

K.C. AND D.K.,

Appellant

v.

BALTIMORE COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 23-06

OPINION

INTRODUCTION

Appellants appeal the November 22, 2022, decision of the Baltimore County Board of Education (“local board”) adopting a Hearing Examiner’s recommendation to uphold the denial of the student’s enrollment to the Virtual Learning Program for the 2022-2023 school year. The local board filed a motion to dismiss or, in the alternative, motion for summary affirmance. Appellant responded and the local board replied.

FACTUAL BACKGROUND

The facts of this case are particularly complex, involving multiple hearings by an appointed Hearing Examiner, changing programmatic offerings, and the needs of a student with a disability. The salient facts are as follows.

K.C. and D.K. (“Appellants”) are the grandmother and mother, respectively, of the student. The student has an individualized education program (“IEP”). During the 2021-2022 school year, the student was eligible for enrollment in kindergarten in Baltimore County Public Schools (“BCPS”). K.C., with whom the student lived, has health concerns, which placed the family at greater concern for exposure to COVID-19. On August 27, 2021, Appellants applied for BCPS’s Virtual Learning Program (“VLP”). (Record, 1-n-Supt. Ex. 1). On September 10, 2021, the Director of the VLP denied enrollment due to a lack of documented medical reasons. (Record, 1-n-Supt. Ex. 2). On September 28, 2021, Appellants filed an appeal, including documentation from K.C.’s physician that she is a vulnerable person at risk for hospitalization if exposed to COVID-19. (Record, 1-n-Supt. Ex. 3). BCPS Office of Health Services reviewed the documentation, and upon their recommendation, the Executive Director of the Department of Educational Options denied the appeal on December 21, 2021. (Record, 1-q).

On January 19, 2022, Appellants appealed to the local board. (Record, 1-p). The local board assigned the matter to Hearing Examiner, Leslie Stellman, who conducted a virtual hearing on March 22, 2022. (Record, 1-o). The Hearing Examiner remanded the case back to the BCPS Office of Health Services to consider an additional letter from Appellant’s physician in determining the student’s enrollment in the VLP. (Record, 1-m). In response, BCPS contacted the Appellant’s physician and subsequently submitted to the Hearing Examiner a Supplemental

Information for Consideration. BCPS concluded based on the conversation with the physician that the grandmother's condition was stable; thus, the student's enrollment in the VLP was not necessary. (Record, 1-l). On May 31, 2022, Appellants submitted another response to the Hearing Examiner. (Record, 1-k).

On June 16, 2022, the Hearing Examiner issued Supplemental Findings of Fact, Conclusion of Law, and Recommendation. The Hearing Examiner found that BCPS understated the grandmother's medical challenges, resulting in the arbitrary and unreasonable decision to deny the student enrollment in the VLP. The Hearing Examiner recommended that the local board reverse the denial of enrollment and allow the student to enroll in the VLP for the 2022-2023 school year, so long as the student resided with the grandmother. He also recommended that "[i]nsofar as the [s]tudent's denial of enrollment [for the 2021-2022] school year may have deprived her of any educational opportunities...that compensatory educational opportunities be provided to the [s]tudent over the summer in order to allow her to make up, *through a virtual learning platform*, any losses in terms of skill she otherwise would have mastered but for her failure to participate in the VLP." (Record, 1-j). On July 12, 2022, the local board adopted the Hearing Examiner's recommendation. (Record, 1-e, f).

Despite adoption of the Hearing Examiner's recommendations, the student was not provided with virtual summer programming. Additionally, after adopting the Hearing Examiner's recommendation, BCPS realized that it would not be offering the VLP for kindergarten during the 2022-2023 school year. BCPS also convened an IEP team meeting with the parent, wherein the school-based team determined that the student's IEP could not be implemented in the virtual environment. BCPS informed Appellants that the student either needed to be enrolled in her home school, or they could elect to homeschool the student. On September 14, 2022, BCPS contacted the Hearing Examiner with this new information and requesting his assistance in settling the enrollment matter.¹ (Record, 1-e). Appellants submitted a response to BCPS, including the student's IEP and a Request for Exemption from Mandatory Kindergarten Attendance. (Record, 1-d).

On September 21, 2022, the Hearing Examiner issued his Second Supplemental Recommendation. The Hearing Examiner re-examined the case, including the new information about the elimination of the VLP for kindergarten and the IEP team's decision that the student's IEP could not be implemented in the virtual setting. He determined that if the parent thought the IEP could be implemented in the virtual setting, the appropriate resolution was for the parent to exercise their right to a due process hearing under the Individuals with Disabilities Education Act (IDEA). Ultimately, the Hearing Examiner recommended that the student be returned promptly to school in order to receive necessary educational and related services required by her most recent IEP, including any needed compensatory educational services due to the student's previous loss of education opportunities. (Record, 1-c).

In response, Appellants requested oral argument before the board. On November 10, 2022, the local board virtually held oral arguments. (Record, 2). On November 22, 2022, the local board adopted the Hearing Examiner's Findings of Fact, Conclusions of Law, and

¹ The BCPS letter to the Hearing Examiner indicated that the parent had not enrolled the student in school.

