

KENNETH HUGHLEY,

Appellant

v.

BOARD OF EDUCATION OF
ANNE ARUNDEL COUNTY,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-26

OPINION

This is an appeal of the expulsion of Appellant's daughter from Broadneck High School for violating local board policy 902.17 -- Assaults by Students. The local board has filed a motion to dismiss the appeal based on untimeliness, and for failure to submit information necessary to an understanding of the appeal as required by COMAR 13A.01.01.03B(2)(c) and (d). Although requested to do so, Appellant has not submitted a response to the local board's motion.

FACTUAL BACKGROUND

During the 1999-2000 school year, Appellant's daughter was an eleventh grade student at Broadneck High School in Anne Arundel County.¹ On September 28, 1999, Appellant's daughter and another student (Student B) were involved in an altercation in the school hallway while changing classes. As is common, there was a certain amount of jostling going on in the hallway as the students moved about. Appellant's daughter and Student B bumped into each other and exchanged some words. Appellant's daughter then struck Student B three times. The students fell to the floor where Appellant's daughter struck Student B another three times. The students then got up off of the floor and Appellant's daughter pushed Student B into a locker. The fight was then broken up by some students.

The scene was bloody due to injuries suffered by Student B -- a broken nose, a lump on her head, and bruises on her arm. Appellant's daughter testified that she hit Student B because Student B bumped into her and grabbed her shoulder. She also testified that she pushed Student B into the locker when they got up because Student B made a movement towards her face. (Tr. 85-87). On the other hand, Student B testified that she did nothing to provoke the incident and that Appellant's daughter bumped into her and then started hitting her. (Tr. 11-14, 121).

William P. Eggert, Administrative Intern for Broadneck High School, conducted an

¹Appellant's daughter had previously been enrolled in school in Ohio where she lived with her mother. While in Ohio she had school attendance problems and had received poor grades. In the summer of 1999, she returned to live with her father and stepmother in Anne Arundel County. She took algebra and English in summer school, earning a B in both classes. Appellant's daughter began attending Broadneck when the 1999-2000 school year started and was doing well in school prior to the incident.

investigation of the incident. Based on the investigation, the principal of Broadneck High School, Linda B. Blackmun, advised Appellant that his daughter was being suspended from school for violating Anne Arundel County Board of Education Policy 902.17 -- Assaults by Students.² The letter further advised Appellant that due to the seriousness of the incident, she was requesting that Appellant's daughter's be expelled from school.

The matter was referred to the superintendent's designee for review of the expulsion request. The superintendent's designee conducted an investigation and met with Appellant and his daughter. In her decision to uphold the expulsion recommendation, the superintendent's designee stated the following:

[T]here is a preponderance of evidence that [Appellant's daughter] did strike [Student B] repeatedly in the face and head on September 28, 1999. [Appellant's daughter] admitted to hitting [Student B] in the face with her fist first because [Student B] had bumped into her. There was some shoving between the two female students. Thirteen student witnesses provided oral and written statements pertaining to the incident. [Student B], victim, and five student witnesses stated that [Appellant's daughter] punched [Student B] in the face with her fist, pulled [Student B's] hair, and banged [Student B's] head against the locker. [Student B] falls (sic) to the floor and [Appellant's daughter] got on top of [Student B] and continue (sic) to hit her head into the floor. Eight student witnesses observed [Appellant's daughter] on top of [Student B] while she hit [Student B's] head into the floor. Even though [Appellant's daughter] denied hitting [Student B's] head into the lockers, hitting [Student B's] head into the floor, and using profanity, t3 (sic) student witnesses corroborated the details of the incident. The writer feels that [Appellant's daughter] did violate Board of Education Policy 902.17, Assaults by Students.

The expulsion decision was appealed to the local board. A full evidentiary hearing was held on November 11, 1999. In a unanimous decision,³ the local board upheld the expulsion of Appellant's daughter.

ANALYSIS

²Policy 902.17 prohibits any assault by a student against a student on school grounds. The 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 an act, if that threat could reasonably cause the other person to believe he or she is in imminent danger of serious physical harm." Policy 902.17 (II.B).

