

IN THE MATTER OF

* BEFORE THE BOARD OF EDUCATION
* OF CARROLL COUNTY

* * * * *

DECISION

This is an appeal before the Board of Education of Carroll County (“the Board”) pursuant to Section 4-205(c) of the Education Article, Annotated Code of Maryland, brought by and (“Appellants”), parents of , a attending High School () during the 2010-2011 school year. Appellants appealed the January 25, 2011, decision of Mr. Stephen H. Guthrie, Superintendent of the Carroll County Public Schools (“CCPS”). Mr. Guthrie found that the actions of the Varsity Basketball coach at toward Appellants’ did not constitute violations of the CCPS policy prohibiting bullying, harassment, and intimidation.

Appellants appealed the Superintendent’s decision to the Board. After receiving initial submissions from and and from the Superintendent, the Board requested additional information. In a letter to the parties dated March 14, 2011, the Board President requested that the parties submit “any additional information related to the issue of the alleged bullying, intimidation, and harassment by and which may have been part of the investigation conducted by the Superintendent or by the parents.” The parties were given until March 25, 2011, to provide the additional information and argument, and then an additional week until April 1, 2011, to provide any rebuttal. Both parties submitted additional documents and argument.

Background

On November 20, 2010, Appellants sent a letter to _____, Principal of _____, appealing the decision of _____ Varsity Basketball Coach, cutting their _____ from the varsity basketball team. _____ had played on the varsity team the year before but was cut at the end of this year's tryouts. On the same day, Appellants completed the CCPS form for bullying, harassment or intimidation and charged _____ with a violation of CCPS policy. Appellants alleged that _____ cut _____ from the basketball team in retaliation for a critical comment _____ had posted on Facebook a year before on December 8, 2009. They alleged that because of the earlier incident the _____ remained prejudiced against their _____ and took the ultimate bullying action of cutting him during tryouts for this year's team. They charge _____ with bullying, harassment, and intimidation occurring from December 8, 2009 through November 18, 2010.

In investigating Appellants' allegations, Principal _____ interviewed both present and former basketball players and met with the Appellants and their _____. After several weeks, _____ conveyed _____ written decision finding insufficient evidence that the Coach had bullied or harassed Appellants' _____. The Principal concluded that the preponderance of the evidence did not support the charges of bullying and harassment.

Appellants then appealed _____ decision to Superintendent Guthrie, who appointed his legal counsel, Rochelle S. Eisenberg, Esquire, to investigate the matter and report whether the facts show evidence of bullying, harassment, or intimidation of Appellants' _____ in violation of Board Policy ACF "Bullying, Harassment, Intimidation, Discrimination, or Hazing" (the "Policy"). After receiving the results of Ms. Eisenberg's investigation, Mr. Guthrie wrote to

Appellants on January 25, 2011 conveying his decision upholding the Principal's finding of insufficient evidence on the bullying and harassment charges. Mr. Guthrie examined several specific incidents over the past year, some which occurred during basketball games and others after such games, such as the Facebook incident, and concluded that there was insufficient evidence supporting the claims of bullying, intimidation, and harassment.

In their appeal to the Board, Appellants argued that the Superintendent's investigator did not interview a material witness (the Captain of the 2010-2011 team), disregarded the testimony of witnesses favorable to Appellants, and that the Superintendent reached all the wrong conclusions. Appellants requested that the Board issue several specific remedies: remove [redacted] from his coaching position and require him to give their [redacted] a written apology; return their [redacted] to the Varsity Basketball Team; discipline the [redacted] Principal and the [redacted] Athletic Director; reassign the coaching staff at [redacted] based on a history of prejudice and bias; and implement a county-wide policy prohibiting parents/teachers from coaching their own children or showing favoritism to children of other coaches.

Motion to Dismiss

The Superintendent asked that this appeal be dismissed because Appellants lack standing to seek the personnel actions they requested, because requested reinstatement of their [redacted] to the [redacted] varsity basketball team is moot, and because the Board cannot initiate county-wide policy changes through the appellate process. (Superintendent's Memorandum in Response to Appeal, February 17, 2011) The Board has carefully considered the Superintendent's arguments and the legal support presented. The Maryland State Board of Education has consistently held that parents asking that personnel action be taken against school system employees lack standing to

prosecute those appeals. See Schlamp v. Howard County Board of Education, MSBE Op. No. 04-04 (2004) “A person who is not a party in interest does not have standing to challenge personnel matters regarding the school system employee.” Id. The Board finds merit in the lack of standing argument.

