

CANDY ADAMS-FRAZIER, ET AL.,

Appellants

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 01-07

OPINION

In this appeal, the parents of a student at Seneca Valley High School contest the local board's affirmance of the Chief Operating Officer's decision to expel their son from Seneca for an unprovoked attack on another student. Appellants argue that expulsion is an excessive penalty.

BACKGROUND

_____ Jonathan was a ninth grade student at Seneca Valley High School during the 1999-2000 school year. On May 26, 2000, Jonathan began punching another ninth grader whom he did not know. The victim returned no punches and attempted to flee. Jonathan pursued the victim and continued attacking him. Other students restrained Jonathan, who then went to class. The incident is recorded on video tape. Later, the police were called and Jonathan was arrested and charged with second degree assault.¹

The school conducted an investigation and the principal, Wayne E. Whigham, suspended Jonathan for 10 days and recommended expulsion. Pursuant to local procedures, on May 31, 2000, Thelma Bates, field office specialist, acting as the designee of Richard C. Pottinger, Supervisor of Pupil Services, conducted an investigative conference regarding the incident. Assistant Principal Brenda Eisenhauer, Pupil Personnel Worker Mary Jo Rigby, and Appellants attended the conference. As a result of that conference, upon Mrs. Bates' recommendation, Dr. Pottinger, by letter dated June 1, 2000, upheld the 10-day suspension and, pursuant to Montgomery County Public Schools Administrative Regulation JGA-RB, recommended expulsion. The recommendation for expulsion was then forwarded to the Chief Operating Officer, Larry Bowers, who assigned the matter to a hearing officer, Terrill Meyer, for review and recommendation.

On June 7, 2000, Hearing Officer Meyer conducted an appeal conference regarding the incident and met with Jonathan and his parents. Also present at the conference were Ms.

¹As a result of a plea of involved, the Juvenile Court placed Jonathan on 6 months probation, victim awareness class, counseling, anger management class, family counseling, and 40 hours of community service. *See, Appellants' Response*, p. 3 (Dec. 14, 2000).

Eisenhauer, and Ms. Rigby. Jonathan's academic and behavioral history and interventions were reviewed. When Jonathan was in the fourth grade, an educational management team met to discuss issues of impulsive and aggressive behavior. When he attended Gaithersburg Middle School, Jonathan was placed in the Choice Program from which he was recommended for expulsion because of continuing behavioral problems. The expulsion was put in abeyance and Jonathan was placed on home teaching until a placement at Muncaster Challenge Program was available.² Upon completion at the Muncaster Challenge Program, Jonathan was enrolled at Forest Oak Middle School. Since the sixth grade Jonathan had been suspended twenty-five days.³

The following facts were established at the conference: Jonathan punched another ninth grader whom he did not know. The victim returned no punches and attempted to flee. Jonathan pursued the victim until another student finally held him back. All of the witnesses to the attack indicated that Jonathan hit the victim for no reason. Jonathan claimed that the victim had used profanity toward him before striking the victim.

Ms. Meyer concluded that the ten-day suspension was warranted, and agreed with the recommendation for expulsion. She also concluded that Jonathan should be permitted to apply to the Expulsion Review Board as of December 1, 2000, for re-admission to Montgomery County Public School for the second semester of the 2000-2001 school year. She gave her decision to the Superintendent's office. Mr. Bowers, acting as the Superintendent's designee, informed Appellants by letter dated June 13, 2000, that he adopted the expulsion recommendation and that Jonathan could reapply for possible enrollment for the second semester of the 2000-2001 school year.

Mr. and Mrs. Frazier appealed Mr. Bower's decision to the county board by letter dated August 29, 2000. Their appeal was based on their concern about Jonathan's lack of education and believed that expulsion was inappropriate in Jonathan's case. They asked the county board to consider numerous clarifications to the appeal conference memorandum, his history of problems in school, and alternatives to expulsion. Appellants did not request an evidentiary hearing, although they claim they did not waive the hearing. The county board considered the matter in closed session on September 12, 2000. By a vote of 5 to 3, the county board affirmed Jonathan's expulsion.⁴ The county board concluded:

²Mr. and Mrs. Frazier contend that Jonathan was placed at the Muncaster Challenge Program because there were no other alternative placements available for middle school students.

