

ANDREA BURNO,

Appellant

v.

CHARLES COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-18

OPINION

In this consolidated appeal, a parent of three daughters at Westlake High School contests the local board's upholding of the superintendent's decision to expel two of her daughters from Westlake for one year based on an incident involving a physical attack on a student.¹ Appellant argues that the local school system deliberately delayed the appeal process and ignored any basis for reversing the decision of expulsion. The local board has filed a Motion to Dismiss for failure to state a claim, or alternatively, a Motion for Summary Affirmance maintaining that its decision was not arbitrary, unreasonable or illegal. Although requested to do so, Appellant has not submitted a response opposing the motion.

BACKGROUND

U.B., Z.B., and a third sister were enrolled in the Prince George's County Public Schools where they had experienced a variety of disciplinary problems throughout their school careers.² These problems involved behaviors including among others, assaults, fighting, insubordination, class disruption and cutting classes. Many of the incidents involved at least two or all three sisters. In the Spring of 1998, U.B. and Z.B. were suspended from Gwynn Park High School in Prince Georges County. They were transferred to Suitland High School as a condition of their return to the school setting for the 1998-99 school year. However, the misbehavior continued, and both U.B. and Z.B. were suspended from Suitland in January, 1999 based on alcohol use during school hours.

Thereafter, on February 4, 1999, the triplets were enrolled in Westlake High School in Charles County and disciplinary problems started almost immediately. In March, 1999, U.B. was suspended from Westlake for five days for insubordination, disrespect, and refusal to obey school policies. Z.B. was suspended for one day for disrespect. Vice Principal Lawrence Butler met

¹Appellant's daughters will be referenced as U.B. and Z.B. The other student involved in the March 29, 1999 incident will be referenced as Student A.

²The three sisters are triplets. This appeal does not involve the third sister.

with Appellant and her daughters to address the behavioral problems. During this meeting, Mr. Butler provided Appellant and her daughters with the school rules and regulations, local

board policies, and the student code of conduct, and reviewed the materials with them. (Tr. 82-83).

On March 29, 1999, an incident between U.B. and another student started in the school cafeteria. According to the transcript of the Juvenile Court proceeding, Student A started the fight by pointing her finger at U.B. Vice Principal, Ronald E. Stup, witnessed the following:

I saw [U.B.] turn in her seat in the last booth on the left hand side wall of the cafeteria. She jumped over the back of the seat, grabbed [Student A's] hair and started hitting her. [Student A] grabbed [U.B.'s] hair and started hitting her. Within 3 seconds I approached the two girls, told them to stop and attempted to break them up. Mr. Maloney, substitute teacher, and Mr. Gick, instructional aide, came to my assistance. We were unable to stop the fight for about 1 to 2 minutes. Both girls would not stop; both girls would not let go. They kicked at one another and we moved from side to side of an aisle bouncing off of tables to another side, I was kicked in the groin by [Student A] as I attempted to hold [U.B.]

Once the fight was broken up, I put [U.B.] in a corner between the last booth and a vending machine. She continued to curse at me and told me to let her go. She eventually calmed down enough to where I could escort her to the office. I attempted to hold on to her left elbow to guide and passively restrain her in case she erupted again. She continually told me to 'get the fuck off her' and 'not to touch her.' I escorted her out of the cafeteria into the cafeteria lobby area. [I] told [U.B.] that we needed to go to the office and told her to go through the back office door. [U.B.] refused to go into the office.

While Mr. Stup was attempting to get U.B. into the office, Appellant and Z.B. entered the school.³ They eventually came over to Mr. Stup and U.B., and were later joined by Mr. Butler who had responded to Mr. Stup's call for help over the walkie-talkie. Despite Mr. Stup's attempt to get everyone into the main office through the back door, the group entered the main office through the front door.

³Appellant and Z.B. were returning to school from Z.B.'s doctor's appointment. Appellant testified that they were on their way to the main office to get Z.B. a classroom pass. (Tr. 161).

