

ANNA AND GARY H.,

Appellant

v.

ANNE ARUNDEL COUNTY  
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-32

## OPINION

### INTRODUCTION

Appellants, parents of S.H., appeal their son's two day suspension from school for attacking another student. They claim that S.H. acted in defense of himself and his friend, who was being attacked by the student. The local board filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellants opposed the Motion and the local board replied.

### FACTUAL BACKGROUND

During the 2014-2015 school year, S.H. was a sophomore at Chesapeake High School. On April 16, 2015, he was involved in an incident with three other students. The incident occurred in a stairwell while S.H. was walking to class with his friends, Students B and C, after leaving the cafeteria. Student A attacked Student B, backing him into a corner and punching him. S.H. went over to help Student B. He pulled Student A off of Student B and wrestled him to the ground. S.H. and Student C were trying to keep Student A down on the ground. As Student A was freeing himself and getting up, S.H. struck Student A with his fists two or three times. Student C also began striking Student A. Student A then went after Student C. S.H. started moving towards them but a teacher became involved and the incident ended.<sup>1</sup> The entire incident lasted approximately 20 seconds.

Immediately following the incident, school authorities interviewed the students involved. S.H. gave the following statement:

In the hallway [Student A] was following, [Student B] while we were walking to class. In the stairwell, [Student A] attacked [Student B] pinning him in a corner. When this happened I grabbed [Student A] and threw him to the ground to get him off [Student B]. He got back up and started punching [Student C]. After this he got [Student C] up near the corner so I pushed him up against the wall and by then the fight was broken up.

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<sup>1</sup> This description is based on our review of the video recordings from the school security camera and the student cell phone video that was submitted to school authorities after the incident.

(S.H. Statement). In the statement, S.H. does not mention striking Student A as he was getting up off of the ground.

In addition, school administrators viewed the school security video recording. Based on that video and the student statements, the school Principal, Stephen W. Gorski, initially decided to take no action against S.H., finding that he appropriately intervened in the fight to defend his friend. S.H. returned to his classes.

Later that day, school authorities discovered and viewed a cell phone video taken by a student during the incident. The cell phone video was taken from a different angle than the school video, and was clearer and of a better quality. The cell phone video clearly showed that, in addition to wrestling Student A to the ground, S.H. struck Student A several times as he was getting up. This aspect of the incident was not visible on the school's video, which was more grainy and choppy than the cell phone video.

Based on the cell phone video, the Principal determined that S.H. had attacked Student A when he struck him during the incident and suspended S.H. for 2 days, April 17 and April 20, 2015. The Principal met with the Appellants to discuss the incident and advise them of his decision. In addition, he and Assistant Principal, Kerri A. Buckley, issued a letter, dated April 16, 2015, advising the Appellants that S.H. was "placed on a temporary suspension" for violating "Education Policy JCC: Student Conduct, Regulation JCC for an attack on another student."<sup>2</sup>

On June 1, 2015, Appellants filed a complaint with Catherine Herbert, Associate Superintendent for School Performance, challenging the suspension decision. (App. Ex. 1). Appellants maintained that S.H.'s actions were taken in defense of his friends. By letter dated June 11, 2015, Ms. Herbert denied the appeal stating that S.H. "was clearly exhibiting behavior that is described as a Category III Attack." She found the two day suspension to be an appropriate consequence under the Code of Student Conduct and upheld the Principal's decision. (App. Attachment).

Appellants appealed Ms. Herbert's decision to Arlen Liverman, Deputy Superintendent. (Letter, 6/19/15). The Deputy Superintendent found that the school administration conducted a thorough investigation into the incident and that S.H.'s behavior fell within the parameters of a Category III Attack. He upheld the disciplinary decision. (Liverman Letter).