³Jonathan's parents do not dispute the number of days he was suspended, but highlight that he was suspended three times, two of which were for defending himself.

⁴The three dissenters would have reversed the expulsion and would have ordered evaluation for an alternative program beginning at the start of the 2000-01 school year.

Attacking a fellow student without provocation is a very serious offense which cannot be tolerated. Not only did Jonathan attack his fellow student, but also it was not until another student restrained him that he stopped hitting the victim. If he had not been stopped, Jonathan could have caused serious physical harm to the victim. Nonetheless, Jonathan will be permitted to seek readmission for the second semester of the 2000-2001 school year by application to the Expulsion Review Board.

Appellants requested this appeal on October 25, 2000. As permitted, Jonathan reapplied for admission to MCPS, and readmission was granted pursuant to a code of conduct contract on December 11, 2000.

ANALYSIS

It is well established that 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 procedure; 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 an initial matter, we find that this appeal is not moot even though Jonathan has been readmitted to his home school. The readmission to MCPS is subject to a code of conduct contract. Also, the expulsion is a part of Jonathan's student record. Thus, a real controversy with an effective remedy exists. *See Joshua Peacock v. Baltimore County Board of Education*, 7 Op. MSBE 1287 (1998); *See also, State v. Parker*, 334 Md. 576, 640 A.2d 1104 (1994).

Appellants do not allege that the county board failed to follow State or local law, policies, or procedures, or that the county board violated Jonathan's due process rights or otherwise acted in an unconstitutional manner. Rather, Appellants argue that the penalty of expulsion is excessive. They claim that Jonathan requested counseling and has attended counseling since June 26, 2000. He has feelings of remorse both for hitting the student and for the financial expenses it has placed on his family. Finally, he has feelings of disappointment and failure.

We note that Md. Educ. Code Ann. § 7-305(b) permits a county superintendent, at the request of a principal, to suspend a student for more than 10 school days or expel him. As set forth in COMAR 13A.08.01.11C(1), a student may be expelled in those instances when the behavior of the student is disruptive and detrimental to the operation of the school.

The material facts are undisputed, are supported by the evidence, and demonstrate that Jonathan's behavior was disruptive and detrimental to the operation of the school. The record shows that Jonathan admitted he punched and struck the victim. In his statement to school administrators Jonathan stated:

I got out of []'s car and saw [] and some other guys chasing []. I ran over and asked him what happened and he must have thought that I was going to hit him so he said, fuck you and bucked at me so I hit him and we started walking down the hill and somebody held me back because I was mad and then I walked back to the school.

In addition to Jonathan's statement, six witnesses, including the victim, gave written statements confirming that Jonathan punched the victim without provocation. The record further shows that at the June 7, 2000, Suspension/Expulsion Appeal conference Jonathan acknowledged that he punched the victim. In Appellants' August 29, 2000 appeal to the Montgomery County Board of Education and in their October 25, 2000 appeal to the State Board of Education, they admit that Jonathan attacked the victim.

Other than arguing that Jonathan's expulsion was excessive, Appellants have not offered any evidence to meet their burden of proof that the county board acted improperly. From our review of the record, we find that the Jonathan was afforded all appropriate due process. Moreover, we believe it was reasonable for the county board to impose expulsion with the opportunity for readmission, based on the severity of the attack, the serious physical injury the victim could have suffered by the attack, as well as Jonathan's prior history of aggressive behavior. Based upon our review, we believe that the local board's decision to expel Appellant was consistent with well settled policy. *See, e.g., Eric Whitaker v. Board of Education of Baltimore County*, 7 Op. MSBE 430 (1996) (affirming student expulsion for fighting in the classroom that involved bloodshed was not too severe); *Malik Brown v. Board of Education of Baltimore County*, 7 Op. MSBE 510 (1997) (affirming student expulsion for fighting with another student during which the other student's shirt was ripped and scratches on that student's neck drew some blood). *Crawley v. Baltimore County Board of Education*, 7 Op. MSBE 1101 (1998) (affirming expulsion from for physically assaulting another student after a school pep rally).

CONCLUSION

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

Philip S. Benzil
President

Marilyn D. Maultsby
Vice President

Raymond V. Bartlett

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February 27, 2001