Similarly, the Board has weighed the mootness argument noting that the varsity basketball season has been over for several months. Since it is not possible to reinstate the Appellants’ to the varsity basketball team, a primary remedy sought by Appellants cannot possibly be granted. An appeal is moot “when there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the courts [or agency] can provide.” In re: Michael B. 345 Md. 232, 234 (1997) quoted in Jannell D. v. Howard County Board of Education, MSBE Op. No. 10-22 (May 25, 2010). If a paramount objective of and is to have their reinstated to the basketball team so could play during senior year, that objective clearly cannot be achieved because circumstances have rendered that potential outcome impossible and therefore moot.

To the extent that Appellants seek a change in CCPS practice of selecting coaches and want the CCPS to adopt a county-wide policy “that eliminates the possibility of parent/teachers coaching their children or their children receiving favorite status from other coaches,” that change likewise is not achievable through this appeal. Discussions of Board policy must occur in public meetings where the Board conducts its legislative function; such policy changes cannot be made through the appellate process of reviewing a particular incident.

While the Board considered the several legal arguments why the appeal could be dismissed outright, the Board refrained from dismissal in order to fully examine the charge of

bullying/harassment/intimidation based on the submissions by the parties. The Board committed itself to a thorough review of the information that the parties wished to present so that the Board could understand the information gathered by the Superintendent's investigator and the Appellants' responses to that investigation. The procedures followed by the Board in requesting additional submissions clarified the documents and information before the Superintendent when he considered Appellants' complaint. The result was a full and detailed record. The Superintendent's submission included an investigative binder containing many documents and emails, including many pieces of correspondence from the Appellants.¹

Conclusions of Law

In reviewing the Superintendent's decision made under the Board policy, the Board considered the definition set forth in Policy ACF "Bullying, Harassment, and Intimidation, Discrimination or Hazing":

Bullying, harassment, intimidation: 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. . .

In order to find that a student or school employee violated the bullying policy the evidence must show that a person's intentional conduct created a hostile environment and "substantially" interfered with a student's educational benefits, opportunities or performance. On the completed Bullying, Harassment, or Intimidation Reporting Form and in the accompanying letter Appellants alleged that [redacted] bullied their [redacted] in retaliation for [redacted] comments on Facebook on December 8, 2009. They contended that the Coach's recent decision cutting their

¹ Per the Superintendent's counsel, a redacted version of the investigative binder was given to Appellants because some documents constituted confidential personnel records not available to Appellants and the public.

from the Varsity basketball team after tryouts was another expression of retaliation and a personal act of hostility and bullying. (Appellants' letter of November 20, 2010)

The Board has reviewed the Superintendent's decision concluding that there was insufficient evidence supporting the charge that _____ violated the bullying policy. In addressing the Appellants' allegations of bullying and intimidating conduct by the Coach, the Superintendent reviewed the several major events in which Appellants allege the Coach mistreated their _____ the December 8, 2009 basketball game at _____ High School; the December 8, 2009 Facebook incident in which _____ posted criticism of the basketball coaches; criticism of their _____ for unsportsmanlike conduct at the _____ High School game; and _____ being cut from this year's varsity team.

The Board has reviewed the Superintendent's conclusions and will affirm his decision upholding the decision of the _____ Principal, _____. The Board commends the Superintendent for selecting his counsel, Rochelle S. Eisenberg, Esquire, to review the bullying complaint and investigate the parents' allegations. That approach showed he was responsive to Appellants' complaint that in-house staff might be biased or influenced in conducting an investigation. Although Appellants complained of omissions and erroneous conclusions in Ms. Eisenberg's investigation, the extensive investigative documentation presented by the Superintendent indicated a direct and thorough effort to ascertain the facts regarding the several incidents.

The Board agrees with the Superintendent's findings that no bullying, harassment, or intimidation conduct violating Policy ACF occurred during the _____ High School basketball game in 2009. Toward the end of that game with the score close, _____ called for a

specific play, but Appellants' ignored the play and tried to shoot a basket and missed, making the Coach angry. When was called off the court, Appellants allege that Coach pulled by Jersey toward the bench and reprimanded for ignoring instructions. He later put back in the game.

While Appellants complain that the Coach's physical grabbing of their jersey was abusive conduct constituting bullying, the Superintendent's investigation concluded otherwise. As the Superintendent noted, it is not uncommon for a player to be touched by a coach during a game or practice, and later said did not think anything was wrong with being pulled by jersey at the time. While the Board does not approve of any school employee inappropriately touching a student during a game or practice, the Board majority concludes that the jersey incident did not constitute an act of bullying or intimidation in violation of the policy. The Coach did not single out their because of a perceived characteristic nor did he threaten

² Interviews with CCPS athletic personnel confirmed that physical contact during a game or practice is commonplace.

