

JUNAID ALI, ET AL.,

Appellant

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-15

OPINION

In this appeal, 13 students and their parents challenge the school principal's decision to suspend each student for a period of approximately three and a half days based on violations of Howard County Board of Education Policy 3445.¹ The local board has filed a Motion to Dismiss, or alternatively for Summary Affirmance, maintaining that Appellants are not entitled to appeal a principal's decision regarding a suspension of less than ten days, and that there are no due process or other violations. Appellants have submitted an opposition to the motion.

BACKGROUND

After school on August 21, 1999, while the soccer coaches were setting up for practice in the soccer field, 14 members of the Centennial High School varsity soccer team engaged in a hazing exercise involving members of the junior varsity soccer team. The varsity team members lined up the JV team members facing the brick wall of the school building, and proceeded to kick or punt soccer balls at the JV players at close range.

The incident was investigated by school administrators at Centennial High School. During the course of the investigation, each of the students involved in this appeal submitted written statements admitting that he kicked, punted, or threw soccer balls at the JV players. At least two JV players were injured.² Victims of the incident, as well as other witnesses and the coaches were interviewed. On September 7, 1999, school administrators met with each of the 14 students, during which a due process interview script was utilized. The students, however, declined to answer any questions without a parent present. Thereafter, school administrators held individual

¹The 13 students and their parents are all represented by the same attorney. Appellants' cases have been consolidated into one appeal based on common issues of fact and law.

²One JV player suffered an injury to the head and the other to the hand or wrist. The extent of their injuries is not known.

meetings regarding the incident with students and parents present.³ Based on the results of the investigation, the students were suspended from school for five days for violating Howard County School System Policy 3445 – Educational and Personal Rights. *See* affidavits of Principal Lynda Mitic; Assistant Principal David Buchoff; Assistant Principal Mara Gordon; and Assistant Principal Joan Lane.

The Howard County Public School disciplinary rules prohibit students from participating in athletic activities during periods of suspension. The disciplinary rules further prohibit students from participating in a game if they have not attended practice in three days. Consequently, the students were going to be prohibited from participating in soccer practice and two scheduled soccer games during the suspension period. The students were also going to be prohibited from participating in a State tournament soccer game because of their failure to attend practice within three days of the scheduled tournament. Some parents contested the suspension decisions, and the principal responded by holding another round of conferences for those parents. The principal reduced the suspensions and allowed the students to return to school during the middle of the fourth day. The students were then eligible to participate in the State tournament, and they did participate.

Thirteen students appealed the suspension decisions to the local board.⁴ By letter dated September 27, 1999, the local board denied the appeal, explaining that “[a] student’s right to appeal a suspension is set forth in section 7-305 of the Education Article of the Annotated Code of Maryland. Pursuant to that law, only suspensions issued by the Superintendent or designee in excess of 10 days may be appealed to the Board of Education.” This appeal followed.

ANALYSIS

Right to Appeal a Suspension of Ten Days or Less

As a threshold matter, the parties dispute whether a suspension of 10 days or less may be appealed to the local board and subsequently to the State Board. The Appellants maintain that they have a dispute involving the application of local board policy 3445 – Educational and Personal Rights, to their conduct before soccer practice. They further assert that they have a right of appeal under section 4-205(c) of the Education Article. Subsection (c)(2) of that statute requires each local superintendent to decide all “controversies and disputes” involving the “rules and regulations of the county board” and the “proper administration of the county public school system.” Subsection (c)(3) provides that:

A decision of a county superintendent may be appealed to the

³Principal Lynda Mitic also held a meeting with parents of students on the varsity and JV soccer teams at which she explained the incident and the ensuing investigation.

⁴The 14th student was also suspended, but did not file an appeal.

county board if taken in writing within 30 days after the decision of the county superintendent. The decision may be further appealed to the State Board if taken in writing within 30 days after the decision of the county board.

In contrast the local board maintains that section 7-305 of the Education Article is controlling in this case. That is the statute specifically addressing suspensions and expulsions. The local board argues that because subsection 7-305(c)(4) only specifies a right of appeal for suspensions of more than 10 days, no right of appeal exists for suspensions of 10 days or less.⁵

Based upon our review of the Education Article, we find that there are three statutes that address appeal rights. As just noted, § 4-205(c) provides a right to appeal to the local board a local superintendent's decision regarding controversies and disputes involving the rules and regulations of the county board and the proper administration of the county public school system, and thereafter a right to appeal to the State Board. Section 7-305(c) provides a right to appeal the decision of a local superintendent involving a suspension of more than 10 days or an expulsion to the local board, with a right to a full evidentiary hearing. There is also § 2-205(e) which vests the State Board with great oversight authority and mandates that the State Board decide all controversies and disputes arising under the Education Article. *See Board of Educ. of Garrett County v. Lendo*, 295 Md. 55 (1982) (“ . . . a litigant has the choice of either going first to the county superintendent under § 4-205 and then on up the appellate ladder, or going directly to the State Board under § 2-205”(citations omitted)).

It is a well established principle of statutory construction that provisions within the same statutory framework should be read, considered, or construed together so that all of the parts harmonize with one another when possible. *See State v. Bricker*, 321 Md. 86 (1990); *Taxiera v. Malkus*, 320 Md. 471 (1990); *Farmers & Merchants Nat'l Bank v. Schlossberg*, 306 Md. 48 (1986). In construing the three statutes described above so that all harmonize with one another to the extent possible, we find as follows. Section 7-305(c) provides specific appeal rights for suspensions of more than 10 days. That statute, however, neither grants nor precludes appeals for suspensions of 10 days or less.⁶ Section 4-205(c) provides a broad appeal route for disputes involving rules and regulations of a local board or the administration of a local school system. Because the suspensions in this case arise under rules and policies of the local board, we believe the Appellants have a right of appeal to the local superintendent under § 4-205(c).

