

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1053

September Term, 2014

IN RE: QOYASHA D.

Kehoe,
Friedman,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: July 8, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Qoyasha D. is a juvenile born in 1999. He attends a public middle school in Salisbury, Maryland. Qoyasha's education at the middle school is governed by an Individualized Education Program ("IEP"). IEPs are designed to provide students with disabilities a public education that appropriately meets their needs, and are mandated for students with special needs under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400. As the name suggests, an IEP is unique to an individual student and it is tailored to address that student's specific educational needs.

Qoyasha's IEP identifies his primary disability as an "emotion disability." The IEP team responsible for constructing his individualized program determined that Qoyasha "has difficulty with skills associated with self-management and anger control which adversely impact his success in school. He requires a structured educational setting with a low teacher to student ratio and a strong behavioral emphasis and extra adult support to successfully access and participate in the curriculum."

Among the areas affected by Qoyasha's emotional disability are social interaction skills, self-management, and his social and emotional behavior. His IEP states:

When Qoyasha earns a consequence or safety level drop on his point sheet for negative behaviors, he struggles to accept it without debate or arguing. When an instance like this occurs, Qoyasha will refuse to leave the classroom until he receives his safety summary sheet, often standing close to staff's personal boundary area until he has it. Staff will give him options to use a coping skill either in the classroom or quiet room to calm down himself, however at times he will shut down completely. Qoyasha sometimes has a hard time recognizing when he is becoming frustrated and will act out without thinking of the consequences beforehand.

Regarding his self-management skills, Qoyasha's IEP states:

Qoyasha struggles on a daily basis of remaining in his assigned areas. When he is on a time-out, he requires several directions to stay in his area. When in the classroom, Qoyasha is often up and moving about the room, requiring staff to prompt him to return to his seat. Qoyasha is easily distracted and needs repetitive directions on his assigned task. After several of the same directions, Qoyasha can become frustrated and is quick to raise his voice to staff, using inappropriate language and becoming disrespectful. When he asks a question about an activity he wants to do or obtaining an item and does not receive the answer he wants, Qoyasha will continue to ask the same question several times over a several minute span. He struggles to accept what he does not want to hear.

One of Qoyasha's recurring problems was that he would regularly leave school property without permission. A Functional Behavioral Assessment regarding this problem was conducted in October 2013, and, accordingly with the assessment, a Behavioral Intervention Plan ("BIP") was developed to help curb Qoyasha's tendency to leave school grounds. The BIP sets out positive strategies and coping mechanisms for teachers and staff to employ to help Qoyasha avoid and respond appropriately to triggers that lead to his defiant behavior.

On December 17, 2013, Qoyasha walked out during his technology class, which was being held in a portable classroom, outside of the main school building, and walked into the main building without permission. Jamie Clark is an instructional assistant at the middle school who works with students with emotional disabilities. Clark was called when Qoyasha was seen entering the main building without permission because students with emotional disabilities are supposed to be followed by teachers or school staff whenever

they leave class. When she located Qoyasha, he began running away down the hallway. Clark radioed the school administration and the social worker to inform them of the situation. Clark and the social worker tried to talk to Qoyasha but he refused to speak to them. Qoyasha continued through the hallway where he punched lockers and knocked a sign down from the ceiling.

Qoyasha then returned to his technology classroom, which had approximately twenty students. Qoyasha attempted to talk with some of the students in the class. At this point, he was no longer acting aggressively or physically. Nevertheless, Clark tried for about three minutes to get Qoyasha to leave the classroom. When that failed, she alerted the school deputy, Deputy Robert Parker. Deputy Parker came to the classroom to escort Qoyasha out of the room. Deputy Parker told Qoyasha that he needed to leave two or three times before Qoyasha obeyed and went into the hallway. Deputy Parker then told Qoyasha that he was under arrest for disorderly conduct and directed Qoyasha to walk with him to his office. Qoyasha refused and walked in a different direction. Deputy Parker attempted to grab Qoyasha by the arm, at which point Qoyasha pushed Deputy Parker away and took a defensive stance with his fists clenched. Deputy Parker warned Qoyasha that if he did not comply with the order to go to the office, he would be pepper-sprayed. Qoyasha indicated that he would not comply with the order, so Deputy Parker pepper-sprayed and handcuffed him.