By letter dated August 5, 2015, Appellants appealed the decision to the local board. (Local Bd. Appeal Letter). Among other things, Appellants argued that S.H. was not the aggressor in the incident and that he merely stepped in to the altercation to protect his friend. They maintained that if S.H. had not become involved, Student B and Student C would have been more severely injured by Student A. *Id.*

The local board referred the appeal to a hearing examiner for review. The hearing examiner conducted an evidentiary hearing on December 17, 2015 at which Appellants were represented by counsel. During the hearing, S.H. claimed that he was acting in defense of his friends and himself. He testified that he was using "softening blows" to "create space" between

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<sup>2</sup> In addition, the school resource officer filed criminal charges against S.H. on or about May 19, 2015 for disorderly conduct and second degree assault. The Anne Arundel County Department of Juvenile Services later dismissed the case against S.H. with no action taken.

him and Student A and to avoid being hit in the face because Student A was in the process of freeing himself. He did not view the contact as full on punches. (T. at 66). S.H. testified that he had learned defensive techniques through his training as a second degree black belt in karate, and could have struck Student A “really hard” if he had wanted to do so, but that it was not necessary to “use that force.” (T. at 46).

The school administrators testified that they viewed S.H.’s actions as defensive until he began striking Student A. (T. at 116-117, 158-159). At that point, they viewed his actions as going beyond intervening and instead as attacking another student which escalated the situation. *Id.* The Principal stated that he believed that the two-day suspension was warranted in this case. (T. at 160-161).

On February 3, 2016, the hearing examiner issued his decision recommending that the local board uphold the suspension. He stated that this was “a case where what was described as a fairly minimal period of suspension was ordered for an otherwise good student who engaged in conduct that was determined to be an attack and which escalated, rather than brought calm to” the situation. (Hearing Examiner Recommendation at 24). The hearing examiner specifically rejected the Appellants’ argument that S.H. did not use excessive force against Student A. He stated as follows:

The evidence presented by the school authorities was that they determined that when [S.H.] punched [Student A], he was, in essence, using excessive force and became an attacker, and the student’s cell phone video supports that determination. Although [Student A] may not have been totally subdued. There were two students holding him down – [S.H.] and [Student C]. I conclude that holding a student down to prevent his aggression against others is different than punching him and when [S.H.] threw punches, he used excessive force.

(*Id.* at 19).

On March 2, 2016, the local board adopted the hearing examiner’s Report and Recommendation and upheld the Deputy Superintendent’s decision. This appeal followed.

#### STANDARD OF REVIEW

In student suspension and expulsion cases, the decision of the local board is considered final. COMAR 13A.01.05.05(G)(1). Therefore, the State Board will not review the merits of the decision unless there are “specific factual and legal allegations” that the local board failed to follow State or local law, policies, or procedures; violated the student’s due process rights; or the local board has acted in an unconstitutional manner. COMAR 13A.01.05.05(G)(2). The State Board may reverse or modify a student suspension or expulsion if the allegations are proved true or if the decision of the local board is otherwise illegal. COMAR 13A.01.05.05(G)(3).

## LEGAL ANALYSIS

At the outset we note that the Appellants spend a great deal of time in their appeal arguing that S.H. had a right to defend his friends and himself from Student A. At no time did school officials or the local board maintain that S.H. did not have a right to come to the aid of his friends or defend himself. Indeed, prior to viewing the cell phone video, the school administrators believed that S.H. had acted defensively to help break up a fight and initially found no fault with his actions and did not impose any disciplinary action. It was only once the cell phone footage of S.H. striking Student A came to light that the Principal found S.H.'s actions to no longer be defensive.

Appellants argue that the local board violated S.H.'s rights by failing to follow Anne Arundel County Public Schools ("AACPS") Regulation JCC-RAF – Attacks by Students. They maintain that S.H.'s actions do not rise to the level of an attack because he used reasonable force in defense of himself and his friends based on his belief that he or his friends would be harmed if Student A got free. They argue that Student A is bigger than S.H. and that he was very aggressive during the incident, even going after Student C once he was pulled down to the ground and struck by S.H.

Regulation JCC-RAF defines an attack as "an unprovoked aggressive action toward another that meets one of the sub-definitions" of a Category I Attack, Category II Attack, Category III Attack or a Category IV Attack, as set forth in the Regulation. S.H. was charged with a Category III Attack. The Regulation defines a Category III Attack as follows:

A Category III Attack is a physical attack without injury but may include other aggressive physical action against another. This may include, but is not limited to, deliberate hitting, pushing, poking, shoving, kicking, pinching, ripping, biting, spitting on, punching, or scratching another person.

