JAMES R.,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
CHARLES COUNTY BOARD OF EDUCATION	OF EDUCATION
Appellee.	Opinion No. 16-11

OPINION

INTRODUCTION

James R. (Appellant) appeals the decision of the Charles County Board of Education (local board) to suspend his son from school for 10 days and reassign him to the Robert D. Stethem Education Center (Stethem Center), an alternative school, for up to 35 days. The local board filed a Motion to Dismiss, arguing that the appeal was not timely filed. In the alternative, the local board filed a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded to the motions and the local board replied.

FACTUAL BACKGROUND

Appellant's son, J.R., attended the seventh grade at John Hanson Middle School (Hanson Middle) during the 2014-15 school year. During the school year, he maintained a roughly 3.0 grade point average and participated in the "scholars course of study" designed for students who can handle advanced-level courses above their grade level. (Motion, App. Ex. 3). J.R.'s report cards show that he earned mostly satisfactory marks in "citizenship," but did receive some unsatisfactory marks over the course of the year. (Motion, App. Ex. 3).

Beginning in the fall of 2014, school officials began to document behavior problems involving J.R. (Motion, Sup. Ex. 4). Between October 2014 and May 2015, the school documented approximately 26 discipline referrals made by 12 different school employees. (T. 19-25).

The incidents leading up to the current appeal and the discipline imposed for each are as follows:

- October 1, 2014 – J.R. would not stay seated while the school bus was moving. He received a warning and a call to his mother.
- October 7, 2014 – J.R. received three referrals for refusing to stay seated while the bus was moving. He received a two-day suspension from the bus and his parents were called.

- October 7, 2014 – J.R. was asked to stop repeatedly pushing buttons on a laptop, which caused it to become inoperable. He received a one-day out-of-school suspension.
- November 11, 2014 – J.R. talked back to a teacher and would not accept redirection. He received one-day of in-school retention and his parents were called.
- November 21, 2014 – J.R. disrupted class by making noises. After being given warnings, he tried to argue with the teacher. He spent the remainder of the class period in the in-school retention room.
- December 2, 2014 – J.R. continued to move while the bus was in motion, not staying in his assigned seat. He also yelled and distracted the driver. He received a two-day bus suspension and a call to his parents.
- December 8, 2014 – J.R. was removed from his social studies, STEM and gym classes due to his behavior. His parents were called.
- December 16, 2014 – J.R. yelled in class and, after being asked to leave, he slammed a keyboard and yelled. He returned to the room again and had to be escorted out. He was kept in the office and a parent-teacher conference was scheduled.
- January 22, 2015 – J.R. received additional referrals for moving on the school bus. He was suspended from the bus for 10 days and a call was made to his parents to discuss additional interventions to improve behavior (such as moving his seat to a different row and creating a behavior chart with rewards).
- January 28, 2015 – J.R. cursed at a teacher after being told to quiet down. He received in-school retention.
- January 30, 2015 – J.R. became disruptive by repeatedly asking for a pencil. After the teacher attempted to redirect J.R., he became argumentative. He received in-school retention for two classes.
- February 3, 2015 – J.R. got into a verbal altercation with another classmate. After being pulled into the hallway, he opened and closed the classroom door repeatedly. He also yelled "come see me" after the other student stated "I'll drop you." He received two-days of in-school retention.
- February 5, 2015 – J.R. moved around his classroom and, when asked to sit, became disruptive. After being asked to leave the room and take a break, he argued with classmates, cursed, and kicked a chair. He received one-day of in-school retention and his teacher met with J.R. and called his parents.
- February 24, 2015 – J.R. argued with his teacher and then an administrator during class. He received a one-day suspension and a call to his parents.
- March 3, 2015 – J.R. argued with his teacher about his assigned seat. The teacher discussed the incident with J.R.
- March 3, 2015 – J.R. got into a verbal altercation with another student and became loud. He eventually was asked to take a break from class, which he did. The incident was heard in other classrooms. He received lunch detention and a warning. Mediation also occurred between J.R. and the other students involved.
- March 4, 2015 – J.R. kicked a student and threw a binder in another student's face. He received a three-day out-of-school suspension from the principal.
- March 17, 2015 – J.R. tried talking over his teacher. He was sent to an administrator's office.

