

TIWANDA ■ M■■■■■ &
NICHOLAS ■ D■■■■■

Appellants

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-09

OPINION

This is an appeal of a five day student suspension and removal from extracurricular activities for 70 school days due to violations of school policy concerning alcohol, drugs, non-controlled substances and inhalants. The local board has filed a Motion to Dismiss and/or for Summary Affirmance based on untimeliness and on the basis that the student's due process rights were not violated. Appellant submitted a reply in opposition to the motion.

FACTUAL BACKGROUND

S■■■ M■■■■, Appellants' son and guardian, respectively, is currently a senior at Mount Hebron High School ("Mt. Hebron") in the Howard County Public Schools ("HCPS"). On June 10, 2003, S■■■ was in a car with a friend when a faculty member, Mr. Larry Luthe, observed S■■■ drinking beer from a "Bud Light" can while driving through a Mount Hebron school parking lot. Mr. Luthe got into his car to follow the students and stopped them. At the time of the stop, he observed the beer can in the back seat of the car. The other student claimed that the beer was his, but Mr. Luthe told them that the only reason he followed the car was that he had seen S■■■ drinking from the "Bud Light" can. The students drove away and Mr. Luthe immediately filed an incident report with the administration. (Statement of Larry Luthe and Disciplinary Removal Form, 6/10/02.)

Possession of alcohol on school grounds is a violation of the HCPS alcohol and drug policy #3451.¹ Mr. Luthe also called S■■■'s home the evening of June 10, 2003, and informed Appellants of the incident, requesting that they attend a conference the next day. At that conference, S■■■ gave a statement that no beer can was visible to him when he got into another student's car, but as they were leaving the parking lot, the driver pulled out a beer. (Statement of June 11, 2002).

¹Policy #3451 is implemented by means of regulation 3451-R and the procedures established in 3451-PR. Appellants in their submissions do not appear to understand that the regulations and procedures are part of the overarching Policy #3451.

The administration believed Mr. Luthé's version of the story and imposed upon S■■■■ a five day suspension from school and a 70 calendar day removal from participation in extracurricular activities for possession of alcohol, in accordance with HCPS Policy #3451. (Letter of June 11, 2003).

By letter dated June 16, 2003, Appellants requested that the administration review the disciplinary action alleging that the decision was arbitrary and capricious and that S■■■■ was denied due process. After reviewing Appellants' arguments, Ms. Alice Hawkins, Director of Secondary Schools, found that S■■■■ was not denied due process and that the decision to suspend was not arbitrary or capricious, thereby upholding the suspensions. (Letter of June 23, 2003).

On July 17, 2003, Appellants appealed the suspensions to the local board. Appellants claimed that S■■■■ was denied his due process rights, that he was in a "504" plan², that the administration did not strictly follow its procedures, and that HCPS made an "overly broad implementation" of its policies. (Letter of appeal, 7/17/03).

The local board conducted a record review of the suspensions on August 20, 2003. Both Appellants and the Superintendent made submissions for the local board to consider. After review, the local board unanimously upheld the disciplinary measures. It found that:

S■■■■, his guardian, and parent are appealing the suspension from extracurricular and school-related activities of 70 school days. The Board finds this request goes against the message of Policy #3451 and its intent to deter students from engaging in illegal and unhealthy habits concerning alcohol and other drugs....

The students at Mount Hebron High School signed policy #3451 at the beginning of the school year and were reminded of the policy by the administration and the staff on numerous occasions. Students received a High School Handbook in which the policies and consequences are clarified. S■■■■ signed an acknowledgment of understanding the requirements and penalties of this and other policies at the beginning of the school year.

By his own written statement, S■■■■ violated Policy #3451 on school grounds on June 10, 2003 by being in proximity, or of having constructive possession of a can of beer. His math teacher submitted a statement that he saw S■■■■ "drinking from a Bud Light can". (See Howard County Board decision.)

²The penalties under Policy #3451 apply to all violations unless the student is a special education student. A student under a § 504 plan is not a special education student.

This appeal followed.

ANALYSIS

_____ In this appeal of a five day suspension, the State Board's review is limited. COMAR 13A.01.01.03(E)(4)(b) requires that the State Board review a student suspension or expulsion case to determine whether the local board violated State or local law, policies, or procedures; whether the local board violated the due process rights of the student; or whether the local board acted in an otherwise unconstitutional manner.

_____ 1. Timeliness

The local board alleges that this appeal was filed with the State Board on October 21, 2003, one day past the required deadline. However, Appellants have provided evidence that the appeal was hand-delivered to counsel for the State Board on October 20, 2003, within the required deadline. Accordingly, we find that the appeal was timely filed.

