VINCENT AND PARUL M.	BEFORE THE
Appellant,	MARYLAND
v.	STATE BOARD
CHARLES COUNTY BOARD OF EDUCATION	OF EDUCATION
Appellee.	Opinion No. 20-17

OPINION

INTRODUCTION

Vincent and Parul M. ("Appellants") appeal the decision of the Charles County Board of Education ("local board") upholding the decision of the local superintendent to issue Appellants' daughter a nine-day suspension arising out of her conduct involving a social media post that pictured guns and a caption "School should be fun Monday." Appellants assert in their appeal that their daughter's suspension should be overturned based on various violations and improper decisions made by the school system. The local board filed a memorandum in response to the appeal maintaining that its decision should be upheld. The Appellants responded and the local board replied.

FACTUAL BACKGROUND

Incident

This matter involves the Appellants' daughter, K.M., who was 16 years old at the time of the incident in question and attending the 11th grade at Maurice J. McDonough High School ("McDonough"). On Saturday, September 7, 2019, K.M. posted a picture on Snapchat featuring numerous rifles with a message underneath reading "School should be fun Monday." (Appeal, Sup't. Ex. 1). K.M. deleted the message shortly after posting it, but not before it was seen by others and referred to the Charles County Sheriff's Department ("CCSD") and the Charles County Public Schools' ("CCPS") *See Something, Say Something* website. (Appeal, Ex. A).

The CCSD ultimately determined the posting and threat were not credible, and no criminal charges were filed. However, McDonough conducted an investigation and notified the school community about the incident. (Appeal, Ex. A). The next school day, on September 9, 2019, Steven D. Roberts, Principal of McDonough ("Principal Roberts"), met with Appellants and K.M. about the incident. K.M. admitted in writing that she posted the image after it was sent to her by two male friends who she said were laughing about the "gun picture." (Appeal, Ex. H). K.M. also claimed in her written statement that she posted the picture on Snapchat to warn others of the threat. *Id.* However, she did not inform her parents, the police, or any CCPS administrators either before or after posting the picture. *Id.*

Investigation and Notice of Suspension

On September 9, 2019, after meeting with Appellants and K.M. to discuss the incident, Principal Roberts issued K.M. a Notice of Suspension to the Superintendent ("Notice"). (Appeal, Ex. B). The Notice stated that K.M. was being suspended based on her involvement in a False Alarm/Threat of Violence by "[i]nitiating or spreading a warning of a fire or other catastrophe without cause (e.g., pulling a fire alarm or misusing 911 or posting or sharing texts or social media messages or other communications that incite fear or cause a disruption to school activities.)" *Id.* The Notice indicated that the "Suspension Dates" would be "determined at the hearing."[1] *Id.*

The next day, on September 10, 2019, Chrystal Benson, CCPS Student Engagement and Conduct Officer and superintendent's designee ("Ms. Benson"), emailed the Appellants that she had conducted a preliminary investigation regarding K.M.'s suspension, and she was recommending that the superintendent impose a suspension for more than 10 days (extended suspension) or expulsion. (Appeal, Ex. C). She further informed Appellants that the matter was set for a conference on September 17, 2019, for both sides to present information before a final decision would be made on K.M.'s suspension. *Id.*

Several days prior to the conference, Appellants' attorney requested the witness statements and the police report from both Principal Roberts and Ms. Benson. Ms. Benson indicated that Appellant could have a copy of K.M.'s statement only. Principal Roberts advised that the school did not have the police report and was not aware of any charges being filed by the CCSD. (Appeal, Ex. D).

September 17th Discipline Conference

Ms. Benson conducted the discipline conference on September 17, 2019. Present at this conference were: Principal Roberts; John Hairston, the Pupil Personnel Worker assigned to McDonough; the Appellants; K.M; and Lisa Seltzer Becker, attorney for the Appellants. (T. 2-4). At the Appellant's request, although not common practice, the conference was recorded and transcribed.

At the conference, the Appellants received the Incident Summary explaining the charges which led to suspension. (T. 7). The Appellants also received K.M.'s written statement admitting that she posted the picture with a photo of rifles which contained a statement saying "School should be fun on Monday." In her statement, K.M. stated she deleted the post after seven minutes because she realized it could cause chaos, and she apologized for all the chaos she caused. (T. 8). There was also a statement from an unidentified student indicating this student was the one who saw the post and told K.M. to take it down. (T. 8-9).

