

RYAN H.,

Appellant

v.

ANNE ARUNDEL COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 06-08

### OPINION

This is an appeal of the denial of the Appellant's request to shorten his extended suspension, dismiss his alternative placement for the first semester of the 2005/2006 school year and return him to Old Mill High School. The local board has submitted its Response to the Appeal, seeking affirmance of the local board decision on the grounds that none of the Appellant's arguments are sufficient to overturn the local board decision. Appellant has submitted a Reply to the local board's Response.

### FACTUAL BACKGROUND

During the 2004/2005 school year, the Appellant, Ryan H., was a ninth grade student at Old Mill High School.<sup>1</sup> On May 31, 2005, while approximately 600 to 700 students were gathered in the school cafeteria during the "B" lunch period, Ryan and two other students were involved in an incident involving the explosion of a small firecracker. Assistant Principal Jason Williams immediately investigated the incident and determined that, while Ryan was one of three students involved in the incident, Ryan was the one who actually lit the firecracker. Ryan initially denied any involvement in the incident and became increasingly agitated during Mr. Williams' questioning, eventually leaving the interview and the school premises against Mr. Williams' instruction.

The next day, Ryan and his mother met with Mr. Williams and Ryan presented an apology letter, in which he acknowledged his involvement in the firecracker incident:

I want to apologize for lighting the firecracker in the school cafeteria. I know it was dumb, and I should not have done it. I lied about it at first, because I got scared after I learned how serious it was. I am glad no one was hurt. I know now, that I should have told the truth to start out with and am truly sorry for not. ... I would greatly appreciate if you could possibly shorten my

---

<sup>1</sup>Ryan was previously evaluated by the local school system and identified as a student with disabilities under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 *et seq.*

suspension time and allow me to finish the year and years to come at Old Mill High School.

*See* Apology Letter, undated, in Hearing Exhibits. Following their meeting, Mr. Williams met with Principal Kathryn L. Kubic, who recommended that Ryan be given a full semester suspension and alternative placement during first semester of 2005/2006 school year for igniting and detonating an illegal firework in violation of Board of Education Policy 902.03 “Student Conduct”. Principal Kubic notified Ryan’s parents of her decision by a revised letter dated June 6, 2005.<sup>2</sup>

Because Ryan has been identified as a student with a disability and the requested suspension was longer than 10 days, his parents had the right to request a manifestation determination under the IDEA in order to evaluate whether Ryan’s conduct was a result of his disability. Ryan’s manifestation determination was held before the Admission, Review and Dismissal Committee on June 9, 2005. The committee found that the firecracker incident was not a manifestation of Ryan’s disability.

On June 10, 2005, Ryan’s parents and Assistant Principal Williams met with Dr. Leon Washington, Special Assistant of Student Discipline, the Superintendent’s designee to review the extended suspension and alternative placement recommendation. At this conference, the parents presented letters of support for Ryan and additional statements obtained by Mrs. Hertz approximately 7-10 days after the incident from the same students interviewed directly after the incident by Mr. Williams. The new statements contradicted portions of the prior statements given to Mr. Williams. Dr. Washington asked Mr. Williams to speak with the students again to verify their accounts. After his review, Dr. Washington supported Principal Kubic’s recommendation and referred the matter to the Discipline Sanction Review Committee, which also reviewed and supported the recommendation. *See* Hearing Transcript at 64-83.

Ryan’s parents were notified via letter on June 14, 2005 that the Principal’s request for an extended suspension was approved by the Superintendent. Ryan would be placed in Mary Moss Academy for the first semester of the 2005/2006 academic year.

On June 21, 2005, Ryan’s parents appealed his suspension to the local school board. The local board acknowledged receipt of the appeal by letter dated June 28, 2005 and provided the parents with a copy of the local board’s Rules of Procedure for Appeals and Hearings. The local board notified the parents that Ryan’s appeal hearing would be held on August 17, 2005. The letter stated that Attorney Laurie Pritchard would present the Superintendent’s case and that the parents should be prepared to make an opening statement, present any witnesses, offer any evidence and make a closing statement on Ryan’s behalf. *See* July 29, 2005 Letter from Local

---

<sup>2</sup>Principal Kubic first sent a suspension letter dated June 1, 2005. However, this revised letter was sent on June 6, 2005 to include the date for the manifestation hearing requested by Ryan’s parents.

