WILLIAM M. AND CORONA S.,

Appellants

v.

WORCESTER COUNTY BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-63

OPINION

INTRODUCTION

The Appellants (two unrelated parents) appealed a discipline decision of the Worcester County Board of Education (local board). The local board filed a motion for summary affirmance maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant submitted a supplemental filing and the local board replied.

FACTUAL BACKGROUND

Appellants' sons were freshmen at Snow Hill High School during the 2011-2012 school year.

On November 10, 2011, there was an incident involving a female student (hereinafter Student R) and Appellants' sons (hereinafter Student J and Student K) at the end of the school day. Student R alleged that Student J pinned her against the lockers, that Student K touched her breasts under her shirt and her buttocks, and that both boys tried to remove her shirt. She claimed that she told them to stop, and that by the time a staff member came around the corner and saw them, the boys had already backed up and Student J merely had his arm around her. (Appeal, Investigative Notes).

Thomas A. Davis, the principal of Snow Hill, investigated the incident and interviewed Appellants' sons. The interviews went as follows:

Student J

- *Student J*: "Student R" and I were hugging in the hallway and stuff. We were kissing for a little bit. "Student K" was there. "Student R" was getting [her] stuff out of [her] locker. I didn't touch "Student R" anywhere that [she] didn't want to be touched. When I walked up to "Student R," [she] gave me a hug and then asked me for a kiss, and I did. This occurs some days, but not all of the time. "Student R" was completely willing.
- *Question*: While you were hugging, did anyone touch "Student R"?

- *Student J*: Yes. "Student K" touched "Student R's" chest. "Student R" didn't do anything at first because [she] thought it was me. Then [she] realized it was "Student K" and [she] got mad and "Student K" stopped. "Student K" was just being stupid or funny. I touched "Student R" on the chest as well. "Student R" didn't respond, and [she] kept on hugging on me and stuff. We were walking out together. We were all laughing. "Student R" said something about wanting to go out.
- *Question*: Did "Student K" ask "Student R" for a kiss?
- *Student J*: No.
- *Question*: Did you pin "Student R" against the locker?
- *Student J*: "Student R" was standing with [her] back to the locker when [she] turned around to face me as I arrived. I have kissed "Student R" before and touched [her] chest. But that was last year because we went out.
- *Question*: Was the touching of "Student R's" breast outside the shirt or inside [her] shirt?
- *Student J*: I touched it outside of "Student R's" shirt.
- *Question*: Did "Student R" touch you in any inappropriate manner?
- *Student J*: No. "Student R" did not touch me inappropriately, besides from hugging.

Student K

- *Student K*: I gave "Student R" a hug. [She] said I touched [her] butt. I may have, but I don't think I did. [Student J] was there. I didn't touch "Student R" anywhere else. I know that [Student J] hugged and kissed "Student R." Student J might have pushed "Student R" on the shoulder playfully. "Student R" was laughing. I didn't see Student J touch "Student R" anywhere inappropriately. A teacher came by and said, "[Student J], hands off." I think he only had his arm around "Student R." I didn't ask "Student R" for a kiss. "Student R" was laughing the whole time, then we walked out together.
- *Question*: Was the touching of "Student R's" breast outside the shirt or inside the shirt?
- *Student K*: I didn't touch "Student R" under her shirt.
- *Question*: Did "Student R" touch you in an inappropriate manner?
- *Student K*: "Student R" did not touch me inappropriately. "Student R" always says to [Student J] that [she] wants him to kiss [her]. For example, the other day "Student R" had some McDonald's fries and [Student J] will ask [her] for some. "Student R" said "you have to kiss me first."

(Motion, Ex.7B).

Based on his investigation, Mr. Davis found merit to the accusation of inappropriate touching and concluded that Appellants' sons engaged in a form of sexual harassment. He suspended Student J and Student K for one day each, which they served on November 16, 2011. (Motion, Ex. 8B). Appellants disagreed with the decision and a conference was held on the matter. *Id.*

Appellants appealed Principal Davis's action to then-superintendent, Dr. Jon Andes, and met with him on January 13, 2012. (Motion, Exs. 1A & 1B). By letters dated January 30, 2012, Dr. Andes upheld the principal's action. *Id.* He found that Mr. Davis had conducted a thorough investigation and took appropriate action consistent with school system policy and procedures. *Id.* He also told the Appellants that the school system practice was to discard the behavioral file

once a student graduates, and that Mr. Davis would remove the behavioral referral form from the discipline file if no future incidences occurred. *Id.* Appellants did not appeal the superintendent's decision to the local board. They maintain, however, that they made repeated requests for information about the disciplinary record and decision from February through April 2012. (Appeal Documents, Ex. 1).

