

GRACE N.,

Appellant

v.

ST. MARY'S COUNTY BOARD OF
EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 08-24

OPINION

In this appeal, Appellant challenges the decision of the St. Mary's County Board of Education (local board) affirming the local superintendent's decision to expel her son from St. Mary's County Public Schools for fighting and stabbing another student. The local board has submitted a Motion for Summary Affirmance maintaining that its decision was not arbitrary, unreasonable or illegal. The Appellant has filed a response to the local board's motion, and the local board has submitted a surreply.

FACTUAL BACKGROUND

During the 2006-2007 school year, R.B. was a freshman at Great Mills High School. On December 13, 2006, he was involved in a verbal and physical altercation with another student ("Student X") during the 6th period lunch. R.B. left school, went home, and returned with a paring knife.¹ (Dec. 28, 2006 Rep.)

At approximately 1:55 p.m., R.B. entered classroom E03 prior to the start of the 8th period class. R.B. was not assigned to that class, but Student X was.² (Hrg. Exam. Rep. at 9; Tr. at 108.) When Student X entered the classroom, he and R.B. exchanged words and began fighting. The fight moved into the hallway, where another student tried to intervene. Approximately 18 seconds later, as captured by the school's security camera, two female teachers broke up the fight.

¹ It is unclear where R.B. got the knife. He initially told school staff that he brought the knife from home. (Tr. at 234-235.) At his expulsion hearing, he said that he obtained the knife from Student X's cousin, another student at school. (*Id.* at 231-232.)

² While R.B. testified that he went to classroom E03 to ask his cousin to use his cell phone (Tr. at 236), the school system believes R.B.'s sole reason for going to the classroom was to wait for Student X.

During the fight, R.B. used the paring knife to stab Student X six times – two times in the wrist, and four times in the midsection.³ (Tr. at 15, 46, 236.) R.B. was immediately taken into custody for questioning by the School Resource Officer, Deputy Dale Reppel. R.B. admitted to stabbing Student X. Deputy Reppel placed R.B. in custody and took him to the St. Mary’s County Sheriff’s Office.⁴ (Hrg. Exam. Rep. at 3; Tr. at 15-16, 46.)

The school was placed on partial lockdown immediately following the fight. (Tr. at 94-95.) The students were secured in the classrooms. Although the teachers continued with instruction (*Id.* at 98-99), the lockdown created a heightened sense of urgency regarding safety in the school building. (*Id.* at 137; Hrg. Exam. Rep. at 7.) The school principal, Tracey Heibel, testified that the situation caused a major disruption to the learning environment. (Tr. at 94-95.)

The following morning, Ms. Heibel met Appellant and several other school staff members to discuss the fight and the consequences for R.B. She also reviewed the video surveillance camera footage of the fight,⁵ collected statements from student and staff witnesses, reviewed the student handbook,⁶ and consulted with directors from the central office. (Hrg. Exam. Rep. at 8-9; Tr. at 124.) Based on her review, Ms. Heibel decided to expel R.B., finding that he chose a violent course of action instead of a non-violent alternative, such as seeking help from a trusted adult in the building. (*Id.* at 9.)

By letter dated December 14, 2006, Ms. Heibel and Vice-Principal Stephen Messenger advised Appellant that R.B. was suspended for 10 days for violating disciplinary code 405 (fighting). They further advised that the Director of Pupil Services would arrange an expulsion hearing to review R.B.’s conduct. (Dec. 14, 2006 ltr.)

Pam Oravec, acting as the local superintendent’s designee, held the expulsion conference on January 3, 2007. The Appellant was present, but waived the right to have R.B. present or on speaker phone. (Jan. 8, 2007 Expul. Ltr.) During the conference,

³ Student X was sent to the nurse’s office immediately after the fight. He was then transported by ambulance to the hospital. (Dec. 28, 2006 Rep.)

⁴ The record indicates that R.B. was criminally charged for his conduct in the fight, but the nature and status of the charges were not clear and are not relevant to this appeal.

⁵ The security video camera footage does not give a clear view of the stabbing. (Hrg. Exam. Rep. at 5; Tr. at 52.)

