

WILLIAM AND RITA S.

Appellant

v.

HOWARD COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-31

OPINION

INTRODUCTION

This is an appeal of the local board's decision denying the Appellants' son credits for three classes due to excessive absences. The local board has filed a Motion for Summary Affirmance, arguing that its attendance policy is reasonable and that the Appellants have raised their disability discrimination claims in the wrong forum. The Appellants filed a Response to the local board's Motion, to which the local board has submitted a Reply.

FACTUAL BACKGROUND

The Appellants, Rita and William S., filed this appeal on behalf of their son, W.S., who was a senior at Long Reach High School during the 2010-2011 school year. W.S. was diagnosed with Attention Deficit Disorder in the 3rd grade and has received accommodations through a Section 504 Accommodations Plan ("504 plan") since 7th grade.

During his junior year in high school, W.S. was also diagnosed with anxiety disorder and major depressive disorder. He was unable to attend school from November 2009 to March 2010, during which time he received instruction through the school system's Home and Hospital Program. After he returned to school in March 2010, W.S. continued to receive psychiatric care. His 504 Plan included notes that attendance was a major factor for W.S. during the school year, that he was going through "a bout of depression" and that he was in danger of failing most of his classes. W.S. missed a total of 74.5 days, and while he failed some of his classes, he earned enough credit for promotion to the 12th grade. (Local Bd. Exh. 2, 6/10/11 memo.)

W.S.'s 504 plan was last updated on June 11, 2010 near the end of his junior year. The 504 plan listed his disabilities as Attention Deficit Hyperactivity Disorder, Social Anxiety Disorder and Math Calculation Disorder. (See Local Bd. Exh. 4, Tab 1.) W.S. received the following accommodations:

- Cueing student for attention and focus;
- Parent/teacher communication via email;

- Extended time for written assignments longer than a paragraph;
- Access to staff to problem solve anxiety provoking situations;
- Copies of class notes to supplement W.S.'s written notes;
- Breakdown of long term assignments into manageable units;
- Teachers to provide W.S. with specific information to lessen the chance of misunderstanding and frustration (e.g., # of paragraphs, sentences required); and
- Access to tutorial to work on breaking down assignments.

In addition, the 504 plan included the following responsibilities for W.S.:

- W.S. will complete all work and utilize psychologist/counselor/tutorial support to problem solve;
- When W.S. needs help with an assignment (doesn't understand or needs further directions,) he will approach the teacher and ask; and
- W.S. will attend school 1st – 6th period daily.

(*Id.*)

The 504 plan remained in effect during the 2010-2011 school year, W.S.'s senior year. Over the course of the year, W.S. missed 29 days in Biology, 51 days in Environmental Science and 53 days in Spanish I. Included among those absences were 9 days due to W.S.'s psychiatric hospitalization in February 2011 and 10 days due to physical illness with a virus. The Appellants generally attributed W.S.'s other absences to his anxiety issues. (*See* 10/20/11 letter to Burton; Chronology, Local Bd Exh. 5.)

School officials notified the Appellants over 20 times during the course of the school year regarding W.S.'s absences, missed or poorly completed school work and low grades. Teachers, counselors, administrators, psychologists and the pupil personnel worker at Long Reach attempted to help reduce W.S.'s absenteeism through extensive meetings, attendance plans, discussions and consultation with W.S.'s psychiatrist. The Appellants also received four denial of credit warning letters prior to the end of the school year. (*Id.*)

By the end of the school year, W.S. passed the examinations for Biology, Environmental Science and Spanish I and earned enough quality points to be awarded credit for the subjects. (*See* Appeal at 2, 4; Local Bd. Exh. 4, Tab 2 – W.S. report card.) However, David P. Burton, Long Reach principal, notified the Appellants by letter dated May 17, 2011 that W.S. would be denied credit for the classes¹ due to his excessive absences. (Local Bd. Exh. 4, Tab 1.)