Board. The local board conducted its hearing on August 17, 2005, without issuing an oral or written decision.

Approximately one month later, still without a final decision from the local board, Appellant appealed to the State Board of Education by letter dated September 23, 2005. On behalf of the State Board, Assistant Attorney General Jackie LaFiandra notified Appellant by letter dated October 11, 2005 that his appeal was premature until a final decision was rendered by the local board.

On October 5, 2005, the local board issued its Memorandum of Opinion. The local board found that, despite inconsistent statements obtained from the student witnesses, the material facts of the case were not in dispute - Ryan had matches and used them to light the firecracker in violation of Board Policy 902.03. The local board acknowledged Mrs. Hertz's desire that Ryan's suspension be reduced to the end of the 2004/2005 school year because she believed he had suffered enough and because it seemed unfair that the other students involved in the incident received lesser penalties. The local board ultimately concluded, however, that "Ryan was clearly involved in the incident, and without his involvement the disruption would not have occurred. There is no reason to second-guess the school administrators who determined the appropriate discipline in this instance." Local Board Memorandum of Opinion at 3.

Following receipt of the local board's final decision, Appellant resubmitted his appeal to the State Board by letter dated November 4, 2005. Appellant presented seven issues for appeal: (1) the Office of the Attorney General-MSDE failed to raise any issue of fact or law and are estopped them from raising any issue now; (2) the local board failed to issue a timely written decision and order in accordance with Maryland law; (3) the appeal hearing to the local board was not calendered and heard promptly; (4) it was improper for the local board to forbid the advocate to speak at the appeal hearing; (5) the Admission, Review and Dismissal Committee improperly determined the conduct which prompted the disciplinary action was not a manifestation of the student's disability; (6) the length of the suspension was unduly harsh; and (7) the time requirements for response and hearing should be shortened pursuant to COMAR 13A.01.05.04B. In addition, Appellant argued that the State Board's October 11, 2005 letter finding his appeal premature was improper since the local board's "failure to issue a decision constituted a deemed denial under Maryland law". See November 4, 2005 Appeal Letter to the State Board.

The State Board acknowledged receipt of the appeal by memorandum dated November 9, 2005. The local board was given until Friday, December 2, 2005 to file its response, which it hand-delivered on December 2, 2005. That same day, presumably because he had not received a copy of the local board's hand-delivered response, the Appellant also hand-delivered an emergency motion to summarily grant his appeal on grounds that the local board failed to file a timely response under COMAR 13A.01.05.03A.

In its response, the local board asserted that none of the issues raised by the Appellant are sufficient at law to require a reversal of the local board's decision. Among other things, the local board argued that the Appellant improperly considered the Maryland State Board of Education as a party to the appeal and not the body which has statutory and regulatory authority to hear the appeal. In addition, the local board argued that the Appellant's challenge to the manifestation determination was brought in an improper forum because the Office of Administrative Hearings is the Maryland State Department of Education's designee in all matters arising under the Individuals with Disabilities Education Act.

The Appellant filed a reply to the local board's response by certified mail on December 27, 2005. The Appellant essentially presented the same issues, with two exceptions. First, he conceded that the Maryland State Board of Education was not a party to the appeal and argued instead that the local board failed to raise any issue of fact or law. In addition, the Appellant withdrew the manifestation determination issue, conceding it was not before the proper forum.

### STANDARD OF REVIEW

The decision of a local board with respect to a student suspension or expulsion is considered final. Md. Code Ann., Educ. §7-305(c). Therefore, the State Board's review is limited to determining whether the local board violated State or local law, policies or procedures; whether the local board violated the due process rights of the student; or whether the local board acted in an otherwise unconstitutional manner. COMAR 13A.01.05.05G; *Saunders v. Charles County Board of Education*, MSBE Op. No. 04-12 (2004).

### ANALYSIS

Although the Appellant's extended suspension and alternative placement ended at the close of the first semester of the 2005/2006 school year, we conclude that the case is not moot since the suspension remains a part of Ryan's permanent educational record. After reviewing the merits of the case, however, it is our opinion that Appellant has not demonstrated that the local board violated State or local law, policies or procedures; violated Ryan's due process rights; or acted in an otherwise unconstitutional manner.

