

JOHN S.,

Appellant

v.

HARFORD COUNTY BOARD  
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-02

## OPINION

### INTRODUCTION

In this appeal, Appellant challenges the 18 day suspension imposed upon his son for stealing a Starburst candy from a vending machine at school. The local board filed a Motion to Dismiss the case based on the assertion of stale claims. Alternatively, it filed a Motion for Summary Affirmance maintaining that its decision should be upheld. Appellant responded to the motion and the local board replied.

### FACTUAL BACKGROUND

During all times relevant to this appeal, Appellant's son, Student X, attended C. Milton Wright High School (Wright), where he began as a freshman at the start of the 2011-2012 school year.

On February 2, 2012, Student X was involved in a fighting incident with another student at school. The school principal issued Student X a 10 day suspension and referred the matter to the local Superintendent for further action. Buzz Williams, the Superintendent's designee, conducted a conference on February 10, 2012, at which the Appellant maintained his son had been attacked by the other student and had acted in self-defense. Based on the results of the school system's investigation and after observing video footage of the incident, Mr. Williams found that Student X's actions went beyond self-defense.<sup>1</sup> (LB Ex.1 to Resp.). Mr. Williams recommended that the Superintendent uphold the 10 day suspension for fighting and the Superintendent accepted the recommendation.

By letter dated February 13, 2012, the Superintendent advised Appellant that Student X would be permitted to return to school if he agreed to the reentry conditions. (LB Ex.4). On February 16, 2012, Student X returned to school after he and his mother signed the reentry contract, which included the condition that he would adhere to all school rules and procedures. *Id.*

The following school year, on March 4, 2013, Student X opened the door of an unlocked vending machine and took a Starburst candy from it. The school principal suspended Student X

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<sup>1</sup> The School Resource Officer charged both students involved with 2<sup>nd</sup> degree assault. (LB Ex.1 to Resp.).

for 10 school days for theft and referred him to the local Superintendent for possible further action. (LB Ex.2, p.22).

The Superintendent's designee, Evonne Alberter, conducted a conference. She recommended that the Superintendent give Student X an 18 day suspension for theft. A factor that contributed to Ms. Alberter's recommendation was Student X's prior disciplinary record. His record included 10 prior violations during the 2012-2013 school year, including 5 insubordination violations resulting in 3 suspension days, a Saturday detention, and an afternoon detention. The record also included the 10 day suspension for fighting in February 2012. In addition, she considered that the theft took place while Student X was under the reentry conditions from the February 2012 incident, and that Student X failed to demonstrate remorse over his continued violation of school system policies. (LB Ex.1, pp. 3-5; Ex.2). The Superintendent accepted the recommendation and imposed an 18 day suspension for theft. (LB Ex.1, pp.6-7).

Appellant appealed the Superintendent's decision to the local board. (App's. Ex. 1). Appellant maintained that his son should have received only a 10 day suspension, not an 18 day suspension, because the additional 8 days were based on the February 2012 fighting incident for which the Appellant claimed his son was denied due process. *Id.* Specifically, Appellant maintained that he had filed an appeal of the disciplinary decision with the Superintendent on February 15, 2012, but that he never heard any response to his appeal. Appellant argued, therefore, that the February 2012 incident should be removed from his son's disciplinary record and should not have been a factor in determining the theft penalty.

A panel of the local board conducted a hearing on the matter. The local board upheld the findings and sanctions imposed by the Superintendent, citing the videotape footage and the fact that Student X had admitted to taking the Starburst candy. The local board noted that the school system had no record of Appellant filing an appeal of the February 2012 matter. It found that the disciplinary decision rendered by the Superintendent on the February 2012 fighting incident was a part of Student X's record and was properly considered by Ms. Alberter and the Superintendent in the theft case. The local board found no basis for changing the disciplinary penalty based on untimely claims that had not been diligently pursued at the time of the alleged due process violation.

This appeal ensued.

#### STANDARD OF REVIEW

In student suspension cases, the decision of local board is considered final. Md. Code Ann., Educ. Section 7-305(d)(8). The State Board only reviews the merits of the case if 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 that the local board acted in an unconstitutional manner. COMAR 13A.01.05.05(G).

## ANALYSIS

Before we begin our analysis we would like to commend the school system for using alternatives, such as afternoon and Saturday detention and in-school suspension, to address the student's disciplinary issues prior to resorting to longer out-of-school suspensions.

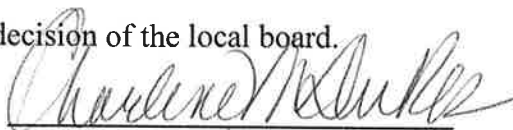
Appellant does not dispute that his son stole the Starburst candy from the vending machine on March 4, 2013. Rather, he maintains that the local board erred because the length of the penalty was, in part, based on the February 2012 suspension, and the local board refused to review Appellant's claims that his son's due process rights were violated with regard to the February 2012 suspension when the superintendent failed to process Appellant's February 15, 2012 appeal. The local board, however, has no record of any such appeal by the Appellant.

Appellant is essentially trying to bootstrap an argument about the legality of the February 2012 disciplinary decision to this appeal of a different disciplinary action over a year later. Appellant maintains that his son's due process rights were violated because neither the superintendent nor the local board ever responded to the appeal Appellant filed in February 2012. The Appellant, however, never followed up on his February 15, 2012 filing when there was no response. By his own admission, Appellant stated that he did not pursue the appeal any further because he did not believe that it would result in any future problems. (Appeal at 2, Tr.21). This statement speaks for itself. In his appeal to the State Board, the Appellant also states that he was preoccupied because he was dealing with a death in the family and a job layoff. While both of those serious events could explain some delay in following up on the appeal, they do not excuse the Appellant from sitting on his appeal rights for approximately one year. It was up to the Appellant to diligently pursue his claims in a timely fashion. He did not and the Superintendent's final decision in the matter remained in effect and became a part of Student X's disciplinary history. The local board did not err in failing to consider the Appellant's due process claims regarding the February 2012 suspension.

With regard to the March 2013 incident that resulted in an 18 day suspension, Appellant has not alleged any other due process violations or claims that the local board failed to follow State or local law, policies or procedures. Nor does he maintain that the local board acted in an unconstitutional manner. Accordingly, we will not review the merits of the decision.

## CONCLUSION

For the reasons stated above, we affirm the decision of the local board.



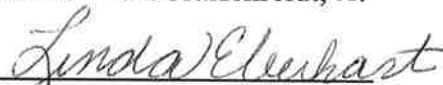
Charlene M. Dukes  
President



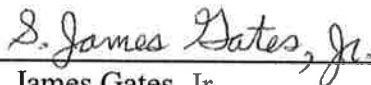
Mary Kay Finan  
Vice President



James H. DeGraffenreidt, Jr.



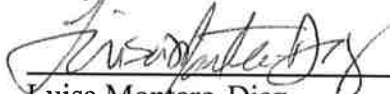
Linda Eberhart



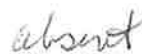
S. James Gates, Jr.



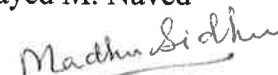
Larry Giammo



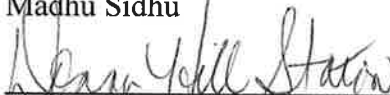
Luisa Montero-Diaz



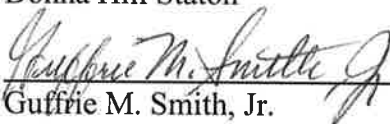
Sayed M. Naved



Madhu Sidhu



Donna Hill Staton



Guffrie M. Smith, Jr.

January 28, 2014