

STEPHEN J. BERRY,

Appellant

v.

CALVERT COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 05-28

### OPINION

In this appeal, the Appellants contest their son's one day suspension from school for violating the Calvert County Public School System's cell phone policy. The local board has submitted a Motion to Dismiss the Appeal or for Summary Affirmance maintaining that its decision should be upheld because Appellants' son used his cell phone "during the school day" in violation of the cell phone policy. The Appellants have replied in opposition to those Motions.

### FACTUAL BACKGROUND

At the time of the incident the Appellants' son, K., was a tenth-grader at Northern High School in Calvert County. He is an honor student and has never been disciplined before by the school. On March 11, 2005, at 2:27 p.m., K. used his cell phone to call his parents who were to meet him in the school for a parent-teacher conference.<sup>1</sup> He made the call standing in front of the school building after school was dismissed. An administrator observed K. making the call. This use of the cell phone, according to the local board, violated the school's cell phone policy.

The cell phone policy allows students to bring cell phones to school, but, "during the school day", the phone must be turned off and concealed at all times. If a student violates that policy, he/she will be:

- Placed on in-school suspension for a period of one to five days or suspended out-of-school for a period of one to three days depending on the individual circumstances of the first offense. The principal will make this determination.
- Suspended out-of-school from one to five days on the second offense.

The principal, Mr. Griffin, imposed a one-day out-of-school suspension.

The Appellants appealed the suspension to the local board which considered the matter in executive session and, on April 14, 2005, voted unanimously to uphold the one-day suspension.

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<sup>1</sup>The parents asked for the parent-teacher conference to discuss a low grade their son had received in a criminal justice class.

On April 26, 2005, this appeal was timely filed.

### STANDARD OF REVIEW

In student suspension and expulsion cases, the decision of the local board is considered a final decision. Md. Code Ann., Education § 7-305(c)(7). 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 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.01.05.05(C).

If the State Board finds in favor of the Appellant, it may reverse or modify the suspension. COMAR 13A.01.05.05(G)(3).

### ANALYSIS

The Calvert County Public School System cell phone policy prohibits use of a cell phone during the school day. At issue in this case is the meaning of "during the school day." In its motion the local board asserts that at Northern High School the school day begins at 7:15 a.m. and ends at 2:40 p.m. Moreover, the local board indicates that at Northern High School the definition of "school day" was emphasized and re-emphasized over the course of the school year. Specifically, during the first week of school, teachers reviewed the Code of Student Conduct, of which the cell phone policy is a part, and explained that school day meant 7:15 a.m. to 2:40 p.m.. Thereafter, grade level assemblies addressed the issue; the Vice Principal visited each class to talk about the Code of Student Conduct, including the cell phone ban in effect between 7:15 a.m. and 2:40 p.m. In early September, morning and afternoon announcements reminded students not to use cell phones between 7:15 a.m. and 2:40 p.m. Also, according to the local board, the cafeteria television flashed daily announcements including the above described cell phone policy.

The Appellants contend that "during the school day" means the hours of 7:25 a.m. to 2:20 p.m. They refer to the bell schedule published in the Calvert Independent Newspaper on August 11, 2004, indicating that all four high schools in Calvert County start at 7:25 a.m. and end at 2:20 p.m. Appellants further contend that at the other three high schools students may use their cell phones beginning at 2:20 p.m.

The Appellants argue that, the local board (1) did not follow its own local policies; (2) violated their son's due process rights; (3) acted in an unconstitutional manner; (4) was arbitrary; and/or issued an illegal decision. Each argument is addressed below.

1. Failure to Follow Local Policies

The Appellants contend that, because all the public documents indicate that the end of the school day in all four high schools in Calvert County is 2:20 p.m., the local board's decision to uphold the suspension violated local policies. That assertion assumes that the principal of a high school does not have the discretion to establish a different end of the school day for the purpose of cell phone use. The Superintendent, however, has confirmed by letter of May 5, 2005, to the Appellants that the principal has that discretion. The ban on cell phone use at Northern High School up to 2:40 p.m. was a well-advertised policy at Northern High School and, we find that the local board correctly applied that policy in upholding the suspension.

2. Violation of Due Process

The Appellants assert that the school violated their due process rights because it did not give the student or his parent "a conference with the principal and any other appropriate personnel during the suspension period." Md. Code Ann., Education § 7-305(a)(2).<sup>2</sup> They assert that they, as parents, were denied a conference with the principal. From our review of the record, we find that a conference was held with the student and his parents on March 14, 2005, three days after the incident. The "Notification of Pupil's Suspension" form dated March 14, 2005 notes that the student "did not sign off per parent request"; and that "Mr. and Mrs. Berry are not pleased with the suspension since K. was on the phone with them discussing their whereabouts with regard to a scheduled parent - teacher conference. Parents will pursue an appeal." The conference was clearly not to the Appellants' liking,<sup>3</sup> but it did occur. There was therefore no violation of due process rights.

