

SISTA AYANNA K. KOKAYI, ET AL.,

Appellant

v.

NEW BALTIMORE CITY BOARD OF
SCHOOL COMMISSIONERS,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-32

OPINION

This is an appeal of a student expulsion from George G. Kelson Elementary School #157 for possession of a toy look-alike gun. Appellants argue that the toy gun did not constitute a look-alike weapon and that the penalty in this case was too severe. The local board has submitted a Motion for Summary Affirmance maintaining that the appeal should be dismissed based on untimeliness, and alternatively, that its decision was not arbitrary, unreasonable or illegal. Appellants have not responded to the motion.

FACTUAL BACKGROUND

During the 1999-2000 school year, Appellants' son, Abdul Hakiim, was a fifth grade student at George G. Kelson Elementary School in the Baltimore City Public School System ("BCPSS"). On October 14, 1999, Abdul Hakiim was found in possession of a green toy gun. His homeroom teacher, Ms. Paula Horshaw, reported the incident to the school principal, Ms. Joyce Hughes, stating:

On Thursday, October 14, 1999, an important matter was brought to my attention by one of my students. I felt that this issue needed to be addressed to you. [Student A]¹ informed me that his classmate, Abdul Hakiim had a gun in his possession. I asked to speak to both boys alone. I had [Student A] repeat what he had told me to Abdul Hakiim. Then, I asked Abdul Hakiim if what [Student A] had said to me was true. He verified by nodding his head up and down. I told him to show the gun to me. He went inside of his jacket and pulled out a gun. It was a toy gun. I asked Abdul Hakiim to explain to me why he had this item in his

¹Student A is a classmate of Appellants' son.

possession. He told me that his sister had placed it into his book bag.² I proceeded to explain to him that he should have brought this toy gun to me immediately after discovering it in his bag. He could have explained the situation to me before [Student A] had a chance to tell me.

Ms. Horshaw confiscated the toy gun and gave it to the principal.

The principal conducted an investigation, including a conference with Abdul Hakiim's mother. She found the student to be in possession of a toy pistol resembling a real gun. Because possession of a look-alike weapon is a level III violation of the BCPSS disciplinary code, Ms. Hughes proposed a long term suspension.³

The matter was referred to the Office of Attendance and Suspension Services for review. Ms. Mildred Owens, Student Support Associate, recommended that Abdul Hakiim be expelled for possession of a look-alike gun. The Chief Executive Officer of the BCPSS reviewed the recommendation and concurred that Abdul Hakiim should be expelled from school.

Appellants appealed to the New Baltimore City Board of School Commissioners. The case was assigned to hearing officer, James L. Wiggins, for review and a full evidentiary hearing was conducted.⁴ Mr. Wiggins found the term "look-alikes" to be controlling and found that a look-alike is something that can pass for the real item. He stated the following in his report, in pertinent part:

Based on the evidence present, the Hearing Examiner finds that the Student was not in possession of a weapon as defined in the Informational Guide For Parents and Students, Fall 1999. The Hearing Examiner finds that the toy gun 'resembles' a gun because of its shape but it was not a 'look alike' because anyone seeing it would know immediately that it was a toy and not a real gun.

Alternatively, in the event that the local board determined the toy gun to be a look-alike weapon, Mr. Wiggins recommended that the expulsion be rescinded and Abdul Hakiim be reinstated in school immediately because there were sufficient mitigating factors to warrant a lesser penalty in

²Earlier that day, Abdul Hakiim had removed the toy gun from his bookbag and placed it in his coat pocket.

³Ms. Hughes testified that she proposed the long term suspension pursuant to the advice of the Office of Attendance and Suspension Services. (Tr. 58, 60).

⁴Although given the opportunity during the hearing before the local board, Appellants did not present any witnesses or evidence in support of their case.

this case. *See* Hearing Officer's Report at 3-4.

The local board reviewed the case at its Executive Session on January 11, 2000. It rejected the recommendation of the hearing officer and upheld the decision of the CEO to expel Abdul Hakiim. *See* letter to Appellant dated Jan. 20, 2000. This decision was announced at the local board's public meeting on February 1, 2000.

On March 2, 2000, the case was again reviewed by Ms. Owens who recommended that Abdul Hakiim be reinstated to school. By letter dated March 8, 2000, the CEO advised Appellants that their son was being readmitted to the fifth grade at George G. Kelson Elementary School.

ANALYSIS

Untimeliness

As a preliminary matter, the local board argues that this appeal should be dismissed because it was untimely filed. 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). The 30 days run from the later of the date of the order or the opinion issued explaining the decision. 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. *Id.*

The local board decision was rendered at its executive session meeting on January 11, 2000. On January 20, 2000 a certified letter was sent to Appellants advising them of the local board decision. The local board publicly announced its decision at the school board meeting on February 1, 2000. If the State Board were to use the February 1, 2000 date as the date the decision or order was issued in this case, the appeal should have been filed with the State Board on or before March 2, 2000. It was mailed on March 30, 2000.

