

LINDA S.,

Appellant

v.

BALTIMORE COUNTY BOARD
OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

Opinion No. 09-06

OPINION

INTRODUCTION

In this appeal, Appellant challenges the findings of the Area Assistant Superintendent concerning her son's appeal of his reinstatement as a member of the National Honor Society at Loch Raven High School. Appellant also challenges a separate decision of the Superintendent's Designee suspending her son from Loch Raven High School based on his involvement in an incident concerning improper access to confidential student data on the school's computers. The local board has filed a Motion to Dismiss. The Appellant has filed an Opposition to the Motion.

FACTUAL BACKGROUND

On December 6, 2007, school administrators learned that Appellant's son, J.S., and Student A had accessed confidential student data on a school computer. At the time of the incident, J.S. was an 11th grade honors student at Loch Raven High School (Loch Raven) and a member of the National Honor Society (NHS).

The Principal, Jacqueline Lamp, and the Assistant Principal, Bonnie Lambert, conducted an investigation. Based on their investigation, which included interviews of and statements from students and teachers, they determined that the following events had taken place:

On Tuesday, December 4, 2007, [J.S.] and Student A went to room 200, a computer lab, during B lunch to work on their projects. The classroom was locked so, with teacher permission, they gained access through the adjoining classroom. When J.S. sat down at the computer he normally uses during class, he noticed that a teacher was still logged on to the computer system and several of the drives that are normally not available to him were accessible. The two students were curious, looked around the drives, and found the student information which included student login ID's, passwords and social security numbers. During interviews with the two students involved, Student A admitted to putting his flash drive in the computer and J.S. admitted to pressing the copy button to download the files onto the flash drive. J.S. and the other student told several classmates that they had accessed the confidential data, which is how the

school administration ultimately learned of it. Due to the security breach, all computer instruction at the school ceased. New login information was later issued for all students at the school.

(Board Exhibits 2 and 3). Based on the results of the investigation, the Principal determined that J.S. had violated local board Policy #5550 - Disruptive Behavior, Category II.m for disruptive behavior that results in the interference with the normal school program, and Category II.x for theft and/or knowingly possessing stolen property. She recommended an extended suspension and initiated criminal charges. (Board Exhibit 3).

Because J.S. has a hearing deficit and an Individualized Education Plan (IEP), his IEP team conducted a manifestation hearing pursuant to the requirements of the Individuals with Disabilities Education Act to determine if his actions were a manifestation of his disability. The IEP team concluded that J.S.'s actions were not a manifestation of his disability. (Board Exhibit 5). Thus, the disciplinary process could proceed.

On December 13, 2007, the Superintendent's Designee, Michael Goldsmith, held a hearing concerning the recommended suspension. Appellant and her son were represented by counsel at the hearing. Mr. Goldsmith issued a written decision on December 20, 2007 finding J.S. guilty of all charges. Mr. Goldsmith also transferred J.S. out of Loch Raven to the Kenwood Evening High School for violating local board Policy #5550. (Board Exhibits 6 and 8). On December 20, 2007, Appellant appealed the suspension decision of the Superintendent's Designee to the local board. (Board Exhibit 9).

Meanwhile, on December 19, 2007, Appellant requested a due process hearing to appeal the IEP team's manifestation determination. (Board Exhibit 7). The local board held the suspension appeal in abeyance pending a determination on the manifestation appeal. (Board Exhibit 10).

As part of the due process procedures for the appeal of the manifestation determination, a mediation conference took place on January 8, 2008. The parties entered into a Mediation Agreement specifying, among other things, that J.S. would return to Loch Raven on January 29, 2008, and that his student record would not reflect any disciplinary action based on the incident. (Board Exhibit 11).

On January 15, 2008, legal counsel for the school system advised Appellant that the Mediation Agreement resolved Appellant's special education due process complaint as well as the appeal of the suspension decision of the Superintendent's Designee. Legal counsel also confirmed that the parties had agreed that [J.S.] would abide by the terms and conditions established by Loch Raven High School, including no further access to the school's computers. (Board Exhibit 12). J.S. returned to Loch Raven.

