

LYUDMILA K. & MIKHAIL K.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 10-19

OPINION

INTRODUCTION

The parents of AK (Appellants) filed an appeal of the decision of the Montgomery County Board of Education (local board) placing their son in an alternative school in lieu of expulsion for a semester. The local board filed a Motion to Dismiss or for Summary Judgment. The Appellants replied.

FACTUAL BACKGROUND

Appellants' son was a member of the Junior Varsity Football Team at Quince Orchard High School ("Quince Orchard"). Football practices start before the beginning of the school year. On August 19, 2009, around 7:00 a.m., AK and other Junior Varsity football players were arriving for practice. AK entered the boys locker room and saw his teammate, Student B, buckling his football pants. AK approached him from behind, grabbed him in a choke hold he had learned from a friend who knew karate and shouted, "Say it to my face now!" (Motion, Ex. 7A). Eyewitnesses said Student B lost consciousness. His teammates shouted at AK to let go and started pulling his arm off of Student B's neck. AK then released Student B who hit his head on the locker room bench as he fell to the ground. Student B suffered injuries to his eye and head. (*Id.*).

Assistant Principal Ronnie Heller arrived in the locker room at approximately 7:20 a.m. When she arrived Student B was sitting on a table with an ice pack over his eye. There were cuts above and below his eye and the eye was swollen shut. AK's father and Student B's parents were in the area, having just dropped their sons off for football practice. Student B's parents took their son to the hospital. (Motion, Ex. 7A, pp. 1-2).

AK, who had left the area, returned with his father to meet with Ms. Heller in her office. He told Ms. Heller that the incident started when Student B posted mean comments about him and his girlfriend on Facebook. AK responded by posting his own insults to Student B. AK said that Student B had been saying mean things to him for over a year. He saw the Facebook

comments as a continuation of bullying¹ he said he had endured since middle school when students picked on him because of his language² and because he was fat. (Motion, Exs. 3C and 7A). AK said he overcame his language problems by reading a lot and his weight problem by lifting weights and playing football. (Motion, Ex. 7A).

The principal suspended AK for ten days (August 31 - September 14, 2009) and recommended expulsion. That decision was conveyed to Appellants by phone on the evening of August 19 and in writing by letter dated August 20, 2009. (Motion, Ex. 2).

On September 2, 2009, Dr. Jevoner Adams, Supervisor of the Student Services Appeals Unit, met with AK, his parents, his lawyer, some friends of the family, and an educational consultant hired by the family. The Assistant Principal, a pupil personnel worker, a school psychologist, and one of the coordinators of the Student Services Appeals Unit also attended. After hearing from all sides, Dr. Adams upheld the ten day suspension and forwarded the principal's recommendation for expulsion to the superintendent's designee, Mr. Larry Bowers, Chief Operating Officer. During the interim, Dr. Adams authorized Home Teaching. (Motion, Ex. 4, p. 2 and Exs. 5 and 6).

Mr. Bowers referred the appeal to Mr. Wayne Whigham, Director of the Appeals/Transfer Team. Mr. Whigham chaired a conference on September 9, 2009, with AK, his parents, his lawyer, and his therapist. The Assistant Principal at Quince Orchard and a pupil personnel worker also attended. The pupil personnel worker reviewed AK's school records, noting that he entered Quince Orchard in 2008-2009, enrolled in all honor classes, and earned As and Bs. AK's therapist said he had seen AK three times as of the date of the conference. He said he was "working with AK to improve his poor impulse control so that AK can control himself, given the pressures of everyday life." He recommended ongoing therapy and said that expelling AK, or placing him in an alternative program, would be a "setback." (Motion, Ex. 7A, p. 3).

On September 10, 2009, Mr. Whigham reported his findings to Mr. Bowers. He recommended that the expulsion be held in abeyance. He noted that prior to this incident, AK was a "good citizen and fine student," but that AK was fortunate that the injuries to Student B were not more serious. Mr. Whigham recommended that for the first semester of 2009-2010, AK be assigned to the Needwood Academy, an alternative program, and then, if successful at Needwood Academy, that he be permitted to enroll at a comprehensive high school other than Quince Orchard. (Motion, Ex. 7A, pp. 4-5). By letter dated September 13, 2009, Mr. Bowers accepted the recommendation of the hearing officer. (Motion, Ex. 7).

¹ There is no information in the record whether the school system addressed specific bullying issues with Student B by discipline or otherwise. Given the serious and sometimes deadly consequences of bullying, we look to all school systems to be vigilant in addressing bullying behaviors.

² AK came to the United States from the Ukraine.

AK's mother appealed the decision to the local board on or about October 7, 2009. She indicated that there was "no disagreement with Mr. Whigham's recommendation" or his summary of the facts. The family did not disagree with the ten day suspension or the decision not to return AK to Quince Orchard. The appeal was limited to the family's objection to assigning AK to the Needwood Academy for the first semester of the 2009-2010 academic year because, after visiting the Academy, they did not think that it provided an appropriate academic environment for their son. Although they thereafter enrolled AK in a private school, they wanted to pursue the appeal so they could have the option of returning their son to a Montgomery County public school "at any time" in the future. (Motion, Ex. 8).

On October 19, 2009, Superintendent Jerry D. Weast responded to the appeal. Dr. Weast highlighted in his memorandum the seriousness of the incident, including the fact that "AK assaulted his teammate from behind when he was in a defenseless position." The superintendent endorsed his designee's decision to assign AK to the alternative program, citing school system policies and regulations that "call for the removal of students from their regular school who act out this violently toward fellow students until they can demonstrate that they no longer pose a threat to the safety of others." (Motion, Ex. 9).

