

LESSIE B.,

Appellants

v.

CAROLINE COUNTY BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-16

OPINION

INTRODUCTION

This is an appeal of the denial of Appellant's request to transfer her daughter from Lockerman Middle School to Colonel Richardson Middle School. The Caroline County Board of Education has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant has submitted a Response to the local board's Motion, to which the local board has submitted a Reply.

FACTUAL BACKGROUND

During the 2009-2010 school year, Appellant's daughter, A.B., was in the sixth grade at Lockerman Middle School. On the morning of January 27, 2010, the Appellant publically disciplined A.B. in the school cafeteria for allegedly bringing a book to school in her book bag that she had taken from the school library without permission.¹ (Local Bd. Mtn., Ex. A, Local Bd. Decision). Dale Kevin Brown, Lockerman School Principal, confronted the Appellant regarding her "loud, aggressive, belligerent and uncontrolled" behavior towards A.B. and for her "personal and verbal assaults" on school staff. (Local Bd. Mtn., Ex. 5, Brown Letter, 1/27/10). Mr. Brown requested that Appellant calm herself, reduce the volume of her voice, and be less harsh towards A.B. After the Appellant would not comply and continued to act in a disruptive manner, Mr. Brown contacted the police and directed the Appellant to leave school property. (Local Bd. Mtn., Ex. A, Local Bd. Decision).

Based on the Appellant's behavior, Mr. Brown denied the Appellant future access to school grounds unless he or his designee approved access. In a letter to the Appellant, he stated the following:

You continually disregarded numerous requests for you to refrain from the loud, aggressive, disrespectful, and demeaning comments, as well as the reported threatening

¹ A.B. has a history of taking things that do not belong to her. (Local Bd. Mtn., Exs. 7, 8).

behaviors you directed to your daughter in the cafeteria and the office. Your untoward behavior clearly disrupted the safe and orderly environment of the school and compromised the well-being of students. These behaviors were unwarranted and per our discussion will not be tolerated. It is evident that your emotionally and psychologically abusive assaults are ineffective in deterring your daughter from her inappropriate behaviors. Additionally, the irrational behavior you displayed towards the adults in the building made it difficult, almost impossible to communicate with you.

(Local Bd. Mtn., Ex. 5, Brown Letter, 1/27/10). Mr. Brown advised the Appellant to contact him after 30 days to discuss future unrestricted access to the school grounds and building. (*Id.*).

Following the incident, the Appellant did not return A.B. to Lockerman. On February 25, 2010, Appellant submitted a Student Transfer Request asking that A.B. be transferred to Colonel Richardson Middle School. As the basis for her request, Appellant claimed that her daughter's "safety and emotional health is at stake at Lockerman", that the Principal "has made it perfectly clear that he makes no bones about making public allegations of abuse", and that the Principal "cannot be trusted to have [A.B.'s] best interests in mind." (Local Bd. Mtn., Ex. 3, Application for Change of Student School Assignment).

By letter dated February 25, 2010, Mary Anne Adkins, Supervisor of Pupil Services, denied the transfer request because it did not meet the criteria set forth in the local board's transfer policy. (Local Bd. Mtn., Ex. 4, Adkins Letter).

Appellant appealed the denial to the local Superintendent. Appellant stated the following as grounds for her appeal:

The school's principal, Mr. Dale K. Brown, made false allegations against me. He has refused mediation. He has also refused to give a public apology and the proposed compromise of a liaison. He has lied about my family publicly and in the role of school principle (sic). This situation leaves me to know that he is untrustworthy and I will not in good faith allow my daughter to attend school where she has the potential of becoming a scapegoat for his dislike of me. If something bad were to happen to my daughter while at Lockerman I could be charged with being a negligent parent. . . .

(Local Bd. Mtn., Ex. 10, Appellant's Letter, 3/11/10).

On March 17, 2010, the Appellant attended an appeal conference chaired by Edward F. Centofante, Hearing Officer. Thereafter, Edward W. Shirley, Superintendent of Schools, denied the appeal. (Local Bd. Mtn., Ex. 14, Shirley Letter, 3/18/10). Mr. Shirley advised the Appellant that the relationship between a principal and a parent is not a basis for approving a transfer request under the transfer policy. He noted that the Appellant was unable to point to any instances in which "Mr. Brown has reacted negatively to [A.B.]" or singled A.B. out as a "scapegoat" based on whatever feelings he may have about the Appellant. (*Id.*).

Appellant appealed to the local board. She continued to maintain that it was not in her daughter's best interest to remain at Lockerman under the direction of Mr. Brown whom Appellant did not trust. She also stated that A.B. had been diagnosed with Reactive Attachment Disorder. (Local Bd. Mtn., Ex. 15, Appellant's Letter, 3/24/10).

