

AMY L.,

Appellant

v.

HARFORD COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-39

OPINION

INTRODUCTION

In this appeal, Appellant challenges the decision of the Board of Education of Harford County (local board) affirming the Superintendent's decision to suspend her son, SB, for an additional eight day in-school suspension after a ten day out-of-school suspension. The local board filed a Motion to Dismiss and/or for Summary Affirmance arguing that the Appellant has failed to show that the decision was arbitrary, unreasonable, or illegal. Appellant opposed the Motion. The local board filed a Reply.

FACTUAL BACKGROUND

On May 16, 2012, Appellant's son, SB, made statements using racially pejorative words to three African American female students in Physical Education class at Aberdeen High School. (Superintendent's Ex.2 at 2). The girls were singing in the gym which annoyed SB, prompting him to tell them to "shut the F- up." *Id.* Some of the girls further claim that SB made statements threatening the victims' families, threatening to slice their throats and that they should be hanging from a tree. SB denies that he made these threatening statements. (Superintendent's Ex.2 at 3). SB's statements resulted in a ten day suspension followed by an eight day in-school suspension. (Superintendent's Ex.1 at 4).

SB claims that the girls had been bullying him for weeks, although he reported no bullying incidents to any teachers or administrators. (*Id.*, Appellant's Ex.2 at 3). No teachers heard SB's comments, but one of the girls informed Mr. Lewis, a teacher at Aberdeen High School, of the incident shortly afterwards. (Superintendent's Ex.2 at 6). Mr. Lewis took SB to see Mr. Lindecamp, SB's stepfather and a teacher at the school, who notified SB's mother, the Appellant in this case. (*Id.*). In SB's statement, he admitted to yelling "F- off" and using the "N" word. Superintendent's Ex.2 at 8. SB also dictated a statement to his mother (Appellant) two hours after the event which states that he said "Shut the F- up" and "F- off N." (Superintendent's Ex.2 at 7). Although there is some conflicting testimony, the usage of these words is not disputed. (Superintendent's Ex. 2 at 6).

After learning of the incident, the principal of the school, Michael O'Brien, informed the Appellant that he would be suspending SB for ten school days and referring him to the Superintendent of Schools for further action. (Superintendent's Ex.2 at 5). Mr. O'Brien had determined that SB had violated the school rules of the Board of Education of Harford County

Codes 404 and 705, pertaining to “Verbal or Physical Threat-Student and Inciting/ Participating in a Disturbance.” (*Id.*). After reviewing the statement from SB, the eight witness statements, and a written teacher referral, the Superintendent’s designee, Buzz Williams, Assistant Supervisor for Student Services, decided that SB’s statements to the African American girls were intended only to express anger, not to carry out threats of violence. (Superintendent’s Ex.1 at 4). Based on that determination, Mr. Williams found that SB was not responsible for violating Code 404, Threat, but rather Code 703- Harassment (in addition to Code 705- School Disturbance.) (*Id.*). Mr. Williams decided that in addition to the ten day out-of-school suspension imposed by the Principal, SB would also serve in-school suspension for eight days. (*Id.*).

Because SB has a learning disability, it was necessary that his IEP team meet to determine if his behavior was caused by his disability. (Superintendent’s Ex.3 at 3). The team determined that his behavior was unrelated to his disability because his disability manifests through inattention and recommended that he return to Aberdeen High School to serve his eight day suspension. (Superintendent’s Ex.3 at 4). Based on this recommendation, Mr. Williams decided that the additional eight days should be served in school. (Superintendent’s Ex.1 at 4).

The Appellant appealed to the local board regarding the additional eight day suspension. After considering the witness testimony and the exhibits provided by the Appellant and the Superintendent, the local board determined by a vote of 5-0 that Appellant had failed to meet the burden of providing sufficient probative evidence to overturn the Superintendent’s decision. Appellant then appealed to the Maryland State Board of Education.

STANDARD OF REVIEW

In student suspension cases, the decision of local board is considered final. Md. Code Ann., Educ. Section 7-305(d)(8). The State Board only reviews the merits of the case if there are “specific factual and legal allegations” that the local board failed to follow State or local law, policies, or procedures; violated the student’s due process rights; or that the local board acted in an unconstitutional manner. COMAR 13A.01.05.05(G).

LEGAL ANALYSIS

Appellant raises many concerns in both her Appeal and in her Response to the local board motion.

Arguments in Appeal

In her Appeal, Appellant first argues that the Superintendent’s Report contains a factual error regarding SB’s disciplinary history because it states that he had previously received both in-school and out-of school suspensions. (Appeal at 4). This error, however, was brought out in testimony before the local board. (T. 72-73). Thus, the board was aware of this issue at the time that it made its decision.

