

JOSHUA CARLSON,

Appellant

v.

ANNE ARUNDEL COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-30

OPINION

In this appeal, a student at Old Mill High School contests the local board's upholding of the superintendent's decision to expel him from Old Mill based on a violation of local board Policy 902.17, Assaults by Students.¹ Appellant argues (1) that the incidents were not assaults as defined by board policy; (2) that at the time of his alleged infraction, the school system had no jurisdiction over his activities because the incident occurred on private property; and (3) that his constitutional rights were violated. The local board has filed a Motion for Summary Affirmance maintaining that its decision was not arbitrary, unreasonable or illegal, and that its decision should be upheld. Appellant has filed a response opposing the motion.

BACKGROUND

During the 1998-99 school year, Joshua was in the ninth grade at Old Mill High School in Anne Arundel County. Near the end of September, 1998, Joshua and another student, Joe, were involved in a weekend incident off school grounds at Joe's home. Appellant alleges that Joe spat in his face causing Appellant to follow Joe into his house and hit him. Tr. at 147.

On the next school day following this incident, Appellant claims that he heard Joe calling him names, such as "bitch." Insulted by the name calling, Appellant went over to Joe while they were both in the gymnasium and pushed Joe's head into the bleachers. Tr. at 148. Appellant testified that Joe never put his hands on him or raised his hands as if to hit him. Tr. at 168.

Later that school day, as they left the bus, the two students were involved in another incident. The altercation occurred near Lucky's store. While there is conflicting evidence concerning the precise sequence of events, Appellant claims that another student, Chris, held Appellant after he got off the bus, and Appellant heard Joe say "I'll kick your butt." Tr. at 163.

¹The principal stated that he would consider Joshua's readmission in the Spring 1999 semester. The record does not indicate whether Appellant has applied for readmission.

Appellant testified that “I walked over to Joe² and I asked him why he was calling me names. He said that he wasn’t calling me anything. So I pushed him, and he pushed me back, and I hit him.”³ Tr. at 151. The bus had not yet pulled away from the stop at the time the incident occurred, Tr. at 195, and the altercation was witnessed by the bus driver and students. Appellant testified that the altercation actually occurred 67 feet from where he exited the bus.⁴ Tr. at 160.

The Assistant Principal, Mrs. Patricia Plitt, conducted an investigation of the incidents. As part of this investigation, she interviewed Appellant, Joe, and a student witness to the bleacher and bus stop incidents. She also spoke with Appellant’s and Joe’s parents. Based on the investigation, Appellant was charged with assault pursuant to local board Policy 902.17. The penalty mandated for assault is suspension and/or expulsion. Policy 902.17(III). The principal suspended Appellant and recommended his expulsion.

Stephen G. Barry, Special Assistant for Student Discipline, conducted a hearing in which Appellant and his parents were present.⁵ Based on his own investigation of the incident, Mr. Barry determined that Joshua assaulted Joe two times: in the gymnasium when Joshua pushed Joe’s head into the bleachers, and at the bus stop where Joshua struck Joe twice in the head.⁶ Mr. Barry concluded that his findings supported the principal’s request for expulsion.

The superintendent’s designee informed Appellants by letter dated October 13, 1998, that Joshua had been expelled.⁷ The letter included the following:

We are in receipt of a letter dated September 30, 1998, from Mr. Arlen Liverman, Principal of Old Mill High School, requesting an expulsion of your son, Joshua Carlson, from school. Joshua was suspended on September 30, 1998, because Joshua pushed another

²Appellant indicated that he followed Joe across the street to speak to him. Tr. at 200.

³The investigation report indicates that Appellant admitted to hitting Joe two times.

⁴Appellant admitted in his testimony that he had the opportunity to remove himself from all three situations, the spitting incident, the bleacher incident and the bus incident; however, he indicated that during the bus incident he felt threatened. Tr. at 183.

⁵According to Appellant’s mother, the principal indicated that he considered the bus stop incident to be the primary basis for the expulsion request, and would not have considered the incident in the gymnasium to have been sufficient for expulsion.

⁶Mr. Barry testified that he applied the definition of assault as stated in the assault policy. Tr. at 85.