Mr. Burton's decision was made in accordance with local board policy 9010, which permits a school principal to deny credit for "any high school student with absences constituting five percent (5%) of a semester or a yearlong course." (*See* Policy 9010 at IV.C. - Local Bd. Exh. 4, Tab 3). The policy also requires the student or parent to obtain and submit medical

¹ W.S. was also denied credit for French I due to his absences, but the Appellants did not appeal denial of those credits.

documentation for lawful absences due to a student's physical or mental illness. (*See id.*, Policy 9010-PR at II.A.6 & III.B.)

On June 3, 2011, the Appellants met with Mr. Burton to request that he rescind the denial of credits. They expressed concern that the school was not considering W.S.'s disability as the reason for his extensive absences. The Appellants stated they could provide medical documentation to substantiate W.S.'s absences from school, which Mr. Burton requested. By June 10, 2011, Mr. Burton had not received the requested documentation, and he notified the Appellants by letter that he would not rescind the denial of credits. (Local Bd. Exh. 4, Tab 2.)

The Appellants appealed to Daniel J. Michaels, Director of School Administration, who served as the local superintendent's designee. In a letter dated July 29, 2011, Mr. Daniels upheld the school principal's decision. Mr. Daniels noted the school's numerous attempts to help reduce W.S.'s absenteeism. Despite these efforts, however, Mr. Daniels determined that W.S.'s absenteeism "grossly exceeded limits necessary for the awarding of credit." (Appeal, Supt. Exh. 5.)

On August 24, 2011, the Appellants appealed the decision to the local board of education. In their appeal, they included a letter from W.S.'s psychologist, Dr. Larry Lynn, who treated W.S. during his junior and senior years. Dr. Lynn noted that during the course of the year, W.S. experienced numerous relapses due to depression and anxiety, which necessitated several changes to his psychiatric medication. He noted that even when W.S. was psychiatrically hospitalized during the school year, W.S. attempted to access and submit make up work so that he could get back on track and graduate. Despite his efforts, Dr. Lynn stated that W.S. gave up after fighting "through a hospitalization, months of make-up work and treatment only to be told that his work and effort did not count for anything." Dr. Lynn requested for the school to reconsider denial of credit in light of W.S.'s well documented mental health issues. (Local Bd. Exh. 1.)

On August 25, 2011, the school principal met with the Appellants and offered to reconsider the denial of credits if W.S. showed satisfactory progress in two other courses (French I and English 12) that he was taking at alternative settings.² The Appellants declined the offer because they felt a decision only to reconsider the denial of credit was too vague. (*Id.*, Oct. 20, 2011 letter to Burton.)

At its November 9, 2011 meeting, five of the seven local board members were present. After reviewing the facts of the appeal, the board was unable to reach a decision because motions offered by members failed to be approved by at least four members, as required by COMAR 13A.02.01.01A. As a result, the local board did not reach a decision on the merits and the decision of the superintendent's designee remained.

This appeal to the State Board followed.

² It is unclear in the record why Mr. Burton offered to consider reinstatement of credits for the three classes based on W.S.'s satisfactory progress in two different classes.

STANDARD OF REVIEW

Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board shall be considered *prima facie* correct. The State Board will not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A.

A decision may be arbitrary or unreasonable if it is one or more of the following: (1) it is contrary to sound educational policy; or (2) a reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached. COMAR 13A.01.05.05B.

ANALYSIS

W.S. passed Biology, Environmental Science and Spanish I but was denied credits under local board policy 9010 due to his excessive absences. The Appellants argue that the denial of credits violates Section 504 of the Rehabilitation Act (“Section 504”) and the Americans with Disabilities Act (“ADA”) because W.S.’s absences were due to his disability.

The local board contends that this is an improper forum for the Appellants’ Section 504 and ADA claims because these laws have prescribed appeals procedures that do not include an appeal to the State Board of Education. Further, the local board argues that guidance from the U.S. Department of Education, Office for Civil Rights (“OCR”), has clearly provided that local board of education members may not serve as impartial hearing officers to evaluate Section 504 complaints. *See In the Matter of Griffith (IN) Public Schools*, 40 IDELR 175 (2003).

However, our view is that the facts in this case warrant a closer look at the application of policy 9010 to W.S. The local board argues that applying the policy to W.S. was reasonable due to the significant number of days that W.S. missed in each course. The local board noted the committed effort by school staff to assist W.S. in addressing his attendance problems. The local board also cites Slocum v. Holton Bd. of Educ., 171 Mich.App. 92 (Ct.App.Mich. 1988), in support of its position that attendance policies with grade reductions are lawful and assist in the enforcement of compulsory attendance laws.

