R. W.	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
MONTGOMERY COUNTY BOARD OF EDUCATION	OF EDUCATION
Appellee	Opinion No. 07-15

OPINION

This is an appeal of a denial of Appellant's request to keep his son, R.W., from being placed in McKenny Hills Alternative Program for the 2006-2007 school year. The local board has filed a Motion to Dismiss based on untimeliness. Alternatively, the local board has filed a Motion for Summary Affirmance maintaining that the decision is not arbitrary, unreasonable or illegal. Appellant has submitted an opposition to the local board's motion.

FACTUAL BACKGROUND

R.W. was assigned to attend Walt Whitman High School ("Whitman"). R.W. allegedly conspired with other Whitman students and planned a store robbery. (Local Board Decision, p. 1). R.W. entered a store with a gun while three other students waited outside in a car. (*Id.*). The students then drove to a pizza restaurant where they were joined by a fifth student who had been working at the Smoothie King store at the time of the robbery. (*Id.*). R.W. allegedly shared the stolen money with at least three other students. (*Id.*).

By letter dated June 20, 2006, Whitman's principal, Dr. Alan Goodwin, notified Appellant that he was suspending R.W. for ten days and that he was recommending R.W.'s expulsion from Montgomery County Public Schools ("MCPS"), concluding that at least part of the conspiracy to commit this armed robbery took place at the high school. (*Id.*). On June 28, 2006, Dr. Jevoner L. Adams, Supervisor of Student Services for the Metro Park Field Office, held an investigative conference. (*Id.*). Appellant, R.W., Ms. Lauree Hemke, field office specialist, and Dr. Goodwin were present. At the conference, R.W. did not respond to the allegations regarding the robbery. Instead, he stated that he played football at Whitman, enjoyed the school environment, and did well on his SAT. He also stated that he took full responsibility for his involvement in the incident, that he turned himself in to the authorities, and that the two other students planned the robbery. (*Id.*). Dr. Adams upheld the ten-day suspension and forwarded Dr. Goodwin's recommendation for expulsion to the Chief Operating Officer, Larry A. Bowers. (*Id.*).

Dr. Bowers designated Dr. Francis W. Curran as the hearing officer. Dr. Curran held a conference on July 12, 2006, which was attended by R.W., his parents, Dr. Goodwin and Ms. Evelyn Joray, pupil personnel worker. (*Id.*). R.W. described the incident as a stupid mistake and

said that it appeared "worse than it was." (*Id.*). Appellant stated that the incident did not involve a real gun or real bullets and that he expected R.W. to enroll in a residential program designed to deter future illegal behavior. (*Id.* at p. 2). Ms. Joray indicated that R.W. had a previous serious disciplinary incident in seventh grade in which expulsion was recommended. As a result of that incident, R.W. was assigned to the Glenmont Alternative Program for nine weeks and then moved to a different middle school. R.W.'s record showed that he had no prior disciplinary record at Whitman during the year he attended the school. (*Id.*).

Following the conference, Dr. Curran recommended to the Mr. Bowers that the expulsion be held in abeyance pending further information resulting from the court proceedings. Dr. Curran also recommended that due to the seriousness of R.W's conduct and prior record, that R.W. be assigned to McKenney Hills Alternative Program School for the 2006-2007 school year. By letter dated August, 14, 2006, Mr. Bowers, acting as the Superintendent's designee, upheld Dr. Curran's recommendation. (*Id.*).

Appellant appealed Mr. Bower's decision to the local board by letter dated August 17, 2006. The appeal contested the decision to assign R.W. to the alternative program. Appellant noted that R.W. needed only 2.5 credits to graduate and was willing to accept "almost any other option" in lieu of the alternative placement. (*Id.*).

On September 15, 2006, Appellant submitted another letter characterizing the robbery incident as follows:

> Five Whitman students planned to steal money from a restaurant that one of them worked at by going there after hours and staging a robbery. One provided the idea, one acted as a lookout, one provided the fake gun, one provided the getaway plan, and through a process akin to drawing straws, one got sent inside.

(Letter to Local Board, 9/15/06, p. 1). Appellant also asserted that no student was ever at risk on school property and that no weapon or dangerous material was ever brought onto school property. He also stated that R.W. was under peer pressure, and that he was the only one to voluntarily come forward and admit involvement in the incident. (*Id.* at p. 2). In addition, Appellant contended that R.W. should be placed in regular high school and allowed to participate in extracurricular activities. (*Id.* at p. 3).

In response to the appeal, was the superintendent noted that R.W. admitted to robbing the store and that evidence gathered during the investigation indicated that the robbery was planned at school. (*Id.*). He explained that R.W.'s role was particularly serious because of the use of a gun, which supports a concern that R.W. poses some danger to the safety and security of staff and students at Whitman. Furthermore, the superintendent asserted that placement of the five students in different MCPS facilities as "consistent with current court restrictions requiring the students to avoid associating with each other." (*Id.*). Moreover, R.W.'s prior disciplinary record

supported the placement. (*Id.*).