- March 17, 2015 – J.R. continued to chew gum in class after being warned, moved seats and refused to return to his assigned seat, made noises, and grabbed his teacher's hand after she attempted to take a packet of gum off a desk. The principal sent a long-term suspension request to the superintendent's office. J.R. was suspended from school for 10 days.
- April 28, 2015 – J.R. and another student were removed from class after a verbal altercation. An email was sent to his parents.
- May 6, 2015 – J.R. became disruptive and had to be removed from class. He received a full-day of in-school retention and a call was made to his parents.
- May 14, 2015 – J.R. went to another classroom without permission and engaged in a verbal altercation with another student. He received afterschool detention and a conference was scheduled with his parents, as well as mediation with the other student.

School officials attempted multiple interventions with J.R. during the school year. They communicated with his parents on a weekly basis starting in November 2014. Parent-teacher conferences were held on December 16, 2014, February 19, 2015, and March 11, 2015. Mediations were also held between J.R. and other students after they had disputes with one another. At some point in this process, the school asked permission to evaluate J.R. for special education services but such permission it appears was not affirmatively given. (T. 48, 114-15).

A student support team was created and drafted additional interventions based on input from J.R.'s teachers. These interventions included preferential seating close to the teacher in his classes, delayed release from class, and a "chill pass," which would allow him to leave the classroom if he needed time to regroup and refocus his attention. (T. 87-88, 100). In early January, a behavior chart was developed for J.R. that required his teacher's signatures and had to be turned in at the end of the school day (known as "check-in/check-out" or "CICO"). The team held a meeting with J.R.'s parents on April 17, 2015 to discuss past interventions and decide on future behavioral supports. After the meeting, J.R.'s class schedule was changed to allow him to have a fresh start in some of his classes and a different administrator was assigned to work with J.R. after another administrator went on leave. (T. 120, 130-131; Motion, Supt. Ex. 6).

The final incidents that led J.R. to be suspended and referred to the Stethem Center occurred on May 19, 2015. During his physical education class, J.R. was granted permission to get a drink of water from inside the gym. After getting the drink, he remained in the upper level of the gym watching other classes and did not return to his own class. Later in the same day, he left his math classroom without permission and entered a science classroom without permission. After being told to leave by the science teacher, J.R. left and returned several more times. At one point, he was found by the teacher hiding under a table in the classroom. After the teacher locked the classroom door to keep him out, he slammed his body into the door. (Motion, Supt. Ex. 11, 12).

As a result of these incidents, Principal Kathy-Lynn Kiessling referred J.R. to the local superintendent for a long-term suspension. During a later hearing, Principal Kiessling acknowledged that insubordination and classroom disruption would not ordinarily warrant a referral for suspension to the superintendent, but she explained that J.R.'s previous suspension

and continued disruptive behavior led her to conclude it was the best course of action. (T. 62). She stated that "[J.R.'s] behavior was chronic and extreme and everything that we had tried, all [the] supports we had put in to place, all the contact that we had made, everything that we had suggested to do didn't seem to be helping the situation and [J.R.], his behavior just did not change." (T. 56).

A hearing officer conducted an initial investigation into the incident and held a hearing on June 3, 2015, during which J.R. and Appellant were able to present their case. (Motion, Supt. Ex. 13). On June 5, 2015, the hearing officer sent a memorandum to Superintendent Kimberly Hill recommending a 10-day suspension along with a reassignment to the Stethem Center, an alternative school, for the start of the 2015-16 school year. Appellant stated that he would keep his son home for the remainder of the school year and the school agreed to provide work for him during that time. (Motion, Supt Ex. 14).

Appellant filed an appeal, which was considered by the Charles County Public Schools (CCPS) Extended Suspension Review Committee during a June 17, 2015 conference with J.R. and his parents. Sylvia Lawson, assistant superintendent of school administration, reviewed the hearing examiner's decision and met with Appellant. She asked J.R. for his explanation of events. J.R. told her that other students, teachers, and administrators had not been truthful about what had occurred. (T. 162). Lawson concluded that the school offered appropriate supports for J.R. and did not find that any actions were taken based on illegal reasons or retaliation. (T. 171). The committee ultimately agreed to uphold the superintendent's decision and Appellant appealed to the local board. (Motion, Supt. Ex. 17).