Qoyasha was charged in a juvenile petition with disturbing school operations in violation of § 26-101(a) of the Education (“ED”) Article of the Maryland Code, resisting

arrest, and attempted second degree escape. After an adjudicatory hearing, the juvenile court found Qoyasha was involved in all three counts.

Discussion

Qoyasha D. claims that there was insufficient evidence to sustain the juvenile court's finding that his conduct constituted disturbing the orderly conduct of the activities, administration, or classes of a school under ED § 26-101(a). He also claims that it was inappropriate for a delinquency petition to be filed because his behavior was the type that his IEP and BIP were intended to address. For the reasons that follow, we affirm the judgment of the juvenile court.

I. The Scope of ED § 26-101

Qoyasha first argues that his conduct fell outside of the scope of conduct prohibited by ED § 26-101(a).¹ He contends that his behavior is not of the type that the statute intended to prohibit. He argues that conduct that violates ED § 26-101(a) is limited to riots, organized demonstrations, and violent confrontations.

ED § 26-101(a) provides:

A person may not willfully disturb or otherwise willfully prevent the orderly conduct of the activities, administration, or

¹ Qoyasha frames his argument as a challenge to the sufficiency of the evidence to find him in violation of ED § 26-101(a). We believe that the substance of his argument is primarily a legal challenge to the scope of ED § 26-101(a), and whether his behavior fell outside the scope of that provision. If Qoyasha did intend to actually challenge the sufficiency of the evidence, we would affirm the juvenile court's finding because our review of the record indicates that there was sufficient evidence to conclude that Qoyasha did, in fact, engage in the conduct that was found to violate ED § 26-101(a).

classes of any institution of elementary, secondary, or higher education.

The Court of Appeals has explained that when the law was enacted, the focus “was on riots and organized demonstrations and disturbances that actually impeded the schools from carrying out their administrative and educational functions.” *In re Jason W.*, 378 Md. 596, 604 (2003). Despite the original focus of the law, the Court of Appeals recognized that the statute extends beyond riots and organized demonstrations, and prohibits any disturbance that significantly interferes with school activities, administration, or classes. *Id.* 606.

The appellate courts in Maryland have decided two cases interpreting ED §26-101(a), *Jason W.* and *Nahif A.*, and the decisions in those two cases guide our analysis. In *Jason W.*, a middle school student was caught writing “there is a bomb” in pencil on a school wall. When a teacher noticed him writing this, he erased the word “bomb” with his hand. There were no other students present and he was escorted to the principal’s office without incident. The writing was not considered by school officials to be an actual threat, so the building was not evacuated. The juvenile court found that Jason W.’s conduct violated ED § 26-101(a). *Id.* at 606. The Court of Appeals reversed, holding that ED § 26-101(a) requires there be an “actual disturbance,” and that the disturbance “be more than a minimal, routine one. It must be one that significantly interferes with the orderly activities, administration, or classes at the school.” *Id.* The Court concluded that Jason W.’s conduct did not create the required level of disruption, noting:

The juvenile court’s reading of [ED] § 26–101(a) would make criminal any unauthorized conduct that requires even a minimal response by a school official, and that would, indeed,

raise the specter of a young child being [hailed] into juvenile court and found delinquent for throwing a temper tantrum in school. As we have so often said, statutes must be given a reasonable interpretation, not one that is illogical, incompatible with common sense, or that would reach an absurd result that could not possibly have been intended by the Legislature.

Id. at 604. The Court of Appeals thus made clear that routine disruptions do not violate ED § 26-101(a).