On September 25, 2006, the local board considered the appeal in a closed session. (*Id.*). The local board found that R.W.'s participation in "a very serious incident is sufficient to warrant and justify his placement at an alternative school." (*Id.*). The local board acknowledged that criminal defendants are innocent until proven guilty, but stated that the local board "does not sit as a criminal court and is not subject to the same standards of proof." (*Id.*). The local board reasoned that there is sufficient evidence that R.W. had some role in the robbery and that "he has not presented evidence at the conferences below or in this appeal sufficient to rebut the evidence that the placement decision is appropriate under these circumstances." (*Id.*). In upholding R.W.'s placement in an alternative program, the local board stated that it is in the best interests of R.W., the other students charged, and the school community in general for the students to be separated and placed somewhere other than Whitman. (*Id.* at p. 4).

This appeal ensued.

STANDARD OF REVIEW

Appellant is not appealing R.W.'s expulsion, but is appealing R.W.'s placement in an alternative school. Such a placement is provided for under the MCPS student transfer policy. The standard of review in student transfer cases is that the State Board will not substitute its judgment for that of the local board unless the decision is shown to be arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05; *See, e.g., Breads v. Board of Education of Montgomery County*, 7 Op. MSBE 507 (1997).

ANALYSIS

Motion to Dismiss

As a preliminary matter, the local board argues that this appeal should be dismissed because it was untimely filed. State law and regulation require appeals of local board decisions to be filed with the State Board within thirty days of the local board decision. *See* Md. Code Ann. Educ. § 4-205(c) and COMAR 13A.01.05.02B(1)(a). The 30 days run from the later of the date of the order or the opinion issued explaining the decision. COMAR 13A.01.05.02B(1)(b). An appeal is deemed transmitted within the limitations period if it has been delivered to the State Board or deposited in the United States mail, as registered or certified, before the expiration of the time period. COMAR 13A.01.05.02B(3). The local board decision was issued on October 10, 2006. The appeal should therefore have been filed with the State Board by November 9, 2006.

Here, the appeal dated November 5, 2006 was delivered by Express Mail, postmarked November 8, 2006, and received and date stamped by the State Board on November 13, 2006. (Letter to Dr. Jerry Dean Weast, 11/28/06). The Express Mail receipt, however, shows that the

appeal letter was received and signed for on November 9 at 11:38AM by "C. Smooth." (Letter to LaFiandra, 12/26/06). For whatever reason, although the appeal was received in the mail room at the offices of the Maryland State Department of Education, it mistakenly was not date stamped on that day. Therefore, because the appeal was actually delivered to the State Board's offices by the filing deadline, the appeal letter was timely filed.

Merits

As stated above, Appellant is appealing the local board's decision to affirm R.W.'s placement in an alternative school. Such a placement is provided for under the MCPS student transfer policy which reserves to the school system the right to change a student's school assignment based on student behavior that "raises concerns about the health and/or safety of others in the school setting." (*See* MCPS Regulation JEE-RA, p. 5).

Appellant does not present any evidence that the local board's decision was arbitrary, unreasonable or illegal in his appeal. Appellant's main contention is that since the courts have looked favorably upon R.W.'s willingness to accept responsibility for his actions, so should the State Board. He also contends that his son was singled out and punished more severely than the other four students involved.

Neither Appellant nor R.W. have denied R.W.'s role in the robbery. R.W. pled guilty to felony armed robbery. As a result, the judge sentenced him to five years in jail, but suspended all but 30 days, after which R.W. will be required to spend 90 days in home detention and two years of probation. (Probation/Supervision Order). Both the superintendent and the local board have noted the particular seriousness of R.W.'s role because he alone brandished the weapon or look alike weapon. The superintendent noted, that even if the gun was not real, "it is apparent that the purpose of brandishing the gun and demanding money was to put someone in fear of their safety or even their life." (Local Board Decision, p. 4). The superintendent and his staff, and ultimately the local board determined that R.W. posed a different and more serious threat to the safety of others in the school environment. The local board reasoned that R.W.'s placement in an alternative program is "sound from both a disciplinary basis, an educational basis, and for the safety of other students and the school community." We find that this decision was not arbitrary, unreasonable or illegal.

Appellant also contends that R.W. should be allowed the "opportunity to return to a comprehensive High School within the state of Maryland and to restore his privileges to participate in extracurricular activities for the remainder of his senior year." (Letter of appeal to State Board, 11/5/06). The Court of Appeals, however, has ruled that there is no right to attend a particular school. *See Bernstein v. Board of Education of Prince Georges County*, 245 Md. 464, 472 (1967). Furthermore, it is well settled that student participation in extracurricular activities is not a constitutionally protected liberty or property interest. *See Denis J. O'Connell High School v. Virginia High School*, 581 F.2d 81, 84 (4th Cir. 1978); *Mitchell v. Louisiana High School Athletic Association*, 430 F.2d 1155, 1158 (5th Cir. 1970). Consistent with this sentiment,

the State Board has held that "participation in extracurricular activities is a privilege, not a right." *See Bloch v. Board of Education of Howard County*, 7 Op. MSBE 388, 390 (1996).

CONCLUSION

Because we find that the local board's decision is not arbitrary, unreasonable, or illegal, we uphold the local board's decision to place R.W. in the McKenney Hills Alternative Program School.

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Vice President

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Calvin D. Disney

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Tonya Miles

Karabelle Pizzigati

Maria C. Torres-Queral

David F. Tufaro

March 27, 2007