

ARTINA RUSSELL,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-09

OPINION

In this appeal, the mother of a student who attended Montgomery Blair High School contests the local board's decision to uphold the expulsion of Alexander based on his assault of the principal of the school. Appellant argues that the local board's decision was arbitrary, unreasonable and illegal for several reasons, including denial of a due process hearing. The local board has filed a Motion for Summary Affirmance maintaining that its decision should be affirmed. Appellant has submitted an opposition to the motion.

BACKGROUND

During the second semester of the 1998-99 school year, Alexander J. Harvey enrolled in the ninth grade at Montgomery Blair High School.¹ On April 28, 1999, the school's principal, Phillip Gainous, observed Alexander at the candy machine in the hallway while classes were in session. Mr. Gainous reported that the following incident occurred:

[Mr. Gainous] saw Alexander near a hall vending machine 10 minutes after the late bell and told him to go to class. Alexander responded that he lost money and was not going to leave. After being told again, he turned to walk away but returned and walked to a public phone ignoring Mr. Gainous' direction to go to class. When Alexander tried to use the phone Mr. Gainous put his finger on the phone preventing his making the call. Mr. Gainous reported that Alexander pushed him using both forearms and moved toward him in a threatening manner saying 'hit me, hit me.' School security was called and tried to get Alexander to the office. He walked toward the office but walked past it and out of the building. Mr. Gainous said he followed a short distance and told the student he would be suspended. At that point, Alexander turned, came

¹In the fall of the 1998-99 school year, Alexander attended Fort Union Military Academy in Virginia.

back to Mr. Gainous and swung his elbow into him twice.

See Hearing Officer DeBalso's Report (6/8/99). Based on the above episode, Mr. Gainous suspended Alexander for ten days and recommended expulsion for Alexander's physical assault on him. *See* Suspension Letter (4/28/99).

The matter was referred to the Supervisor of Pupil Services to investigate the expulsion recommendation. At a conference on May 10, 1999,² Mr. Gainous explained the circumstances serving as the basis for his recommendation. Dr. Stanley Truman, Alexander's pupil personnel worker, provided a school history report from Alexander's school file. Alexander submitted a prepared statement describing his version of the April 28 interaction with Mr. Gainous. Alexander indicated that he had been waiting by the candy machine for twenty minutes for security to help him dislodge the candy which was stuck in the machine, and that classes had resumed during that time. While he was waiting, Principal Gainous approached him and asked what he was doing out of class. Alexander claims that he attempted to explain the situation, but that Mr. Gainous ordered him to the office. Alexander indicated the following:

I immediately apologized for any actions he may have found disrespectful and I asked could I go to class. He said yes. Before walking away I asked (respectfully) is it ok for me to just get my candy because I was hungry. I told him if not I would just go to class. Mr. Gainous seemed to erupt for no apparent reason. He demanded I go with him to the office. I found it hard to contain my anger at his overreaction to the situation. Before I did anything I would regret later, I decided to call my mother so that she could speak to Mr. Gainous. When I tried to dial the number, Mr. Gainous used his forearm to push me out of the way, then he pushed the tongue of the phone down. I tried to walk to another phone because his use of physical force was making me angrier. He would not let me go though, he pushed and blocked my way in order to stop me from walking. (Alexander's handwritten statement).

Additionally, Alexander claims that on the way to the office, he left the school building to go to the 7-eleven to call his mother, but Mr. Gainous held him back again by pushing him. Based on her review of the information in the case, Betty R. Howard, Supervisor of Pupil Services, upheld the ten-day suspension and the principal's recommendation for expulsion.

The matter was appealed to the Acting Deputy Superintendent of Schools who assigned the case to Hearing Officer DeBalso for review. On May 25, 1999, DeBalso conducted

²The conference was attended by Alexander, his mother, his grandmother, Mr. Gainous, Alexander's pupil personnel worker, and a principal on special assignment.

an appeal conference.³ At that time, Appellant explained that when Alexander attempted to call her during the incident with Mr. Gainous, Alexander was following his past practice in other schools where he was permitted to call his mother from school when problems arose. However, Alexander did not have any such agreement with Blair High School. Additionally, she indicated that Alexander had been diagnosed with Attention Deficit Hyperactivity Disorder (“ADHD”) several years ago for which he had been taking Ritalin, and that Alexander would soon be having private counseling.⁴ Based on his review of the entire record, DeBalso recommended upholding the ten-day suspension and the expulsion recommendation. The Superintendent’s designee concurred and adopted the recommendations of the hearing officer.