Principal Roberts presented information from K.M.'s teachers establishing that even though she was only a few days into the school year, she was viewed as a "thoughtful," "diligent" student with a "good attitude" and "good behavior." (T. 17-22; *see also* Appeal Ex. F). At the time of her suspension, K.M. had a 3.56 grade point average and was on track to graduate with high distinction. (T. 22-23). K.M. had no attendance issues prior to her suspension and had

[1] The school system documents interchangeably use the terms "hearing" and "conference" to refer to the September 19, 2019 discipline conference before the superintendent's designee.

missed only two days of school in the prior two years. (T. 25-26). Further, K.M. was involved in athletics, including track, cross country, and soccer. (T. 23-25).

Appellants also presented testimony that, prior to the incident, they had concerns that K.M. had possible neuropsychological and impulse issues and they were going to schedule a neuro psych test. (T. 29-30; 33). There was no evidence that they had previously informed the staff at McDonough of their concerns.

Appellants admitted at the conference that they did not learn of K.M.'s involvement with the Snapchat posting until the next day, Sunday, September 8, 2019, when a detective with CCSD arrived at their house. (T. 30). K.M. had not informed her parents prior to that time.

Principal Roberts presented information regarding the significant impact K.M.'s actions had on the school, including the handling of parents who were concerned about what was going on and how it also caused a lot of students to be absent the next school day. (T. 34).

Nine-Day Suspension and Appeal to the Local Board

Two days after the conference, on September 19, 2019, Ms. Benson notified the Appellants that K.M. would receive only a nine-day suspension, and that she could return back to school on Monday, September 23, 2019. (Appeal, Ex. G). Other conditions attached to K.M.'s suspension included serving an in-school removal ("ISR") from September 23, 2019 through September 27, 2019, completing community service, and abiding by other rules and regulations of the school. *Id.*

On September 25, 2019, Appellants appealed Ms. Benson's decision to the local board. (Appeal, Ex. L). On November 12, 2019, the local board issued a decision affirming Ms. Benson's decision to uphold K.M.'s nine-day suspension from McDonough and other conditions. The local board determined that a hearing before the local board was not necessary since the suspension was less than ten days. (Appeal, Sup't. Ex. 7.)

Appellants filed this appeal with the State Board appeal on December 16, 2019. (Appeal, Ex. N).

STANDARD OF REVIEW

This is an appeal pursuant to § 4-205(c)(3) of the Education Article and COMAR 13A.01.05 concerning the nine-day suspension of the Appellants' daughter. For student suspensions, COMAR 13A.01.05.06G provides that the decision of the local board is considered final and therefore the State Board will not review the merits of the suspension unless there are "specific factual and legal allegations" proven by an appellant that the local board failed to follow State or local law, policies, or procedures; or the local board violated the student's due process rights or the local board has acted in an unconstitutional manner; or the decision was otherwise illegal. Under COMAR 13A.01.05.06C, a decision may be considered illegal if it is: 1) unconstitutional; 2) exceeds the statutory authority or jurisdiction of the local board; 3) misconstrues the law; 4) results from unlawful procedure; 5) is an abuse of discretionary powers; or 6) is affected by any other error of law.

LEGAL ANALYSIS

Procedural Issues

Appellants argue that a procedural violation occurred because they were not "provided with notice of the duration of the suspension." (Appeal, p. 7; *see also* Exs. B & C). Appellants provide no legal basis for this claim outside of COMAR 13A.01.05.06C(6) which states that a decision may be illegal if it is "affected by any other error of law."

Although Appellants assert that the September 10, 2019 letter from Ms. Benson did not provide the duration of the suspension, Ms. Benson could not specify the precise number of days at that point because that was something to be determined at the September 17, 2019 conference. Appellants, however, were on notice of the possibility that a suspension in excess of 10 days could be imposed. Ms. Benson's letter clearly informed the Appellants that a "suspension for longer than ten days from Maurice J. McDonough High School or an expulsion from Charles County Public Schools may be warranted." (Appeal, Ex. C). Furthermore, after holding the conference and reviewing the matter, Ms. Benson, determined that K.M. would receive only a nine-day suspension, finding that a suspension greater than ten days, or expulsion, was not appropriate. Thus, we find no procedural violation on this basis.

Due Process Issues

Appellants maintain they were deprived of due process because they had no notice that Principal Roberts would be recommending expulsion until the discipline conference, they were not provided with witness statements or other information prior to the hearing, their attorney, although present, was not allowed to "fully participate," and the local board failed to hold a full evidentiary hearing. (Appeal, p. 7).