The Principal testified that, at the time S.H. began striking Student A, Student A had already been pulled off of Student B and brought to the ground. Although he was freeing himself and getting up, he was not striking S.H. or anyone at the time. It was at this point that the Principal maintains that S.H. should have backed off. Instead, he struck Student A, as did Student B, and the altercation continued. It is for that reason that the Principal and the Assistant Principal found S.H.'s "punches" or "softening blows" to be an unprovoked aggressive physical attack on Student A, even if S.H. only intended to defend. The Associate Superintendent, the Deputy Superintendent, the hearing examiner and the local board all concurred that this was a reasonable assessment of the events captured on the video footage.<sup>3</sup>

After reviewing the entire record in this case, including all of the video footage, we acknowledge that there might be differences in opinion regarding the interpretation of the events that transpired during the incident. A difference of opinion, however, does not require reversal of the local board's decision. Rather, in the context of this student discipline case, a finding of illegality is necessary to reverse the local board. For that to occur, this Board would have to find

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<sup>3</sup> Appellants are incorrect in their claim that the Assistant Principal had S.H. charged by the police. That decision was made by the school resource officer, who is an employee of the County police department and not the school system.

that the local board's decision is "violative of fact and logic" and constitutes an "untenable judicial act that defies reason and works an injustice." *Atanya C. v. Dorchester County Bd. of Educ.*, MSBE Op. No. 09-26 (2009). The local board's decision would have to "be well removed from any center mark imagined by [this Board] and beyond the fringe of what [this Board] deems minimally acceptable." *Parents R. and Z. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 14-67 (2014); *Atanya C. v. Dorchester County Bd. of Educ.*, MSBE Op. No. 09-26 (2009); *David J. v. Howard County Bd. of Educ.*, MSBE Op. No. 11-39 (2011)(citing *State v. WBAL-TV*, 187 Md. App. 135-153 (2009)). We would have to find that no reasoning mind could reach the same decision as the local board. Based on the record in this case, we cannot reach such a conclusion. Thus, it is our view that the local board's decision is not illegal.

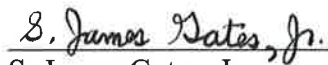
Appellants argue that the decision to suspend in this case is the result of an "overbroad zero tolerance policy" that encourages aggressive students to fight whenever a teacher is not around since it does not allow a distinction between those who instigate an attack and those who try to protect themselves or others. They maintain that this undermines the school system's goal of ensuring a safe and orderly school environment. They point to The Maryland Guidelines for a State Code of Discipline offense code for "Attack on Student," which states that school systems should consider factors such as whether a student acted in the heat of the moment, as opposed to planning ahead; whether the student was verbally provoked; whether the student acted in self-defense; whether the student was intervening in a fight; the student's age; and whether fighting is persistent or habitual. (State Guidelines at 22).


Regulation JCC-RAF is not a zero tolerance policy. It gives discretion to the school officials regarding whether or not the conduct at issue constitutes an attack under the Regulation and the appropriate consequence to be imposed. School officials exercised their discretion and made the decision to impose a two-day suspension based on all of the facts available to them. The view of school administrators was that S.H. became an aggressor and that his actions escalated the incident. It was likely a heat of the moment response, but aggressive nonetheless. School administrators also weighed various factors in meting out a consequence, taking into account mitigating factors such as prior disciplinary infractions and S.H.'s respectful nature. (T. 140-141). The Appellants simply disagree with the ultimate decision.

## CONCLUSION

For the reasons stated above, we affirm the decision of the local board upholding the two-day suspension for attack on a student.

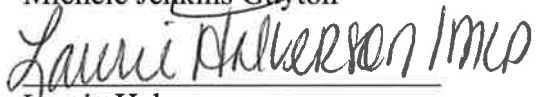
  
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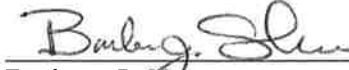
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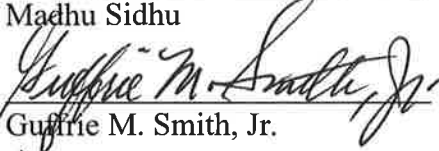
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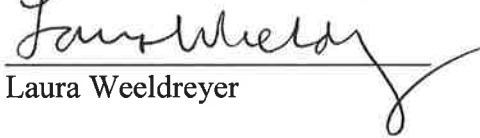
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July 26, 2016