

TERESA M [REDACTED],

Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 03-11

### OPINION

This is an appeal of the unanimous decision issued by the Montgomery County Board of Education affirming the expulsion of Appellant's son for the remainder of school year 2001-02. The local board has submitted a Motion for Summary Affirmance and supporting memorandum, maintaining that the expulsion was appropriate under the factual circumstances and the applicable rules and regulations of the local board. Appellant has filed a reply opposing the local board's motion and requesting that R [REDACTED] be readmitted to Damascus High School. In addition, the local board has filed a motion to strike four letters attached to Appellant's appeal on the basis that the letters were generated after the closure of the record in the evidentiary hearing.<sup>1</sup>

### FACTUAL BACKGROUND

Appellant is the parent of R [REDACTED], who was an 11<sup>th</sup> grade student at Damascus High School ("Damascus") in the Montgomery County Public School ("MCPS") system at the time of the incident at issue. On January 23, 2002, after early dismissal, R [REDACTED] provoked a physical altercation with J [REDACTED], an African-American ninth grade student who had attended the school for only the prior two weeks. The event happened in the parking lot of a shopping center adjacent to the school.<sup>2</sup> As summarized by the board in its memorandum, the testimony of several students disclosed:

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<sup>1</sup>COMAR 13A.01.01.03C(2) permits the State Board to accept additional evidence where an appellant shows that the additional material is relevant and there were good reasons for the failure to offer the evidence in the proceedings before the local board. In this case, the letters were generated after the closure of the evidentiary record and are simply a continuation of Appellant's arguments. Therefore, we are not considering them in reviewing this appeal.

<sup>2</sup>Appellant does not contend that the disciplinary code of MCPS does not apply because the incident occurred off school property. The discipline policy is applicable even though the incident did not occur on school grounds. See *Pickett v. Montgomery County Board of Education*, 7 Op. MSBE 1302 (1998); *Schlamp v. Board of Education of Howard County*, 7 Op. MSBE 27 (1995).

that R■■■■ initiated the involvement by going after J■■■■, crossing the parking lot to the place where J■■■■ and a friend were walking; that R■■■■ instigated the physical contact by yelling 'Hit me! We're going to fight!'; that J■■■■ tried to avoid the confrontation and attempted to leave several times but was prevented; that R■■■■ initiated the physical contact by pushing J■■■■; that five or six students (several were friends of R■■■■) then joined the confrontation and began to kick, hit and even spit on the African American student.

(See Motion for Summary Affirmance, 11/12/02, p. 2; Tr. 142-5, 230, 237-9, 251; Police Report, and Ralph's Statement - Student Referral Information Sheet)

On or about January 30, 2002, Dr. Robert L. Bastress, Principal of Damascus, informed Appellant that Ry■■■■ was suspended for ten days, and recommended R■■■■ for expulsion to the Upcounty Field Office of MCPS. (Recommendation Memorandum, 1/30/02). In accordance with local procedures, Richard C. Pottinger of the Upcounty Field Office conducted an investigative conference on February 4, 2002 with R■■■■, his parents, and school officials. After reviewing all of the information provided, a recommendation for expulsion was made to Dr. James Williams, Deputy Superintendent of MCPS. (Recommendation Memorandum, 2/5/02). Dr. Williams assigned the matter to hearing officer Raymond DeBalso for review.

Mr. DeBalso conducted an appeal conference on February 13, 2002, where R■■■■ and his parents and Dr. Bastress and other school officials presented testimony. Dr. Bastress testified that he believed that the fight had racial overtones. However, he also testified that he would have recommended expulsion based upon the fight alone as R■■■■ went out of his way to be the aggressor in the fight. (Memorandum from DeBalso to Williams, 2/25/02). Mr. DeBalso recommended to Dr. Williams that R■■■■ be expelled. (Memorandum, 2/25/02). Dr. Williams adopted the hearing officer's decision and added that R■■■■ could apply for re-enrollment the first semester of the 2002-2003 school year. (Letter from Williams to Appellant, 2/26/02). R■■■■ applied for and was granted re-enrollment, but at a high school other than Damascus.<sup>3</sup>

Appellant appealed Dr. Williams' decision to the local board and requested a hearing. The local board referred the matter to hearing examiner Gregory A. Szoka, Esquire, who conducted an evidentiary hearing on June 10, 2002. After consideration of the evidence presented by all parties, Mr. Szoka recommended that the expulsion be upheld. (Decision, 7/10/02).

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<sup>3</sup>Appellant has requested that R■■■■ be allowed to re-enroll at Damascus. However, under MCPS regulation JRA-RB, MCPS reserves the right to reassign a student to a different school or alternative program for disciplinary reasons. We believe under the circumstances of this case the local school system acted well within its discretion to reassign R■■■■ to another high school in the county.

On August 26, 2002, the parties presented oral argument before the local board. On September 12, 2002, the local board issued a decision and order, affirming by a 7 to 0 vote, the decision to expel.<sup>4</sup> (Local board's Decision and Order, 9/12/02). The appeal to the State Board followed.