³Two board members did not participate in the decision.

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

As a preliminary matter, the local board argues that this matter should be dismissed because Appellant failed to file a timely appeal of the expulsion decision to the State Board. Appellant has not responded to this allegation. State law and regulation require appeals of local board decisions to be filed with the State Board within thirty days of the local board decision. See Md. Code Ann., Educ. § 4-205 (c) and COMAR 13A.01.01.03B(3). An appeal is deemed transmitted within the limitations period if it has been delivered to the State Board or deposited in the United States mail, as registered or certified, before the expiration of the time period. COMAR 13A.01.01.03B(3).

The local board decision was issued on January 5, 2000. The appeal should therefore have been filed with the State Board by February 4, 2000. Unfortunately, the appeal was misdirected at the Maryland State Department of Education and was received in the Department's accounting office on February 8, 2000. It was delivered to the State Board office on February 9, without the envelope in which the appeal was delivered. Thus, due to the mishandling of the appeal letter within the Department, the date on which the appeal was actually filed by Appellant with the State Board is unclear.

Time limitations are generally mandatory and will not be overlooked except in extraordinary circumstances such as fraud or lack of notice. See *Scott v. Board of Education of Prince George's County*, 3 Op. MSBE 139 (1983); See also COMAR 13A.01.01.03G(2). We believe that given the unique circumstances described above, there is justification in finding that the appeal was timely filed. We note, however, that Appellant has submitted nothing to help clarify this issue.

The local board also argues that Appellant has failed to submit the information necessary to an understanding of the appeal. Appellant's letter of appeal merely states that:

I request an Appeal of the Board of Education decision. (1) the school administrators conducted an unfair, quick, and bias (sic) investigation of the incident on September 28, 1999; (2) We did not receive (sic) due process; (3) the expulsion was excessive.

Despite Appellant's failure to submit further information regarding his appeal, we conducted a review of the record including a review of the hearing transcript to determine whether there were any due process violations or other illegalities in the local board's decision.⁴ With respect to the

⁴Without Appellant's providing specifics regarding his claims, the State Board may only engage in a general review of this case. It is not appropriate for the State Board to make

first issue, the school system's investigation of the incident appears to be thorough and well documented. Secondly, from our review of the transcript, we find that Appellant was given a full and fair opportunity to present his case at the hearing before the local board, including the chance to submit exhibits and present and cross-examine witnesses.

Based on the testimony presented at the hearing, the local board determined that Appellant's daughter committed an assault in violation of local board policy 902.17. In so finding, the local board concluded that Student B did not grab Appellant's daughter's shoulder, and that even if she had grabbed her shoulder, it was insufficient provocation for the violent physical attack upon Student B by Appellant's daughter. This credibility decision was within the local board's province as trier of fact. *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."); *Board of Education v. Paynter*, 303 Md. 22, 36 (1985)(same).

As to Appellant's third issue, Policy 902.17 -- Assaults by Students -- states that a possible consequence of violating the policy is expulsion. *See* Policy 902.17 (III) and Regulation 902.17 (III.D.2). As previously noted, the local board found insufficient provocation for the violent physical assault committed by Appellant's daughter. Thus, we find the punishment in this case appropriate and not unduly excessive. *See, e.g., Joshua Carlson v. Anne Arundel County Board of Education*, Opinion No. 99-30 (June 30, 1999) (affirmance of student expulsion for violation of local board policy on assaults by students); *Tyler Gosnell v. Baltimore County Board of Education*, Opinion No. 99-36 (June 28, 1999) (affirmance of student expulsion based on assault and battery of another student as well as intimidation of another student).

CONCLUSION

Because we find no due process violations or other illegalities in the proceedings, we affirm the decision of the Board of Education of Anne Arundel County.

Edward Andrews
President

Philip S. Benzil
Vice President

Raymond V. Bartlett

JoAnn T. Bell

Reginald Dunn

assumptions about the basis of Appellant's claims.

George W. Fisher, Sr.

Marilyn D. Maulsby

Judith McHale

Edward Root

Walter Sondheim, Jr.

John Wisthoff

June 21, 2000