains unsatisfied with the actions of the school staff. She believes that if school staff had taken additional steps as set forth in the bullying policies and procedures that her son would not have fought with Student B on January 7. The issue here is whether the local board acted arbitrarily, unreasonably or illegally

in upholding the determination that school staff appropriately handled Appellant's complaint. Based on the information provided in the appeal, it appears that they acted appropriately given the information before them at that time. The result was that no further complaints of bullying were made by C.W. regarding Student B after Ms. Qawiyy received Appellant's note and spoke with the students on January 3.

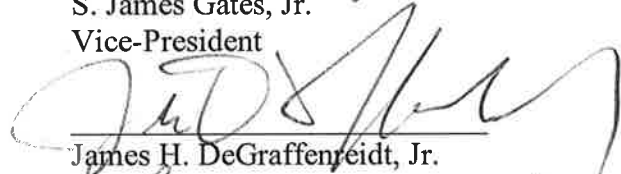
Although the Appellant would disregard the local board's explanation of staff actions because it has been provided after the fact, the Appellant has not presented any evidence to contradict Ms. Qawiyy's or Mr. Baker's actions. We emphasize that it is vital for school systems to be forthcoming with parents when dealing with such serious matters as bullying. As we stated in MSBE Opinion No. 15-27, "school systems must be vigilant in following through and responding to complaints of bullying in school. It is critical that school systems be transparent and accountable to parents and students in those responses."



Guffre M. Smith, Jr.  
President



S. James Gates, Jr.  
Vice-President



James H. DeGraffenreidt, Jr.



Linda Eberhart



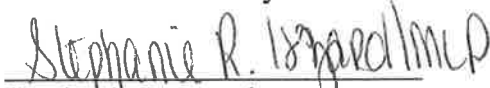
Chester E. Finn, Jr.

Absent

Larry Giammo



Michele Jenkins Guyton



Stephanie R. Iszard



Madhu Sidhu



Andrew R. Smarick

February 12, 2016

  
Laura Weeldreyer