By letter dated February 26, 2008, Appellant again appealed to the local board, alleging noncompliance with the Mediation Agreement and various other claims against the school

system. (Board exhibit 13). The Appeals and Mitigation Officer, Dr. Alan Hill, denied the request explaining that the appeal of the decision of the Superintendent's Designee had concerned only the suspension of J.S., which had since been resolved through his re-entry to Loch Raven and the expungement of any disciplinary action from his record. (Board Exhibit 14). In a separate letter, legal counsel for the school system addressed Appellant's other concerns, including J.S.'s return to school and the prohibition on his access to the school's computers and enrollment in computer classes. (Board Exhibit 16). Appellant again requested an appeal. (Board Exhibit 17). Once again, Dr. Hill advised Appellant that the school system considered the matter resolved given that J.S. had returned to school and his disciplinary record had been expunged. (Board Exhibit 18).

Meanwhile, on February 15, 2008, the National Honor Society Advisors informed J.S. that his membership in the NHS was being terminated due to his violation of the Telecommunications Acceptable Use Policy. (Board Exhibit 21). On March 18, the NHS Faculty Council held an appeal hearing with J.S. and his parents. J.S. asserted a procedural defense to his membership termination but did not present any evidence regarding his conduct. (Board Exhibit 22). By letter dated March 18, 2008, the NHS Advisors informed J.S. that his dismissal from NHS would stand. In that letter, they also advised him that students dismissed from the NHS "have the right to appeal the decision of the Faculty Council under the same rules pertaining to any other disciplinary action used in the school district." (Board Exhibit 23).

Appellant noted an appeal of the NHS Advisors' decision. (Board Exhibit 24). By letter dated May 12, 2008, Lyle Patzowsky, Area Assistant Superintendent, advised Appellant that J.S. would be reinstated into the NHS because of procedural irregularities. He stated, "while [J.S.] violated the standards of the National Honor Society which would have been grounds for his dismissal, he was not provided due process according to the National Honor Society procedures as outlined in their bylaws." (Board Exhibit 19). Appellant appealed Dr. Patzowsky's May 12 decision to the local superintendent, Joe Hairston. (Letter to Hairston, 5/16/08). Dr. Hairston did not respond to the appeal.

STANDARD OF REVIEW

There is no local board decision in the matters appealed here. In the usual, case we would summarily dismiss the appeal because it is the long held position of this Board that it will not review matters not initially reviewed by the local board. *Jan M. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 08-40 (2008); *McDaniel v. Montgomery County Bd. of Educ.*, MSBE Op. No. 03-22 (2003); *Craven v. Board of Educ. of Montgomery County*, 7 Ops. MSBE 870 (1997); *Hart v. Board of Educ. of St. Mary's County*, 7 Ops. MSBE 740 (1997).

The Appellant, however, attempted appeals to the local board but the school system did not initiate that process. In such a case, we would usually remand the case to the local board. We have, however, reviewed the extensive record filed herein in an attempt to understand the Appellant's various claims and arguments. It is our view that the suspension issue appealed here is moot and it would serve only to complicate and extend this matter if we were to remand it to

the local board. There remains a live controversy about the National Honor Society issue. We explain our reasoning below.

ANALYSIS

Timeliness of Motion to Dismiss

As a preliminary matter, Appellant maintains that the local board's Motion to Dismiss should be stricken because it was untimely filed. The local board's Motion was due to be filed with the State Board on August 14, 2008. (Memorandum from La Fiandra to Hairston/Howie, 7/22/08). Counsel for the local board faxed a copy of the Motion to the State Board on August 14, 2008.¹ The State Board received the fax the same day. Because the Motion was delivered to the State Board on the date it was due, the Motion was timely filed. COMAR 13A.01.05.01A(5).

Appeal of Suspension from Loch Raven

Although it is not entirely clear from Appellant's appeal, we believe that she is challenging Mr. Goldsmith's suspension decision. Appellant attempted to appeal the suspension to the local board on at least two occasions, but was advised by Dr. Hill that the matter was resolved due to J.S.'s reinstatement at Loch Raven and the expungement of the disciplinary removal from his record. (Board Exhibits 14 and 18). Dr. Hill did not forward Appellant's appeal to the local board for a final decision by that body.

