

LESLIE N. SIMMONS,

Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 01-05

### OPINION

This is an appeal of an expulsion of Appellant's son from Col. Zadock Magruder High School for one school year based on David's possession of controlled dangerous substances on school grounds and distribution of controlled dangerous substances to classmates. Appellant argues that the local board failed to seriously consider her son's behavioral disabilities in mitigation of the offense. The local board has submitted a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal.

### FACTUAL BACKGROUND

During the 1999-2000 school year, Appellant's son David was a ninth grade student at Col. Zadock Magruder High School. On February 29, 2000, school officials received information regarding drug use by students on a February 25, 2000 school field trip. An investigation ensued, and David was identified as one of the students involved. During an initial interview with the Assistant Principal, Mr. Walt Cross, David admitted buying a pill from another student, but denied distributing anything to students on the field trip. A search was conducted and David was found to be in possession of 20 pills, one of which was identified as Aderol, and a supply of baggies. Reports and interviews of other students disclosed that David had distributed pills to students on the day of the field trip. The police were called and David was arrested. The principal of Magruder High School, Mr. John Nori, suspended David for 10 days and recommended his expulsion for the possession of controlled dangerous substances ("CDS") on school grounds and distribution of CDS to classmates.<sup>1</sup>

On March 3, 2000, Ms. Myra Abramovitz, Field Office Specialist and designee for the Supervisor of Pupil Services, conducted an investigative conference with David and his parents

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<sup>1</sup>This was David's second referral for an expulsion for a drug related offense during the 1999-2000 school year. In October 1999, David was found in possession of drug paraphernalia on school property. He was suspended for 10 days and permitted to return to school if he abided by a strictly worded code of conduct contract.

regarding the incident.<sup>2</sup> In pertinent part, the Supervisor of Pupil Services reported that during the conference:

David claimed that he and another student, whom he identified as 'Alex,' had gone to a mall the Saturday before the fieldtrip (sic) and had 'gotten Xanax.' David stated, 'Alex had tried it (Xanax) many times before, and it had made him feel like 'freeze-dried alcohol'. That was his words.' David described Alex as having 'tried smoking weed and other things but not with me.' David claimed that he had not sold pills before the February 25 fieldtrip (sic). David went on to say that he and Alex had made a plan to distribute pills on the fieldtrip (sic) bus. Later he said, 'We had convinced ourselves that would be a good way of making money real quick.' David stated, 'When we got there, Alex asked me for ten (pills), and I gave them to him. I told him, You're not going to take them, right?' David went on to say that, on the bus ride back to school, 'Alex came up with \$15.00' and he (David) 'came up with \$10.00'. . . . David then named various students to whom he and David (sic) had sold pills while on the fieldtrip (sic). David said that Alex had sold four pills to 'Lauren,' who had taken all four and had gotten sick before her game. He said that Lauren had lied about what she had already taken before Alex sold her the pills. David said that he and Alex had also sold pills to 'Christina' and that Alex had gotten rid of the rest of his pills by selling them to 'Delano'. . . .

During the conference, Appellant presented information regarding David's behavioral and drug related problems.<sup>3</sup> It was disclosed that at the time of the incident, David was taking a prescribed combination of drugs which included the drug Aderol. While Aderol was one of the pills seized during the February 29 search, both Appellant and David claimed that none of the pills found were from David's medication supply. Based on the investigation, the Supervisor of Pupil

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<sup>2</sup>Mr. Cross and Mr. David Lienhardt, Pupil Personnel Worker, were also present at the conference.

<sup>3</sup>At the investigative conference, Appellant produced a letter addressed to the school principal formally requesting that her son receive an assessment for special education services. Appellant indicated that although this was her first formal request in writing to anyone at the school, she had raised concerns about David's behavior while he was in elementary and middle school with MCPS staff, but no one had ever recommended an assessment for special education. Appellant does not argue in this appeal that the school system should have evaluated David for disabilities prior to the incident. An IEP team did meet on April 5, 2000 and recommended psycho-educational testing. The evaluation meeting was held on May 24, 2000. No disability was found.