⁷The other student involved, Joe, did not receive any punishment.

student's head into a bleacher in physical education class. After school, he attacked the initial student as they got off the bus. This is in violation of Board of Education Policy 902.17, Assaults by Students. . .

Appellants appealed to the local board. After holding a full evidentiary hearing , the local board upheld the superintendent's decision to expel Joshua. In its decision, the local board stated:

The Board has considered the transcript of the testimony, the documentary evidence, and the arguments presented. The Board finds from the evidence that Joshua approached a student named Joe at the beginning of the physical education class on September 28, 1998, and precipitously pushed Joe's head back into the bleachers. Even if Joe had been engaged in verbal name calling, the Board finds that this would not have been sufficient provocation for the attack, that Joshua's physical battering of Joe was unjustified, and the attack constituted an assault in violation of Board of Education Policy 902.17, Assault by Students. Because the Board finds that Joshua committed an assault on school property, this action alone would justify the Board upholding the decision to expel Joshua from the Anne Arundel County Public Schools.

However, there was a second incident. With regard to that incident, the Board rejects the student's arguments that the episode was a "fight," not an assault, that the school system lacks jurisdiction to punish him for fighting off school property, and that the sanction was arbitrary and capricious.

The local board also determined that the school system had jurisdiction to punish Joshua for his actions occurring both off and on school property on the same day based on the nexus between his behavior and the safety and welfare of others and the need to maintain order and discipline at school.

ANALYSIS

The decision of a local board with respect to a student suspension or expulsion is considered final. Md. Code Ann., Educ. § 7-305 (a)(7). The State Board's review is therefore 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.01.01.03E (4)(b).

(1) Assault Policy

As stated above, the local board reviewed the evidence in this case and determined that the acts committed by Joshua, in the gymnasium and after exiting the bus, satisfied the definition of assault according to board policy. That policy defines assault as “any unprovoked attack upon or malicious act of violence against another person, any attempt to commit such an act, or any threat to commit such act, if that threat could reasonably cause the other person to believe he or she is in imminent danger of serious physical harm.” Local board Policy 902.17 (I). The local board has interpreted this policy in a manner that distinguishes “assaults” from “fights” where something in the nature of mutual combat occurs. The board has also determined that mere verbal name calling is not sufficient provocation for an attack.

We find these to be reasonable interpretations of the assault policy. Based upon our review of the record, we believe the local board has applied its policy to the facts of this case and appropriately determined that both incidents constituted assaults, while noting that the bleacher incident alone would have been sufficient to justify Joshua’s expulsion.⁸

(2) Jurisdiction and Authority

Appellant also argues that the local board exceeded its jurisdiction because the incident at the bus stop area occurred off school grounds. This argument presupposes that the bleacher incident was not an assault; however as set forth above, we uphold the local board’s classification of the bleacher incident as an assault. Nonetheless, even if the State Board were to consider Appellant’s argument that the assault occurred off school property, we would find that the school system acted in accordance with local policy. Local board policy 902.17 (II) states the following:

. . . the Board strictly prohibits any assault by a student against a student . . . on Board of Education property, including in school buildings or on school grounds; on school buses and other school vehicles; or during any school, school-related, or Board-sponsored activity, whether held on school property or at locations off school property, including private clubs, businesses, or commercial establishments.

The incident on Lucky’s property was precipitated by the events earlier that day including the gym incident. While the after school behavior did not necessarily occur on the school bus or at the precise location where the students exited the bus, the board determined that the behavior was school-related based on its nexus to the safety and welfare of the students and others in the school community.

In *John Schlamp v. Board of Education of Howard County*, MSBE Opinion No. 95-11

⁸The assistant principal testified that Joshua was expelled for the two incidents, the one in the gym and the one at the bus stop. She further testified that the incident in the gym alone may have been sufficient to justify expulsion. Tr. at 34-35.