Under *Goss v. Lopez*, 419 U.S. 565, 581 (1975), for a suspension of ten days or less, due process only requires that the student be given oral or written notice of the charges against the student and, if the student denies them, an opportunity to present the student's side of the story. *Id.* The State Board has developed a State regulation to effectuate this due process requirement. Pursuant to COMAR 13A.08.01.11(C)(3), for suspensions that are ten days or less, the student has a right to an explanation of the evidence supporting the charges and an opportunity to present the student's side of the story at or before the conference with the principal. Due process in this context does not entitle an appellant to a full evidentiary hearing before the local board or the State Board. *See Ali, et al. v. Howard County Bd. of Educ.*, MSBE Op. No. 00-15 (2000).

K.M. received a nine-day suspension. The record reveals that Appellants and K.M. met more than once with school administrators to discuss the incident. They met with Principal Roberts who explained the information the CCSD discovered through its investigation, and also allowed K.M. to provide her side of what occurred. K.M. admitted to the charges in writing after being provided with notice of the charges by Principal Roberts. (Local Bd. Response, Ex. 4).

Thereafter, Appellants were afforded a conference with Ms. Benson, which they attended with their attorney. At this conference, Ms. Benson provided the Appellants with a packet of information that included an explanation of the accusation against K.M., along with transcribed versions of witness statements. (Appeal, Ex. H). Appellants and K.M. were also provided with

the opportunity to present evidence and documents supporting their position. Thus, K.M. received the due process requirements of notice and the opportunity to be heard.

We find no merit to Appellants' claim that their attorney was not permitted to fully participate in the conference with Ms. Benson. Appellants' attorney was present and Ms. Benson provided Appellants time to consult their attorney during the conference. (T. 37). The conference at the superintendent level is not a full evidentiary hearing, and therefore, there was no error in Ms. Benson precluding Appellants' attorney from offering formal objections or engaging in cross-examination of school system staff. In addition, there is no requirement to allow recordation of these types of informal conferences, but the school system allowed Appellants to do so. (*See* Response to Appeal, p. 2, fn.2).

Appellants also argue that they should have been provided a full, in-person evidentiary hearing before the local board to correct any errors that occurred at the Superintendent's conference. As already explained above, due process does not mandate this. *See Ali, et al. v. Howard County Bd. of Educ*., MSBE Op. No. 00-15 (2000). Local school systems have discretion on whether to offer full evidentiary hearings in short-term suspensions. *See V.H. v. Anne Arundel County Bd. of Educ*., MSBE Op. No. 18-11 (2018). CCPS has chosen not to do so. The local board allowed the Appellants to provide whatever arguments or other information they wanted to submit in writing. The Appellants received all of the process they were due in this case.

Determination of "False Alarm/Threat of Violence"

Appellants also maintain that the local board erred in finding that K.M.'s actions constituted a "False Alarm/Threat of Violence" because K.M. did not create a true threat and she only intended to warn others of danger. The local board rejected this argument, finding that K.M.'s actions of posting her message on social media and then removing the post without further action, such as notifying the police, the school system or her parents, contradicted her claimed intent. (Appeal, Ex. N).

The Code of Conduct defines "False Alarm/Threat of Violence" to include "posting or sharing texts of social media messages or other communications that incite fear or cause a disruption to school activities." (Local Bd. Response, Ex. 5 at p.16). K.M. posted an image of guns with the message, "School should be fun Monday." In today's culture, such a posting is reasonably interpreted to mean that violence at school might take place. Even the Appellants noted in their appeal that K.M.'s actions were "ill-advised" and that the image "can certainly be frightening in today's environment of school shootings." (Appeal, pp. 7-8). At least one viewer became alarmed and immediately contacted McDonough and the police. The posting necessitated an investigation by CCSD and resulted in a major disruption to McDonough the following day. The incident had an impact on the school, including numerous student absences. The local board did not err in finding that K.M.'s actions constituted a false alarm or threat of violence.

Legality of Nine Day Suspension

Appellants also argue that the "imposition of a long-term suspension was clearly illegal." (Appeal, p. 8). A nine-day suspension, however, is within the range of consequences allowed in

the Student Code of Conduct for the False Alarm/Threat of Violence infraction which ranges from a Level 3 to a Level 5 required response. (Local Bd. Response, Ex. 5 at p.16). The lowest Level 3 response could have included in-school interventions and responses, but appropriate responses for this type of behavior at a Level 5 include referral to alternative education, out of school suspension ranging from 4 -- 44 days, or expulsion because of the severity of the behavior and potential implications for future harm. *Id.* The Code of Conduct states that the listed responses to infractions used by the school administrator are intended to be guidelines, and that the administrator may use the highest level of response even for initial infractions, if warranted.

A nine-day suspension falls within the range of permissible discipline and is appropriate here based on the nature of the threat and its impact. *See Aziz B. v. Montgomery County Bd. of Educ.,* MSBE Op. No. 00-30 (2000). Although K.M. expressed remorse for her actions, the incident was highly disruptive to McDonough's operations given the current environment in this country regarding school shootings. The local board's findings were not illegal.