The local board conducted a hearing on July 20, 2015. The vice-chair of the local board and four other board members were present for the hearing, though they delegated responsibility to local board counsel to preside over the hearing. (T. 3). Appellant presented no witnesses, but did cross-examine school system witnesses and introduced several documents into the record. He argued that J.R. was an honor roll student with a 3.2 grade point average whose academic record and report card were inconsistent with the behavior reports. Appellant accused the school of making false accusations, acting arbitrarily, retaliating for past criticisms of the school. He asserted that the school system did not put in place agreed-upon supports for J.R. (T. 8-11).

Although Appellant did not testify, he was asked questions by the board members. He characterized his son's actions as "normal age-appropriate" behavior and denied that his son needed any assistance. (T. 143-44). As part of his argument, he claimed that J.R. did not act alone in many of the incidents and he alluded to concerns about the culture of the school, incidents of bullying, and "inappropriate sexual conversations and interactions between students," though he did not provide details. (T. 140-141).

Appellant questioned whether J.R. was involved in some of the bus referrals because the name portion of the referral sheet was crossed out and J.R.'s name was written in on two of the sheets. In one case, another student's name was listed on the form under the description of the misconduct. (App. Ex. 2c-d; T. 76). He also questioned how J.R. could receive good marks for citizenship on his report cards when the school viewed his behavior as being disruptive. (T. 80, App. Ex. 3). Appellant accused other teachers and staff members of making derogatory

comments about J.R. and Appellant and his wife. (T. 122-23). Principal Kiessling acknowledged that an in-school referral facilitator made an inappropriate comment about how J.R. should receive a jumpsuit with orange and black stripes, but she was unable to corroborate reports of other negative statements against J.R. or his family.

On August 14, 2015, the local board issued its decision upholding J.R.'s suspension and referral to Stethem. The local board found that Appellant had failed to support his allegations with testimony or credible evidence. The board concluded that J.R. "engaged in both chronic and extreme disruption of the learning environment" and that his behaviors "adversely impacted the ability of his fellow students to effectively learn." The board disagreed with Appellant's contention that J.R.'s alleged bad behavior was contradicted by the good citizenship marks on his report cards and his good academic record. The local board found that, because J.R.'s behavior was spread across many classes, that his poor behavior likely was not reflected on the report cards. In the local board's view, J.R. could perform well on school assignments and still have behavioral problems. (Motion, Ex. 1).

This appeal followed.

STANDARD OF REVIEW

The decision of a local board in a student suspension or expulsion matter is considered final. Md. Code, Educ. §7-305(c). The State Board may not review the merits of a suspension decision unless there are specific factual and legal allegations that the local board (1) has not followed State or local law, policies, or procedures; (2) violated the due process rights of a student; or (3) otherwise acted in an unconstitutional manner. COMAR 13A.01.05.05G. Appellant has the burden of proof by a preponderance of the evidence.

LEGAL ANALYSIS

Before addressing the merits of Appellant's appeal, there are two preliminary issues which we must consider: whether the appeal was timely filed and whether it is now moot.

Timeliness of the appeal

The local board filed a motion to dismiss on the basis that Appellant did not file a timely appeal. The local board's decision was issued on August 14, 2015, and sent to Appellant on August 17, 2015. According to Appellant, he submitted an appeal dated August 26, 2015 to the State Board, within the 30-day time frame required in our regulations. *See* COMAR 13A.01.05.02B ("An appeal shall be taken within 30 calendar days of the decision of the local board or other individual or entity which issued the decision on appeal.").

The State Board did not receive a copy of the appeal. After not receiving a response to his appeal, Appellant contacted the State Board on October 13, 2015. In an email sent to the State Board on the same day, Appellant included a copy of his appeal, which was dated August 26, 2015.

The local board argues that the appeal should be dismissed as untimely. The local board observes that Appellant did not use the correct zip code for the State Board in the heading of his appeal letter, listing the zip code as 20201 instead of 21201. The local board suggests that this may have led to the appeal not being received by the State Board. Appellant maintains that he did properly address the appeal and that it should have been received by the State Board.