Student A was already in the main office talking to Ms. Kathy D. Periello, Vice Principal, about the cafeteria fight.⁴ When Mr. Stup entered the office with U.B. and Z.B., another altercation erupted. It took several school officials to regain control of the situation. Mr. Stup reported the following:

We entered the front door of the main office. [U.B.] cursed at [Student A] who was standing at the counter talking to Mrs. Periello. [U.B.] moved quickly toward [Student A] and struck at her. I quickly separated [U.B.] and [Student A] and moved [U.B.] down the hallway towards the nurse's office. [U.B.] was uncooperative and attempted to get away from me. Mr. Farley, instructional aide, emerged from the teachers' work room behind [U.B.] As [U.B.] attempted to get away from me, she raised her arms up and back striking Mr. Farley on the right side of his face. Mr. Farley placed her in a headlock and I assisted him in getting [U.B.] into Mr. Butler's office. Mr. Farley let go and [U.B.] began to curse at him. I asked Mr. Farley to leave the office and asked [U.B.] to sit down. She complied and I left the office and asked Mr. Farley to monitor the door and office while I went to ascertain the remaining situation in the office.⁵

Mr. Butler reported his account of the incident as well:

. . . 11:39 a.m., I heard a call from Mr. Stup over the walkie-talkie needing assistance in the cafeteria, so as I walked down the hallway from guidance, I saw Ms. Burno walking towards me with [U.B. and Z.B.] along with Mr. Stup and 2 other girls. Mr. Stup was requesting repeatedly for them to enter through the door near the principal's conference room/office, but [U.B.] kept walking along with her other sister, [Z.B.] and her mother towards the other entrance to the main office. Since they kept walking, I began walking with them all the while [U.B.] was cursing profusely at Mr. Stup, F-this, F-him, etc.! As the girls, Ms. Burno, Mr. Stup, and myself entered the office, before I knew it, [U.B. and Student A] were fighting next to the secretary's counter (Mrs. Browning). I ran over to help break it up and witnessed [Z.B.] kick at [Student

⁴Ms. Periello was covering the front office while the secretary was on lunch break. At the time, Ms. Periello was in the late stages of a high risk pregnancy. (Tr. 106).

⁵Mr. Gene Farley stated in his report that he "saw [U.B.] break away from Mr. Stup and swing at the young lady she was fighting. This swing hit me in the mouth. I then took her by the arm and escorted her into Mr. Butler's office."

A] one time! During the fight in the main office, many attempts were made to break it up by myself, Mr. Stup, and I saw Ms. Burno also involved! (I assumed she was helping to break it up). Once we finally had separation, I brought [Student A] back to the principal's conference room.

Additionally, Ms. Periello reported, in pertinent part:

[Student A] stood at the front counter facing me, with her back towards the outside glass. All of a sudden, two of the triplets, Mr. Stup, Mr. L. Butler, and Mrs. Burno came into the main office. [U.B.] began saying 'What the fuck you doing bitch' and grabbed [Student A] in the head and started hitting her. The two of them ([Student A and U.B.]) continued fighting. Mr. Stup tried breaking them up. As he tried to move [U.B.], her sister [Z.B.] jumped in and started hitting [Student A], Mrs. Burno also jumped in as well as Mr. L. Butler. At this point, the four of them are rolling around on the floor. Mr. L. Butler was trying to separate everyone. I yelled for help. I saw a trophy fall down on [Student A]. I saw [U.B.] hit Mr. Farley on the right side of his head. I yelled for Coach Zaccarelli. He came over and attempted to break it up.

Principal, Richetta Acker, conducted an investigation of the incident. Statements were taken from school officials and other witnesses. Ms. Acker met with Appellant, U.B. and Z.B. Based on the investigation, U.B. was charged with physical attack on a student, insubordination towards the Vice Principal, participating in a disturbance, and fighting. Z. B. was charged with physical attack on a student, participating in a disturbance, and fighting. Ms. Acker suspended U.B. and Z.B. from Westlake and recommended their expulsion for a period of one year.

Thereafter, the matter was assigned to hearing officer, John H. Sams, for his review. A hearing was held on May 6, 1999 where Appellant was present with her daughters and their attorney.⁶ Based on his own investigation of the incident, Mr. Sams found U.B. and Z.B. guilty of the charges and recommended expulsion of both from Westlake for one year.

Appellant appealed Mr. Sams' decision. An appeal conference was held on May 19, 1999. The superintendent's designee advised Appellant that he was upholding the hearing officer's decision to expel U.B. and Z.B. from the Charles County Public School System for a period of one year. Appellant was further advised that her daughters could attend the Novel School during the 1999-2000 school year at their own expense.