The local board upheld the denial of the transfer, finding that Appellant's reasons did not justify assigning A.B. to a school outside the attendance area. The board noted that it was not presented with any "evidence or allegation of behavior by Mr. Brown purporting to mistreat [A.B.] in any way." Further, the board strongly encouraged the Appellant to re-enroll A.B. at Lockerman, where she performed well academically and socially prior to the incident on January 27. (Local Bd. Mtn., Ex. A, Local Board Decision, 04/20/10).

This appeal to the State Board followed.

STANDARD OF REVIEW

The standard of review in a student transfer decision is that the State Board will not substitute its judgment for that of the local board unless the Appellant shows that the decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.05.

ANALYSIS

As a preliminary matter, the Appellant disputes a number of statements in the local board's motion that she argues are material and warrants a de novo review before an administrative law judge. The Appellant disagrees with the local board's description of her interaction with A.B., her treatment by school officials and her interaction with Mr. Brown at the January 27 incident.

The local board responds that most of these facts are not in dispute and, even if they were, they are not material to the local board's decision. We agree with the local board.

It is well settled that due process does not require a hearing on issues that do not involve a genuine dispute of material fact. *See Hethman v. Prince George's County Bd. of Educ.*, 6 Ops. MSBE 646, 648-649 (1993). In addition, the State Board has held that there is no right to an evidentiary hearing when there is no constitutional or statutory basis to provide one. *See Roger B. v. St. Mary's County Bd. of Educ.*, MSBE Op. No. 08-53 (2008); *Teegardin v. Carroll County Bd. of Educ.*, MSBE Op. No. 02-52 (2002).

In our view, the details regarding the incident that led the Appellant to request A.B.'s transfer are not material to this appeal. Rather, the material facts before the local board included the basis and evidence presented for the Appellant's transfer request, which are not in dispute.

The Appellant argues that the local board's decision should be overturned because her transfer request was based on A.B.'s mental health, in accordance with local policy. The Appellant also contends that because the school system has granted other transfer requests on the basis of a student's mental health, the local board's denial of her request violates A.B.'s equal protection rights.

In support of her appeal, the Appellant now seeks to introduce a letter from A.B.'s therapist, Janice Davison, LCSW-C, who began treating A.B. shortly after the local board's hearing. Ms. Davison's letter states as follows:

I have seen [A.B.] for therapy weekly since April 28th of this year. I am aware that she has had conflict with the administration at Lockerman Middle School and that her mother is not allowed to have any contact with the school. [A.B.] is extremely distressed at the idea that she may have to return to Lockerman, and the fact that her mother cannot contact her in any way, talk to her teachers, work with the guidance department, etc. has made her very anxious and puts undue pressure on her.

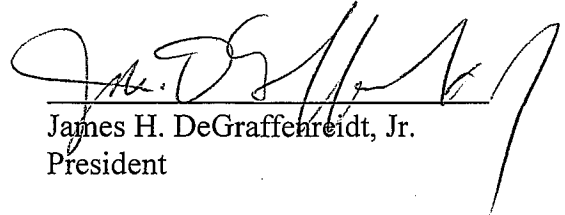
It is my opinion that it would be harmful to [A.B.'s] mental health for her to return to Lockerman Middle School.

(App., Davison Letter, 6/15/10).

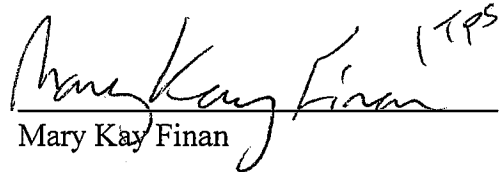
The Appellant concedes, however, that Ms. Davison's letter, which may have been material to her case, was not presented to the local board. (Appeal at 3; Response at 2.) Indeed, despite occasional references to A.B.'s safety and emotional health, the Appellant did not present any documented evidence to the local board supporting her concerns over A.B.'s health. The State Board has consistently declined to address issues that were not initially reviewed by the local board. *See Etefia v. Montgomery County Bd. of Educ.*, MSBE Op. No. 03-03 (2003) (failure to raise untimely notice of probationary contract non-renewal decision constituted waiver); *Craven v. Bd. of Educ. of Montgomery County*, 7 Op. MSBE 870 (1997) (failure to challenge suspension before local board constituted waiver); *Hart v. Bd. of Educ. of St. Mary's County*, 7 Op. MSBE 740 (1997) (failure to raise issue of age discrimination below constituted waiver).

CONCLUSION

For these reasons, we affirm the decision of the Caroline County Board of Education.


James H. DeGraffenreidt, Jr.
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March 22, 2011