3. Unconstitutional Action

The Appellants contend that "nowhere in any Calvert County Board of Education publication is there any mention of or reference to a 'Cell Phone Policy'." There is, however, a Student Code of Conduct handbook which does contain direction as to the use of cell phones on school property. Although it is not entitled "Cell Phone Policy" per se, the section of the handbook on "Communication Devices" does indeed include such a policy. *See* Student Code of Conduct Handbook, Part C, pp. 14-15. Therefore, we find the Appellants' conclusion that their son is being punished in an unconstitutional manner for violating a policy that does not exist has no merit.

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<sup>2</sup>Section 7-305(a)(2) provides that for a suspension for not more than ten school days "[t]he student or his parent or guardian promptly shall be given a conference with the principal and any other appropriate personnel during the suspension period."

<sup>3</sup>The Appellants state that the principal refused to discuss the cell phone policy with them.

4. Arbitrary, Unreasonable, or Illegal Rationale

The Appellants argue that because all other high schools in Calvert County allow cell phone use after 2:20 p.m., the decision to suspend their son for using a cell phone at 2:27 p.m. was arbitrary and unreasonable. It is the case, however, that at Northern High School, the cell phone ban lasts until 2:40 p.m. Appellants assail the 2:40 p.m. time period because all classes are dismissed at 2:20 p.m. They assert that no one's safety would be compromised and the cell phone use after 2:20 p.m. would not be disruptive.

The rationale underlying a ban on cell phone use in schools is clearly set forth in the Cell Phone Policy:

Calvert County Public Schools, in reviewing its current policy and procedures, still finds that the possession and use of pagers and cellular telephones have the potential to disrupt classroom instruction and the general, overall school climate. In addition, the safety of students and staff could be greatly compromised by inappropriate use of these communication devices.

The Appellants are correct that cell phone use after 2:20 p.m. would not disrupt classroom instruction. The Superintendent has explained to the Appellants, however, why cell phone use immediately after school would present a safety issue and affect the overall climate of the school. As Dr. Horsman explained in his May 5, 2005 letter:

It is my opinion that extending a ban on cell phone use until 2:40 p.m. at Northern High School, a time when students have boarded buses and all bus traffic and many student drivers have cleared the campus, is a reasonable time to lift the ban. Otherwise, I envision a scenario of many students exiting the building precisely at 2:25 p.m. - - the end of the last instructional period of the day - - with a cell phone pressed to an ear. I would prefer that students remain focused at that time of day and get safely to their destination.

That explanation provides an acceptable rationale for the 2:40 p.m. ban on cell phone use at Northern High School and is neither arbitrary, unreasonable, nor illegal.

Finding no due process violation or other illegality in this matter, we uphold the local board decision in this case. While doing so, we point out that in 2002 the State Board considered a disciplinary case involving a three-day suspension for violation of the Calvert County Public Schools' cell phone policy. In that case, *Thomas L. Sydnor v. Calvert County Board of Education*, Opinion No. 02-43, the State Board referred to the Philosophy of Student Supervision contained in the Code of Student Conduct which states:

Usually a suspension is not implemented until all appropriate school resources have been utilized. If the offense, however, is serious or illegal in nature, it may warrant a suspension on the first offense. The suspension process is individualized by considering various factors such as the student's background, the dynamics of the student's behavior, and the local school situation. The effective use of the suspension is, hopefully, a learning activity for the child. *See* Code of Student Conduct at 45.

The State Board reversed the three-day suspension in that case because there was insufficient evidence to show that the student knowingly violated the cell phone policy. In doing so, the State Board noted that the State Board "does not look favorably upon automatic penalty provisions that leave a board with no discretion to consider extenuating circumstances or mitigating factors."

Three years have passed since we issued the *Sydnor* opinion, yet we find the local board cell phone policy has suspension as its only discipline option. There is no discretion to impose a lesser penalty. We request the local board and local superintendent to revisit the cell phone policy to allow prospectively consideration of mitigating circumstances and the imposition of lesser penalties such as use of warnings and reprimands.

#### CONCLUSION

For the reasons described above and finding no due process violations or other illegalities in the proceedings in this matter, we affirm the student discipline decision of the Calvert County Board of Education.

Edward L. Root  
President

Dunbar Brooks  
Vice President

Lelia T. Allen

JoAnn T. Bell

J. Henry Butta

Beverly A. Cooper

Calvin D. Disney

See below\*

Richard L. Goodall

Karabelle Pizzigati

Maria C. Torres-Queral

David F. Tufaro

\*Richard L. Goodall, a new member of the State Board of Education, did not participate in the deliberations leading to the issuance of this opinion.

August 31, 2005