After reviewing the record, because J.S. has been reinstated at Loch Raven and the disciplinary action expunged from his record, there is no existing controversy or dispute. The discipline case is moot. We therefore dismiss the appeal of Mr. Goldsmith's suspension decision.

National Honor Society Claim

In her appeal, Appellant takes issue with the language used by Mr. Patzkowsky in his May 12, 2008 letter reinstating J.S. to the National Honor Society, specifically his statement that J.S. violated the NHS standards. She argues that Mr. Patzkowsky has no basis for that conclusion given his finding that J.S. was not provided due process under the NHS procedures. She asks that the State Board require Mr. Patzkowsky to issue a corrected letter stating only that J.S. was reinstated because of procedural irregularities. (Letter of Appeal).

As stated above, the NHS Advisors had informed Appellant of her right to appeal their decision dismissing J.S. from the NHS under the same rules pertaining to other disciplinary

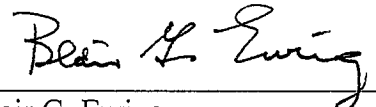
¹The local board mailed a hard copy of the Motion to the State Board on August 14 as well.

action in the school system. Appellant's pursuit of the appeal resulted in J.S.'s reinstatement in the NHS and the letter from Dr. Patzkowsky containing the statement with which Appellant disagrees. Appellant contested the findings in Dr. Patzkowsky's letter by filing an appeal to Dr. Hairston on May 16, 2008. Appellant never received a response to that appeal. We find, therefore, that there remains a live controversy on this issue.

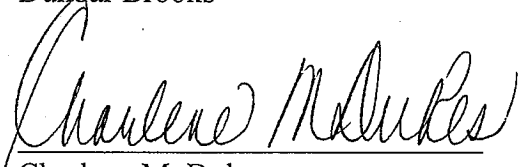
CONCLUSION

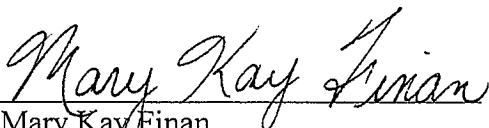
We dismiss as moot Appellant's appeal of her son's suspension. With regard to Appellant's claim concerning the wording of Dr. Patzkowsky's May 12, 2008 letter, we remand the matter to the local board for final resolution on that issue alone.

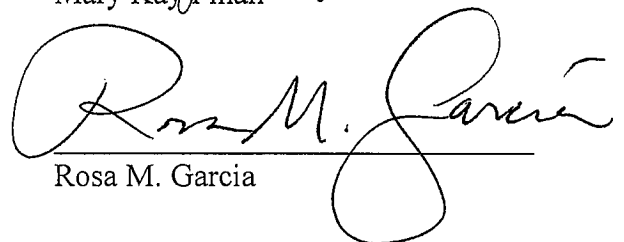

James H. DeGraffenreidt, Jr.
President

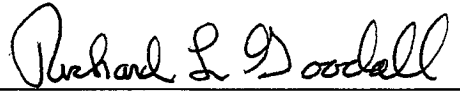

Blair G. Ewing
Vice President


Dunbar Brooks

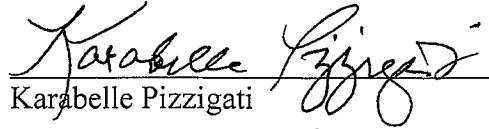

Charlene M. Dukes


Mary Kay Finan

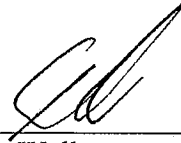

Rosa M. Garcia



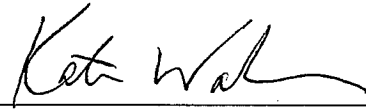
Richard L. Goodall



Karabelle Pizzigati



Ivan C.A. Walks



Kate Walsh

February 24, 2009