Recommendation, and ordered that the decision to deny the request to enroll the student in the VLP be upheld. (Record, 3).

This appeal followed.

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 are 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.01.05.06A.

LEGAL ANALYSIS

The issue presently before this Board is whether the decision of the local board to uphold the denial of the student's participation in the VLP and order her return to school to receive education and a determination of compensatory education services was arbitrary, unreasonable, or illegal.

In support of their request that the local board decision be overturned, Appellants make the following arguments:

- They were not provided sufficient time after the September 14, 2022, BCPS letter to the Hearing Examiner and prior to issuance of the Second Supplemental Recommendation to adequately explain their case.
- BCPS made false, misleading, and factually inaccurate statements to the Hearing Examiner and local board about the student and her abilities.
- The failure of BCPS to provide summer programming, per the Hearing Examiner's First Supplemental Recommendation, resulted in the student not being ready for first grade for the 2022-2023 school year.
- The student's IEP can be implemented in a virtual environment.

Appellants argue that the appropriate resolution to this enrollment quagmire is for BCPS to advance the student to first grade and place her in the VLP for the remainder of this school year with her IEP services. As an alternative, Appellants request BCPS pay for a private online program for the student that includes special education services. They also request that BCPS provide the student with compensatory education services for the missed education from the 2021-2022 and 2022-2023 school years. We consider the arguments in turn.

First, Appellants allege they were not provided with sufficient time to respond before the Hearing Examiner issued the Second Supplemental Recommendation, and that the materials submitted by BCPS contained false, misleading, and inaccurate information. The local board provided the parties with the opportunity for oral argument before issuing its November 22, 2022, order. Appellants took advantage of this option and submitted several exhibits, in addition to their oral advocacy, to support their position. Over a month transpired between the issuance of the Second Supplemental Recommendation and the oral argument before the local board,

affording Appellants adequate time to prepare their case. Appellants were able to explain the parts of the record they took issue with, as well as where they disagreed with BCPS' interpretation of events. Ultimately, the local board weighed the evidence presented in making its decision. Thus, we cannot find that Appellants were denied adequate due process in this matter.

Second, we do not agree with Appellant's assessment that if the student was provided with summer programming, she would have been eligible for first grade at the start of the 2022-2023 school year. Attendance in kindergarten is mandatory unless the student meets one of the prescribed exemptions pursuant to COMAR 13A.08.01.02-2. For example, a five year old student who attends a verified alternative setting may be enrolled in first grade at six years old. There is no evidence to support that if the student had received summer programming, the program would have met the regulatory requirement to exempt the student from kindergarten. There is also no evidence that the student attended another verified alternative setting. Therefore, the only option for the 2022-2023 school year was to enroll the student in kindergarten.

Third, neither party disputes that BCPS no longer offers the VLP for kindergarten. As we determined above, Appellants have not alleged or provided any evidence to support why the student should be exempted from kindergarten attendance pursuant to regulation. As there is no basis for advancing the student to first grade, nor is there a VLP option for kindergarten, we are left with the conclusion that the remedy sought by Appellants – namely enrollment in the VLP – is unavailable. Given that the remedy is not available, this issue is moot. *See State v. Neiswanger Mgmt. Servs., LLC*, 457 Md. 441, 455 (2018) (explaining a case is moot if “there is no longer an existing controversy between the parties, so that there is no longer any effective remedy” to be provided).

Finally, the local board adopted the Hearing Examiner's recommendation for the student to return to school in order to determine compensatory education services. Here the local board agreed to provide compensatory education services, and Appellants indicated they would like to receive such services. As no formal offer has been made by the local board to Appellants, there is not presently a controversy for this Board to decide. However, we note the local board argues in its reply that this Board does not have jurisdiction over compensatory education as it is a special education matter. We take this opportunity to remind the local board that while we do not exercise jurisdiction over special education matters, we have previously held that compensatory education services are not a remedy solely available for special education. *See Frances P. v. Baltimore Cnty. Bd. of Educ.*, MSBE Op. No. 20-21 (2020) (holding compensatory services are an equitable remedy offered to students who have suffered harm stemming from a violation of their educational rights, such as illegal suspensions/expulsion and acts of de jure segregation in school districts).

CONCLUSION

For the reasons stated above, we find that that the appeal of the local board's decision to uphold the denial for enrollment in the VLP is neither arbitrary, unreasonable, nor illegal. Accordingly, we affirm the decision.

Appellants indicate in their appeal that they are providing the student with home schooling. We urge BCPS to inform Appellants of the options for educational programming for the student, including compensatory education services. BCPS should also inform Appellants of the implications of these decisions on the student's right to special education and related services under the Individuals with Disabilities Education Act ("IDEA"), including their dispute resolution options.

Signatures on File:

Clarence C. Crawford
President

Shawn D. Bartley

Gail H. Bates

Charles R. Dashiell, Jr.

Vermelle D. Greene

Rachel McCusker

Lori Morrow

Warner I. Sumpter

Holly Wilcox

Absent:

Chuen-Chin Bianca Chang

Joan Mele-McCarthy

Dissent:

Susan J. Getty, Vice-President

Jean Halle

March 28, 2023