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). The State Board has strictly applied this rule of law, and has dismissed appeals that have been filed a mere one day late based on untimeliness. *See Christine Schwalm v. Board of Education of Montgomery County*, 7 Op. MSBE 1326 (1998); *Marie Friedman v. Board of Education of Montgomery County*, 7 Op. MSBE 1260 (1998); *Eleanor Duckett v. Board of Education of Montgomery County*, 7 Op. MSBE 620 (1997).

Here, the appeal was delivered by certified mail postmarked March 30, 2000, almost one month beyond the limitation deadline. Appellants offer no reason for their failure to appeal in a

timely manner. There does not appear to be any extraordinary circumstance that would merit an exception to the mandatory thirty day deadline. For this reason, we dismiss the appeal as untimely.

Substance of Case

Alternatively, if the State Board were to consider this appeal on its merits, our review is limited. 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).⁵

Appellants argue that their son did not commit a level III violation because the toy gun did not constitute a look-alike weapon.⁶ The BCPSS Fall 1999 Information Guide for Parents and Students ("Guide") lists the possession of weapons and explosives as a level III violation. The Guide states as follows:

Possessing, handling, transmitting, concealing, or using explosive devices (or substances that can be used as explosives) and weapons or instruments such as rifles, guns, knives, brass knuckles, chains, pipes, nunchuks, or look-alikes. This includes using as a weapon, or in any manner likely to cause injury to

⁵As a preliminary matter, the local board contends that this appeal should be dismissed as moot. It is well established that a question is moot when, "there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the courts [or agency] can provide." *In Re Michael B.*, 345 Md. 232, 234 (1997); *See also Walter Chappas v. Montgomery County Board of Education*, 7 Op. MSBE 1068 (1998). The expulsion decision was modified by the CEO on March 8, 2000, and Abdul Hakiim was readmitted to school. However because the disciplinary action may be reflected in the student's record, we would not find the appeal moot.

⁶For the first time on appeal to the State Board, Appellants raise the issue of discrimination based on the fact that Abdul Hakiim is Muslim. However, this issue has been waived because it was not presented for review by the local board. *See, e.g., Chase Craven v. Board of Education of Montgomery County*, 7 Op. MSBE 870(1997) (failure to challenge suspension before local board constituted waiver); *Theresa H. Fentress v. Howard County Board of Education*, 7 Op. MSBE 439 (1996) (failure to challenge 5-day suspension before the local board constituted waiver); *Earl Hart v. Board of Education of St. Mary's County*, 7 Op. MSBE 740 (1997) (failure to raise issue of age discrimination below constituted waiver of issue on appeal). Furthermore, Appellants have not presented any evidence to support this claim.

another person, any object that is permitted in the school.

The Guide further states that,

It does not make any difference what kind of weapon is found or why the weapon is in the student's possession. The following will be treated as weapons: a penknife; a large knife; brass knuckles; a chain; a pipe; nunchaku; a BB gun; a pellet gun; a starter pistol; **a toy gun if it resembles a real gun**; a revolver or automatic pistol – loaded or unloaded, operable or inoperable. (Emphasis added).

Expulsion is the standard consequence for this violation, however, the Chief Executive Officer may modify the expulsion requirement on a case-by-case basis.

Based upon our review of the entire record in this matter, if we were to address the merits, we would adopt the following reasoning and recommendation of the local hearing examiner:

In this case, the Student is a 10 year old boy in possession of a green toy gun. There is no evidence that the Student intended to used the toy gun in a threatening manner. Baltimore City Public School students and their parents are advised through the Informational Guide For Parents and Students, Fall 1999 that the length of time a student will be out of school for a suspension or expulsion will, "depend on both the seriousness of the incident and on the student's previous conduct" [CEO exhibit 6, page 7 at bottom]. Certainly, there were sufficient mitigating factors to warrant a lesser penalty in this case.

The Hearing Examiner is surprised that the Office of Suspension Services did not take into account the feelings of Ms. Hughes regarding this matter. Ms. Hughes testified that she would welcome having the Student back at school #157.

As of the date of this hearing, the Student has been out of school for approximately 8 weeks for having a toy gun. By the time he is reconsidered for reinstatement in January, 2000, he will have missed between 10 to 12 weeks of school. The evidence presented on behalf of the CEO does not justify such a harsh penalty.

THEREFORE, the Hearing Examiner respectfully recommends

that the CEO's decision to expel the Student for possession of a weapon be rescinded and that the Student should be reinstated immediately and be allowed to return to George G. Kelson Elementary.

CONCLUSION

For the reasons noted above, we dismiss this appeal as untimely. *See* COMAR 13A.01.01.03J(1) & (2)(d).

Raymond V. Bartlett

Philip S. Benzil

JoAnn T. Bell

Reginald Dunn

George W. Fisher, Sr.

ABSTAIN*

Walter S. Levin, Esquire

Marilyn D. Maultsby

Judith McHale

Edward Root

Walter Sondheim, Jr.

John Wisthoff

*Walter S. Levin, Esquire, a newly appointed member of the State Board of Education, did not participate in the deliberation of this appeal.

July 25, 2000