Maryland law presumes that a "properly mailed" letter "reached its destination at the regular time and was received by the person to whom it was addressed." *Border v. Grooms*, 267 Md. 100, 104 (1972) (quoting *Kolker v. Biggs*, 203 Md. 137, 144 (1953)). Appellant has presented evidence that he did timely send an appeal, namely the original letter dated August 26, 2015. Although the local board is correct that Appellant used an incorrect zip code on the appeal letter, there is no evidence to contradict Appellant's assertion that he properly addressed the envelope and sent it to the State Board. In light of these unusual circumstances, we shall treat the appeal as having being timely received and deny the motion to dismiss.

Mootness

Appellant withdrew J.R. from school for the final weeks of the 2014-15 school year and CCPS provided make-up work for J.R. to complete. Both sides agreed to defer J.R.'s placement at the Stethem Center until the start of the 2015-16 school year. According to the local board, J.R. never returned to CCPS for the 2015-16 school year and his educational records were forwarded upon request to Prince George's County Public Schools. (Motion, p. 2). At this point it is unclear whether J.R. intends to ever return to CCPS. Despite this, we shall continue to address the merits of the appeal and not consider the matter moot. A decision could impact J.R.'s disciplinary record and also influence the family's decision on whether they will return to Charles County.

Having decided that the appeal is timely and not moot, we shall turn to the issues raised by this appeal.

Questions regarding special education rights

Although neither party raised the issue of special education on appeal, the record below led us to examine whether this case should be considered through the lens of the Individuals with Disabilities Education Act (IDEA). According to the record, the school system sought to have J.R. evaluated for special education services. The record is not robust on special education-related matters because special education rights in the discipline process was not the subject of the Appellant's appeal before the local board or part of the appeal to the State Board.

Although it is not crystal clear in the record, J.R.'s parents appear to have declined the request for an initial special education evaluation. (T. 48, 114-15). Specifically, during the hearing before the local board, Kathy Kiessling, the principal at John Hanson Middle School, explained that J.R. was not referred for special education services.

> We asked at the SST [student support team meeting] whether or not a formal behavior assessment, we could do one, was asked numerous times and Appellant stated no.

(T. 48).

Appellant later cross-examined Principal Kiessling on this point. The following exchange occurred:

> Appellant: Okay. It was mentioned in, during our SST meeting, that [J.R.] was not referred to, referred for any testing for special education services. Do you recall why, Ms. Kiessling?
>
> Ms. Kiessling: I believe you said that you did not want him to be tested.
>
> Appellant: Do you remember whether or not any other school official weighed in on that decision?
>
> Ms. Kiessling: I don't recall. I do recall Mr. Blanchard [the supervising school psychologist] asking three or four different times whether you wanted to start with a formal behavior assessment and you said no.
>
> Appellant: Do you recall the intervention of the school psychologist, Ms. James, in saying that we should see how the interventions go before we began any formal behavioral assessment?
>
> Ms. Kiessling: I can, I can hear Ms. James saying something like that.
>
> Appellant: Okay. Normally when a student receives markings on their report cards and interim progress reports that denote that he's being successful or satisfactory in his classes, is it normal practice for them to participate in a formal or functional behavioral assessment?
>
> Ms. Kiessling: If there's behavior issues.

(T. 114-115).

The exact date of the SST meeting referenced by Principal Kiessling and Appellant is not stated. The record indicates, however, that at least one SST meeting took place on April 8, 2015. There are other parent contacts and meetings referenced in the record, but it is unclear whether the subject of special education services was raised at those earlier meetings.

During the hearing before the local board, Appellant identified himself as a middle school educator with experience teaching in Maryland. (T. 10). He did not elaborate on his experience and it is unclear to what degree he was familiar with special education services.

