GEORGE ASHE,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
PRINCE GEORGE'S COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee	Opinion No. 01-17

OPINION

This is an appeal of the expulsion of Appellant from DuVal High School for violating the local board's Code of Student Conduct, Section V, Paragraph H.3 - Physical Attack on Any Prince George's County Public School Employee. The local board has filed a motion to dismiss or in the alternative, motion for summary affirmance, maintaining that its decision was not arbitrary, unreasonable or illegal. Appellant has filed a response to the motion claiming that local board's decision was arbitrary and unreasonable because George had not received a copy of the Code of Student Conduct and because the decision was not based upon sufficient evidence. Appellant also argues that the decision was illegal because the proper procedures were not followed. Finally, Appellant maintains that the decision was unconstitutional because Appellant was not informed of his right to remain silent and of his right to the assistance of counsel before he was questioned by school officials.

FACTUAL BACKGROUND

Appellant entered the tenth grade at DuVal High school in the fall of 2000. On August 28, 2000, Appellant signed a Code of Student Conduct Memorandum of Understanding, acknowledging his understanding that certain listed acts would result in expulsion from school. One of those listed is "Physical Attack of any Prince George's County Public School System Employee –First Offense". (*See* Code of Student Conduct Memorandum of Understanding, DuVal High School, August 28, 2000).

On October 6, 2000, Appellant was involved in a fight with another student in the hallway of the school. A teacher, Mr. Alex Crum, intervened and gave the following statement to school security immediately after the incident:

> I walked down the hall and found a group of students trying to talk Mr. Ashe out of fighting Mr. Lane. Lane was being held back while Ashe advanced. I put myself between the two and asked them to stop. Ashe continued and I tried to restrain him. Once Lane and Ashe were close enough, Ashe through [sic] a punch at Lane over my shoulder. During the fight, Ashe struck me in the head and chest and Lane struck me in the back. They got around me and continued fighting. I told the substitute in room 25 to call

> the office and then continued trying to stop the fight verbally. Ashe and Lane stopped of their own accord when security got into the hall, and blended into the crowd to escape. Both students left the hall.

(Statement of Alex Crum, October 6, 2000) Security personnel also took contemporaneous statements from Mrs. Phyllis Harmon, a teacher who witnessed the incident, and Appellant. Mrs. Harmon stated that Mr. Crum was "struck in the face by Mr. Ashe".[1] (Statement of Phyllis Harmon, October 6, 2000). Mr. Ashe acknowledged that he threw the first punch in the incident and that he pushed Mr. Crum. (Statement of George Ashe, October 6, 2000.)

Pursuant to Section V, Paragraph F of the Code of Student Conduct[2] (the "Code"), Mr. Robert Beery, Principal of DuVal High School, notified Appellant of the charges, and accepted information from those who had knowledge of the incident. When he determined the accuracy of the charges, on October 10, 2000, the principal requested expulsion of Appellant based upon "Gross Misconduct; Physical Attack on a P.G. County Employee". (Notification of Request for Expulsion, October 10, 2000). A copy of this request was sent to Appellant's guardian, pursuant to Section V.2.b of the Code. (Tr. 13).

Also pursuant to Section V, Paragraph F.1.b., Mr. Beery initiated an expulsion investigation by Pupil Personnel Services. Ms. Allison Prince, Pupil Personnel Worker, conducted the investigation and interviewed Appellant. Her Expulsion Investigation, dated October, 18, 2000, noted that during her interview of Appellant "George also stated that he accidentally hit the teacher sometime during the fight." She also noted that "George stated that he was aware of school rules and he knew that fighting was against school policy". (Expulsion Investigation, October 18, 2000, p. 2).

The matter was referred to the superintendent for review of the expulsion request. On December 13, 2000, a panel designated by the superintendent convened an expulsion conference to determine whether there were sufficient grounds to grant the principal's request for expulsion.[3] Mr. Crum testified at the conference at to what happened in the incident. His contemporaneous statement was presented to the superintendent's panel as were the contemporaneous statements of Mrs. Harmon and Appellant. The superintendent's panel also reviewed the Expulsion Report. Mr. Ashe and his foster parent, Mr. William Anderson, were present and Mr. Ashe was

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[1]Mrs. Harmon's version of the incident was also reported on the school's Security Incident Report and Self Insurance Form.

[2]Section V, Paragraph F incorporates by reference the investigation requirements set forth in Section V, Paragraph E1.a.

[3]The panel consisted of Ms. Dorothy B. Stubbs, Administrative Assistant for Appeals, Prince George's County Public Schools; Ms. Sandra Nelson, Principal, Potomac High School; and Mr. Andre Walker, Vice Principal, Lord Baltimore Middle Schools.

represented by counsel, Ms. Alfreda Cooper, Esq., who spoke on Appellant's behalf. [4]

On December 14, 2000, the superintendent's panel granted the request for expulsion. In a letter to Appellant's attorney, Ms. Stubbs, on behalf of the superintendent's panel, stated:

> Initially, it was noted and the panel so found as a fact that George is fully knowledgeable of the Code of Student Conduct. Based upon the evidence presented at the expulsion conference, the panel finds as a matter of fact that he did engage in the physical attack of a Prince George's County Public School System employee, and therefore, orders his expulsion to take effect immediately.

