

MICHELLE B.,

Appellant
v.

ST. MARY'S COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 13-53

OPINION

INTRODUCTION

Appellant filed an appeal with the State Board challenging “no trespass” restrictions imposed upon her by the Director of Safety and Security for St. Mary’s County Public Schools, as well as an “Executive Summary of Investigation” he prepared. The St. Mary’s County Board of Education (local board) filed a motion to dismiss the case for failure to exhaust administrative remedies. Appellant replied to the motion and the local board responded.

FACTUAL BACKGROUND

Appellant is the mother of two children who were enrolled in the St. Mary’s County Public Schools (SMCPS) during the 2012-1013 school year and who attended Evergreen Elementary School (Evergreen) until Appellant withdrew them on or about April 23, 2013. During the time the children were enrolled at Evergreen, the Appellant and her ex-husband were involved in a series of contentious domestic disputes that spilled over into the school, causing repeated and significant disruptions to the educational functions at Evergreen and to the “Before and After Care” program at the school run by the St. Mary’s County Department of Recreation and Parks.

On February 7, 2013, F. Michael Wyant, Director of Safety and Security for SMCPS, imposed “no trespass” restrictions on Appellant and her ex-husband in accordance with §26-102 of the Education Article. The restrictions on Appellant and her ex-husband were the same and stated that they were “prohibited from entering into the buildings or upon the grounds of Evergreen Elementary School or any other St. Mary’s County Public Schools except as provided in [the] letter.” (Motion, Exhs. 1 & 2). The letters further set forth the circumstances under which Appellant and her husband could be on school property, which included pick up and drop off, emergency circumstances, by invitation, and by scheduled and confirmed appointment. *Id.*

Appellant, through legal counsel, appealed the “no trespass” restrictions. In anticipation of the appeal proceedings, Mr. Wyant prepared an “Executive Summary of Investigation” detailing his investigation into the events leading to the issuance of the “no trespass” restrictions. He furnished a copy to Appellant and her attorney. (Motion, Exh.9).

On April 17, 2013, J. Bradley Clements, Deputy Superintendent of Schools and Operations for SMCPS, conducted an appeal conference. Mr. Clements found that Appellant

had never been denied access to her children at school since the issuance of the “no trespass” restrictions, and that the restrictions had successfully coordinated the school visits of Appellant and her ex-husband. (Motion, Exh. 11). Based on what transpired at the conference, it was Mr. Clements’ understanding that there was agreement that the “no trespass” restrictions would remain in effect. It was also agreed that the “no trespass” restrictions would not be included in the education records of the children. *Id.* Appellant withdrew her daughters from school on April 23, 2013.

Thereafter, on April 26, 2013, Appellant sent Mr. Clements a letter that appeared to be a rebuttal and appeal of Mr. Wyant’s investigation and the restrictions. (Motion, Exh.12). On May 9, 2013, legal counsel for the school system forwarded the letter to Appellant’s attorney seeking clarification as to whether Appellant’s intent was to file an appeal of Mr. Clements decision. (Motion, Exh.13). Appellant’s attorney did not respond so the school system did not process the matter as an appeal.

On July 1, 2013, Mr. Wyant was served with a *Subpoena Duces Tecum* for the production of the “Executive Summary of Investigation” to Appellant’s ex-husband as part of the ongoing custody case. (Motion, Exh. 14). Upon learning that Appellant’s attorney was no longer representing her, legal counsel for the school system advised Appellant that Mr. Wyant intended to comply with the subpoena unless Appellant obtained a court order quashing it. No order quashing the subpoena was issued so Mr. Wyant produced the document.

On July 22, 2013, Appellant filed her appeal to the State Board. Appellant is challenging the “no trespass” restrictions and Mr. Wyant’s “Executive Summary of Investigation.” She maintains that the information was used against her by her ex-husband, causing her to lose custody of her daughters.