Appellant further argues that the Superintendent’s Report erroneously lists ADHD as SB’s primary disability, rather than “Other Health Impairment.” (Appeal at 4). SB’s IEP team,

aware that SB's primary disability was not ADHD, had determined prior to the local board hearing that SB's behavior was not a result of his disability. Thus, this issue is not material to this appeal.

Appellant also alleges that the Hearing Examiner, Greg Szoka, should have been recused because of his prior contact with Appellant. (Appeal at 4). Appellant initiated those communications, however, and she fails to explain why and how these communications would have warranted a recusal.

Appellant next argues that Harford County Public School System's failure to have a policy in place requiring documentation of bullying and harassment resulted in a punishment based on inaccurate data. (Appeal at 4). The Harford County Public School System does, however, have such a policy in place; it has both a policy manual explaining the procedure for reporting incidents of bullying and a form entitled the "Bullying, Cyberbullying, Harassment or Intimidation Reporting Form." (available at <http://www.hcps.org/community/cybersafety/docs/parentguide.pdf>; <http://www.hcps.org/students/docs/HarassmentReportingForm.pdf>). Because SB admitted that he had not previously made any bullying reports in regard to the girls involved here, the Appellant's argument is not material to the case. (T. 128).

Appellant's Arguments in Response to Local Board's Motion

Appellant raises three additional issues in her Response to the local board's Motion to Dismiss and/or for Summary Affirmance. Appellant alleges that the decision of the local board was arbitrary because it is contrary to sound educational policy, that it violated due process, and that the local board did not follow state policies. (*Id.*).

As to the assertion that the decision was arbitrary, Appellant argues that it is contrary to sound educational policy to hold SB responsible for harassment. (Response at 1). We cannot agree, given the facts of this case.

Next, Appellant alleges that SB's due process rights were violated because he was not given a scribe to write his statement as is required by his disability. (Response at 2). Although SB was not given a scribe for his first statement, he later dictated his account of the incident to Appellant. (Superintendent's Ex. 2, at 7). This account is in the record. (*Id.*). Furthermore, SB had a full evidentiary hearing which would have cured any defects in prior proceedings. *See Venter v. Bd. of Educ.*, MSBE Op. No. 05-22 (2005) (finding that any procedural errors in the proceedings before the superintendent were cured by appellant's full evidentiary hearing before the local board). Thus, we cannot agree that SB's rights were violated when he was not given a scribe to write his first statement.

Appellant also claims that SB's rights were violated because his disciplinary consequences were decided prior to completion of the investigation. (Response at 2). In this argument, however, Appellant is referring to the ten day suspension imposed by the principal. (T. 36-38). Not only does the principal have the discretion to suspend a student for ten days under §7-305(a) of the Education Article, but the ten day suspension is not the topic of this


appeal. The additional eight day in-school suspension that is at issue in this appeal was not decided until after the Superintendent's designee completed the investigation.

Appellant additionally argues that SB was not offered help in coping with the suspension. (Response at 3). In imposing the additional eight day suspension, the Superintendent decided that SB would serve the suspension in school with support from his IEP team, rather than at home or in an alternative setting. (Superintendent's Exh. 3, at 4). During this eight day period, SB was able to serve his suspension in his classes at his high school with the supports of his IEP team in place. (*Id.*). In allowing SB to serve his additional suspension in school and allowing him to continue to go to his classes, he was able to serve this suspension in a familiar location and his regular routine was minimally disrupted. If he did encounter any difficulties, the supports of his IEP team were available to him. For these reasons, we cannot agree that he was not offered help in coping with the suspension.

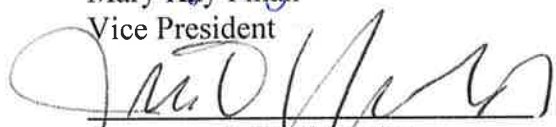
Lastly, Appellant claims that the county board has not followed state or local policies and procedures. (Response at 3). Appellant, however, fails to name any specific policies or procedures that were violated and is again simply asking the State Board to review the case on the merits without providing the legal basis for such a review.

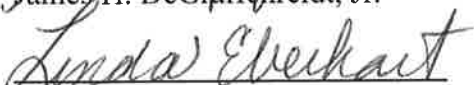
CONCLUSION

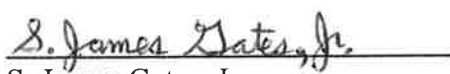
For the foregoing reasons, we affirm the decision of the local board to uphold the Superintendent's additional eight day in-school suspension.

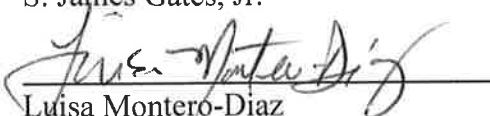

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July 23, 2013