Appellant Corona S. sent an email to Dr. Andes on March 19, 2012, inquiring about the disciplinary file, the incident, and the entry in her son's student record. She maintained that no inappropriate touching went on between her son (Student K) and Student R. (Appeal Documents, ex. 8). By letter dated March 28, 2012, Dr. Andes responded to the email. He told her that (1) Mr. Davis would mail her a copy of her son's discipline file; (2) he had already reviewed the issue of the November 2011 incident and found the action taken by Mr. Davis to be appropriate; (3) he had already explained that upon graduation the discipline file is destroyed; and (4) it was up to Mr. Davis whether to remove the referral from the discipline file in June 2013 at the end of 10th grade. (Motion, Ex, 1C).

In letters dated February 7, 2013, Mr. Davis clarified that he had told the Appellants in November 2011 that he would consider revisiting the infraction information recorded in the student records at the end of the boys' sophomore year if they did not have any further disciplinary referrals. He stated that he never promised to expunge the information, but rather to revise the infraction code and narrative in the log entries. His reasoning for doing so was based on his assumption that both students would have grade point averages making them eligible for the National Honor Society ("NHS") which entails review of disciplinary reports on the candidates by the Faculty Council. He stated that his intent was to argue that the incident should not be a factor precluding the students from membership in NHS. (Motion, Exs. 7A & 7B).

Appellant Mr. M. appeared at the February 2013 meeting of the local board to complain about the November 11, 2011 action against his son. After the meeting, the new superintendent, Dr. Jerry Wilson, met with both Appellants to discuss the matter. By letters dated February 25, 2013, Dr. Wilson stated that he would not reverse the decisions made by Dr. Andes on January 30, 2012. (Motion, Exs. 2A & 2B).

By letter dated February 28, 2013, counsel for Appellants filed with Dr. Wilson a request for the release of all records related to the November 2011 incident and various school policies, and a request that any record of the disciplinary action against the Appellants' sons related to the November 2011 incident be removed from the students' files. (Motion, Ex. 3). By letter dated March 28, 2013, Dr. Wilson provided the requested documents in the school system's possession and responded to the request that the disciplinary records be expunged. Dr. Wilson stated:

> I disagree with your assertion that "no evidence was found that any inappropriate touching in fact took place" with respect to the incident at Snow Hill High School involving [Appellants' sons]. The female student involved alleged inappropriate touching, and both [boys] confirmed inappropriate touching. As stated in my letters of February 25, 2013 to your clients, the principal of Snow

> Hill High School and former superintendent took reasonable action in the handling of the incident, and no change will be made. Before addressing your clients' Maryland Public Information Act request, I want to clarify certain facts surrounding the incident between the female student and [Appellants' sons]. Contrary to what the parents may think, all three students were disciplined, and [Appellants' sons] were not accused of "rape" or any sexual contact beyond touching the female student's "butt" and "breasts."

(Motion, Ex.4).

On or about April 23, 2013, Appellants filed two appeals to the local board, one submitted directly from them, and another submitted through counsel.[1] By letter dated May 24, 2013, Robert A. Rothermel, Jr., the president of the local board, responded to the filings. He explained that the appeals were not timely because they were not filed within 30 days of Dr. Andes' January 30, 2012 decision or Dr. Wilson's February 25, 2013 decision. (Motion, Ex.6).

Thereafter, by letters dated June 10, 2013, Mr. Davis advised Appellants that he had modified the wording of the student record log entries for the November 2011 incident. The entries now read as follows:

> Infraction Code: Refusal to Obey Policy
> Infraction Narrative: "Student failed to follow school rules as determined by an administrator. Student issued 1-day OSS (11/16/11). Parent was notified 11/15."

(Motion, Ex. 8A). Prior to the change, the entry on Student J's record stated that the "Student touched a female student inappropriately on the breast (outside of her shirt). Student was issued 1-day OSS (11/16). Det. Moore was involved and will discuss this matter further with student and parent. Parent was notified 11/15."[2] The wording was slightly different in Student K's record, but the substance was the same.

