THE STATE OF NEW HAMPSHIRE

BOARD OF EDUCATION

Student/Pembroke School Board
SB-FY-13-06-009

RECOMMENDED DECISION

I. INTRODUCTION

This is an appeal by the Parents ("Parents") of [redacted] ("Students") relative to the March 26, 2013 decision by the Pembroke School Board ("Pembroke"). The issues for hearing were whether the Pembroke School Board should have found that actions of another student toward the Parents' children constituted bullying, and whether the school personnel took appropriate and timely action in response.

A hearing on the merits was held on August 29, 2013 at the Department of Education Hearings Office in Concord. The Parents had the burden of proof and presented first. The Parents testified on their own behalf and on behalf of the Students; the District presented testimony by Co-Superintendent Patty Sherman and Pembroke School Board Chair Tom Serafin. Both parties submitted exhibits.

II. FACTUAL BACKGROUND

During the 2012-2013 school year, Students were [redacted] at the Pembroke Village School. In December of 2012, Parents met with Mona Sandberg, Pembroke Village School Principal, regarding Parents' allegations of bullying by another student toward their [redacted]. Parents described four incidents that occurred over the period from September to December of 2012. The incidents were as follows:

1. At the beginning of the school year, the other student threw wood chips at the Students;
2. During recess, the other student ran into one of the Students and knocked her over;
3. During lunch, the other student was staring at the Students;
4. In December of 2012, the other student told one of the Students to "get out of town".

Parents believed that school staff was not properly addressing their stated concerns. Parents felt that the incidents should have stopped immediately and were frustrated at the length of time it took to see a positive change. Parents felt the other student sought their [redacted] out and saw this occur on at least one occasion.

Parents completed a bullying report, following which Ms. Sandberg conducted an investigation of each incident. As part of her investigation, Ms. Sandberg interviewed [redacted] Students, the alleged perpetrator, both classroom teachers and both sets of parents. Ms. Sandberg also reviewed the social history between the students. Her findings are summarized below:

- In early September, several children were throwing wood chips on the playground, behavior typical of kindergarten children at the beginning of the year. Teachers worked with the students to teach them appropriate playground behavior.

- The incident where the other student ran into one of the Students was observed by the classroom teacher, who spoke with the Student at the time of the incident. The Student reported to the teacher that she was fine and that she experienced the incident as an accident.

- During lunch time, all the students were staring at each other. The Students felt that the other child was staring at them, and the other child reported that they were staring at [redacted]. According to the Parents, there have been "domestic issues" next door where the other student lived, and it was suggested that the ongoing strife between the two families may have been a contributing factor.

- Following the school's winter concert, the other student did tell one of the students to "get out of town", admitting that he was repeating a statement he had heard his father make. Around that time, the fathers of the three students were involved in an incident resulting in police intervention.

By letter dated January 17, 2013, Ms. Sandberg notified the Parents regarding her conclusion that the alleged bullying was unfounded, but that the school would continue to monitor the Students. In addition, school staff limited interaction between Students and the other child, checked in with all three children, practiced strategies with the Students to teach them how to respond to further encounters or deal with feelings of discomfort that might occur. Parents declined the school's offer to meet with all of the children together, believing that this would further intimidate their [redacted] An offer to meet with the guidance counselor was also declined.

The Parents disagreed with the principal's findings and appealed to Co-Superintendent Patty Sherman. Ms. Sherman conducted an independent review of Ms. Sandberg's investigation results, consisting of a file review and interviews with school personnel. She determined that Ms. Sandberg's investigation was adequate and found no cause to alter the findings therein.

The Parents appealed the Superintendent's decision to the Pembroke School Board. A hearing was held on March 26, 2013, at which the Students' father appeared and testified. The Pembroke School Board also heard testimony from Principal Sandberg. Based upon testimony, written documentation provided by the Parent and criteria set forth in state law and school policy, the Pembroke School Board voted unanimously to affirm Ms. Sandberg's findings and Ms. Sherman's independent conclusion that allegations of bullying were unfounded.

Parents had received prior notice of the hearing before the Pembroke School Board, which notice included information and governing provisions relative to anti-bullying as well as a statement of the right to appeal the final decision of the local school board to the State Board of Education within thirty days. At the start of the school board hearing, the notice was read into the record, and was also provided to the Parents. The final decision of the Pembroke School Board contained a statement that the Parents had thirty calendar days to appeal to the State Board.

The instant appeal was filed on June 10, 2013. The timeliness of the appeal was challenged by Pembroke, as set forth below.