Later in the hearing, a member of the local board asked Appellant about the "change" that had occurred in his son during the 2014-15 school year. Appellant stated that he did not believe there was a change in J.R.'s behavior. "[J.R.] may engage in normal age-appropriate or what's considered age-appropriate behaviors, talking in class, back and forth with peers, but [J.R.] does not engage in the behaviors that were described in, the violent and kind of, the terminology that was used does not illustrate what my son does." (T. 139). Another local board member described J.R. as "screaming for help." In response, Appellant disagreed with that characterization and argued that "we're not accepting what is being presented at face value" in

the disciplinary reports. (T. 144). He maintained that a disagreement he had with the school principal "was the genesis of J.R. allegedly having behavior issues." (Appeal at 5-6).

As stated previously, Appellant did not raise the issue of special education services in his appeal before the local board or in his appeal to the State Board. Yet, school systems have certain obligations under IDEA. We shall review some of those obligations to determine whether IDEA procedural protections should have been applied to the disciplinary process.

In order to be covered by the Individuals with Disabilities Education Act (IDEA), a student must meet the definition of one or more categories of disabilities and be in need of special education and related services as a result of his or her disability or disabilities. 20 U.S.C. §1401(3); COMAR 13A.05.01.03B(78). The "Child Find" obligation of IDEA requires a school system to identify, locate, and evaluate all children with disabilities within their jurisdiction. 20 U.S.C. §1412(a)(3). Once a child is suspected to be a student with a disability, the next step is for a child to be evaluated. This evaluation may be requested by the parent of a child, the State, or the school system. 20 U.S.C. §1414(a)(1). Evaluations may include information provided by parents, current classroom-based assessments, local or state assessments, classroom observations, and observations by teachers and related service providers. *Id.*

The ultimate decision on whether a student will be identified and receive special education and related services rests with a student's parent. *See Fitzgerald v. Camdenton R-Ill Sch. Dist.*, 439 F.3d 773, 775 (8th Cir. 2006) (observing that "the IDEA allows parents to decline services and waive all benefits under the IDEA"). Parental consent is required at two early points in the identification process. First, a parent must consent to an initial evaluation to determine whether a student is eligible for services. 20 U.S.C. §1414(a)(1)(D). If a parent declines consent, a school system *may,* but is not required to under the law, pursue mediation or a due process hearing in order to override a parent's refusal and force an initial evaluation on a parent. 34 CFR §300.300(a)(3)(i)-(ii); COMAR 13A.05.01.13A(2).

Even if a parent consents to an initial evaluation, consent is required a second time when it comes to whether special education services should be provided. A parent again has the ultimate decision on whether to initiate special education services for a child and to develop an initial Individualized Education Program (IEP). 20 U.S.C. 1414(a)(1)(D)(i)(II). If a parent says no to services, this lack of consent *cannot* be overridden through mediation or due process. 20 U.S.C. §1414(a)(1)(D)(ii)(II); 34 CFR 300.300(b); COMAR 13A.05.01.13(B)(3).

There are consequences to refusing consent to an evaluation or to receiving services. A student who might otherwise qualify for special education services is not covered under IDEA if a parent refuses consent for an initial evaluation or withdraws consent for special education services. *See* 20 U.S.C. §1414(a)(1)(D)(ii)(III) (school system is not considered to be in violation of the requirement to make available a free appropriate public education and not required to convene an IEP meeting or develop an IEP in the absence of parental consent). Under the law, a student whose parents have refused consent for an evaluation or services may be disciplined in the same manner as any other regular education student. 20 U.S.C. §1415(k)(5)(D)(i).

In the disciplinary arena, a "child who has not been determined to be eligible for special education and related services . . . and who has engaged in behavior that violates a code of

student conduct, may assert any of the protections provided [by law] . . . if the local educational agency had knowledge . . . that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred." 20 U.S.C. §1415(k)(5)(A). Thus, parents whose children are suspected of having a disability, but who have not yet been identified and determined to be disabled, may assert rights under the IDEA related to discipline.[1]

In order for these procedural protections to apply, the law requires that two conditions be met. First, the parent of the child must ask for those protections. 20 U.S.C. §1415(k)(5)(A).

Second, the law requires that the school have "knowledge . . . that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred." 20 U.S.C. §1415(k)(5)(A). The law does not require that the school system actually know that the child is a child with a disability; if a school system suspects the child has a disability because of concerns raised by teachers or parents, this would be sufficient knowledge under the law, except under certain circumstances.[2] 20 U.S.C. §1414(k)(5)(B). Those circumstances relate to parental consent.