By letter dated July 24, 2013 to the local superintendent, Appellant again challenged the “no trespass” letter and the investigative report. On or about July 30, 2013, Appellant submitted to the school system a Bullying, Harassment and Intimidation Report against Mr. Wyant.

In light of those filings and Appellant’s appeal to the State Board, the local Superintendent, Dr. Michael J. Martirano, wrote to the Appellant on August 22, 2013, and provided her with the local board’s Rules of Procedure for Appeals and Hearings brought under §4-205(c) of the Education Article – local board Administrative Regulation BEE-R-1. (Martirano Letter). In the letter, Dr. Martirano advised the Appellant to complete and return the enclosed Hearing Information Form within 10 days so that the local board could advise whether it would conduct an evidentiary hearing and/or use a hearing examiner. *Id.* To date, Appellant has not submitted the form.¹ (Local Bd. Response).

Since the filing of this appeal, the court awarded the father sole physical and legal custody of Appellant’s daughters. The father has re-enrolled them in SMCPS and they are

¹ We note that the local board’s Administrative Regulation BEE-R-1 provides that an individual appealing to the local board must complete the Hearing Information Form within 10 days after the form is sent to the appellant by the local board. An appellant’s failure to submit the required form may result in the local board dismissing the appeal. (Administrative Regulation BEE-R-1(2)(d)(1)).

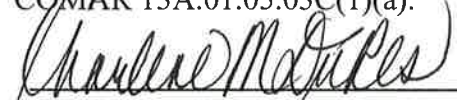
attending school . The “no trespass” restrictions remain in effect to require coordination of school visits without disruption. (Local Bd. Response).

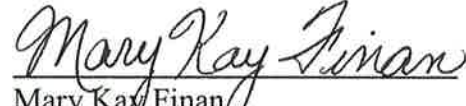
ANALYSIS

The local board has filed a Motion to Dismiss the case maintaining that the matter is not ripe for review by the State Board because the Appellant did not exhaust her administrative remedies by first filing an appeal to the local board. It is well settled that a matter must first be decided by the local board before an appellant can pursue an appeal to the State Board. See *Kemp v. Montgomery County Bd. of Educ.*, MSBE Op. No. 01-14 (2001); *Stuart v. Prince George’s County Bd. of Educ.*, 7 Op. MSBE 1358 (1998). Although Appellant filed a document with the local board purporting to challenge the April 18, 2013 decision of Deputy Superintendent Bradley Clements, there was some confusion about whether Appellant intended to appeal due to a lack of response from Appellant’s attorney, despite the local board’s attempt to seek clarification. Regardless of that filing and Appellant’s filings in July 2013, the fact remains that there is no local board decision for the State Board to review.

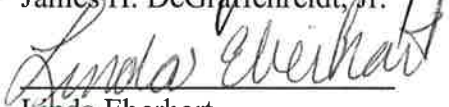
CONCLUSION

For these reasons we dismiss the appeal because the local board has not issued a decision and there is nothing for the State Board to review. COMAR 13A.01.05.03C(1)(a).


Charlene M. Dukes
President

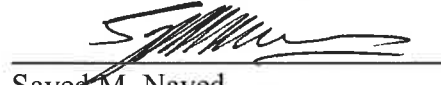
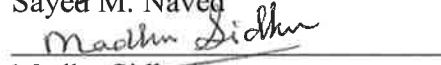

Mary Kay Finan
Vice President


James H. DeGraffenreidt, Jr.


Linda Eberhart

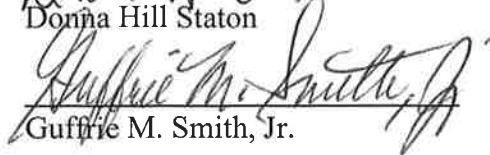
Absent
S. James Gates, Jr.

Absent JM
Luisa Montero-Diaz


Sayed M. Naved

Madhu Sidhu



Donna Hill Staton



Guffie M. Smith, Jr.

September 24, 2013