By letter dated October 24, 2009, AK's parents responded, challenging the superintendent's rationale for the alternative program assignment. They told the local board that "Dr. Weast [did] not present any evidence that AK is currently a threat to the safety of others." They emphasized the history of their son's behavior, the way he has been perceived in the community, and the opinion of the educational expert they hired. (Motion, Ex. 10).

The local board issued its decision on December 8, 2009. After considering all of the information and arguments, a majority of the local board concluded that, despite contributing factors and pressure on AK, his behavior was "completely unacceptable regardless of the factors that may have been affecting him." They characterized the attack on Student B as "sudden, violent, and [one that] carried the potential for very serious injury or worse." The local board viewed the alternative program as "an appropriate placement to permit AK to continue receiving supports while giving him the opportunity to demonstrate that he has adequate control over his behavior to permit his return to a comprehensive high school." (Motion, Ex. 11).

Three of the eight members of the local board voted to reverse the superintendent's decision in light of the student's record as a whole, the bullying conduct directed at AK, and the absence of any pattern of violence or likely recurrence of violence. The minority concluded that assignment to an alternative program was not warranted or necessary. (Motion, Ex. 11 at 6). This appeal followed.

STANDARD OF REVIEW

Because this is a student discipline case involving the removal of a student from the school of attendance, we follow the standard of review used for suspension and expulsion cases.

In student suspension and expulsion cases, the decision of the local board is considered final. Md. Code Ann., Educ. §7-305(c). 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 in an unconstitutional manner; or that the decision is otherwise illegal. COMAR 13.01.05.05G(2).

LEGAL ANALYSIS

The local board argues that because it upheld the assignment of AK to the Needwood Academy for the first semester of the 2009-2010 school year and because the first semester is over, the issue before the State Board is moot. It is well established that a question is moot when “there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the courts [or agency] can provide.” *In Re Michael B.*, 345 Md. 232, 234 (1997); *See also Arnold v. Carroll County Bd. of Educ.*, MSBE Op. No. 99-41 (1999); *Farver v. Carroll County Bd. of Educ.*, MSBE Op. No. 99-42 (1999); *Chappas v. Montgomery County Bd. of Educ.*, 7 Op. MSBE 1068 (1998).

The issue before us, as we see it, is the legality of the local board’s decision to assign AK to Needwood Academy. Even though the first semester is over, if the local board’s decision were illegal, the decision to assign AK to Needwood Academy would be overturned, which is, in part, the remedy the Appellants seek. The Appellants believe, however, that if we were to overturn the local board’s alternative placement decision that outcome would automatically “allow AK to return to a comprehensive public school program immediately.” (Appeal at 2). Such is not the case, however. According to school system policy, AK, who everyone agrees was suspended for a violent act, may return to a regular high school when he is no longer a threat to others.

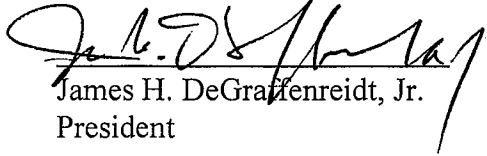
It is not within the purview of this Board to determine that AK is no longer a threat to the safety of others. If the Appellants decide to re-enroll their son in the Montgomery County Public School System, they will present to the school system their evidence that AK is no longer a threat to others. The school system will make its placement decision, which, if the Appellants are not satisfied, may be appealed. That decision remains in the hands of the school system and the local board.

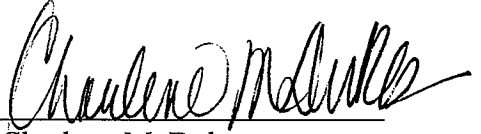
Because there is no effective remedy this Board can provide, this case is moot.³

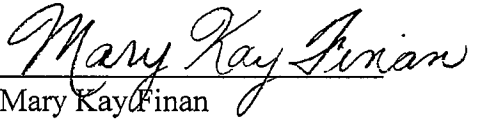
³ If we were to consider the legality of the local board’s decision, we would find that there is a factual and legal basis to support the decision at the time it was made. AK attacked another student, knocked him unconscious, and caused him injuries. AK showed by that act that he was a threat to the safety of others. The school system followed its policy and procedures, provided AK with due process, and crafted an alternative to expulsion that took into account AK’s excellent history as a student, as well as his need to manage his anger. In our view, the decision to assign AK to the alternative program is supported by the law and facts.

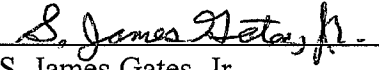
CONCLUSION

For the reasons set forth, we dismiss this appeal as moot.

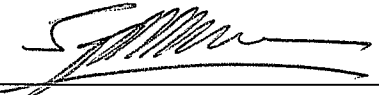

James H. DeGraffenreidt, Jr.
President

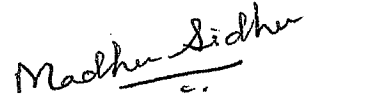

Charlene M. Dukes
Vice President

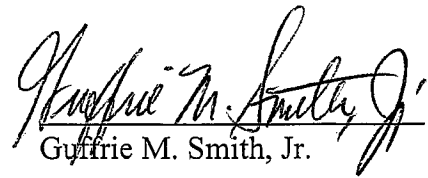

Mary Kay Finan


S. James Gates, Jr.

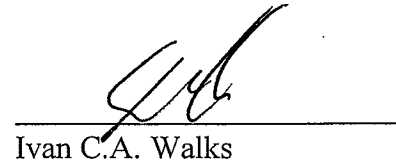

Luisa Montero-Diaz



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April 27, 2010