

SHERRY SPARKS,

Appellant

v.

QUEEN ANNE'S COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-21

OPINION

This is an appeal of a student expulsion for the balance of the fall semester through January 27, 2000, based upon the theft of computer equipment from Queen Anne's County High School. Appellant claims that her son was penalized for his association with the student who actually stole the items, and that her son had no part in the theft or knowledge that the items were stolen from the school. The local board has filed a Motion to Dismiss, or alternatively a Motion for Summary Affirmance, maintaining that its decision is consistent with State and local law; that the appropriate policies and procedures were followed; and that Appellant was afforded full due process and constitutional safeguards. Appellant has submitted an opposition to the local board's motion.

BACKGROUND

During the summer of 1999, Henry attended summer school at Queen Anne's County High School. Henry and another student, Student A, attended an American History class every morning from Monday through Friday. (Tr. 21, 36). The two boys were friends and regularly traveled to and from school together in a car pool. (Tr. 37).

Sometime in late summer, it was discovered that computer equipment and chemicals had been stolen from the school during the summer session. *See* Breaking and Entering Reports and Police Reports. An investigation ensued, during which Student A implicated Henry in the theft.¹ The Queen Anne's County Sheriff's Department recovered stolen computer items from Appellant's home.

Appellant and her son claim that the computer equipment was loaned to Henry by Student A because Henry's computer was not working properly. Henry has consistently claimed that he had no knowledge that the equipment was stolen from Queen Anne's County High School, and that he believed the equipment had come from Student A's home. At all times, Henry and his

¹Student A first claimed that he was responsible for stealing the items from school, but he later admitted to police that Henry had assisted him. *See* Warren Wright's Investigation Report, September 15, 1999.

parents cooperated with the police investigation.² (Tr. 39-40, 56).

Based on the investigation, the principal charged Henry with the theft of computer equipment and science chemicals from Queen Anne's County High School. Under the disciplinary policy for Queen Anne's County Public Schools theft of personal or public property is an offense for which a student is normally suspended and may be expelled. The school principal suspended Henry and recommended his expulsion for the remainder of the 1999-2000 school year. *See* letter from principal, September 7, 1999.

The superintendent's designee, Warren Wright, conducted an investigation of the incident, followed by a conference at which the student and his parents were present.³ *See* Warren Wright's Investigation Report, September 15, 1999. Mr. Wright determined that Henry was guilty of the charges and recommended that he be expelled for the remainder of the school year. However, although the superintendent upheld Henry's expulsion from school for his being in possession of items stolen from Queen Anne's County High School and for conspiring with another student in the theft of the items, the superintendent reduced the expulsion to the balance of the first semester, until January 27, 2000.⁴ *See* letter from superintendent, September 24, 1999.

Appellant appealed to the local board. A full evidentiary hearing took place.⁵ Three people testified at the hearing: Warren Wright, Henry, and Henry's mother. In addition, the police report and the school investigation report including a summary of interviews with other students were submitted into evidence.

Henry testified that he was very knowledgeable about computers. He and his grandfather went to computer shows. Henry's bedroom was full of different parts of computers. He enjoyed taking apart and assembling computers. Henry stated that he had gotten the computer equipment that was ultimately determined to belong to the Queen Anne's County Public School System from Student A. Henry denied, however, that he knew the equipment had been stolen or that he had any involvement in the theft. Henry did acknowledge that his mother drove Student A and Henry to Chestertown to try to pawn a laptop, one of the items that had been stolen from the school system.

Henry also acknowledged that he and Student A were friends and that they attended summer school together. Student A's father drove the two students to school in the morning and

²Henry was not charged by the police, but Student A was charged with regard to the theft of the computer items.

³Appellant and her son were represented by counsel at the conference.

⁴Henry was not expelled for theft of stolen chemicals. (Tr. 25).

⁵Appellant and her son were represented by counsel at the hearing.

Henry's mother picked them up after school and brought them home. (T. 36-52).

In addition to Student A, two of the students who were interviewed implicated Henry. The first stated that:

Student A said could I watch out for him and tell him if any teachers were coming. I told him I want no part of it. During break at 10:00 a.m. in the Lobby I told him I wanted no part of it. Henry and [another student] went with him. They asked for three days and finally stopped asking. I couldn't yell for them anyway. They were out of site (sic).

They [Student A and Henry] said they wanted to look at something. They had book bags with them. I don't know about Student A. Both know about computers. Student A asked Henry where he has a question or gets stumped. I heard (overheard) a story that computer stuff was planed (sic) in a locker to hid (sic) it. (Wright Investigation Report).