In Slocum, a school system reduced a student’s letter grade under its attendance policy after she failed to attend the mandatory make up study sessions for her excused absences. The plaintiff argued that the board of education lacked authority to adopt the attendance policy. The plaintiff also raised allegations of constitutional due process violation and argued that an attendance policy which leads to loss of course credit acts as a disincentive to continued attendance.

Here, the Appellants do not challenge, nor do we question, the local board’s authority to adopt policy 9010. Rather, in our view, the question is whether it was arbitrary or unreasonable for the local board to apply its policy to W.S. after he passed the courses at the end of a school year that was replete with problems due to his mental health issues.

It remains undisputed that W.S. has a well-documented history of mental health challenges that impacted, in varying degrees, his attendance and performance at school. From the 7th grade, W.S. has needed accommodations under a 504 plan and the school system has worked closely with the Appellants in addressing W.S.'s educational needs. During the 2010-2011 school year, W.S.'s challenges included rigorous psychiatric medication regimens, psychiatric hospitalization and extensive therapy. Further, after missing so many days of class instruction, W.S. was also required to complete months of make-up work for those classes. Thus, the fact that W.S. was able, despite his substantial absences, to complete and pass examinations for his classes and earn enough quality points to receive course credit is significant.

It seems arbitrary or unreasonable, then, for the school system to deny W.S. credits for the courses that he successfully completed despite his documented difficulties. The school system had discretion in whether to apply its policy to W.S., and it chose to do so in order to enforce expectations that students will regularly attend school. We agree that there is great educational value to this expectation. Yet, the fact is that W.S.'s mental health issues made coming to and staying in school a feat that he did not or could not overcome on many days.

Certainly, the record shows that school personnel communicated regularly with the Appellants to try to mitigate W.S.'s absences throughout the school year. Our view is not that school staff should have done more, but rather that the extenuating factors due to W.S.'s longstanding mental health issues should have outweighed the standard application of the local board's attendance policy in this case.

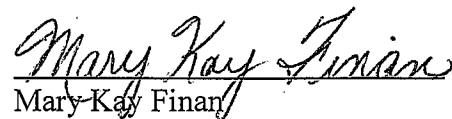
Thus, our view is that the decision to deny W.S. credits for Biology, Environmental Science and Spanish I under local board policy 9010 was arbitrary or unreasonable.

CONCLUSION

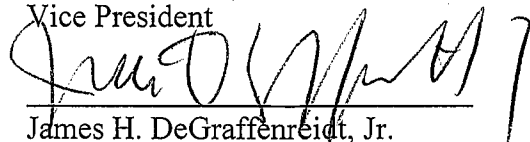
For these reasons, we reverse the decision of the Howard County Board of Education



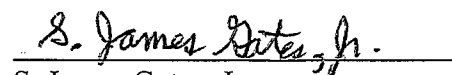
Charlene M. Dukes
President



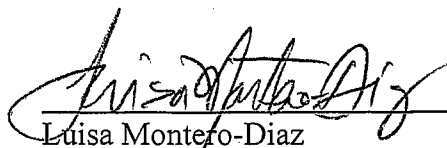
Mary Kay Finan
Vice President



James H. DeGraffenreid, Jr.



S. James Gates, Jr.



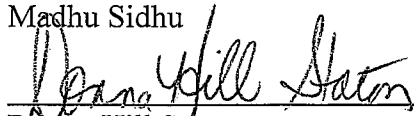
Luisa Montefo-Diaz

Absent

Sayed M. Naved

Absent

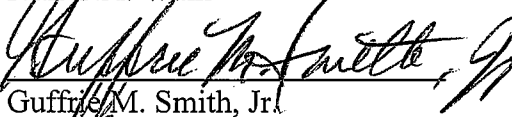
Madhu Sidhu




Donna Hill Staton



Ivan C.A. Walks



Guffrey M. Smith, Jr.



Kate Walsh

August 28, 2012