

A. J.
Appellant

BEFORE THE
MARYLAND

v.

STATE BOARD

PRINCE GEORGE'S COUNTY BOARD
OF EDUCATION

OF EDUCATION

Appellee

Opinion No. 07-1

OPINION

INTRODUCTION

This is an appeal of the expulsion of Appellant's son from Laurel High School for physically attacking a School Resource Officer in violation of the local board's Code of Student Conduct. The local board filed a motion to dismiss, or in the alternative, motion for summary affirmance, maintaining that its decision was not arbitrary, unreasonable or illegal. Appellant responded to the motion.

FACTUAL BACKGROUND

At the time of the incident, K.R.¹ was a ninth grade student attending Laurel High School (Laurel). (Expulsion Investigation Report, p.1). Around noon on March 15, 2006, K.R. was involved in a physical altercation with the School Resource Officer (SRO), Corporal Rupp. The Security Assistant, Stephen Craig, the Investigative Counselor, Deborah Toppins, and three other students were present during the altercation. The following summary of the incident is set forth in the Security Incident Report:

The suspect [K.R.] along with three other students were in the hallway talking about guns when [Security Assistant Stephen] Craig directed them to the security office. The conversation included the boys talking about guns as well as having guns in their waistband and in their lockers.² [K.R.] came into the security booth being disrespectful and insubordinate. The students were being told why they could not have the conversation that they were having. [K.R.] continued to be insubordinate and disrespectful. [K.R.] refused to give his ID. The SRO [school resource officer]

¹Appellant's son is referred to as K.R. throughout this opinion.

²The students claimed they were discussing the movies "Boyz in the Hood" and "Menace to South Central." (See Hearing Officer's Report, p.2).

decided to place [K.R.] under arrest for disorderly conduct and disturbing school activities. The SRO told [K.R.] to stand up because he was under arrest. [K.R.] resisted and the two of them ended up on the desk. Rupp [the SRO] was able to get [K.R.] against the wall and [K.R.] attempted to choke Rupp by placing his hands on Rupp's neck. . . . Rupp transported [K.R.] to the Beltsville Station and charged [K.R.] with assault, disturbing school activities, disorderly conduct and resisting arrest. An administrator was notified and an Expulsion Request was processed.³

(See also Expulsion Investigation Report).

Subsequently, Dewayne Jones, Principal of Laurel, notified Appellant, that he was requesting K.R.'s expulsion based on his physical attack on a Prince George's Public Schools' (PGCPS) Employee. (Notification of Request for Expulsion, 3/15/06). This offense is a level IV offense subject to expulsion and/or removal to a disciplinary alternative education program. (Code of Student Conduct, p.7-8).

Donna Mundy, Pupil Personnel Worker, conducted an expulsion investigation and issued an investigation report. The witness statements from Craig, Toppins, Rupp, and the three other students involved corroborate the description of the incident in the Security Incident Report. The investigation report also revealed that K.R. had a history of prior behavioral incidents such as "discipline referrals for inciting/participating in disturbance, class disruption, disrespect, being tardy to class and fighting." (Expulsion Investigation Report, p. 9).

This matter was referred to Verjeana C. McCotter-Jacobs, Esq., the local board's Hearing Officer. She conducted a hearing on May 30, 2006, at which testimony was received from various witnesses, including the Assistant Supervisor for Appeals, and the Principal and Investigative Counselor of Laurel High School (Hearing Officer's Recommendation, p. 1). The Hearing Officer found that:

An assessment of the facts based on the totality of evidence presented within the expulsion packet and testimony at the appeals hearing reveals that [K.R.] was noncompliant, belligerent, and disrespectful which ultimately led to an attempt by school security to place him in handcuffs. By his own admission, he jerked his hand away from those attempting to subdue him. His resistance escalated the already volatile situation and a scuffle ensued. It is

³K.R. claims that he was harassed and threatened by the police officer. He has filed a formal complaint with the Prince George's County Police Department. (See Hearing Officer Report, p.3).

clear that this student was noncompliant from the very start of the situation and the facts do not suggest that he became compliant the moment security attempted to subdue him.

