

GREGORY MASIMORE,

Appellant

v.

CARROLL COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-45

OPINION

This is an appeal of Gregory Masimore's suspension from North Carroll High School for throwing eggs at his teacher's house on Halloween. Appellant argues that the local board erred in upholding Gregory's suspension under the Carroll County Board of Education Violent Acts Policy. The local board has moved to dismiss or summarily affirm the appeal maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant has filed an opposition to the motion.

BACKGROUND

During the 1998-99 school year, Gregory was an eleventh grade student at North Carroll High School in Carroll County. The record discloses that on Halloween night, Saturday, October 31, 1998, Gregory Masimore and several of his friends drove from Manchester to the home of Gregory's teacher in Westminster and threw eggs at the teacher's house.¹ At approximately 10:00 that evening, a neighbor who had witnessed the incident informed the teacher that the back of her recently painted house had been egged. The police were successful in identifying some of the students involved in the egging, including Gregory Masimore, and advised the teacher that the matter would be handled by the families. At approximately 10:30 that same evening, Gregory telephoned the teacher to apologize for his actions. On Sunday morning, Gregory and several of the students involved in the egging went back to the house to clean up the mess from the night before. Not finding the teacher at home, they left her a note to let her know that they had come by. The teacher reported the weekend incident to her principal.

The assistant principal conducted an investigation. During the investigation, Gregory admitted that he was involved in egging the house. He also revealed that he was angry and embarrassed about an incident in class the previous Friday in which the teacher lectured him for

¹Appellant has accepted the facts as set forth in the "Background" section of the local board's Memorandum in Support of its Motion to Dismiss or for Summary Affirmance. Therefore, there is no dispute of material fact.

disruptive behavior. Based on the results of the investigation, Gregory was suspended for three days.²

The matter was appealed to the local superintendent. Vernon F. Smith, acting as the superintendent's designee, conducted his own investigation. In a memorandum dated November 5, 1998, he stated:

In considering the matter, I have reviewed the information from the school. It is my understanding that Gregory and five (5) other boys traveled from Hampstead to Westminster on the night of the incident in three separate cars. All three cars were parked nearby and the boys then walked to the teacher's house and threw eggs at her property. When questioned as to why the teacher's house was targeted, the boys said that Gregory was angry as a result of something the teacher had said to him on Friday, October 30th. All interviewed stated that they were specifically going to the teacher's house to throw eggs.

Despite the fact that the act took place away from school, the act against the teacher was not random. Therefore, the school administration appropriately dealt with the matter as a school disciplinary infraction.

Unhappy with this decision, Gregory appealed to the local board. In a 4 to 1 decision, the local board upheld the suspension based on the Carroll County Board of Education Violent Acts Policy, ADD. The local board determined that the intentional act of vandalism committed against the teacher's home by Gregory and his companions constituted an act of malice directed towards a teacher for the purpose of intimidating her, and satisfied the violent act definition contained in the policy. The local board decision states in relevant part that

Gregory was involved in an intentional act of misconduct directed at a teacher. Although the act of misconduct took place away from school, this Board is of the opinion that, when teachers are singled out as victims of off-campus acts by students, there is a direct, detrimental impact on the ability of school officials to maintain order in school.

ANALYSIS

The decision of a local board with respect to a student suspension or expulsion is

²One of the three days was reduced to an in-school suspension based on Gregory's attempt to clean up the egg mess.

considered final. Md. Educ. Code Ann. § 7-305. Therefore, the State Board’s review is 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.01.01.03(E)(4)(b).

Appellant argues that his actions do not constitute a violation of the Violent Acts Policy, thus the local board acted in an arbitrary and unconstitutional manner by upholding his suspension on that basis. The local board regulation on violent acts ³ states as follows:⁴

Carroll County Board of Education policies, as well as administrative regulations, are designed to support the belief that schools must be a safe place for students and staff. Violent acts committed against any person(s) on Carroll County Board of Education owned property, on school bus(es), or at any school sponsored event, will be handled as school disciplinary infractions, as well as illegal acts. In addition, a violent act against a staff person by a student, at any time or place, will be handled as a school disciplinary infraction as well as an illegal act.

Additionally, the regulation defines “violent act” as

Any action which creates a substantial danger or serious injury to any person(s) on Board of Education owned property, on school bus(es), or at any school sponsored event, resulting in a suspension of four or more days. Also included in this definition is any act which creates a substantial danger or serious injury to a staff person at any time or place. A violent act includes, but is not limited to, serious assault or battery by a student directed toward another student, any assault or battery by a student directed toward an adult, and possession of a weapon or look-alike weapon.

The local board argues that the application of the policy in this instance effectuates its true

³Policy ADD is the corresponding local board policy on violent acts.

⁴The Carroll County Board of Education has adopted a new regulation, Serious Threats of Violence, that was publicized on October 14, 1998, and went into effect on January 19, 1999. That regulation defines a serious threat of violence as a “verbal or nonverbal declaration of intent or determination to inflict significant injury to persons, and/or damage to property with the perceived ability/intention to carry through on the threat.” The penalty for a first offense violation is a three day suspension. Gregory was deemed to have violated the old regulation in effect at the time of the incident which carried a five day suspension as a first offense penalty, but he received the lesser penalty of the new regulation.

intent and meaning. In its decision, as well as in the appeal materials, the local board indicates that the Violent Acts Policy was intended to have broad application to a variety of acts of wrongdoing directed towards employees by students and does not contain an exhaustive list of actions that meet the violent act definition. Additionally, the board asserts that application of the policy here is consistent with its application in a 1997 Carroll County Board of Education decision involving vandalism, where a student smashed the windows of a teacher's car and slashed all of the tires.

As we have indicated in prior opinions, deference is due local boards in the application and interpretation of their own policies; such policies are promulgated by them, are designed to serve their specific needs, and are utilized by them on a regular basis. *See Department of Health and Mental Hygiene v. Reeders Mem'l Home, Inc.*, 86 Md. App. 447, 453 (1991); *Maryland Comm'n on Human Relations v. Bethlehem Steel Corp.*, 295 Md. 581, 593 (1983). Based on our review of the record, we find that the local board's interpretation that its Violent Acts Policy applies to instances of vandalism against a teacher's home is not arbitrary, unreasonable, or illegal. This is especially true where, as in this case, a student deliberately set out to vandalize the teacher's home in retaliation for an incident in class. A reasoning mind could find that the student's behavior in this case created a substantial danger or threat of serious injury to the teacher. We find that as a matter of public policy such an intentional act of retribution against a teacher should not go unpunished. Accordingly, we find that the decision of the local board is not arbitrary, unreasonable, or illegal.⁵

CONCLUSION

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

Walter Sondheim, Jr.
President

Edward Andrews
Vice President

Philip S. Benzil

George W. Fisher, Sr.

Marilyn D. Maultsby

⁵While we are deferring to the local board's interpretation of its Violent Acts Policy, we are pleased that the policy has recently been revised to further clarify its intent.

Judith McHale

Edward Root

John Wisthoff

DISSENT

Because we find that the egg throwing incident was a Halloween prank not within the purview of the local board Violent Acts Policy, we would reverse the decision of the Board of Education of Carroll County.

Raymond V. Bartlett

JoAnn T. Bell

Reginald Dunn

September 22, 1999