

JENNIFER HOOVER,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 19-12

OPINION

INTRODUCTION

Jennifer Hoover (Appellant) requests that the State Board reconsider its opinion upholding the decision of the Montgomery County Board of Education (local board) dismissing her claims of workplace bullying and harassment. *Hoover v. Montgomery County Bd. of Educ.*, MSBE Op. No. 19-03 (2019). The local board replied to the request.

FACTUAL BACKGROUND

The original decision in this case recites the full factual and procedural history of this case. *See Hoover*, MSBE Op. No. 19-03. Appellant, an employee of Montgomery County Public Schools (MCPS), filed two administrative complaints in August and September 2017. *Id.* The first complaint alleged that her supervisor, Principal Damon Monteleone, bullied her in violation of MCPS policies (the “bullying complaint”). *Id.* The second complaint (the “reprimand complaint”) challenged a reprimand issued by MCPS against her, alleging that Principal Monteleone made false accusations against her. *Id.* MCPS agreed to convert the reprimand into a “letter of concern” and Appellant agreed not to appeal the reprimand complaint to the local board. *Id.* Meanwhile, MCPS dismissed the bullying complaint and the local board upheld that decision, finding that disagreements between Appellant and Principal Monteleone did not rise to the level of intimidation, bullying, or harassment. *Id.*

Appellant raised two issues in her appeal to the State Board: (1) whether the hearing examiners and local board improperly failed to consider evidence from her reprimand complaint as part of the appeal of her bullying complaint; and (2) whether the hearing officers and local board gave appropriate weight to her evidence. *Id.* The State Board determined that Appellant was barred from raising the allegations in her reprimand complaint by virtue of having agreed to forgo an appeal of the reprimand complaint to the local board. *Id.* Additionally, the State Board concluded that facts in the record supported the local board’s decision and there was no indication of improper bias by the hearing officers who presided over the case at the local board level. *Id.*

STANDARD OF REVIEW

The State Board exercises its discretion in deciding whether to grant a request for reconsideration. COMAR 13A.01.05.10. The State Board may, in its discretion, abrogate, change, or modify its original decision. COMAR 13A.01.05.10G. A decision may not be disturbed unless (1) the decision resulted from a mistake or error of law; or (2) new facts material to the issues have been discovered or have occurred subsequent to the decision. COMAR 13A.01.05.10D.

LEGAL ANALYSIS

Appellant presents 13 exhibits with her request for reconsideration, six of which she explains were included with the original appeal. Under our standard of review, new evidence must not only be “material to the issues,” but it cannot have been evidence that the party could have introduced while the appeal was pending. COMAR 13A.01.05.10E. Out of the seven “new” exhibits offered by Appellant, Exhibits 9, 10, and 12 are already in the record. That leaves only four “new” exhibits that Appellant asks us to consider. Those exhibits and our analysis is are follows:

- Exhibit 7 is correspondence between MCPS’s general counsel and Appellant’s union representative. Because these documents were in possession of her representative at the time of her appeal, Appellant could have introduced them previously.
- Exhibit 8 is an email in which the MCPS General Counsel forwards a copy of the school system’s reply to Appellant’s appeal. Contrary to Appellant’s assertions, we find nothing material in an email that forwards another document already in the record.
- Exhibit 11 is a further response from Principal Monteleone to the statements made by Appellant’s counsel. It does not appear that this document was included in the record. As the local board points out, though, the substance of Principal Monteleone’s statement was a part of the hearing officer’s report. The document does not appear to add any new material facts to the issues in the appeal.
- Exhibit 13 consists of emails that Appellant either sent or received in November 2016. Because Appellant was a part of this email chain, these documents could have been used in her appeal previously.

Appellant could have either introduced these exhibits previously in her appeal, or they contain no material facts that conceivably could have altered the local board’s decision. In short, there are no new facts material to the issues that require us to modify our decision.

Without any new facts to consider, we would only modify our decision if there was an error of law. Most of Appellant’s remaining arguments reiterate her view that her reprimand complaint should have been considered as part of the bullying complaint. This disagreement with the State Board’s conclusions does not equate to an error of law. *See Banks-Jones v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 17-32 (2017) (denying request for reconsideration where there is merely a “disagreement with the conclusions reached by the State Board”).

One new legal argument is that MCPS breached its promises to her regarding the resolution of the reprimand complaint. Appellant maintains that because MCPS did not follow through on its promises, she should not be bound by any agreement that waived her right to appeal the reprimand complaint to the local board. Even if MCPS breached its agreement with Appellant (and we do not conclude that it did), Appellant waived this argument by failing to raise it previously. *See Towle v. Carroll County Bd. of Educ.*, MSBE Op. No. 17-31 (2017) (declining to consider new evidence that could have been, but was not, presented to the local board). Absent new facts or an error of law, there are no grounds to reconsider our decision. Accordingly, we deny Appellant’s request for reconsideration.

CONCLUSION

We deny the request for reconsideration because there was no mistake or error of law and no facts material to the issues have been discovered subsequent to the decision.

Signatures on File:

Justin M. Hartings
President

Gail H. Bates

Vermelle D. Greene

Jean C. Halle

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

David Steiner

Warner I. Sumpter

Absent:
Stephanie R. Iszard
Vice-President

March 26, 2019