

ROBERT & STEPHANIE P.,

Appellants

v.

ALLEGANY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 09-21

OPINION

INTRODUCTION

In this appeal, Appellants challenge the local board's decision expelling their son from Fort Hill High School for playing and singing a racially offensive song on the school bus. The local board has filed a Motion to Dismiss for untimeliness. Alternatively, the local board has filed a Motion for Summary Affirmance maintaining that the Appellants have not made a legally cognizable argument that would justify the State Board's review of the case. Appellants have submitted a response to the local board's Motions.

FACTUAL BACKGROUND

Appellants' son, C.P., is a tenth grade student at Fort Hill High School (Fort Hill) in Allegany County. There is a history of racial tension at Fort Hill, particularly during the 2007-2008 school year and the beginning of the 2008-2009 school year. The Principal of Fort Hill had taken steps to alleviate racial tensions at the school, warning students on several occasions to refrain from actions, activities, or statements that would exacerbate the problem. The Principal had specifically warned C.P. not to engage in any inappropriate behavior. (Local Board Decision).

In October 2008, several hours after being warned about his behavior by the principal, C.P. played a racially offensive song on a cell phone and sang it out loud on the school bus. (Local Board Decision, AuMiller Letter). The song contains references to the Ku Klux Klan, and is replete with language promoting racial hatred and violence against African Americans. (Song Lyrics). Fort Hill's Principal suspended C.P. from school on October 13, 2008 and recommended expulsion. (AuMiller Letter).

The Superintendent's Designee conducted a hearing. C.P. defended his actions by stating that there were no African American students on the bus that would have been offended. The Designee concluded that C.P.'s actions violated local board policy and recommended expulsion. The Superintendent accepted the recommendation and expelled C.P. from the Allegany County Public School System (ACPSS) through the end of the 2008-2009 school year. He advised Appellants that C.P. could seek readmission to the school system for the 2009-2010 school year.

provided he meets certain requirements. (AuMiller Letter).

Appellants appealed to the local board. In a unanimous decision, the local board upheld the Superintendent's decision to expel C.P. from the ACPSS based on the incident.

STANDARD OF REVIEW

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 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, 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) & (3).

ANALYSIS

As a preliminary matter, we address the local board's Motion to Dismiss the appeal for untimeliness. COMAR 13A.01.05.02B(1) provides that an appeal to the State Board "shall be taken within 30 calendar days of the decision of the local board" and that the "30 days run from the latter of the date of the order or the opinion reflecting the decision." 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 issued its Opinion and Order in this case on December 18, 2008. The appeal should have been filed with the State Board by January 20, 2009.¹ Although the State Board did not receive the appeal until January 22, 2009, Appellants filed it on January 8, 2009 by depositing it in the mail as certified mail on that date. Thus the appeal was timely filed.

With regard to the expulsion decision in this case, Appellants' appeal does not raise any allegations that would warrant the State Board's review of the decision. As already stated, the State Board does not review the merits of an expulsion decision. The State Board will only review a suspension or expulsion decision if an appellant makes "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. Appellants make no such allegations here. Rather, Appellants criticize the demeanor of several local board members, argue that the decision adversely affects C.P.'s

¹If the last day of the time period is a Saturday, Sunday, or a State legal holiday, the time period ends on the next day which is not one of those days. COMAR 13A.01.05.02B(4). The 30 day time period ended on Saturday, January 17, 2009 and Monday, January 19 was a State holiday.

education, and complain that there are still racist acts going on in the schools. None of these claims provide a basis for State Board review.

CONCLUSION

Because Appellants have not made any allegations that would warrant the State Board's review of the local board's decision in this case, we dismiss the appeal.

James H. DeGraffenreidt, Jr.
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June 23, 2009

* Both Blair G. Ewing and Rosa M. Garcia deliberated on the appeal but resigned from the State Board before this Opinion was issued.