

ANNETTE K.,
Appellant
v.
SOMERSET COUNTY
BOARD OF EDUCATION,
Appellee

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Opinion No. 08-45

OPINION

INTRODUCTION

The Appellant appeals several decisions made by the Somerset County Board of Education (local board). The local board has submitted a Motion to Dismiss. Appellant has filed a response.

FACTUAL BACKGROUND

At the beginning of the 2007-2008 school year, Appellant's daughter, T.K., was a sophomore at Crisfield Academy and High School (Crisfield). On October 18, 2007, T.K. was involved in a physical fight with another student. As a consequence, Crisfield's dean, Phil Rayfield, imposed a 3 day out-of-school suspension and a requirement that T.K. attend 12 weeks of classes in the Anger Management Program conducted by the Health Department. (Letter from Scott, 2/22/08).

Local board Policy 600-36 (2B) requires students who have been suspended 1-3 days to enroll in the Anger Management Program conducted by the Health Department. Because Appellant did not believe the anger management classes were warranted, she appealed Mr. Rayfield's decision to the local superintendent.

On December 4, 2007, Appellant met with Karen-Lee N. Brofee, local superintendent, to discuss T.K.'s participation in the Anger Management Program. Appellant maintained that T.K. should not be required to attend the classes because (1) she did not start the fight; (2) she already has a therapist; (3) she is hyperactive and takes medication; and (4) she needs help in school to keep her focused on learning rather than how to manage anger. (Brofee Letter, 12/5/07). At that meeting, Dr. Brofee explained that the requirement for participation in anger management classes is not dependent on who initiated the fight. She advised Appellant that, pursuant to local board Policy 600-36 (2B), T.K.'s failure to complete the classes would result in the school system issuing a report of the fighting incident to the Crisfield Police Department.

Meanwhile, in an unrelated matter, Appellant was experiencing problems with regard to her recent employment as an assistant with the local board's Voyager Program. Appellant was hired in October 2007 and assigned to work in the Voyager Program with 4th and 5th graders under the supervision of a school teacher at Woodson Elementary School. As is standard practice when new employees are hired, the school system performed a background check of Appellant. That check disclosed that Appellant had been sanctioned for child neglect by the Somerset County Department of Social Services (DSS) when she was providing home day care in June 2007. By letter dated December 3, 2007, Leo Lawson, Human Resources Supervisor, advised Appellant that the school system was releasing her from the Voyager Program, effective November 29, 2007, based on that sanction. (Lawson Letter, 12/3/07).

Appellant then submitted three letters dated December 11, 2007 to Dr. Brofee for the local board's consideration. One letter was an appeal of Dr. Brofee's decision that T.K. attend the anger management classes, one letter was an appeal of Appellant's release from employment as an assistant with the Voyager Program, and one letter addressed both issues. There was some confusion regarding the letters and only one was considered at the local board's December 11, 2007 meeting – the letter appealing Dr. Brofee's decision that T.K. attend anger management classes.

By letter dated December 17, 2007, Richard Scott, local board President, advised Appellant that the local board upheld Dr. Brofee's decision. He stated:

Although you are having [T.K.] work with both a physician and a therapist, that is not sufficient to meet the requirements or intent of our policy regarding fighting. Anger management is a group/social experience in learning how to manage one's emotional and physical responses. We believe that Anger Management will reduce students' frustrations, increase their enjoyment of school, and help them to avoid another fight.

Dr. Brofee is doing what we have asked her – implementing our policy as it stands without exception. Although you disagree with the need of your daughter for Anger Management, we sincerely hope that you see the benefits at home and at school.

(Scott Letter, 12/17/07).

In response to Appellant's letter regarding the Mr. Lawson's decision to release the Appellant from employment in the Voyager Program, Dr. Brofee engaged in further investigation of the issue. She contacted the school system's solicitor, who advised that DSS's finding that Appellant is a "person responsible for indicated or unsubstantiated abuse and/or neglect" made

her employment with the school system impermissible. By letter dated January 3, 2008, Dr. Brofee advised Appellant that the school system could not employ anyone with a child abuse indication by DSS. She also told Appellant that there was no connection between her release from employment and her daughter's disciplinary issues. (Brofee Letter, 1/3/08).