The local board argues that *Gardner v. Board of Education of Prince George's County*, 3 Op. MSBE 64 (1983), is controlling here. In *Gardner*, the State Board ruled that the suspension

⁵The local board notes that while a local board is not required to review appeals of suspensions of 10 days or less, a local board as a matter of policy may grant such an appeal.

⁶We note in this regard that *Goss v. Lopez*, 419 U.S. 565 (1975), does not address appeal rights for suspensions of 10 days or less.

and expulsion decisions being appealed in that case were not reviewable by the State Board since they were appealed pursuant to section 7-304⁷ of the Education Article, and not pursuant to section 4-205. However, the *Gardner* decision provides no analysis for its conclusion. Moreover, subsequent to the *Gardner* case, the State Board has issued two opinions indicating that suspensions of ten days or less are reviewable by the State Board. One of these appeals involved the Howard County Board. See *Fentress v. Howard County Board of Education*, 7 Op. MSBE 439 (1996); *DiGiacomo v. Board of Education of Montgomery County* 7 Op. MSBE 87 (1995).

Even if there were no right of appeal under section 4-205, we believe that section 2-205(e) provides an avenue for appeal directly to the State Board. Under section 2-205, the State Board has a “visitatorial power of such comprehensive character as to invest the State Board ‘with the last word on any matter concerning educational policy or the administration of the system of public education.’” *Bd. of Educ. of Prince George’s County v. Waeldner*, 298 Md. 354, 360 (1984), citing *Resetar v. State Bd. of Educ.*, 284 Md. 537, 556 (1979). This visitatorial power authorizes it to correct all abuses of authority and to nullify all irregular proceedings. *Zeitschel v. Bd. of Educ. of Carroll County*, 274 Md. 69, 81 (1975). This authority also includes oversight of student suspensions of 10 days or less in length.

Finally, while we believe that an appeal right exists, the nature of the State Board’s review of a suspension is limited. COMAR 13A.01.01.03(E)(4)(b) requires only that the State Board review a student suspension or expulsion case to determine 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. Thus, although Appellant requests a meeting with the State Board concerning this appeal, neither a hearing nor an in-person meeting is warranted.

Alleged Due Process Violations

Appellants contend that their due process rights were violated. The suspension in this case was for approximately three and a half days. Under *Goss v. Lopez*, 419 U.S. at 581, for a suspension of 10 days or less, due process only requires that the student be given oral or written notice of the charges against him and if he denies them, an opportunity to present his side of the story. Due process does not entitle Appellants to a full evidentiary hearing before the local board or the State Board. The record in this case reveals that Appellants met more than once with school administrators to discuss the incident, and that at a minimum, they were advised in writing of the charges against the students. Appellants were well aware of the incident and the behavior for which the students were being disciplined. Students were given the opportunity to present their sides of the story at meetings with administrators, and as evidenced by their written statements in which the students do not deny the behavior in question. Due process requires nothing more.

⁷That section 7-304 has been recodified as section 7-305.

Appellants also argue that the students were not given formal notice of Howard County Board of Education Policy 3445. That policy and its implementing regulations were adopted and promulgated by the Board of Education of Howard County on October 22, 1992. The students were all enrolled at Centennial High School. It is that school's practice to distribute to all students at the beginning of the school year copies of the High School Handbook. The Handbook contains the Code of Conduct for Howard County Public Schools, a review of which discloses the wrongful nature of the students' conduct and that such conduct had certain consequences. Accordingly, we believe that the students had fair notice that they could be disciplined for their actions.

Application of Board Policy 3445 - Educational and Personal Rights

Appellants maintain that their actions do not constitute violations of Howard County Board of Education Policy 3445, and that the school system misapplied the policy in this case. Policy 3445 states in part:

The Board of Education is committed to promoting and maintaining an educational environment of decency and respect within which and from which students can learn. **Threats, intimidation, harassment, or violence constitute material and substantial interference with the operation of schools and with discipline and invade the rights of others.** Such behavior is incompatible with the basic educational mission of public schools to inculcate fundamental values of educational worth, respect, and decency in order to prepare students to function in a democratic society. (Emphasis added).

The implementing regulation provides the following:

It shall be a violation of this policy for any student on school grounds . . . to harass, defame, intimidate, threaten, use profanity toward, assault, or engage in an act of violence directed against an individual or identifiable group of individuals. A violation of this policy includes, but is not limited to, instances when the harassment, defamation, intimidation, threat, use of profanity, assault, or act of violence is based on the individual's race, color, creed, religion, physical or mental disability, national origin, gender, or sexual orientation.

See Howard County Board of Education Regulation 3445-R. The regulation defines a threat as an "expression, conveyed by word or action, of intent to do physical harm to another." It further defines intimidation as "actions or statements which are willful in nature and which put an individual in fear of bodily harm." The consequence for physical intimidation or threats of

physical harm is suspension. *See* Howard County Board of Education Regulation 3445-PR.

We believe that Appellants' behavior falls within the purview of Policy 3445 and its implementing regulations. While the policy may also apply to human rights violations which are discriminatory in nature, there is nothing in the policy that would limit it to such violations. We think reasonable people would agree that lining students up facing a wall and then proceeding to punt or throw soccer balls at them would constitute physical intimidation or a threat of physical harm. While Appellants characterize their behavior as a "Centennial High School soccer tradition" or mere "hazing," such characterizations do not excuse or minimize the potential for serious consequences.

CONCLUSION

Based upon our review of the record in this matter and finding no due process violations or other illegalities in the proceedings, we affirm the decisions of the Howard County Board of Education.

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March 22, 2000