STANDARD OF REVIEW

In student suspension and expulsion cases, the decision of the local board is considered final. COMAR 13A.01.05.05G(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; acted

[1] Included in the appeals were unsigned statements from Students J and K. Student J admitted kissing Student R, but denied that Student K touched her inappropriately. He stated he was nervous during questioning by the principal and that his earlier statements were "not reliably accurate." In his statement, Student K denied touching Student R in an inappropriate manner. (Appeal Documents, Exs. 2 & 3).

[2] Appellants maintain that the language "outside of her shirt" was only added by Mr. Davis after much protesting on their part.

in an unconstitutional manner; or that the decision is otherwise illegal. COMAR 13A.01.05.05G(2).

ANALYSIS

The local board maintains that its decision dismissing the appeal was not arbitrary, unreasonable, or illegal because the Appellants failed to timely file their appeal to the local board. A decision of a local superintendent may be appealed to the local board if taken in writing within 30 days of the local superintendent's decision. Md. Code Ann., Educ. §4-205(c)(3). The superintendent issued his decision on January 30, 2012. An appeal to the local board was not taken until April 23, 2013.

Appellants maintain that they did file a timely appeal because they were appealing from the March 28, 2013 superintendent letter declining to change the disciplinary records. The local board disagrees that this was a timely appeal, arguing that the March 28th letter merely responded to Appellants' public information act request and clarified several points in the superintendent's previous decision. The local board argues that this did not constitute a "new" decision.

The local board is correct. The March 28 letter, although containing new information and a response to the public information act request, was not a reexamination of the superintendent's earlier decision. The letter reads: "*As stated in my letters of February 25, 2013* to your clients, the principal of Snow Hill High School and the former superintendent took reasonable action in the handling of the incident, and no change will be made." (emphasis added). The letter indicates that the superintendent was merely restating a previous conclusion, not reviewing the case anew.

Appellants argue that their due process rights were violated because they were not provided information about the November 2011 incident or applicable school policies in a timely fashion and were never advised of their appeal rights.[3] This on its own, however, did not constitute a due process violation.

Ignorance of a right to appeal is not an excuse for failing to file an appeal within the prescribed time period. *See White v. Prince George's County Board of Education*, OR06-02 (2006); *Hi Caliber Auto & Towing v. Rockwood Cas. Ins.*, 149 Md. App. 504, 508 (2003) (quoting *Ohio Cas. Ins. Co. v. Insurance Comm'r*, 39 Md. App. 547, 555 (1978)) ("Ignorance of the law cannot serve as an excuse for failure to file a petition of appeal."). Time limitations on a

[3] Appellants argue that their due process rights were violated in other ways, as well. They maintain that the allegation against their sons was false and should be removed from their school records, and that the principal reneged on a promise to remove the incident from the students' records in June 2013. These issues are related to the merits of Appellants' complaint, which the local board did not consider, and need not be addressed by the State Board. Appellants have also complained about the substance of what is contained in their children's educational records. The Worcester County Public Schools Manual Policy IV-D-7 lays out the process for a parent to challenge information in an educational file, consistent with the Family Educational Rights and Privacy Act of 1974. This appeal was not brought as a result of that process.

right to appeal will not be overlooked except in extraordinary circumstances such as fraud or lack of notice of the decree. *Trina C. v. Prince George's County Board of Education*, Op. No. 12-03 (2012) (concluding that the burden was on Appellant to file a timely appeal with the State Board).

Section 4-205(c)(3) of the Education Article states that the decision of a local superintendent may be appealed to a local board if taken in writing within 30 days of the local superintendent's decision. There is no law or regulation that requires school districts to inform students and parents of their appeal rights. *See White, supra.* Providing this information is encouraged, but not mandatory, and the ultimate responsibility for adhering to deadlines rests with Appellants.

Due process in the school discipline context requires that a student be provided with notice of the charges and the opportunity to be heard. *See Parent H. v. Montgomery County Board of Education*, Op. No. 13-27 (2013). Appellants were promptly notified of the allegations against their sons and the principal's decision to impose discipline. They met with the principal and the superintendent, who listened to their grievances and issued a written decision. Their due process rights were not violated and they have not provided a sufficient reason to excuse their late filing.

Accordingly, the decision of the local board to reject the appeal as not being timely filed was not arbitrary, unreasonable, or illegal.

CONCLUSION

For the reasons stated above, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.

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ABSENT

Sayed M. Naved

Madhu Sidhu

Donna Hill Staton

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December 16, 2013