

KELLY D.,

Appellant

v.

HARFORD COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-32

OPINION

INTRODUCTION

This is an appeal of the local board's decision denying Appellant's son the ability to attend the Patterson Mill High School senior prom and the post-graduation boat cruise based on a reportable offense violation. The Harford County Board of Education (local board) has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant responded to the Motion and the local board replied.

FACTUAL BACKGROUND

Appellant's son, LD, is a senior at Patterson Mill High School (Patterson Mill). On February 19, 2013, the Assistant Principal, Robert Limpert, received a report reflecting that LD had assaulted another Patterson Mill student (hereinafter referred to as Student A) at school on February 15, 2013. Student A told Deputy Lori Denbow, the Patterson Mill School Resource Officer, that she was near her locker by a classroom door when LD grabbed her right arm tightly and would not release it when requested to do so. (Sup't Exs.1 & Ex.3 at 3-8). She stated that LD grabbed her tighter, leaving red marks on her arm, and pushed her against the wall pressing his fingers against her left side and ribs to the point where it hurt. *Id.* She stated that LD would not release her until she gave him a kiss, so she did so and left quickly. *Id.* Student A also reported that LD constantly calls her, leaves her harassing text messages, and has threatened her. *Id.* Student A's mother stated that she fears for her daughter's life because of LD's behavior. (Sup't Ex.1 at 1). Appellant and her son maintained that the report was retaliation for LD breaking up with Student A on February 15th.

Student A and her mother decided to press charges against LD. (T.24). Deputy Denbow informed Mr. Limpert that LD had been charged with assault in the second degree. (*Id.*; Sup't Ex.1).

Student A and her mother also sought a peace order against LD in the Juvenile Court for Harford County. The Juvenile Court issued an *Ex Parte* Temporary Peace Order on February 20, 2013 prohibiting LD from having contact with Student A. (Sup't Ex.4 at 2). LD consented to the entry a final Peace Order dated March 4, 2013, effective until September 4, 2013. (Sup't Ex.4 at 1).

Meanwhile, because the second degree assault charge was a reportable offense under §7-303 of the Education Article and COMAR 13A.08.01.17, Wayne D. Thibeault, Principal of Patterson Mill, referred the matter to the local Superintendent to determine if a change in LD's placement was necessary to maintain a safe and secure school environment. (Sup't Ex.1; see COMAR 13A.08.01.17). Mr. Thibeault did not, however, pursue disciplinary action against LD based on the February 15th incident.

Buzz Williams, the Superintendent's designee, conducted a conference with Appellant and LD on March 1, 2013. *Id.* At the conference, Appellant maintained that Student A was fabricating the allegations to get back at LD for breaking up with her. *Id.* In addition to the allegations in the written statements from Student A and her mother, and what was stated in the police report, there were photos that showed red marks on Student A's arm, a monthly statement from Student A's phone showing numerous phone calls and messages made from LD's phone, and threatening Facebook posts allegedly made by LD on October 29 and 30th. *Id.*; T.41-43. Mr. Williams recommended a change in LD's placement because there was sufficient evidence that Student A would be negatively impacted by LD's presence in school. *Id.*; T.60. He stated:

While the evidence presented was largely Student A's word against [LD's] word, the police charges were found to be substantial evidence that an assault occurred and that [LD's] presence at school would further upset Student A and negatively impact her education. [Appellant] stated that this was just a made up story; however, there was enough evidence to criminally charge [LD] for assault [including physical evidence of the red arm] which rises beyond a made up story and warrants the change in placement.

Based on the results of the conference, on March 5, 2013, the Superintendent issued a decision transferring LD to the Alternative Education Online Program (AEP).¹ He advised that LD was prohibited from participating in any school activity at Patterson Mill and was prohibited from being on Harford County Public School Property without the authorization of the Superintendent or school principal. (Sup't Ex.1 at 5-6).

Appellant appealed the decision to the local board. The local board conducted a hearing on March 19, 2013. On March 25, 2013, the local board upheld the Superintendent's decision

¹ Mr. Williams stated that LD's situation warranted referral to an alternative education placement rather than a transfer to a comprehensive school setting based on the fact that LD already had a record of prior unsatisfactory behavior during his senior year. He had two disciplinary actions – one for a fight and one for posting pictures of a partially clothed special needs student online. The result of the online posting was a 10 day suspension and a school modification such that LD was attending school on a part-time basis. (T.22-26, 36-38). Mr. Williams also stated that the online courses were the best way for LD to achieve his graduation requirements. (T.22, 32, 56).

but modified it to allow LD to attend the Patterson Mill graduation ceremony on June 6, 2013. The local board did not permit LD to participate in any other Patterson Mill activities, including senior activities.