2. Alleged Due Process Violations

Appellants contend that S■■■■'s due process rights were violated. The suspension in this case was for five days. Under *Goss v. Lopez*, 419 U.S. at 581, for a suspension of 10 days or less, due process only requires that the student be given oral or written notice of the charges against him and if he denies them, an opportunity to present his side of the story. The record reveals that S■■■■ had such notice and opportunity. S■■■■ met with Mr. Scott Ruehl, Assistant Principal at Mt. Hebron, as part of the school investigation and gave a statement prior to the suspension decision. Mr. Ruehl also met with S■■■■'s legal guardian concerning the matter. Thereafter, Ms. Ronnie Bohn, Principal of Mt. Hebron, met with S■■■■'s legal guardian to review the incident. Following this process at the school level, the matter was again reviewed by Ms. Haskins, in response to a lengthy written complaint from the Appellants. S■■■■ received due process again before the local board through its review of the appeal. Throughout this process, Appellants had the full opportunity to submit whatever information, evidence, and legal argument they deemed relevant, and did so. Due process for a short term suspension requires nothing more.

Appellants appear to contend that S■■■■ was not given due process because they understood that S■■■■ had only been determined to be in constructive possession of the alcohol and because the student handbook did not refer to constructive possession of alcohol.³ It is

³Appellants present only selected pages of the Handbook and not all the pages that deal with Policy #3451 and the consequences for its violation. A review of the entire document discloses that page 13 of the Handbook defines constructive possession. S■■■■ acknowledged receiving the Handbook and cannot now claim that he did not have knowledge of the policy, regulations, and procedures concerning the use and/or possession of alcohol.

unclear how Appellants came to these conclusions. The statements, both written and oral, made by Mr. Luthe make it clear that Mr. Luthe observed S■■■■ with a can of Bud Light in his hand and that is why Mr. Luthe pursued the car. The fact that S■■■■ by his own word acknowledged that he was in constructive possession of the alcohol does not mitigate against the fact that school officials, and the local board, believed that he was also in actual possession of the alcohol. It is evident, based on the local board's decision to uphold the suspension, that the local board found the school official's statement more credible than S■■■■'s statement. *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."). The State Board may not substitute its judgment for that of the local board unless there is independent evidence in the record to support the reversal of a credibility decision. *See Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994). Based upon our review, we find that Appellants have provided no basis for reversing the credibility determinations made by the local board.

3. Disciplinary Procedures

Appellants allege that the school did not follow its own procedures and thus the suspension must be overturned. Policy #3451 requires that a school administrator who observes a policy violation:

1. Explain to the student the reason for the suspicion [of violation]; and
2. Escort the student, along with any evidence to the building administrator.

These procedures were not completely followed in this case.⁴ Mr. Luthe did, however, proceed directly to the school administration and make a contemporaneous statement to the school administrator. He also called S■■■■'s parent and guardian that evening. S■■■■ was permitted to make a statement to the school administrator prior to the imposition of the discipline. And, as discussed above, S■■■■ received several more opportunities to present his side of the issue to school administrators and to the local board. We therefore find that these subsequent levels of review cured any procedural irregularity at the school level. *See Williams v. Board of Education of Anne Arundel County*, 7 MSBE 649 (1997); *West v. Board of School Commissioners of Baltimore City*, MSBE 7 Op. MSBE 500 (1996) and *Harrison v. Board of Education of Somerset County*, 7 Op. MSBE 391 (1996).

Appellants also challenge the application of the 70 day suspension to a homecoming dance. By letter dated September 4, 2003 to Roger Plunkett, Assistant Superintendent for School Administration, Appellants questioned whether a school dance is an "extra-curricular" activity or a "school-related" activity. However, Appellants did not raise this issue in the materials submitted to the local board. The State Board has consistently declined to address issues that

⁴It is not clear why the procedures were not followed - whether the students sped away or that Mr. Luthe just let them proceed.

have not been reviewed initially by the local board. *See Craven v. Board of Education of Montgomery County*, 7 Op. MSBE 870 (1997) (failure to challenge suspension before local board constituted waiver); *Hart v. Board of Education of St. Mary's County*, 7 Op. MSBE 740 (1997) (failure to raise issue of age discrimination below constituted waiver on appeal). Thus, Appellants have waived their right to raise this matter on this appeal to the State Board.

Moreover, the procedure 3451-R defines both terms:

K. School-Related Activity - On or off premises activity in which a student directly participates (e.g. athletic event, field trip, prom, graduation activities and commencement) or in which the student does not directly participate but represents the school or student body simply by being there (e.g., spectator at athletic event).

L. Extracurricular Activities - Continuing activities available to students beyond the regular school day which are not required for the satisfactory completion of a particular class.

Based on the definitions, we find the terms synonymous.

CONCLUSION

For all of these reasons and finding no due process violations or other illegalities in the proceedings, we affirm the disciplinary decisions made by the Howard County Board of Education.

Edward L. Root
President

JoAnn T. Bell
Vice President

Philip S. Benzil

Dunbar Brooks

Calvin D. Disney

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Maria C. Torres-Queral

John L. Wisthoff

February 25, 2004