

JEANETTE W.

Appellant

v.

CALVERT COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-33

OPINION

INTRODUCTION

Appellant filed this appeal to the State Board alleging that the school system violated §504 of the Rehabilitation Act of 1973, as amended, and challenging her son's five day suspension. The local board has filed a Motion to Dismiss the appeal because there is no local board decision for the State Board to review. The Appellant opposed the motion and the local board responded to Appellant's opposition.

FACTUAL BACKGROUND

During the 2010-2011 school year, Appellant's son, RW, was in the 11th grade at Northern High School and on a Section 504 Plan for ADHD. At the end of the school year, RW received a 10 day out of school suspension for distribution of a controlled dangerous substance (Hydrocodone) to a classmate. He served 5 days of the suspension during the last 5 days of school year. RW was also prohibited from coming onto school grounds during the summer and was excluded from extracurricular activities for the first 30 days of the 2011-2012 school year.

Over the summer months, as part of the §504 process, the school system conducted a manifestation hearing to determine if RW's conduct was a manifestation of his disability and concluded that it was not. Appellant appealed the manifestation determination and the suspension. Thereafter, the school system and Appellant, represented by legal counsel, engaged in the §504 mediation process. As a result, the school system reduced the out of school suspension to the 5 days already served. On September 2, 2011, the parties entered into a settlement agreement that resolved the manifestation determination and discipline dispute. Appellant agreed to withdraw her appeal to the local board concerning the disciplinary action. She agreed that she would not pursue further §504 action or a §4-205(b)(3) appeal of issues related to the manifestation determination and discipline dispute. The school system agreed that RW's 5 day suspension would be noted as an absence in his education record and that the disciplinary action would not follow him to any post-graduation institutions. The school system also agreed to a reduction of the 30 day ban from extracurricular activities, which was readjusted

to end on September 17, 2011, and that the settlement agreement would not supersede any coach's decision regarding try-outs for any athletic team.

On September 5, 2011, Appellant sent a letter to the local board "to provide [the board] with an accounting of events" with respect to her son's experiences over a period of several years as they relate to §504. She alleged that the school system had committed various §504 violations during her son's schooling. The allegations included claims that the school system failed to properly identify RW's need for a §504 plan in the 4th and 8th grades or follow proper procedures, that the school system did not follow proper procedures in establishing RW's §504 plan during the 9th grade, that the established plan was not sufficient, and that it was not properly implemented in the 9th grade, and in October and May of the 10th grade. The remainder of the allegations pertain to the 2011 suspension and manifestation determination. Appellant notes in her letter that she filed a §504 complaint with the U.S. Office of Civil Rights (OCR) alleging that the school system failed to properly implement her son's §504 plan during the 2010-2011 school year (11th grade) and that a resolution of that complaint was reached in August 2011.¹

In the letter to the local board, Appellant did not state that she was filing an appeal and did not request any remedy. Rather, she stated that her intent was to provide school system "staff with the knowledge they need to provide equal access to education for disabled students while protecting student's rights" as the school system embarks on its endeavor to adopt a §504 grievance procedure and to establish training for the §504 officer and staff at Northern High School. (Appellant's Letter to Chambers, Local Board President).

In response, the local board President thanked Appellant for her letter and stated his understanding that Appellant's concerns had been addressed through the mediation and OCR processes, and that school staff had already scheduled another §504 meeting to work with her to address her son's needs. (Letters from Chambers, Local Board President).

Thereafter, Appellant filed this appeal to the State Board. She attached her September 5 letter to the local board and stated that the local board did not properly address her issues.

STANDARD OF REVIEW

The State Board shall exercise its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations. COMAR 13A.01.05.05E.

ANALYSIS

There is no local board decision in this case. The local board concluded that Appellant's September 5, 2011 letter was not a letter of appeal. The local board reasonably viewed the correspondence as informational given that Appellant sought no relief, stated that she was

¹ Appellant indicates that due to the OCR Resolution, the school system will be adopting a §504 grievance procedure and developing §504 training for school system staff.

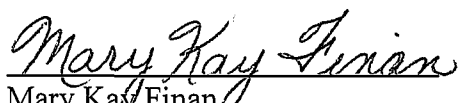
submitting the letter to provide the local board with information as it established a §504 grievance procedure and §504 training, had waived some of the issues raised, had resolved others through an OCR complaint, and had a pending §504 meeting. Because there is no local board decision, there is nothing for the State Board to review and, pursuant to COMAR 13A.01.05.03C(1)(a), this appeal must be dismissed.

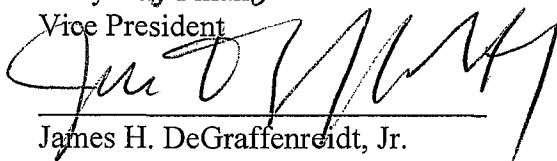
In addition, to the extent that the Appellant is attempting to raise §504 issues through an appeal to the State Board, the school system's established §504 process does not follow that appeal route. While the school system process includes several avenues of review of §504 matters, it does not provide an appeal of those issues to the local board. (See Calvert County Public Schools Section 504 Procedure Document). Thus, an appeal of §504 issues to the State Board is inappropriate as well.

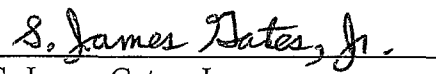
CONCLUSION

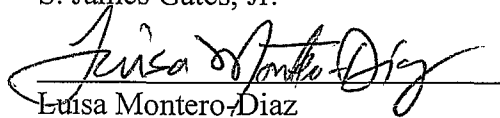
For the reasons stated above, we dismiss the appeal.


Charlene M. Dukes
President



Mary Kay Finan
Vice President

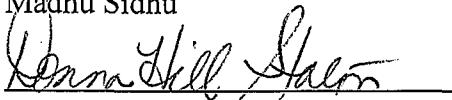

James H. DeGraffenreidt, Jr.


S. James Gates, Jr.

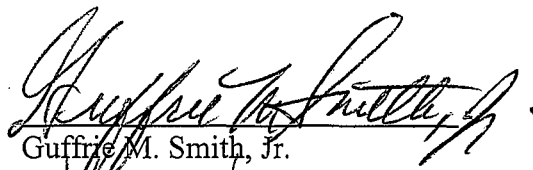

Luisa Montero-Diaz


Sayed M. Naved

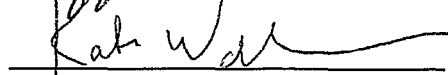

Madhu Sidhu


Donna Hill Staton


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Guffie M. Smith, Jr.



Kate Walsh

August 28, 2012