Similarly, the Board does not find that Appellants' was inappropriately disciplined or bullied as a result of the Facebook incident and the High School incident. profane criticism about the coaches published on Facebook after the game resulted in being temporarily removed from the varsity team for several weeks until earned way back into active participation. It was not unreasonable for to be disciplined in such a manner, and acknowledged that some discipline was

² made an issue over a lost email which he said he sent to Athletic Director complaining about s grabbing the jersey of his . He demanded that the superintendent find it. In his March 24, 2011 letter, superintendent's counsel responded that such an email could not be located. Regardless whether such an email was sent by Appellants, the email has no probative value to the issues and is just another piece of information to be considered.

appropriate. Likewise, the Board finds that [redacted] was appropriately reprimanded after the [redacted] game in which, after a lopsided victory, [redacted] either rolled the ball or placed it on the floor during the last few seconds of the game in a way that indicated unsportsmanlike conduct. In both incidents, a discipline or reprimand by the coaching staff was appropriate, and such disciplinary actions by coaches cannot be interpreted as bullying, harassment, or intimidation.

Appellants' contention that Coach [redacted] cut [redacted] from this year's team in retaliation for the Facebook incident is not supported by hard evidence. Retaliation is a very serious charge, so it was incumbent on Appellants to support their allegations with more than personal opinions. They argue that the scoring rubric used by Coach [redacted] to evaluate players during try-outs was manipulated to justify cutting their [redacted]. However, the investigation revealed that Junior Varsity Coach, [redacted] participated in the evaluation and rated the skills of Appellants' [redacted] similarly to Coach [redacted] assessment. There was no allegation that Coach [redacted] was biased against [redacted]. Furthermore, interviews of several players indicated that the guard play during try-outs was not that great but was sloppy. Several school employees confirmed the general understanding that seniors who will not receive much playing time should not be selected because they could become morale problems. We concur with the Superintendent's conclusion that a student's failure to make a team is not evidence of bullying, harassment, or intimidation.

In reviewing the decision of the Superintendent regarding rules and regulations of the local board, the Board must determine if the decision was arbitrary, unreasonable, or illegal. According to the State Board of Education's standard of review in COMAR 13A.01.05.05, a decision may be illegal if it is unconstitutional, exceeds jurisdiction of the Board, misconstrues

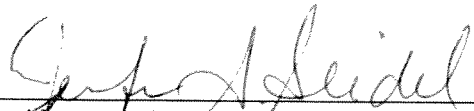
the law or results from an unlawful procedure or abusive of discretionary powers. Appellants have not alleged that the Superintendent acted illegally. Therefore the only remaining question is whether the Superintendent's decision was arbitrary or unreasonable. A decision may be arbitrary or unreasonable if (1) it is contrary to sound educational policy or (2) a reasoning mind could not have reasonably reached the conclusion of the local board or superintendent.

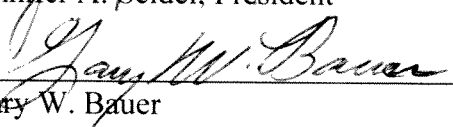
Considering the lack of hard facts to support the bullying charge, the Superintendent's decision was not contrary to sound educational policy. Having reviewed the large record presented by the parties, including the complete investigative binder assembled by the Superintendent's investigator, the Board concludes that the decision reached by the Superintendent was not arbitrary but based on the reasonable assessment of the information before him. A reasoning mind would have had no difficulty reaching the same conclusion of Superintendent Guthrie that various actions attributed to Coach did not constitute bullying, harassment, or intimidation in violation of CCPS policy.

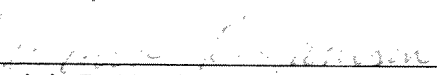
CONCLUSION

As noted above, Appellants' appeal was subject to dismissal for lack of standing, mootness, and unavailable policy changes, but the Board refrained from ordering a formal dismissal so that it could review the merits of Appellants' claims. After reviewing the extensive information and examining the Superintendent's decision, the Board majority affirms the Superintendent's decision and dismisses Appellants' appeal.

5/25/11
Date

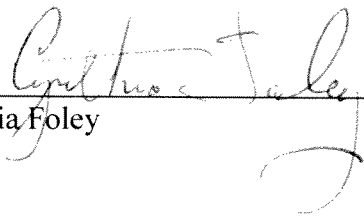

Jennifer A. Seidel, President


Gary W. Bauer


Virginia R. Harrison

DISSENT

I dissent from the majority and would find that Coach [redacted] violated the Policy against bullying, harassment and intimidation when he grabbed Appellants' [redacted] by the jersey and pulled toward the bench during the basketball game. I believe no school employee may physically touch a student to correct him/her. Had any other employee touched a student like this, it would have been improper. Whether it is common practice or not, it does not make it right or acceptable, as stated on page 7. The time and place of the contact and the person doing so should not make a difference. By accepting this it leads to a gray area with no definition of when and how it is or is not okay for a school employee to correct a student.



Cynthia Foley