It is quite significant that [K.R.] was the only student of the four students involved in this situation who was subjected to discipline. [K.R.] clearly has a problem with authority. He was noncompliant from the very start of the incident for no apparent reason. By a preponderance of the evidence, this Hearing Officer finds that [K.R.'s] behavior is consistent with a physical altercation that occurred as a result of his noncompliance.

The Hearing Officer recommended, therefore, that the CEO's expulsion decision be upheld.

On April 27, 2006, the local board voted to affirm the decision to expel K.R. This appeal 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. 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 the state or local law or policies; violated the student's due process rights; acted in an unconstitutional manner; or that the decision was otherwise illegal. See COMAR 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

Hearing Officer's Recommendation

Appellant contends that the local board's decision to affirm K.R.'s expulsion is illegal because it was based on the Hearing Officer's faulty recommendation of expulsion for K.R. being disrespectful and "mouthing off," and on his prior disciplinary incidents, rather than on the physical altercation with the SRO. This claim lacks merit.

The Hearing Officer's Report clearly reflects that the recommendation for expulsion was based on K.R.'s physical attack on the SRO on March 15 in violation of the Code of Student Conduct, and not on disrespectful behavior alone or prior incidents of disobedience. The Hearing Officer describes the March 15 incident in her report. She concludes that it was K.R.'s

resistance to school authority that escalated a volatile situation and resulted in a physical altercation between K.R. and the SRO. (Hearing Officer Report, p. 4). The Hearing Officer referred to K.R.'s past incidents of disobedient behavior merely to demonstrate that his current behavior is consistent with a pattern of behavior that he had previously exhibited. (*Id.* at p. 3).


Other Claims

Appellant challenges the merits of the expulsion decision. She claims that her son was wrongfully expelled because he did not physically attack anyone. 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).

Appellant also makes a variety of other claims regarding the expulsion and tangential issues that were not raised during the proceedings before the local board. For example, Appellant maintains that the charge of "Physical Attack on any Prince George's County Public Schools Employee" was not appropriate because the SRO is not a school employee,⁴ that the school system failed to adhere to time frames for notice, investigation and conference, that the charge did not require an expulsion, and that K.R. did not receive credit for certain classes. The State Board has consistently declined to address issues that have not been reviewed initially by the local board. *See Craven v. Board of Education of Montgomery County*, 7 Op. MSBE 870 (1997) (failure to challenge suspension before local board constituted waiver); *Hart v. Board of Education of St. Mary's County*, 7 Op. MSBE 740 (1997) (failure to raise issue of age discrimination below constituted waiver on appeal). Therefore, Appellant has failed to preserve these matters for appeal and has waived her right to raise them before the State Board.

CONCLUSION

Because we do not find any due process violations or other illegalities in the proceedings, we affirm the local board's decision upholding K.R.'s expulsion.

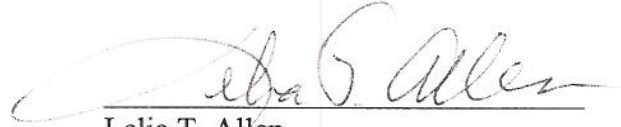


Edward L. Root
President

⁴We note, however, that the CSC defines "Physical Attack on any Prince George's County Public Schools Employee" as "the act of assaulting, or an attempt to assault, any administrator, teacher, or other staff members, either on school property..." (Code of Student Conduct, p. 19). The local board has explained that although the SRO is employed by the County Police Department, the SRO is considered to be a part of the school staff and is covered by the above provision in the CSC. (*See* local board's Motion).



Dunbar Brooks
Vice President



Lelia T. Allen



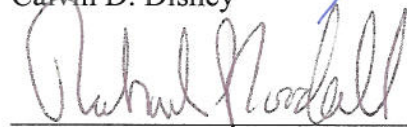
J. Henry Butta



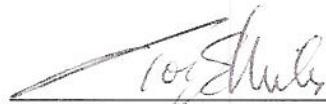
Beverly A. Cooper



Calvin D. Disney



Richard L. Goodall

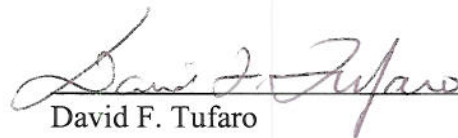


Tonya Miles



Karabelle Pizzigati

Maria C. Torres-Queral



David F. Tufaro

January 30, 2007