This appeal followed.

STANDARD OF REVIEW

Because this appeal involves a decision of the local board involving a local policy, the local board's decision is considered prima facie correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

LEGAL ANALYSIS

Appellant challenges the local board's decision to disallow LD from participating in the senior prom and post-graduation boat cruise.² (Reply Letter, 3/29/13). She argues that the school system did not impose disciplinary action against LD for the February 15th incident and that although LD was charged with a reportable offense, he has not yet been found guilty of the charge. She points out that Student A is not a senior and that LD's presence at senior activities in which Student A is not present is not detrimental to Student A. Appellant continues to maintain that Student A acted in retaliation to LD ending their boyfriend/girlfriend relationship. (Appeal, 3/29/13).

This case is not a case involving disciplinary action imposed by a local school system. Rather, it involves an educational placement and school safety decision made pursuant to the reportable offense law. The Superintendent and local board are charged under §7-303 and COMAR 13A.08.01.17 with making decisions regarding the educational programming of a student charged with a reportable offense and the maintenance of a safe and secure school environment for all students and staff in light of the reportable offense information.

LD was charged with the reportable offense of second degree assault against another student at Patterson Mill while on school property. The local board considered the evidence in the case and unanimously determined that it was appropriate to place LD in a different educational setting and to preclude him from participating in all Patterson Mill High School activities for the rest of the school year, except for graduation, in order to maintain a safe and secure educational environment there.

A review of the hearing transcript demonstrates that the local board's primary concern was that LD's presence at Patterson Mill was detrimental to Student A and created problems related to enforcement of the peace order. Because it is possible that Student A could attend prom, the local board's decision to disallow LD's attendance is not arbitrary or unreasonable.

² Appellant is not challenging LD's placement in alternative education at this stage of the process. (Reply Letter, 3/29/13).

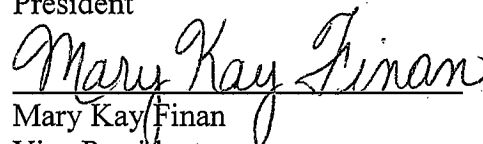
As for the post-graduation boat cruise, the local board has explained that the cruise is sponsored solely by the Patterson Mill High School Parent Teacher Association (PTA) and that the PTA maintains exclusive control of the event. Thus the local board makes no determinations regarding cruise attendance. (Local Bd. Reply). Because the cruise is not sponsored by Patterson Mill High School, it is up to the PTA to determine whether or not LD can attend the event if it is a senior-only cruise at which Student A will not be present. We recommend that Appellant contact the PTA directly on this issue.

CONCLUSION

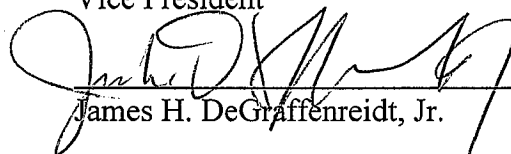
For the reasons stated above, we do not find that local board's decision is arbitrary, unreasonable or illegal. Accordingly, we affirm the local board's decision.



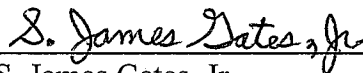
Charlene M. Dukes
President



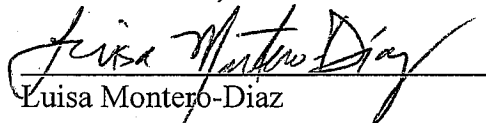
Mary Kay Finan
Vice President



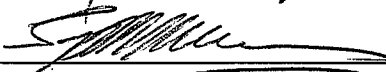
James H. DeGraffenreidt, Jr.



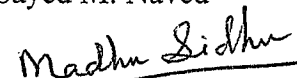
S. James Gates, Jr.



Luisa Montero-Diaz



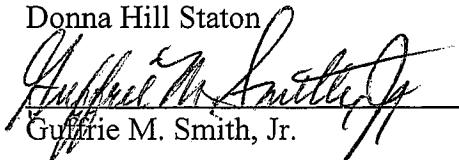
Sayed M. Naved



Madhu Sidhu

Absent

Donna Hill Staton



Guffie M. Smith, Jr.

Linda Eberhart

Linda Eberhart

May 21, 2013