Prior to receiving Dr. Brofee's January 3 letter, Appellant filed an appeal with the State Board. The appeal challenged Dr. Brofee's decision that T.K. attend anger management classes, and Appellant's discharge from the Voyager Program. The appeal regarding T.K. was accepted for processing, but the appeal regarding Appellant's discharge from the Voyager Program was not because there was no local board decision on the matter.

Meanwhile, Dr. Brofee invited Appellant to make a formal appeal to the local board at its closed session on January 15, 2008. Appellant raised both issues before board. The local board again concurred with Dr. Brofee's decision to have T.K. participate in the Anger Management Program, or have the fight reported to the Crisfield Police as the local policy requires. The local board also affirmed Appellant's release from the Voyager Program based on the "unsubstantiated but indicated" abuse and/or neglect status with DSS. (Local Board Decision, 2/22/08).

After the local board considered the issues raised by Appellant, T.K. was involved in another incident at school. These are the facts as set forth in the local board's decision:

On or about January 28, 2008, there were a series of incidents which occurred early in the morning at the Crisfield Academy and High School cafeteria. Although an off-campus incident at an earlier time may have precipitated the activity, on that morning, one student apparently was intending to instigate a fight with [T.K.]. Fortunately, a Board employee, Mr. Bozman, observed what was about to happen and intervened, taking control of the student. In spite of Mr. Bozman's efforts, [T.K.] reached around Mr. Bozman and was swinging at the other student, and in fact hit Mr. Bozman several times . . . Mr. Bozman and several other administrators told [T.K.] to go to the office, both for her own safety and the safety of others, but [T.K.] refused and stayed in the cafeteria. A few moments later, another incident apparently began and [T.K.] moved from where she was directly towards the other incident and engaged as the aggressor in an altercation with another student.

(Local Board Decision at 1-2, 3/7/08; Brofee Letter, 2/25/08). Several school employees witnessed the fight and helped to resolve the situation. The events were captured on a student's video camera as well as a school security camera.

On February 8, 2008 the local superintendent expelled T.K. because this was her second fight and it marked a clear and well documented pattern of behavioral problems both inside and outside of the classroom.¹ Juvenile charges were also filed. The local superintendent recommended that T.K. be placed in an Alternative Learning Center but her mother insisted on home tutoring. Appellant filed an appeal with the local board. On February 27, 2008, the board upheld the local superintendent's decision to expel T.K.

On March 25, 2008, Appellant amended her appeal to the State Board. She is appealing the local board's decision that: (1) T.K. attend anger management classes based on the October 18 fight; (2) T.K. be expelled for the incident on January 28; and (3) Appellant be released from the Voyager Program.

STANDARD OF REVIEW

The local board's decision regarding T.K. attending anger management classes, and its decision regarding Appellant's release from the Voyager Program are decisions involving local policy, rules or regulations. Local board decisions involving a local policy or a controversy and dispute regarding the rules and regulations of the local board must be considered prima facie correct and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

With regard to T.K.'s expulsion, the decision of a local board in a student suspension and expulsion matter is final. Md. Code Ann., Educ. §7-305(c); COMAR 13A.01.05.05G(1). The State Board may not review the merits of a student suspension or expulsion, but shall accept an appeal if there are specific factual and legal allegations of one or more of the following: (a) The local board has not followed State or local law, policies, or procedures; (b) The local board has violated the due process rights of the student; or (c) The local board has acted in an unconstitutional manner. COMAR 13A.01.05.05G(2).

ANALYSIS

Anger Management Program

As part of the consequence for T.K.'s involvement in the incident on October 18, 2007, Dr. Brofee required T.K.'s participation in the Anger Management Program pursuant to local board Policy 600-36 (2B). Appellant does not believe her daughter should have to attend the anger management classes. She maintains that her daughter was "scared" not "angry." (Letter from Appellant, 1/1/08).

¹T.K. has a Section 504 Plan. A manifestation hearing was held and it was determined that the incident was not a manifestation of any issues associated with Section 504. (Local Board Decision, 3/7/08).

On appeal, the local board considered whether T.K. should be granted an exception to the policy and be excused from attending the classes. In doing so, local board members reviewed a report from the principal of Crisfield that included a summary of T.K.'s discipline issues and reports from her teachers. In concluding that T.K. would benefit from anger management classes, the board found that T.K. has evidenced angry behavior at school and that the behavior interferes with her learning. Examples of the behavior include having discussions with other students in class about fighting, stating that she wants to initiate fights with other students, physically putting her hands on other students to instigate fights, screaming profanities in the school hallways, and engaging in fights with students. (Local Board Decision at 6, 2/22/08). Although Appellant disagrees with the local board's decision, her disagreement does not make the decision arbitrary, unreasonable or illegal. The decision is consistent with local policy.