## ANALYSIS

It is well established that the decision of a local board of education with respect to a student suspension or expulsion is considered final. Md. Code Ann., Educ. § 7-305. Therefore, the State Board's review is limited to determining whether the local board violated State or local law, policies, or procedure; whether the local board violated the due process rights of the student; or whether the local board acted in an otherwise unconstitutional manner. *See* COMAR 13A.01.01.03E(4)(b); *Butler v. Board of Education of Anne Arundel County*, 7 Op. MSBE 404 (1996).

Appellant maintains that the investigation conducted by the MCPS was "inept" and alleges "misconduct throughout the hearing process". However, based upon our review of the extensive record in this matter, we believe the record reflects that R■■■■ and his parents were given a fair and full opportunity to present their side of the story at each of the meetings with school administrators. Further, at each meeting, R■■■■ admitted to pushing J■■■■ and fighting with him. *See Junaid Ali, et al. v. Howard County Board of Education*, MSBE Opinion No. 00-15 (March 22, 2000) (finding no due process violations). We find that this procedure afforded R■■■■ the process he was due.

As to "misconduct" in the hearing process, Appellant appears to allege that the hearing officer should not have believed the school system's witnesses. However, determinations concerning witness credibility are within the province of the local board as trier of fact. *See, e.g., Board of Trustees v. Novik*, 87 Md. App. 308, 312 (1991), *aff'd*, 326 Md. 450 (1992) ("It is within the Examiner's province to resolve conflicting evidence. Where conflicting inferences can be drawn from the same evidence, it is for the Examiner to draw the inferences."); *Board of Educ. v. Paynter*, 303 Md. 22, 36 (1985) ("[N]ot only is it the province of the agency to resolve conflicting evidence, but where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences.").

Appellant also contends that R■■■■ should have been disciplined under Damascus Discipline Policy Code 405 "Fighting" which imposes a four day suspension for a first offense. Appellant contends that since no one reported any racial slurs, the incident cannot be considered an act of hate/violence under MCPS' Guidelines for Identification, Notification, Investigation and Resolution of Acts of Hate/Violence. However, the use of racial epithets is only one of eleven factors to be considered when determining whether an incident is considered an act of hate/violence under the Guidelines. The record at the evidentiary hearing demonstrated that this

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<sup>4</sup>The local board president, Reginald M. Felton, did not participate in the decision.

incident was more than ordinary fighting. The hearing examiner found that:

In addition to the injuries sustained by J■■■■, the testimony of Dr. Bastress confirmed that Damascus was negatively affected in that racial tensions were exacerbated, that the fight escalated into an attack by others than J■■■■, that there was at least one incident the day following involving a fight between students of different races and the school was generally adversely impacted by the incident.

Decision of Hearing Examiner, p. 4-5 (July 10, 2002). Moreover, the county-wide MCPS regulation JFA-RA, Student Rights and Responsibilities, indicates that suspension is the minimum penalty for a physical attack on a student, with a maximum penalty of expulsion.

Moreover, Dr. Bastress testified, and the local board believed, that expulsion was the proper action whether or not R■■■■'s actions were motivated by race:

Attacking a fellow student without provocation is a very serious offence. R■■■■'s actions in physically attacking another student and continuing that attack while that student was on the ground could have had devastating consequences. His actions fully justified the imposition of significant disciplinary measures.

In making its decision the Board notes that R■■■■'s actions warrant expulsion without regard to the motivation for his actions. Such violent and dangerous behavior cannot be tolerated, regardless of what motivating factors for such behavior may have been.

Local board decision, p. 2.

Based on the local board's determination that R■■■■ was the aggressor and that the expulsion was appropriate regardless of motivation, we find sufficient record evidence to support the local board's decision to uphold R■■■■'s expulsion for fighting with another student. *See, e.g., Crawley v. Baltimore County Board of Education*, 7 Op. MSBE 1101 (1998) (upholding expulsion of student for fighting); *Brown v. Baltimore County Board of Education*, 7 Op. MSBE 510 (1997) (upholding initial suspension and subsequent expulsion of student for fighting). The decision of the local board is also consistent with recent cases in which the State Board has upheld a student's expulsion that was based upon the student's violent attack on another student. *See Phyllis Hammond Black v. Carroll County Board of Education*, MSBE Opinion No. 02-24 (June 26, 2002)(suspension upheld for student who was aggressor in fight); *Adams-Frazier v. Montgomery County Board of Education*, MSBE Op. 01-07 (February 27, 2001) (expulsion upheld for unprovoked attack on fellow student).

## CONCLUSION

For the reasons noted above and finding no due process violations or other illegalities in the proceedings, we affirm the expulsion decision of the Board of Education of Montgomery County.

Marilyn D. Maultsby  
President

JoAnn T. Bell

Philip S. Benzil

Dunbar Brooks

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

Reginald L. Dunn participated in the deliberations on this appeal and voted to affirm the local board decision, but passed away prior to the issuance of this opinion.

February 26, 2003