By letter dated June 16, 1999, Alexander’s family appealed the matter to the local board, maintaining that Alexander’s due process rights were violated based on the fact that he has a disability - ADHD.⁵ In a memorandum dated July 21, 1999, the superintendent advised the local board that Alexander’s school record contained no information “indicating Alexander suffered from ADHD and no information that would suggest a disability.” He explained that because the school system had no knowledge that Alexander was a student with a disability before the behavior occurred for which he was disciplined, the usual due process protections available to any regular education student applied. The Superintendent also noted that the question of whether Alexander is now in need of special education services due to ADHD should be determined by a screening committee of the local education agency responsible for providing such services.

Following a review of the record, the local board upheld the expulsion in a decision issued on August 24, 1999.

ANALYSIS

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

³The conference was attended by Alexander, his father, his mother, his stepfather and his grandmother. Mr. Gainous and Dr. Stanley Truman, a pupil personnel worker, were also present.

⁴Appellant later disclosed that she withdrew Alexander from Montgomery County Public Schools just after the incident with Mr. Gainous. She and Alexander have moved to Prince George’s County, but Prince George’s County Public Schools will not enroll Alexander in school due to the expulsion from the Montgomery County School System.

⁵The letter of appeal was written by the family’s minister, Mr. Vernon Russell, upon the request of Alexander’s mother. The local board accepted the letter as an appeal from Alexander’s family. We assume for the purposes of this appeal that Mr. Russell was acting with Appellant’s authorization and was accurately representing the family’s position.

acted in an otherwise unconstitutional manner. COMAR 13A.01.01.03E (4)(b).

Appellant contends that “[s]he was advised by Mr. George H. Margolies, Board of Education Staff Director, that it was not necessary to have a hearing on this matter.” Appellant alleges that because Mr. Margolies persuaded her to waive her right to a hearing, she was denied a fair opportunity to present evidence before the local board.

The record discloses the following on this issue. The affidavit of Mr. Margolies indicates that he explained to Mrs. Russell the appeal process, her options, and the timetables for each during a telephone conversation with him on July 23, 1999:

. . . on June 23, 1999, I spoke to Mrs. Russell and explained the entire appeal process and timetable. I explained to her her option to request a hearing as a matter of right. I told her that she did not have to make a decision that day but would have to do so after Dr. Vance submitted a reply to the Board. I further explained to her that a request for a hearing would extend the appeal process, but that it was her choice as to how she wished to proceed.

. . . .

At no time during my discussions with Mrs. Russell did I advise her that she did not need to request a hearing. As I do with many parents who inquire about the student disciplinary appeal process, I informed her of her options and laid out the timetables under each one, clearly making it known that a hearing would extend the process.

In contrast, Appellant’s affidavit indicates that she thought a hearing was not necessary and that she would get a positive ruling:

I called Mr. George H. Margolies, Staff Director, Board of Education, Montgomery County, on or about June 22, 1999, to discuss the process for appealing Alexander’s expulsion. He explained the process to me and stated that I did not have to have a hearing in this matter and that the Board of Education could make a decision on the record.

. . . .

I spoke to Mr. Margolies again on July 21, 1999. He told me he would need a decision on whether to have a hearing and gave me the impression that based on what he saw, the board could make a decision on the record and it would be in my favor. He advised that if I did not request a hearing, the matter could be handled much more expeditiously. He said the board would meet one last time for the summer and I could get a decision pretty quickly.

Because Appellant's affidavit raises a reasonable doubt that she knowingly waived the right to a due process hearing, we believe there is a genuine dispute of material fact as to whether due process was afforded in this case. Accordingly, we are transferring the case to the State Office of Administrative Hearings to determine whether Appellant knowingly waived her right to a hearing.

CONCLUSION

For these reasons, we are transferring the appeal to the State Office of Administrative Hearings for the limited purpose of determining whether Appellant knowingly waived her right to a hearing before the Board of Education of Montgomery of County.

Edward Andrews
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February 23, 2000