⁶ The St. Mary’s County Public Schools 2006-2007 School Calendar/Student Handbook provides: “The bringing or possession of a weapon by any student or individual in and around a school greatly increases the danger to all students and staff members.” (*Id.* at 29.) In addition, it provides: “St. Mary’s County Public Schools makes many efforts to provide students a safe and orderly school environment. Disruption of school activities is considered a violation of school policies, rules, and regulations and may result in a student’s ...expulsion.” (*Id.* at 31.) Every secondary student acknowledges through signature that he/she received a copy of the student handbook each year, which includes the code of conduct and consequences for misconduct. (Hrg. Exam. Rep. at 12; Tr. at 181-183.)

Appellant conceded that R.B.'s conduct was wrong. (Hrg. Exam. Rep. at 15.) Nevertheless, she felt that expulsion was unfair because R.B. was being bullied by Student X and other student gang members at the school. Appellant argued that school staff failed to do anything about the bullies or the gang problem, and that R.B.'s fight with Student X was essentially self defense. (*Id.* at 15-16.)

The materials reviewed by Ms. Oravec for R.B.'s expulsion hearing provided, among other things, that:⁷

- R.B. has missed an average of 60 days per school year since the sixth grade, many of those dates due to 13 prior suspensions;
- R.B. had two other disciplinary referrals for the 2006-2007 school year;
- R.B. was failing, or on the verge of failing, all of his classes except PE;
- R.B.'s teachers describe R.B. as a quiet student who is polite and respectful. They state, however, that his irregular class attendance and failure to complete or turn in assignments results in poor academic achievement;
- This was R.B.'s third expulsion conference. He had two prior expulsion conferences, one each in the 2003-2004 and 2004-2005 school years, both for physical attacks on another student; and
- R.B. did not contact any school staff about the conflict he had with Student X, rather, he chose the course of action that resulted in him stabbing Student X.

(School History Summ. Rep. at 3; Jan. 8, 2007 Expul. Ltr.)

By letter dated January 8, 2007, Ms. Oravec advised Appellant that she had decided to permanently expel R.B. from St. Mary's County Public Schools. The local superintendent issued the Notice of Student Suspension/Expulsion on January 12, 2007. The notice stated that R.B. was ineligible for alternative education because this was his third serious incident involving an attack on another student. (Jan. 12, 2007 Notice of Expulsion.) The school system did not want to risk placing R.B. with other students in an alternative program in light of his escalating pattern of violent behavior. (Tr. at 190.)

Appellant appealed Ms. Oravec's decision to permanently expel R.B. The Chief Academic Officer, Linda Dudderar, conducted an appeal conference on February 7, 2007. Ms. Dudderar upheld the expulsion decision noting that, for several years, R.B. has displayed a pattern of behavior involving aggressive behavior and physical attacks on other students. (Feb. 9, 2007 Ltr.)

Appellant further appealed to the local board. (Feb. 12, 2007 Ltr.) In accordance with Education Article section 6-203, the local board transferred the appeal to an independent hearing examiner. Jeff Griffith, Esq., presided over the hearing on March 6,

⁷ Under school system policy, an expulsion conference includes a review of the student's School History Summary Report – a compilation of the student's academic, disciplinary and attendance records. The school system reviews this information to get a complete picture of the "whole student", and to consider other mitigating or aggravating factors that may impact the discipline decision. (Hrg. Exam. Rep. at 12; Tr. at 173-175.)

2007. He heard testimony from five witnesses for the local superintendent, and three witnesses for R.B., including R.B. himself. Mr. Griffith found ample evidence to support the decision to expel R.B. He concluded that Appellant failed to meet the burden of showing that the local superintendent's decision was arbitrary, unreasonable or illegal. (Hrg. Exam. Rep. at 22-23.)

On May 9, 2007, Appellant presented oral argument before the local board. Following oral argument and review of the record, the local board upheld the local superintendent's decision, and adopted the findings, conclusions and recommendations of the hearing officer. The local board noted that the "incident is of particular concern to the Board for two reasons":

First, this stabbing was not something that occurred on the spur of the moment or during a heated confrontation. There was time for [R.B.] to reflect; there was time for [R.B.] to calm down from an earlier encounter with the student as the two were leaving the cafeteria; there was time to seek help from home or from school; there was time to choose a different course of action. [R.B.] thought this out; he sought out the student; and the presence of a teacher, an authority figure, had no deterrent effect.