#### 1. Local Board Failure to Timely File a Response

Appellant first argues that the local board failed to provide any response to his first notice of appeal filed on September 23, 2005, and that the local board's response to his second notice of appeal was due by November 29, 2005, not December 2, 2005. Appellant contends that the local board should, therefore, be prevented from raising any issue of law or fact. Appellant cites COMAR 13A.01.05.03A as providing a "clear, unequivocal mandate" that the local board file its response 20 days after a copy of the appeal has been sent. Appellant's Response, Dec. 27, 2005, at 3.

While Appellant correctly cites the deadline for a response under COMAR 13A.01.05.03A, he quotes it out of context. The clock for a response does not begin to run until the State Board acknowledges receipt of the appeal in writing and sends a copy of the appeal to the local superintendent pursuant to COMAR 13A.01.05.02C. Read in its proper context, it is clear from the regulation that the State Board must first acknowledge receipt of the appeal before deadlines are set. Therefore, although Appellant submitted his letter of appeal on September 23, 2005, that “appeal” was not ripe, since no decision had been rendered by the local board as required by state law. COMAR 13A.01.05.02.B(1)(a). When a decision was issued, the State Board accepted the appeal. The local board’s response was not due until the State Board said it was due on December 2, 2005.

The Appellant does correctly state that the local board’s response should have been due on November 29, 2005, not on December 2, 2005. We concede that we miscalculated the deadline by four days. However, the local board submitted its response by the deadline and it would be manifestly unfair to hold the local board responsible for our own miscalculation. Moreover, this miscalculation was a harmless error that did not materially impact the Appellant, who does not assert otherwise. Regardless of this error, COMAR 13A.01.05.04E(3) permits the State Board or its designee to modify the time schedule for filing of pleadings upon timely notice to all parties.

2. Local Board Failure to Timely Schedule Hearings or Issue Its Decision

Appellant next argues the local board failed to timely schedule Ryan’s appeal hearing, conduct the hearing and issue its written Decision and Order. The Appellant cites general due process principles that require the expeditious redress of grievances. The Appellant asserts that delay in this case has led Ryan to be “irreparably injured”. Appellant’s Response, Dec. 27, 2005, at 5.

The local board, however, correctly pointed out that the Appellant cites no statutory, regulatory or policy support for this argument. The record clearly shows that Ryan and his parents were notified within a reasonable amount of time of the principal’s recommendation for extended suspension and alternative placement, and given proper information regarding their rights to appeal the decision. *See, e.g.*, June 6, 2005 Letter from Principal Kubic; June 28, 2005 Letter from local board; Rules of Procedure for Appeals and Hearings (provided by the local board); Hearing Transcript at 121-122 (generally explaining the local board’s decision process and the parents’ right to appeal to the State Board).

It took the local board approximately one month to set Ryan’s hearing date and approximately a month and a half to issue its decision. During this time, Ryan was able to attend summer school and his alternative placement during the first semester of the 2005/2006 school year. In addition, the local board approved Ryan’s participation in classes at the Center of Applied Technology, which Ryan’s mother testified was a main reason they wanted him returned to Old Mill High School. *See* Local Board Response at 7; Hearing Transcript at 93-94. The

Appellant does not challenge the appropriateness of Ryan's alternative placement. While the waiting time was undoubtedly frustrating for the Appellant, it is our opinion that Ryan was not irreparably harmed by the delay.

3. Local Board Improperly Limited Role of the Parents' Advocate

The Appellant's challenge to the local board's treatment of the parents' advocate essentially involves two arguments - (1) the local board failed to follow its own local policy, which stated that advocates could help present a case during a hearing; and (2) the conduct that the local board did permit during the hearing amounted to the unauthorized practice of law. We address each of these in turn.