When a parent declines consent to an evaluation for identification purposes, the law specifically states that, at that point, the school system does not have legal knowledge that a student is a student with a disability. If a school system does not have legal knowledge – e.g. a parent did not consent to an initial evaluation – it may discipline a student it had suspected of having a disability in the same way it would any other student. 20 U.S.C. §1415(k)(5)(D)(i). Thus, we concluded that the school system did not violate IDEA by disciplining J.R. as it would any other student.

Delay in local board decision

After the hearing before the local board, Appellant claims he was told that he would have a written decision within a week but did not receive the decision until almost a month later. He also maintains that he was not told how to appeal the board's decision. Appellant argues that the

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[1] Students who have been evaluated and identified as having a disability may be removed from school without the provision of educational services to the same extent as non-disabled students for not more than 10 consecutive school days for a violation of school rules. 20 U.S.C. §1415(k)(1)(B). A disciplinary action that removes a student from school for more than 10 consecutive school days is considered a "change in placement." 34 CFR 300.536. Short term discipline that cumulatively adds up to 10 days or more can also constitute a change in placement if it is part of a pattern of discipline. *Id.* Certain IDEA procedural protections are triggered by a change in placement, most notably a requirement for a "manifestation determination." 20 U.S.C. §1415(k)(1)(E); COMAR 13A.08.03.08.

When a disciplinary action will result in a change in placement, a student's IEP team must conduct a "manifestation determination" by reviewing all relevant information and deciding (1) whether the student's conduct was caused by or had a direct and substantial relationship to the student's disability and (2) whether the student's conduct was the direct result of the school system's failure to implement the IEP. 20 U.S.C. §1415(k)(1)(E)(i). If the answer is yes to either of those questions, the conduct is considered to be a manifestation of the student's disability. 20 U.S.C. §1415(k)(1)(E)(ii). At that point, the IEP team must conduct a functional behavioral assessment, implement a behavior intervention plan (or if one already exists, review it and modify it if necessary) and return the student to his current educational placement unless the parents agree otherwise or the student committed an offense involving drugs, weapons, or a serious bodily injury and is being sent to an interim alternative educational setting. 20 U.S.C. §1415(k)(1)(F)-(G); COMAR 13A.08.03.08.

[2] In this case, the parents did not ask for special education protections and did not consent to an evaluation.

delay in providing him with a decision made it difficult for him to prepare an appeal and left him at a "severe disadvantage."

The hearing before the local board occurred on July 20, 2015 and Appellant received the local board's decision on August 17, 2015. At the close of the hearing, counsel for the local board stated that the board would deliberate and a decision "even if announced this evening, will not result in [an] immediate written opinion." Instead, counsel explained that a "very short conclusory opinion" may be issued "and then a detailed opinion will be prepared and signed" by the local board. (T. 211). The transcript does not indicate that Appellant was told he would have a decision within a week, although the local board acknowledges that such a conversation may have happened off-the-record. (Motion, pg. 9). Even so, in our view, the one-month delay between the hearing and the local board's decision was reasonable.

As to being informed of his appeal rights, the local board's decision provides notice of the right to appeal and gives the address for the State Board. The cover letter accompanying the decision also makes specific reference to where Appellant could find information on his appeal rights. (Motion, Ex. 3).

Due process in the investigation

Appellant argues that J.R. did not receive due process because CCPS did not exercise due diligence in investigating the disciplinary incidents at issue in the appeal. To the extent that there could have been any due process violations during the investigation of those incidents, and we do not infer that there were, those deficiencies were cured by the full evidentiary hearing afforded by the local board. *See Mobley v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 15-09 (2015); *Mayberry v. Board of Educ. of Anne Arundel County*, 131 Md. App. 686, 690-691 (2000).

