

EDWARD A.,
Appellant

v.

CARROLL COUNTY BOARD
OF EDUCATION,
Appellee

BEFORE THE
MARYLAND
STATE BOARD

Opinion No. 09-09

OPINION

INTRODUCTION

In this appeal, the Appellant challenges the Carroll County Board of Education's decision affirming the decision of the Superintendent's Designee to suspend his son for physically attacking another student. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. The Appellant has filed a response to the local board's motion.

FACTUAL BACKGROUND

During the 2007-2008 school year, Appellant's son, E.A., was a tenth grade student at Liberty High School (Liberty). On April 28, 2008, E.A. was involved in a violent physical altercation with another student in the school cafeteria. Tension had been building between the students for several days leading up to the incident due to issues between the two, including a \$20 bet over a chemistry grade, alleged racial name calling, an alleged egging of a house, and several invitations to fight by the other student. During the altercation on April 28, the boys threw punches at each other and fell to the floor while continuing to fight. E.A. used a plastic lunch tray to shield himself, but in doing so hit the other student with it. It took several staff members to break up the fight, three of whom required medical attention afterward. School staff summoned police to the scene. (Incident Report; Police report; Piper Letter, 4/29/08; Simmons' Letter, 5/9/08).

Based on this incident, Liberty's Principal, Dwayne Piper, suspended E.A. for ten school days for physically attacking another student, and recommended to the superintendent that E.A. receive an extended suspension for the remainder of the 2007-2008 school year.¹ (Notice of Suspension).

¹The other student involved in the altercation received similar discipline and transferred to a different high school for the remainder of the school year.

Richard J. Simmons, the Superintendent's Designee, conducted an investigation of the incident. As part of the investigation, Mr. Simmons met with E.A. and the Appellant, and interviewed staff members and students at Liberty. Mr. Simmons issued a decision on May 9, 2008, upholding Mr. Piper's recommendation for a suspension through the end of the school year.² He stated the following:

What is relevant is the fact that many people knew there was going to be an incident in school at lunch time on Monday. Many students were eagerly awaiting the event. They knew it was going to happen in the cafeteria. No staff member was told. [E.A.] anticipated the event and took no preventative action to avoid the conflict. Both boys engaged in an extremely bad fight which disrupted the school significantly. It was clearly dangerous behavior. Both boys were fully engaged and neither responded to repeated directives to stop. No less than six (6) men were required to end the affray. Four (4) staff members were injured, three requiring professional medical appointments and treatment. The police were summoned and responded. Both boys were released to their parent (sic). Mr. Piper issued a Notice of Suspension for [E.A.] and recommended that his suspension be extended for the rest of this school year.

(Simmons' Letter).

In his appeal to the local board, Appellant maintained that the punishment was too severe given that the other student attacked E.A., that E.A. was engaging in self defense; and that E.A. was unaware the other student planned to fight him in the cafeteria that day. (Appeal Information Form and Statement of E.A.). The local board conducted a full evidentiary hearing at which time it reviewed all of the written material submitted by the Appellant and Mr. Simmons, reviewed a series of still photographs of the incident from the surveillance camera posted in the Liberty cafeteria, and heard testimony from Mr. Piper, Mr. Simmons, Appellant and E.A. (Local Board Decision).

The local board upheld the suspension decision finding that although the other student was the aggressor, it was clear that E.A. was not merely engaging in self defense. The local board explained that E.A. was aware during the days leading up to the incident that the other student wanted to fight him, and that E.A. took no steps to avoid a fight or extricate himself from the circumstances on April 28. The local board stated that E.A. could have stayed in his seat and refused to fight instead of getting up when the other student approached, he could have tried to

²Although E.A. received an extended suspension, lasting 34 school days from the April 28, 2008 incident, the school system provided him with home teaching during that time. E.A. successfully completed his tenth grade year and returned to Liberty for the 2008-09 school year.

escape when he saw the other student coming, or he could have stopped fighting when Mr. Piper and other staff members intervened. (Local Board Decision).