Expulsion

Appellant challenges the local board's decision to affirm T.K.'s expulsion based on the January 28 incident. Appellant argued her position before Dr. Brofee, who, based on the evidence determined that the expulsion was warranted pursuant to local board Policy 600-36. On appeal, the local board reviewed the matter and affirmed Dr. Brofee's decision.

As stated above, the decision of a local board on a student suspension or expulsion is final. The only basis for appeal is if the local board failed to follow State or local law, policies, or procedures; the local board violated the student's due process rights; or the local board acted in an unconstitutional matter. There are no substantive allegations of this nature here. Appellant has failed to present a basis for the reversal of the local board's decision upholding the expulsion.

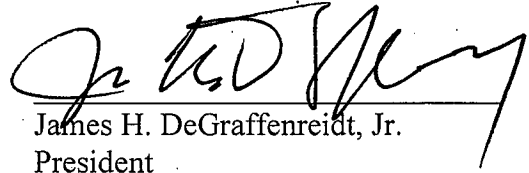
Release from Voyager Program

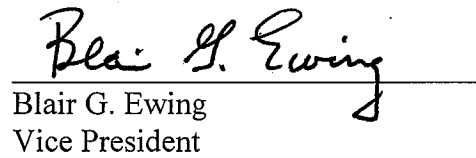
Appellant believes that she should be permitted to work as an assistant in the Voyager Program. Although the local board ruled on this issue, this claim was not addressed by the local board in its Motion. Nevertheless, based on the record in this case, it is school system policy not to permit an individual who has been found by DSS to be responsible for indicated or unsubstantiated abuse and/or neglect to continue his/her employment with the school system. Such a policy is for the protection of the children entrusted to the care of the school system. The Somerset County DSS deemed Appellant to be such an individual. Accordingly, we do not find the local board's decision to be arbitrary, unreasonable or illegal.

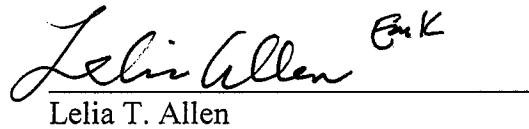
CONCLUSION

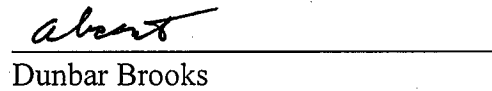
For all of these reasons, we find that the local board's decisions are not arbitrary,

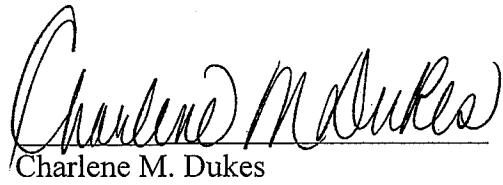
unreasonable or illegal. We therefore affirm the local board's decisions.

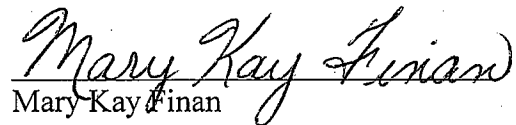

James H. DeGraffenreidt, Jr.
President

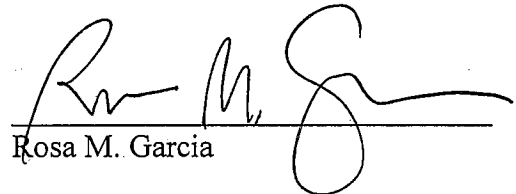

Blair G. Ewing
Vice President

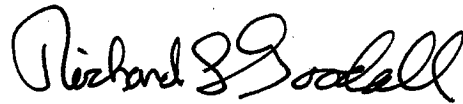

Lelia T. Allen


Dunbar Brooks



Charlene M. Dukes


Mary Kay Finan


Rosa M. Garcia



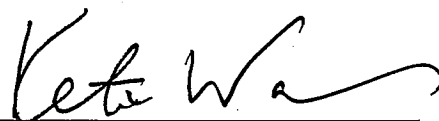
Richard L. Goodall



Karabelle Pizzigati



Ivan C.A. Walks



Kate Walsh

September 23, 2008