Second, this was not the first time that [R.B.] had used violence to solve his problems. ... This incident, unfortunately, is part of an escalating pattern of violence.

(Loc. Bd. Dec.) This appeal to the State Board followed.

STANDARD OF REVIEW

In student suspension and expulsion cases, the decision of the local board is considered a final decision. Md. Education Code Ann. §7-305(c). Therefore, the State Board may not review the merits of the suspension or expulsion. COMAR 13A.01.05.05G(2). The State Board will, however, review the local board's decision if the Appellant makes "specific factual and legal allegations" that the local board failed to follow State or local law or policies; violated the student's due process rights; acted in an unconstitutional manner; or that the decision is otherwise illegal. 13A.01.05.05G(2) – (3). A decision is illegal if it is unconstitutional; exceeds statutory authority; misconstrues the law; results from unlawful procedures; is an abuse of discretion; or is affected by other error of law. COMAR 13A.01.05.05C.

ANALYSIS

In her appeal to the State Board, Appellant does not argue any due process violations or other illegalities. Rather, she argues that the consequence of R.B.'s behavior is unduly harsh given that there were mitigating factors for his behavior, and

that R.B. should be allowed to return to school. She maintains that the fight was a result of R.B. being bullied by student gang members at Great Mills High School, a problem for which she claims to have sought help from school staff to no avail.⁸

The local board maintains that the State Board should respect the finality of the local board's decision on the merits as Appellant has failed to identify a valid basis for appeal. Alternatively, the local board maintains that the expulsion was warranted given that R.B. had constructive opportunities to address the alleged bullying problem; that this was a violent, pre-meditated multiple stabbing of another student; and that this was the third time R.B. resorted to violence in school resulting in expulsion, thus demonstrating "an escalating pattern of violence."

As stated above, the State Board does not review the merits of expulsion cases. The decision of the local board on the merits is considered to be correct unless it is based on an illegality. COMAR 13A.01.05.05G(1).


Here, the record indicates that there were no procedural violations. Staff from Great Mills High School conducted an appropriate investigation immediately following the December 13, 2006 fight and the principal of the school submitted a report to the local superintendent's designee requesting expulsion. Appellant had conferences on the charges against her son with the school principal, the local superintendent's designee, and the Chief Academic Officer. On appeal to the local board, the matter was referred to a hearing examiner who held a full evidentiary hearing regarding the expulsion. Thereafter, the parties presented oral argument to the local board. Appellant was apprised of her right to appeal at each level within the appropriate time frames. She fully exercised that right each time and never alleged any due process violations.

Nor does the record disclose any other illegality. School system policy prohibits students from fighting, physically attacking other students and possessing weapons. (Stud. Hnbk. at pp. 47-48, 59.) In addition, COMAR 13A.08.01.11C(1) provides: "In those instances when the behavior of a student is disruptive and detrimental to the operation of the school, the student may be suspended or expelled." The local board's policy provides the same. (Stud. Hnbk. at p. 31.) The possession and violent use of a dangerous weapon at school is conduct that is "disruptive and detrimental" to the school environment and warrants discipline. *See, e.g. Mace v. Carroll County Board of Education*, 5 Op. MSBE 1 (1988) (affirming expulsion of a student who brought a hand gun at school despite student's claim that other students had bullied him).

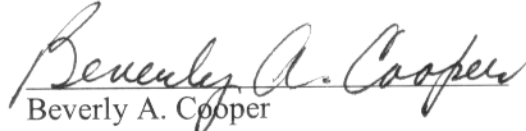
⁸ To the extent that Appellant seeks R.B.'s readmission to St. Mary's County Public Schools, she must apply for readmission through the local school system and demonstrate that the requirements for readmission have been met. Tr. at 191-192.

CONCLUSION


Finding no due process violations or other illegalities, we affirm the local board's decision to expel R.B. from St. Mary's County Public Schools.




Dunbar Brooks
President



Beverly A. Cooper
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J. Henry Butta

Charlene M. Dukes



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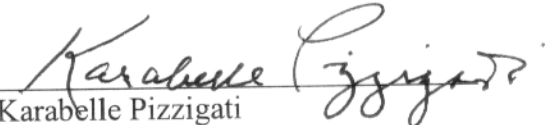



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April 30, 2008