(May 13, 1995), this Board enumerated the principles that must be applied to determine the validity of school regulation of off campus conduct: whether the conduct being regulated has a direct effect on the order and general welfare of the school and whether the regulation is reasonable in scope. In *Schlamp*, this Board upheld the local board's policy of placing a student in an alternative program when the student was charged with assaulting another student off school grounds. See also *Kevin Pickett v. Board of Education of Montgomery County*, MSBE Opinion No. 98-45 (August 26, 1998) (upholding school district's authority to discipline student for non-school sponsored activity off of school grounds); *Donna DiGiacomo v. Board of Education of Montgomery County*, MSBE Opinion No. 95-16 (July 26, 1995) (upholding 7 day suspension of student based on conduct that occurred off school property before the school day began).

Applying the principles enunciated in *Schlamp*, we believe that the conduct being regulated has a direct effect on the order and general welfare of the school. The off-campus behavior occurred on a day when the Appellant had already assaulted the student during gym class. Further, the off-campus behavior took place immediately after the students had exited the bus. The bus had not yet pulled away from the location and the incident was witnessed by other students as well as the bus driver. We think it is therefore reasonable to find that there is a direct nexus between the conduct being regulated: occurrences during which a student hit another student on the same school day, once in school and once upon disembarking from the school bus, and the school's responsibility to maintain an orderly and safe environment for its students. The regulated off campus conduct therefore has a rational relationship to legitimate school interests.

(3) Due Process and Equal Protection

With regard to the constitutional claims, Appellant argues that his due rights were violated because he was not given prior notice of the assistant principal's interpretation of what constituted an assault under board policy.⁹ However, we do not need to address the merits of this issue because to the extent that any error may have occurred in testimony given by the school administrator, it was cured by the local board's review and decision. The local board considered the record in light of its assault policy and determined that Joshua committed an assault as defined by the policy. The policy quoted in part above speaks for itself. See, e.g. *Cory Williamson v. Board of Education of Anne Arundel County*, MSBE Opinion No. 97-20 (April 30, 1997) (failure to give prompt notice would be cured by local board's full evidentiary hearing on appeal); *West & Bethel v. Board of Commissioners of Baltimore City*, MSBE Opinion No. 96-47 (December 10, 1996) (failure to hold conference within ten days was cured by the de novo administrative hearing on merits before the local board); *Harrison v. Somerset County Board of Education*, MSBE Opinion No. 96-28 (July 30, 1996) (failure to grant conference with superintendent or his representative in timely fashion was cured by local board's full evidentiary hearing on appeal).

⁹At the hearing before the local board, the assistant principal testified concerning her understanding of the definition of an assault in contrast to a fight. Tr. at 31-34; 48.

Second, Appellant argues that he was unaware of the consequences of his actions because he was not given formal notice of the board's assault policy. However, as the local board notes, "Joshua has attended Anne Arundel Public Schools for nine years and admitted to receiving a copy of the student handbook in previous years, although he said he did not receive a handbook this year." The record supports these statements. It also supports the fact that Joshua recalls discussing the handbook with school officials in previous years and had heard about the assault policy in the past.¹⁰ Tr. at 175-176. Although the school system was unable to produce direct evidence that Joshua had received a copy of the Anne Arundel County parent/student handbook, "Making the Home- School Connection" for the 1998-99 school year, the record reasonably supports the conclusion that Joshua was on notice of the assault policy and its consequences.

Third, Appellant contends that the school system engaged in disparate treatment by disciplining other students who committed similar behavior in violation of the assault policy in a different manner from Joshua. However, the local board determined that the instances cited by Appellant were distinguishable based upon different factual circumstances. In the other cases the board determined that no violation of the assault policy occurred because no one student was the unprovoked aggressor. Here, for the reasons described above, the local board determined that the incidents were assaults by Joshua, and that Joe did not provoke Appellant's actions. We concur with the board's reasoning. The severity of the punishment is directly related to the severity of the triggering behavior. Based upon our review of the record, we find no due process violations or other illegalities in the proceedings.

CONCLUSION

For these reasons, we affirm the decision of the Board of Education of Anne Arundel County.

Walter Sondheim, Jr.
President

Edward Andrews
Vice President

Raymond V. Bartlett

JoAnn T. Bell

Philip S. Benzil

¹⁰Joshua testified that he believed the punishment for assault was suspension only. (Tr. at 176).

George W. Fisher, Sr.

Morris Jones

Marilyn D. Maulsby

Judith McHale

Adrienne L. Ottaviani

John Wisthoff

June 30, 1999