First, Appellant contends that Ryan's parents reasonably relied to their detriment on the document "Information on How to Return Your Child to School," which contains the county school logo and office information and states that parents can present their case at the appeal hearing through an advocate. *See Exhibit D, November 4, 2005 Appeal Letter.* In response, the local board maintains that it did not authorize the document and that the document conflicts with the Rules of Procedures for Appeals and Hearings, which does not authorize an advocate to speak on behalf of the Appellant. *See Local Board Response at 4-6.*

The local board is correct in asserting that the Rules of Procedures for Appeals and Hearings provided by the board to Ryan's parents did not contain misinformation about an advocate's representation during the hearing. Indeed, these Rules refer only to a parent or counsel representing the student during a hearing. *See Rules of Procedures for Appeals and Hearings at sect. III.B., V.D.2. and XII.D.* The local board's rules and enforcement of those rules during Ryan's appeal hearing is consistent with state law. *See Md. Code Ann., Educ. Article §7-305(c)(5)(iii)* (permitting student or his parent to bring counsel to county board hearing); *Hearing Transcript at 3-8* (allowing the advocate to give the parents advice and to sit next to them, but not give statements or examine witnesses in the proceeding). It is our opinion that limiting the role of the Appellant's advocate was legal.<sup>3</sup>

Next, Appellant concedes that a non-attorney advocate should not be permitted to represent parents at an appeal hearing, but argues that the activity permitted by the local board amounts, as a matter of law, to permitting the advocate to engage in the unauthorized practice of law. The local board permitted the parents' advocate to sit with, advise and guide the parents at Ryan's hearing, even stating that she can "literally whisper in [the parents'] ears" if she wanted. *See Hearing Transcript at 8; Local Board Response at 5-6.* The Maryland Attorney General has

---

<sup>3</sup>Based on our review, we still find that the "Information on How to Return Your Child to School" document would cause confusion and lead parents to conclude it governs procedures for hearings before the local board. The document contains the county school logo and office information. We encourage the local board to address this issue and ensure that this and other school system documents are consistent with local board policy and procedures.

held that a lay advocate may, among other things, sit with a victim (or aggrieved party) at a trial table, if permitted by the court. *See* Opinion No. 95-056 (Dec. 19, 1995). However, a lay advocate may not be permitted to “provide information about the legal aspects of judicial proceedings, such as how to present a case, call witnesses, introduce evidence, and the like”. *Id.* In this case, the local board permitted the parents’ advocate to act in advisory capacity that appears close to this prohibition. However, the Maryland Court of Appeals is the body that has jurisdiction to ultimately decide what constitutes the “practice of law”, not the State Board. *See generally Atty. Grievance Comm’n v. James*, 340 Md. 318, 322 (Md. 1995).

4. Suspension was unduly harsh and arbitrary

Finally, Appellant argues that the length of his suspension was unduly harsh and arbitrary, particularly in light of the penalties imposed against the other two students involved in the firecracker incident. However, Appellant ignores the fact that Principal Kubic testified that the same penalty was requested and upheld against another student who lit a firecracker at Old Mills the week before Ryan did. *See* Hearing Transcript at 58-59. In addition, Principal Kubic decided to impose a tougher penalty against Ryan than against the other students involved since he was the one who lit the match that ignited the firecracker. This, in the Principal’s view, is “what caused the disruption and the threat to the safety of the students.” *Id.* at 60.

A local school system’s sanction will not be considered arbitrary or capricious simply because different penalties are imposed against those involved. The appropriate standard is whether the local school system’s decision is supported by substantial evidence in the record that could lead reasoning minds to reach the same decision. COMAR 13A.01.05.05B.(2); *see also Hurl v. Bd. of Edu’n of Howard County*, 107 Md.App. 286, 306 (1995) (discussing the standard for arbitrary and capricious); *Baltimore Lutheran High School Assn., Inc., v. Employment Sec. Admin.*, 302 Md. 649, 662-63 (1985) (discussing substantial evidence standard in administrative review). Applying this standard, it is our opinion that the local school board’s decision was not arbitrary or capricious.

CONCLUSION

Therefore, based on the evidence presented, it is our opinion that the decision of the local board was neither arbitrary, unreasonable nor illegal. Accordingly, we affirm the decision of the local board.

Edward L. Root  
President

Dunbar Brooks  
Vice President

Lelia T. Allen

JoAnn T. Bell

J. Henry Butta

Beverly A. Cooper

Calvin D. Disney

Richard L. Goodall

Karabelle Pizzigati

Maria C. Torres-Queral

David F. Tufaro

March 29, 2006