Services forwarded the recommendation for expulsion to Dr. Steven G. Seleznow, Deputy Superintendent for Education.

Thereafter, the Chief Operating Officer's designee, Ms. Terrill Meyer, conducted her own investigation of the incident. A conference was held at which David, his mother, Mr. Cross, and Mr. Lionhardt were present. Ms. Meyer recommended that the ten day suspension stand and that the recommendation for expulsion be adopted through the end of 2000-2001 school year. She also indicated that David could reapply for admission to MCPS no sooner than May 1, 2001. The Chief Operating Officer upheld the recommendation. He indicated that the expulsion review board would determine if David could re-enroll for summer school for the 2001-2002 school year taking into consideration David's use of time during the expulsion, such as participation in educational programs, employment, volunteer activities, community service, counseling and random drug testing.

Appellant appealed to the local board, but did not request an evidentiary hearing. Superintendent of Schools, Dr. Jerry D. Weast, responded to the appeal recommending that the local board uphold the decision. In a unanimous decision issued July 27, 2000, the local board upheld the expulsion, stating,

Regulation COF-RA provides, in pertinent part, that '[s]tudents found to be in possession of intoxicants with intent to sell or distribute them on MCPS property or students engaged in the sale or distribution of intoxicants on MCPS property, will be expelled with a police referral.' Having reviewed the materials the parties submitted, the Board finds that David, by his own admission and that of his parents, possessed and distributed controlled substances on MCPS property, and that these actions violate Regulation COF-RA and constitute a serious offense risking significant harm to others. Accordingly, the disciplinary action of expulsion through the end of the 2000-2001 school year is appropriate and warranted.

Local board decision at 2. This appeal 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).

Montgomery County Public Schools ("MCPS") Regulation COF-RA provides that

“[s]tudents found to be in possession of intoxicants with intent to sell or distribute them on MCPS property or students engaged in the sale or distribution of intoxicants on MCPS property will be expelled with a police referral.”<sup>4</sup> Pursuant to MCPS Regulation JFA-RA, there are five offenses for which expulsion and police referral is automatic; distribution of intoxicants is one of them.

The record in this case reveals that David admitted distributing CDS to fellow students on a school sponsored field trip. There is corroborating evidence supporting this admission, as well as evidence that David possessed CDS while on school grounds. Appellant was afforded several layers of due process throughout the case in which David’s version of the events in question were presented, including explanations for his behavior. Appellant had the opportunity to and did submit documentation regarding David’s behavior and his emotional and medical conditions.

Appellant argues that the appeal is based on “the Board’s failure to seriously consider David’s behavioral disabilities in mitigation of the offense to which David admitted” and failure “to seriously review the medical documentation and other supportive materials submitted by [Appellant]. See September 14, 2000 addendum to letter of appeal of August 18, 2000. However, Appellant fails to acknowledge that in addition to the February 25, 1999 distribution and possession incidents, David had been suspended and recommended for expulsion in October, 1999, for possession of drug paraphernalia. He was permitted to return to Magruder on condition that he “abide by a strictly worded code of conduct contract.” Unfortunately, a mere four months later David admitted being involved in another very serious drug incident. Based on his record, the local board determined that the disciplinary action imposed in this case was appropriate despite David’s behavioral problems.<sup>5</sup>

In light of the record in this case, we do not find that the local board acted arbitrarily, unreasonably or illegally in this matter. See *Joni Webster v. Montgomery County Board of Educ.*, MSBE Opinion No. 00-43 (9/26/00) (upholding student expulsion for possession and sale of marijuana on school grounds.)

## CONCLUSION

For these reasons we affirm the decision of the Board of Education of Montgomery County.

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<sup>4</sup>For purposes of the regulation, MCPS property is interpreted to include the location of an MCPS sponsored activity. Additionally, intoxicants are defined as alcohol or controlled substances not authorized by a physician’s prescription.

<sup>5</sup>We again note that the IEP team evaluated David and made a finding of no disability.

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January 31, 2001