By contrast, *In re Nahif A.* involved a student who committed a minor infraction but then refused to go to the assistant principal’s office, used profanity in the hallway, was loud, and was generally disruptive while other students were in class. 123 Md. App. 193 (1998), overruled on other grounds by *In Re Antionne M.*, 394 Md. 491 (2006). This Court concluded that Nahif A.’s conduct was sufficient to sustain the juvenile court’s finding that he had violated ED § 26-101(a).²

Qoyasha’s outburst created an actual disturbance that was more significant than a routine disturbance in middle school, thus making this case closer to *Nahif A.* than *Jason W.* Although the statutory language should not be construed so broadly that it criminalizes the types of everyday disturbances that are expected in a school, Qoyasha created a scene

² Qoyasha argues that *Nahif A.* is not controlling because it was decided before the Court of Appelas recognized the requirement of an actual and significant disturbance in *Jason W.* The Court of Appeals in *Jason W.* cited to *Nahif A.* as an example of behavior that is sufficiently disruptive to warrant criminal or juvenile intervention. *In re Jason W.*, 378 Md. at 605 (citing *Nahif A.* as an example where “conduct is serious or disruptive enough to warrant not only school discipline but criminal, juvenile, or mental health intervention as well”). Thus, we reject the argument that *Nahif A.* was overruled by *Jason W.* or is otherwise not controlling.

that was more than a routine disruption. He ran through the hallway, punched lockers, knocked down a sign, and refused to leave a classroom while a class was in session. His technology class was interrupted and students were distracted before Deputy Parker escorted him out of the classroom. He eventually had to be pepper-sprayed in a hallway. While this behavior is less than a riot, it goes beyond the run of the mill disturbances one expects on a daily basis from middle school students.

We hold that Qoyasha’s conduct was within the scope of ED § 26-101(a), and, therefore, we affirm the decision of the juvenile court.³

II. Permissibility of Filing a Delinquency Petition Against a Student With an IEP

Qoyasha also argues that his IEP and BIP were developed specifically to deal with his disruptive behavior and that, therefore, it is not appropriate to criminalize that behavior. Qoyasha contends that filing a delinquency petition against him circumvented the school’s obligations to him under the IDEA. We disagree.

The IDEA, by its terms, permits states to deal with behavioral problems by criminal sanctions. It states that “[n]othing in this subchapter shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities.” 20 U.S.C. § 1400. Qoyasha takes out of context a statement in the legislative

³ Qoyasha also argues that because the charges for resisting arrest and attempted second degree escape hinged on the validity of the arrest, these charges also must be reversed. We need not address this issue, however, given our holding that there was sufficient evidence to sustain the finding that Qoyasha violated ED § 26-101.

history of the IDEA that expresses the view that referring disabled children to police and other authorities for committing crimes is only appropriate when “the referrals[] do not circumvent the school’s responsibilities under the IDEA.” Statement of Sen. Harkin, Congressional Record, May 14, 1997 at S4403. As the State points out, this statement is properly understood as discouraging direct referrals by the school to the juvenile system when an incident is dealt with by school officials without assistance from other authorities, rather than referrals made by law enforcement officials who responded to assist in diffusing an ongoing incident. *See* Eileen L. Ordovery, *When Schools Criminalize Law Strategies for Legal Advocates*, Center for Law and Education 3 (November 2001).

While it is certainly ideal that children with specialized education programs avoid the juvenile justice system, the option of filing a delinquency petition is not foreclosed simply because a student has an IEP and a BIP or because the student’s misbehavior is the subject of that IEP or BIP. Filing a delinquency petition remains an option for school officials, particularly when the child engages in a more aggressive or destructive form of the same type of behavior for which the child is receiving specialized attention. The record shows that Clark attempted to implement Qoyasha’s BIP before the school deputy became involved. Clark told Qoyasha that he needed to “cool down,” informed him that his behavior was not acceptable, offered to let him call his mother, and reminded him that he could speak to the school social worker. When these efforts failed to diffuse the situation, it was appropriate to involve the school deputy and to file a delinquency petition. The school did not fail to fulfill its obligations under IDEA and Qoyasha’s behavior warranted

involving the police and juvenile justice system. Therefore, we cannot conclude that the delinquency petition circumvented federal statute.

**JUDGMENT OF THE CIRCUIT COURT
FOR WICOMICO COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**