Inability to offer witnesses

Appellant maintains that he did not present witnesses because the local board never explained that he would be allowed to do so. He also claims he was not told how many copies of exhibits to bring and that this led him to be ill-prepared for the hearing. Contrary to Appellant's assertions, the letter informing him of the hearing stated the following: "Both you and [the attorney representing the superintendent] may bring witnesses to the hearing and present evidence. Please bring with you four copies of any documents you intend to offer as evidence." The letter also provided a phone number for counsel for the local board and for the superintendent, along with a number for the board's executive assistant. (Motion, Ex. 6). The superintendent's counsel also sent a letter to Appellant a week before the hearing informing him of the witnesses he planned to call and providing him with his planned exhibits. (Motion, Ex. 7). During the hearing itself, Appellant never mentioned that he was unaware of his ability to call witnesses. (T. 206). Accordingly, we find no merit to this claim.

Merits of the decision

Long-term suspensions from a student's regular school program are meant to be "last-

resort" options. COMAR 13A.08.01.11A. A student may only be suspended from his or her regular program for more than 10 days if the local superintendent determines the student's return would pose an imminent threat of serious harm to other students and staff or the student has "engaged in chronic and extreme disruption of the educational process that has created a substantial barrier to learning for other students across the school day, and other available and appropriate behavioral and disciplinary interventions have been exhausted." COMAR 13A.08.01.11B(3). The 10-day suspension and reassignment to Stethem is considered an "extended suspension."

Appellant disagrees with the facts supporting of the local board's decision. He maintains that the local board did not have documentation for all of the disciplinary incidents and did not properly investigate them; that J.R. had a good academic record; that there were discrepancies in records; that interventions were not properly implemented; and that CCPS staff acted in a discriminatory and unethical way toward his son. Throughout his appeal, Appellant offered his own version of the facts which he maintains undercut the superintendent's presentation of evidence. But aside from presenting a few documents into evidence and answering some of the board member's questions, Appellant did not testify to these facts during the hearing or offer evidence that confirmed his claims. The State Board has consistently held that an Appellant must support allegations of illegality with factual evidence. *See King v. Baltimore Bd. of School Commissioners*, MSBE Op. No. 14-19 (2014). Appellant has not done so here.

The superintendent, however, presented several witnesses and numerous documents to support the disciplinary decision. The record shows that the superintendent documented roughly two dozen instances of disruption by J.R. during the school year. School staff attempted various behavioral interventions over a period of months, including altering J.R.'s school schedule, requiring daily check-up meetings with school staff, and providing him permission to leave class if he felt unable to control his behavior by using a "chill" pass. The superintendent's designee testified that these interventions failed to alter J.R.'s behavior and that suspension and a referral to the Stethem Center was viewed as an appropriate next step. In our view, the superintendent followed the requirements of Maryland law in deciding to suspend J.R. for an extended time.

Our decision that the school system did not violate IDEA or illegally suspend J.R. does not mean that the parties could not have handled this matter in a better way. Certainly, there was poor communication between the parents and the school system, including on the issue of special education. Derogatory comments about J.R. made by at least one school staff person increased the contention in the relationship between the school and these parents. That contention led to the breakdown in communication between the parties during the 2014-15 school year and made it difficult for the two sides to work together to achieve a more positive outcome for J.R.

It is our understanding that J.R. is enrolled in another school system. If J.R.'s parents decide that they want J.R. to return to CCPS, however, we ask both parties to work together to understand what is in the best interests of J.R. Specifically, we request that the school system consider carefully any value in imposing an alternative placement before transitioning J.R. back to his regular school. Although we affirm the local board's disciplinary decision, it was imposed based on the conditions that existed at the end of the 2014-15 school year. J.R.'s behavior over the past year, including any successful strategies that have been implemented by his current school, should be taken into account before deciding on J.R.'s placement.

Likewise, we request that J.R.'s parents work with the school system to achieve positive outcomes for J.R. The contentious nature of the previous relationship, even when it occurred in defense of one's son, is ultimately not in J.R.'s best educational interests.

CONCLUSION

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

Guffrie M. Smith, Jr.
President

S. James Gates, Jr.
Vice-President

James H. DeGraffenreidt, Jr.

Absent
Linda Eberhart

Chester E. Finn, Jr.

Absent
Larry Giammo

Stephanie R. Iszard

Madhu Sidhu
Madhu Sidhu

Andrew R. Smarick

Laura Weeldreyer

Dissent:
Michele Jenkins Guyton

April 26, 2016