Another student stated:

During summer school some boy named Student A stole a laptop and I think that they stole some computer things. The boy [Student A] stole some tanks with some stuff. I think that Henry stole some computer things too. I saw Henry go into a computer. (Wright Investigation Report).

The local board upheld the superintendent's decision to expel Henry until January 27, 2000. This appeal to the State Board followed.

ANALYSIS

A decision of a local board with respect to a student suspension or expulsion is considered final. Md. Code Ann., Educ. § 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). Although Appellant requests a meeting with the State Board concerning this appeal, neither a hearing nor an in-person meeting is warranted at the State level.

Appellant primarily challenges the credibility determinations made by the local board. It is well established that determinations concerning witness credibility are within the province of the local board 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). Moreover, the 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. *See Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994); *Kaleisha Scheper v. Baltimore County Board of Education*, 7 Op. MSBE 1122 (1998); *Corey Williamson v. Board of Education of Anne Arundel County*, 7 Op. MSBE 649 (1997); *Mecca Warren v. Board of Education of Baltimore County*, 7 Op. MSBE 328 (1996).

It is evident based on the local board’s decision to uphold the charges against Henry that it found the testimony of Mr. Wright and the results of his investigation more credible than the testimony of Henry and his mother. As the local board noted in its decision, “There was no new information presented at the hearing that would cause a change to the Superintendent’s decision.”⁶ Although Appellant cites portions of the transcript to support her position, we find the cited testimony insufficient to support a reversal of the local board’s credibility determinations in light of all the evidence in this case. At best, the cited testimony may demonstrate that the evidence in this case required the board to make certain credibility decisions in order to assess what took place. As noted above, that is precisely the purview of the local board as trier of fact to resolve conflicts in testimony.

Although not raised as specific issues in the appeal to the State Board, we note that if any procedural violations had occurred at the school or at the superintendent’s level, they were cured by the full evidentiary hearing before the local board panel. *See Cory Williamson v. Board of Education of Anne Arundel County*, 7 Op. MSBE 649 (1997) (failure to give prompt notice would be cured by local board’s full evidentiary hearing on appeal); *West & Bethea v. Board of Commissioners of Baltimore City*, 7 Op. MSBE 500 (1996) (failure to hold conference within ten days was cured by the de novo administrative hearing on merits before the local board); *Harrison v. Somerset County Board of Education*, 7 Op. MSBE 391 (1996) (failure to grant conference with superintendent or his representative in timely fashion was cured by local board’s full evidentiary hearing on appeal).

Additionally, regarding Student A’s absence at the hearing, case law including State Board rulings have followed the principle that students facing suspension or expulsion are entitled to confront and cross-examine teachers or administrators who accuse the student of wrongdoing, but

⁶To the extent that Appellant’s challenge is based on the admission of hearsay testimony during the hearing, the proceedings consisted of a hearing before an administrative body which is not bound by the strict rules of evidence and in which hearsay evidence is admissible. *See, e.g., Travers v. Baltimore Police Dep’t*, 115 Md. App. 395, 408 (1996); *Kade v. Charles H. Hickey Sch.*, 80 Md. App. 721, 725 (1989); *Eichberg v. Maryland Bd. of Pharm.*, 50 Md. App. 189, 192-193 (1981). Thus, there was no due process violation on this basis.

confrontation and cross-examination of student accusers may be disallowed because of a concern for reprisals.⁷ See, e.g., *Paredes by Koppenhoefer v. Curtis*, 864 F. 2d 426, 429 (6th Cir. 1988); *Newsome v. Batavia Local School District*, 842 F. 2nd 920, 922-25 (6th Cir. 1988); *Brewer v. Austin Independent School District*, 779 F. 2d 260, 263 (5th Cir. 1985); *Marc Bazemore v. Baltimore County Board of Education*, 7 Op. MSBE 435 (1996). Further, an administrative hearing is not bound by the same technical rules of evidence and procedures as a court of law. See *Zengerle v. Board of County Comm’r for Frederick County*, 262 Md. 1, 21 (1971); *Hyson v. Montgomery County Council*, 242 Md. 55, 69 (1966).

CONCLUSION

Based upon our review of the record, we find no due process violations or other illegalities in the proceedings. We therefore affirm the decision of the Board of Education of Queen Anne’s County.

Edward Andrews
President

Philip S. Benzil
Vice President

Raymond V. Bartlett

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Reginald Dunn

George W. Fisher, Sr.

Marilyn D. Maulsby

Judith McHale

Edward Root

Walter Sondheim, Jr.

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⁷While a school staff member did suggest Student A’s involvement, that staff member did not implicate Henry. That staff person was therefore not required to be present at the local board hearing.

April 19, 2000