The expulsion decision was reviewed by a panel of the local board on January 9, 2001. The local board reviewed the record presented before the superintendent's panel and heard argument from school system officials and from Appellant's attorney. The local board upheld the expulsion decision, indicating that it

> took cognizance of the fact that a request for expulsion was issued by Mr. Robert Beery, Principal of DuVal High School, on October 10, 2000 for the reason that George was involved in a physical attack on a Prince George's County Public School System employee, taking cognizance, also, of the fact that he was knowledgeable of the portions of the Code of Student Conduct regarding attacks on School System employees.

(Letter to Ms. Cooper, January 10, 2001). The local board did, however, permit Appellant to enroll in the County's Evening High School or Community-Based Classroom programs, with no charge for tuition. (Letter to Ms. Cooper, January 10, 2001, ¶ 2). This appeal followed.

ANALYSIS

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]

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[4]Appellant did not testify at the expulsion conference upon advice of counsel. (Transcript of Proceeding before Local Board, p. 15, 19-20, hereinafter "Tr.")

[5]Both Appellant and the local board frame their arguments in terms of COMAR 13A.01.01.03E(1). However, this is not the standard by which the State Board reviews student suspensions and expulsions.

I. Due Process Issues

Appellant raises several issues regarding due process. We address each in turn.

First, Appellant argues that the his due process rights were violated because the principal "failed to follow the procedure set forth in the Code of Student Conduct" by not making contact with the guardian. (Appellant's Response, p. 3). However, there is evidence in the record that a message regarding the expulsion was left on Appellant's guardian's answering machine (Tr 10"); that notice was sent to Appellant's guardian by mail (Tr. 13, 31); and that, in fact, the expulsion conference was rescheduled at Appellant's request so that he might be represented by counsel. (Tr. 31-2).

Second, Appellant argues that his due process rights were violated because Appellant did not have a conference with the principal before the principal submitted the request for expulsion. However, Section V. F.1 of the Code of Conduct only requires that the principal:

> follow the same investigatory steps outlined for short-term suspension, Section V.E.1.a., i.e., notifies the student of the charge(s), reviews information from persons with knowledge of the incident, including the student; and determines the accuracy of the charge(s).

There is evidence in the record that the principal notified the student of the charges, and reviewed information from the student and other persons with knowledge of the incident. (See, Notification of Request for Expulsion; Statements of Mr. Crum, Mrs. Harmon, George Ashe; Security Incident Report, and Expulsion Investigation). The Code of Conduct does not provide a right to a conference with the principal before the expulsion conference is convened. Rather, after the request for expulsion has been made, the superintendent must arrange to convene and conduct a conference pursuant to Section V.F.2.e. That conference was held on December 13, 2000, before the superintendent's designees at which Appellant was represented by counsel. Accordingly, we can find no violation of Appellant's due process rights on these grounds.

Third, Appellant argues that the local board violated his rights by allowing Principal Beery, who was not an eyewitness to the fight, to present evidence before the local board panel. (Response of Appellant, pp 5-6). As explained below, we find no merit to this contention.

The local board sits as an appellate body. Its function in these cases is to review the evidence presented to the superintendent's panel to determine if it supports the decision to expel Appellant. There is no requirement that the teacher who testified before the superintendent's panel be the same person who presents the case to the local board. Mrs. Stubbs and Principal Beery summarized the evidence presented to the superintendent's panel, as did Appellant's counsel. The local board had the record before them including the contemporaneous statements of the victim and the eyewitness. There is thus sufficient record evidence to sustain the local

board's finding that Appellant struck Mr. Crum (*See* Statements of Mr. Crum, Mrs. Harmon and the Expulsion Investigation) and knew that his action would result in his expulsion pursuant to the Code of Conduct. (*See* Memorandum of Understanding Code of Student Conduct, DuVal High School).

Fourth, Appellant objects to the inclusion of his contemporaneous statement in the record materials provided to the local board. (Response of Appellant, p. 4). Appellant argues that Mrs. Stubbs agreed that his contemporaneous statement would not be used in her decision. (Response of Appellant, p. 4). However, Appellant offers no affidavit or other evidence in support of this claim. Moreover, even without the contemporaneous statement, the Expulsion Investigation also contains evidence that Appellant acknowledged hitting Mr. Crum. Thus the inclusion of this statement is repetitive and therefore harmless.