III. DISCUSSION

1. Pembroke School Board Decision

Pembroke's anti-bullying policy, which is consistent with state law, defines bullying as:

"a single significant incident or a pattern of incidents involving a written, verbal or electronic communication, or a physical act or gesture, or any combination thereof, directed at another pupil which:

(1) Physically harms a pupil or damages the pupil's property;
(2) Causes emotional distress to a pupil;
(3) Interferes with a pupil's educational opportunities;
(4) Creates a hostile educational environment; or
(5) Substantially disrupts the orderly operations of the school.

Bullying shall include actions motivated by an imbalance of power based on a pupil's actual or perceived personal characteristics, behaviors or beliefs, or motivated by the pupil's association with another person and based on the other person's characteristics, behaviors or beliefs."

Neither Principal Sandberg nor Co-Superintendent Sherman found any evidence of physical harm, property damage, emotional distress, interference with educational opportunities, hostile environment or substantial disruption to the school or an imbalance of power between the Students and the alleged bully. The investigations were thorough, as was the hearing before the local school board, at which Parents were provided adequate opportunity to participate. A review of the documents and communications indicates that school personnel was consistently responsive to the Parents' stated concerns, addressing them appropriately even though the allegations of bullying were determined to be unfounded. The incidents ceased after December of 2012.

There was some conflicting testimony at the hearing before the State Board. For instance, Parents testified that their [redacted] stated to them that they did not want to go to school; however, school staff reported that [redacted] Students loved school, were doing very well and showed no signs of reluctance or distress at school. According to the Parents, their [redacted] informed them that [redacted] had not experienced the September playground collision as an accident, in contrast to the Student's description to the classroom teacher at the time of the incident. Parents also described another incident - relayed by the Students to them but not to the teacher - regarding the other child jumping out in front of the Students on the stairs. The Parents acknowledged that their family had experienced problems with the other student's family – who resides next door - from the time Parents bought their home in Pembroke. Parents believe that this accounts for the other student's behavior.

These very loving and concerned Parents were understandably anxious about their [redacted] school experience, particularly given the animosity between the two families. These Parents have been very proactive in advocating for the safety and well-being of their [redacted]. It is also understandable that, as parents, they would be frustrated with any perceived delays in the process – no matter how brief - and in seeing the situation improve.

A finding of "unfounded" relative to bullying does not necessarily mean that the behaviors in question are appropriate. To be clear, as was acknowledged by the school and the local board, some of the other student's behaviors were inappropriate and needed to be addressed. However, there was insufficient evidence on this record to support a conclusion that the behaviors constituted bullying within the meaning of the applicable law and policy. In this case, the behaviors of the other student were not shown to be inconsistent with behaviors of kindergarten children generally during the first part of the

school year and in fact ceased over the latter part of the school year. Further, it was reported that the Students loved school, showed no signs of anxiety and were doing well. In any event, and the school personnel took the Parents' concerns seriously and addressed them in a prompt and professional manner.

The parties should be commended for their efforts and willingness to work together despite their disagreements to ensure that the Students enjoy a healthy educational environment.

2. Pembroke's Motion to Dismiss

Following the March 26, 2013 hearing and decision, Parents sent two e-mails in April of 2013 to the Pembroke School Board Chair, clearly indicating their desire to appeal the board's decision. However, the appeal to the State Board was not filed until June 10, 2013. The thirty day statute of limitations for appeal to the State Board expired on May 3, 2013. Pembroke moved to dismiss based on the untimeliness of the appeal; that motion was held in abeyance.

The Parents argue that their clear communication to the local board chair was sufficient to be considered a timely appeal to the State Board. There were no clear reasons articulated for the delay in filing the State Board appeal. Pembroke maintains that Parents received ample notice of the 30-day appeal deadline, and the District had no affirmative obligation to forward the e-mails to the State Board or file the appeal on the Parents' behalf.

IV. PROPOSED FINDINGS OF FACT AND RULINGS OF LAW

Parents: None submitted.

Pembroke School District: Hearing Officer recommends granting proposed findings 1 – 61.

V. RECOMMENDATION TO STATE BOARD

The Hearing Officer recommends:

The Parents have not met their burden of showing that the decision of the Pembroke School Board was erroneous or unreasonable, relative to upholding the decision that the reported incidents did not constitute bullying under state law and local policy. In the alternative, the appeal to this forum was untimely under the circumstances.

Date: November 21, 2013

Amy B. Davidson

Amy B. Davidson, Hearing Officer