⁶Appellant is not represented by counsel in her appeal to the State Board.

Appellant appealed to the local board.⁷ A full evidentiary hearing was held on July 26, 1999, at which Appellant was present with her daughters and their attorney.⁸ At the hearing, school officials testified in a manner consistent with their earlier written statements. During closing arguments, Ms. Burno interrupted counsel for the superintendent several times. She laughed and stated that “they should have killed her [Student A]. That’s what they should have done. And if they ever get the opportunity again, that’s what they’re going to do.” (Tr. 186). The hearing examiner upheld the superintendent’s decision to expel U.B. and Z.B. In her recommendations, she noted that (1) the girls have a long school history and pattern of disciplinary problems; (2) this incident was not the first in which they had committed violent acts in school; (3) the girls did not dispute that they had committed the acts; and (4) the girls provided no explanation for their behaviors. Finally, the hearing examiner stated that “Andrea Burno, [U.B. and Z.B.’s] mother, not only supports [her daughters’] vicious and inappropriate behavior but suggests that it could occur again.”

Following oral argument on October 12, 1999, the local board adopted the recommendations of the hearing examiner and upheld the one year expulsions.

ANALYSIS

The decision of a local board with respect to a student suspension or expulsion is considered final. *See* 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).

As a preliminary issue, Appellant argues that the local school system intentionally delayed the proceedings in this case. However, Appellant has provided no explanation in support of this allegation. The record discloses that Appellant availed herself of the appeal process which takes time, especially in cases such as this where there are multiple levels of review. This particular case was reviewed by the school principal, a hearing officer, an associate superintendent, a board

⁷Meanwhile, on June 4, 1999, with regard to the incident on March 29, 1999, the Juvenile Court found U.B. involved in second degree assault on another student, and Z.B. involved in assault on another student. The Judge stated in his decision that “[U.B.] initiated the fight in the office, that she was the aggressor, [was] confronted and began fighting again.” He further stated that “[Z.B.] kicked [Student A] during [Student A’s and U.B.’s] fight in the office” and “that kicking would constitute assault. . .” (Juvenile Ct. Tr. 11). U.B. and Z.B. are on supervised probation.

⁸U.B. and Z.B. disappeared during the middle of the hearing and did not return. The hearing examiner noted in her reports that during the part of the hearing that U.B and Z.B. were present, they exhibited inappropriate behavior through facial expressions and body language. Neither sister testified, although their mother did testify.

hearing examiner, and the local board. There is no evidence of delay by the school system.⁹ In fact, the record discloses that the school system handled this appeal in an expeditious fashion.

With regard to the circumstances of the expulsion decision, these matters involve essentially a credibility dispute left to the trier of fact. It is evident based on the local board's decision to uphold the charges against U.B. and Z.B. that it found the live testimony of school officials more credible than the live testimony of Ms. Burno. *See, e.g., Board of Trustees v. Novik*, 87 Md. App. 308, 312 (1991), *aff'd*, 326 Md. 450 (1992) ("It is within the Examiner's province to resolve conflicting evidence. Where conflicting inferences can be drawn from the same evidence, it is for the Examiner to draw the inferences."). School officials testified that this was one of the worst school incidents they had witnessed. (Tr. 52, 93). The local board determined that the disciplinary action imposed on the students was reasonable given the full record in this case. Based upon our review of the record, we find that Appellant has provided no basis for reversing the credibility determinations made by the local board.¹⁰ *See Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994)(State Board may not substitute its judgment for that of the local board unless there is independent evidence in the record to support the reversal of a credibility decision).

CONCLUSION

Finding no due process violations or other illegalities in the proceedings, we affirm the expulsion decisions of the Board of Education of Charles County.

Edward Andrews
President

Philip S. Benzil
Vice President

Raymond V. Bartlett

JoAnn T. Bell

Reginald Dunn

⁹The only delay that occurred was when Appellant postponed the hearing before hearing officer Sams.

¹⁰In her appeal Appellant has made a bald allegation of a hate crime against her daughters, but has offered no evidence in support of the allegation. Nor can we find any such evidence in the record.

George W. Fisher, Sr.

Marilyn D. Maultsby

Judith McHale

Edward Root

Walter Sondheim, Jr.

John Wisthoff

April 19, 2000