This appeal followed.

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

In the appeal to the State Board, Appellant challenges the merits of the suspension decision. He claims that his son's punishment was too severe given that he was not the aggressor and was merely defending himself. As stated above, the State Board does not review the merits of suspension or 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. *See also, A.J. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 07-01 (2007). Appellant makes three allegations of illegality in this case. We address them below.

Appellant argues that the school system failed to provide E.A. with due process because the principal, Mr. Piper, did not investigate or meet with E.A. prior to recommending that E.A. be suspended for the rest of the year. The record discloses, however, that Appellant met with Mr. Piper within the 10 day suspension period to discuss the incident and the charges against his son. (T. 290). Thus, Appellant received all the process that he was due from Mr. Piper. In addition, it is clear that the Superintendent's Designee, Mr. Simmons, conducted a full investigation and met with Appellant and E.A. prior to making the decision to suspend E.A. Appellant also had the opportunity to present E.A.'s case during a full evidentiary hearing before the local board. Therefore, even if Mr. Piper had committed some type of due process violation, which we do not believe he did, any such violation would have been cured by the full evidentiary hearing before the local board. *See Williamson v. Bd. of Educ. of Anne Arundel County*, 7Op. MSBE 649 (1997); *West & Bethea v. Bd. of Comm'rs of Baltimore City*, 7Op. MSBE 500 (1996); *Harrison v. Somerset County Bd. of Educ.*, 7 Op. MSBE 391 (1996).

Appellant also alleges that the Superintendent abused his discretionary power because he advised Mr. Piper to request an extended suspension for both students and then advised Mr. Simmons to approve the requests. The record contains no evidence that the Superintendent made any such directives. Nor would we consider such actions to be an abuse of discretion. Moreover, this is a new issue presented by Appellant in the appeal to the State Board. The State

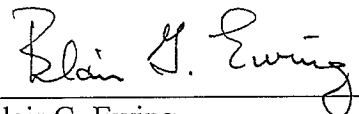
Board has consistently declined to address issues that have not been reviewed initially by the local board. *See Craven v. Bd. of Educ. of Montgomery County*, 7 Ops. MSBE 870 (1997)(failure to challenge suspension before local board constituted waiver); *Hart v. Bd. of Educ. of St. Mary's County*, 7 Ops. MSBE 740 (1997)(failure to raise issue of age discrimination below constituted waiver on appeal). Therefore, Appellant has failed to preserve this matter for appeal and has waived his right to raise it before the State Board.

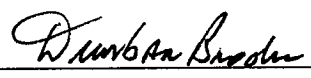
Appellant also complains that the local board never provided him with a copy of the CD containing the video surveillance from the cafeteria, as promised at the local board hearing. (T. 29). The CD contains a copy of fifteen snapshots of the incident in the cafeteria. As explained at the hearing, the surveillance camera captures images in a "freeze frame type of mode" with a snapshot of the area every several seconds rather than capturing images in a regular smooth video format. (T. 22). The board members and Appellant viewed the fifteen freeze frame shots at the local board hearing. (T. 23-29). Appellant should have notified counsel for the local board that he did not receive the CD. Nonetheless, his failure to receive a copy of the CD does not render the local board's decision illegal.

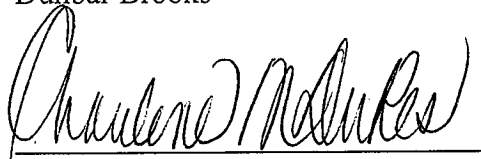
CONCLUSION

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


James H. DeGraffenreidt, Jr.
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Blair G. Ewing
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Dunbar Brooks


Charlene M. Duker

Mary Kay Finan
Mary Kay Finan

Rosa M. Garcia^{1PS}
Rosa M. Garcia

Richard L. Goodall^{1PS}
Richard L. Goodall

Karabelle Pizzigati
Karabelle Pizzigati

Ivan C.A. Walks^{1PS}
Ivan C.A. Walks

Kate Walsh
Kate Walsh

March 24, 2009