Legality of In-School Removal

Appellants also claim that K.M.'s receipt of an additional five day "in-school suspension" was illegal. Ms. Benson did not impose a five day in-school suspension. Rather, she imposed a five day in-school removal ("ISR"). (Local Bd. Response, Ex. 9). COMAR 13A.08.01.11(C)(2)(a) permits in-school removals and does not consider them to be suspensions so long as the student is afforded the opportunity to (1) appropriately progress in the general curriculum; (2) receive special education and related services specified on the student's IEP if the student has a disability; (3) receive instruction commensurate with the program afforded to the student in the regular classroom; and (4) participate with peers as they would in their current education program to the extent appropriate.

Appellants argue that the ISR prevented K.M. from accessing her regular education, which included classes in an off-campus Physical Rehabilitation Program. Although K.M. was not permitted to attend her off-campus classes, the record demonstrates that K.M. was provided the work and was allowed to complete it for credit. (Local Bd. Reply, Ex. 12). She progressed in all of her classes and ended the first quarter with four A's, one B, and one C, and a higher GPA than she received in her second quarter of school. (Local Bd. Reply, Ex. 13). Because McDonough met the requirements for in-school removal, the five days did not count as an in-school suspension. Therefore, we find that the ISR was not illegal.

Imposition of Discipline Without a Manifestation Hearing

Appellants argue that K.M. should have received a manifestation determination hearing prior to any disciplinary action being imposed, due to her disability[2]. We point out that Appellants admit in their appeal that the evaluation of K.M. regarding any possible disability occurred on December 1, 2019, with a 504 meeting being held by the local school on December 4, 2019, which was after the local board's decision on November 12, 2019. (Appeal, p. 6; *see also* Exhibits I & J).

[2] A manifestation determination is an evaluation a school needs to take to determine the relationship between the student's disability and misconduct, if the school is on notice of a student's disability prior to discipline, but then only if the discipline would constitute a significant change in placement. 34 C.F.R. §300.534.

We have long declined to extend our jurisdiction to resolve special education disputes and we do the same in this matter. *See Semere D. and Yehdego K. v. Montgomery County Bd. of Educ*., MSBE Op. No. 17-09 (2001), *citing Parents R. & Z. v. Montgomery County Bd. of Educ*., MSBE Op. No. 14-67 (2014); *Frye v. Montgomery County Bd. of Educ*., MSBE Op. No. 01-30 (2001). This is because specialized forums exist through under IDEA or Section 504 to resolve these complex and fact-intensive matters in a timely fashion.

Matters Not Raised Before the Local Board

Appellants argue that the local board's policy making students ineligible for extracurricular activities the following sports season if they are absent by suspension for more than four and a half days in a quarter is inconsistent with the excused absence provision set forth in COMAR 13A.08.01.03. (*See* CCPS Athletic Handbook, Appellant's Response, Ex. A, p. 20). Appellants did not raise this issue in their appeal to the local board.[3] Appellants have also requested the State Board allow K.M. to transfer to another school. This request was also not raised in the appeal to the local board. It is well settled that a matter must first be decided by the local board before an appellant can appeal the matter to the State Board. *See* Md. Code Ann., Educ. § 4-205(c); *see also Kemp v. Montgomery County Bd. of Educ.*, MSBE Op. No. 01-14 (2001). Accordingly, we dismiss these claims.

Request for Attorney Fees

Appellants seek legal fees from the local board for the legal costs they incurred in appealing their case. The State Board has no jurisdiction or authority to order the payment of attorney fees. *See Richard C. and Cathy C. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 12-02 (2012); *Bruce Venter v. Howard County Bd. of Educ*., MSBE Op. No. 05-22 (2005). We therefore deny the request.

CONCLUSION

For the reasons stated above, we affirm the decision of the local board and dismiss those issues that were not first raised in the Appellants' appeal to the local board.

Signatures on File:

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Warner I. Sumpter
President

_____
Jean C. Halle
Vice-President

_____
Gail H. Bates

[3] Appellants indicate they filed a second appeal with the local board specifically addressing this issue on December 3, 2019, however, we have no record of a decision by the local board on that matter or an appeal to the State Board. Thus, this issue is not under review in this case.

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Clarence C. Crawford

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Charles R. Dashiell, Jr.

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Vermelle D. Greene

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Justin M. Hartings

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Rose Maria Li

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Rachel McCusker

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Joan Mele-McCarthy

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Lori Morrow

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Michael Phillips

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David Steiner

April 28, 2020