

LAKEIA N.

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-09

OPINION

INTRODUCTION

Lakeia N., the Appellant, is the mother of MB, a 6th grade student who was expelled from school for a month. She has appealed the decision of the Baltimore City Board of School Commissioners (local board) to uphold the expulsion. The local board filed a Motion for Summary Affirmance. The Appellant replied.

FACTUAL BACKGROUND

The incident that led to MB's expulsion occurred on April 24, 2012 when a fight occurred between two students in the classroom next door to MB's classroom. MB was in the hallway when the door to the classroom next door to his flew open. He testified that he could see blood on the floor. (T. 74-75). The teacher in that class was trying to restrain one of the fighting students. The teacher called out for help. MB's teacher, Ms. Hembd, came out of her classroom to help the other teacher. She asked MB three times to go back to her classroom. He refused to do so. (T. 11-12, 75).

Ms. Hembd testified that, after MB refused for the third time to leave the hallway, she placed her hand on his hood and gestured toward the door of the classroom telling MB to get back into the classroom. She further testified that she applied no force and was not pulling him. (T. 12).

MB testified that Ms. Hembd "yanked" on his hood and tried to pull him into the classroom. He said that his neck got hurt. (T. 75-76). MB testified that, in response, he pushed Ms. Hembd's hand off his hoodie. (T.75). Ms. Hembd testified that MB "swatted" her arm way, pushed her, "and said get the F... out of my face." (T.12).

Physical contact with a teacher is a Level Four offense for which suspension or expulsion is the consequence. MB was expelled for one month and re-assigned thereafter to North Bend Elementary School.

The Appellant appealed the expulsion on the grounds that the teacher should not have touched her son and that the school was not providing her son with a free, appropriate education sufficient to address his disabilities - - Attention Deficit Hyperactivity Disorder and Oppositional Defiance Disorder. A full evidentiary hearing was held. The Hearing Examiner upheld the expulsion. The local board affirmed the Hearing Examiner's decision. This appeal ensued.

STANDARD OF REVIEW

In student suspension and expulsion cases, the decision of the local board is considered final. Md. Code Ann., Educ. §7-305(c). Therefore, the State Board will not review the merits of the decision unless 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; acted in an unconstitutional manner; or that the decision is otherwise illegal. COMAR 13A.01.05.05G(2).

ANALYSIS

In her appeal, the Appellant states, "My son and I do not deny that my son intentionally touched a staff..." She posits, however, that "staff had no premise to touch my son." As to that issue, the record reflects that the fight in the next door classroom was a bloody one, that the student the other teacher was attempting to restrain was volatile and fighting back, and that MB was either in the doorway of that classroom or close by. As the Hearing Examiner explained, "Since the student that was fighting was bleeding profusely, any contact with the bleeding student, intentional or unintentional, could have dire consequences." He concluded that Ms. Hembd's actions to move MB out of the hallway were in an effort to protect MB. (Motion, Ex. 7 at16). We concur.

The Appellant raises a second issue in her appeal - - that her son "was not receiving a free and appropriate education tailor[ed] to his specific diagnosis," which was Attention Deficit Hyperactivity Disorder and Oppositional Defiance Disorder. Resolution of this type of issue is not within the jurisdiction of this Board. We have consistently held that an appeal to this Board is not the appropriate forum to resolve issues governed by the Individuals with Disabilities Act (IDEA). See, e.g., *George and Sharon K. v. Montgomery County Bd. of Educ.*, MSBE Op. No.12-09 (2012); *Phillip and Deborah W. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 11-48 (2011).

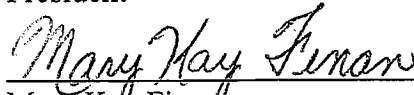
In that regard, we note that, because of MB's disability, the school system conducted a manifestation hearing to determine whether MB's misconduct was a manifestation of his disability. The school system determined that it was not. That decision has also been appealed, but not yet decided. That special education process is the appropriate process to address the disability issues that the Appellant raises here.

CONCLUSION

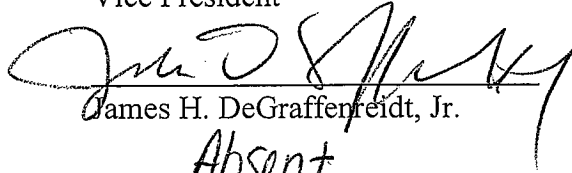
For all the reasons, we affirm the decision of the local board.



Charlene M. Dukes
President



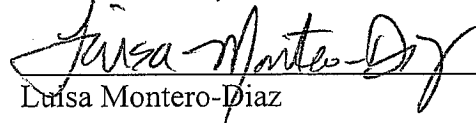
Mary Kay Finan
Vice President



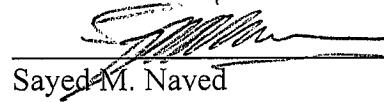
James H. DeGraffenreidt, Jr.

Absent

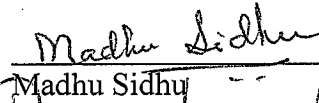
S. James Gates, Jr.



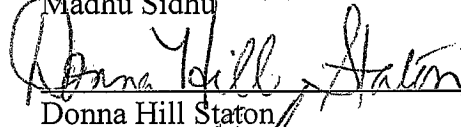
Luisa Montero-Diaz



Sayed M. Naved

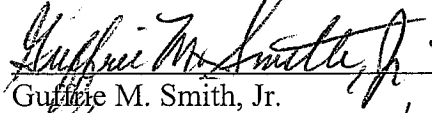


Madhu Sidhu

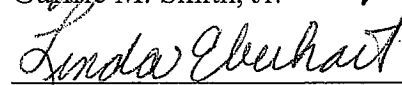


Donna Hill Staton

Ivan C.A. Walks



Guffie M. Smith, Jr.



Linda Eberhart

February 26, 2013