II. Constitutional Issue

Appellant argues that the local board acted unconstitutionally because Appellant's statement was taken without being informed of his rights, including the right to remain silent and right to assistance of counsel. (Appellant's response, 4).

The Supreme Court set the standard for due process rights in student disciplinary cases in *Goss v. Lopez*, 419 U.S. 565 (1975). When presented with a similar argument, the Supreme Court stated:

> In the great majority of cases the disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred. We hold only that, in being given an opportunity to explain his version of the facts at this discussion, the student first be told what he is accused of doing and what the basis of the accusation is.

419 U.S. at 582. Another court stated:

> The plaintiffs seem to suggest that school officials may not question a student in order to obtain an admission of misconduct and immediately suspend the student on the basis of the admission. *Goss* does not support this proposition and no other authority has been cited by plaintiffs or discovered by the Court.

Boynton v. Case, 543 F. Supp. 995, 998 (D. Me. 1982). The *Boynton* court also addressed the question of whether a student in a disciplinary proceeding must be given notice of his right to remain silent and of his right to the assistance of counsel before being questioned:

> No authority is cited by the plaintiffs, and the Court can find none, supporting an extension of the Miranda rule, see *Miranda v.*

> *Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 694 (1966), to interrogations conducted by school officials in furtherance of their disciplinary duties.

543 F. Supp. at 997. Since Appellant was permitted to give his side of the story at the time of the incident, during the Expulsion Investigation, and while represented by counsel at the designee's expulsion conference and before the local board, we find no violations of Appellant's constitutional rights.

III. Issues concerning the Merits of the Case

Appellant argues that the local board erred when it accepted the finding of the expulsion conference panel that Appellant "was fully knowledgeable of the Code of Conduct". (Letter to Cooper, December 14, 2000). Appellant argues that he never received a copy of the code and that school officials never established that Appellant actually heard the announcements concerning the Code made at assemblies and in classroom presentations.

As previously noted, in student discipline appeals the State Board is limited in its review and will not rehear the merits of a case. This notwithstanding, we note that there is no requirement that a student receive a copy of the entire Code of Conduct. Here, there is evidence in the record that there were assemblies concerning the Code of Conduct, that posters explaining the Code of Conduct were posted throughout the school, and that each student was given a summary of the Code. (Tr. 12). The Memorandum of Understanding that Appellant signed on its face states that a physical attack on a Prince George's County employee is one of the offenses that will result in expulsion.[6] Accordingly, there is a sufficient basis upon which the local board could find that Appellant had knowledge of the pertinent portions of the Code of Conduct.

Finally, Appellant argues that the local board's decision was arbitrary and unreasonable because Appellant did not intend to strike a Prince George's County School System employee. (Appellant's Response, p. 2). However, whether a local board's decision is arbitrary and unreasonable is not the standard used in the case of a student suspension and expulsion. Rather, as stated above, the State Board 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).

In spite of this limited standard of review, we shall briefly address Appellant's issue. Appellant maintains that since he did not intend to hit Mr. Crum, his action did not rise to gross misconduct because his action was not willful or malicious. Appellant defines "malicious" as

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[6]Appellant also acknowledged that he knew fighting was against the rules. *See* Expulsion Investigation, p. 2.

"without just cause". (Appellant's Response, p. 2)[7]. However, by Appellant's own definition, Appellant's hitting of Mr. Crum was "malicious" because there was no cause for Appellant to hit Mr. Crum. Moreover, with regard to the circumstances of the expulsion decision, these matters involve essentially a credibility determination left to the trier of fact. It is evident, based on the local board's decision to uphold the charges against Appellant, that it found the testimony of school officials more credible than the testimony presented on behalf of Appellant. *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."). 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).

Based upon our review, we find that Appellant has provided no basis for reversing the credibility determinations made by the local board. In short, we find that Appellant was given a full and fair opportunity to present his case at the expulsion conference and before the local board.[8]

CONCLUSION

Because we find no due process violations or other illegalities in the proceedings, we affirm the expulsion decision of the Board of Education of Prince George's County.

Philip S. Benzil
President

Marilyn D. Maultsby
Vice President

Raymond V. Bartlett

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[7]Appellant appears to abandon the argument made at the expulsion conference and before the local board that his action was justified because Mr. Crum "interjected himself" into the fight. (Tr., 7). We note, nonetheless, that the record testimony disclosed that the students were not physically fighting when Mr. Crum attempted to stop the fight (Tr. 6-7, 13, and Statements of Mr. Crum and Mrs. Harmon). Moreover, Md. Educ. Code Ann. § 7-308 authorizes school personnel to take reasonable action to prevent violence on school premises.

[8]We note that the local board did permit Appellant to enroll in night school tuition-free so that he could keep up with his school work and apply for readmission to summer school in July 2001.

JoAnn T. Bell

Reginald L. Dunn

George W. Fisher, Sr.

Walter S. Levin, Esquire

Judith A. McHale

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

May 23, 2001