PHYLLIS HAMMOND BLACK,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
CARROLL COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee	Opinion No. 02-24

OPINION

This is an appeal of a one day suspension of Appellant's son from Westminster High School for fighting with another student. Appellant argues that the suspension is "unfair, unjust and racially biased." The local board has submitted a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellant filed a reply in opposition to the local board's motion.

FACTUAL BACKGROUND

At the time of this appeal, Irvin was a junior at Westminster High School. On September 11, 2001, Irvin and another student, referred to as A.D., were involved in an incident which led to Irvin's suspension. As set forth in the local board's decision, the facts of that incident are as follows:

> On September 11, 2001, Irvin and another student, A.D., were in the main gym just prior to the beginning of their physical education class and were engaging in "horseplay." However, it appears the horseplay, which began as pushing, escalated to Irvin punching A.D. in the arm. A.D. apparently hit Irvin back in the arm, and Irvin responded by hitting A.D. in the arm two or three times in rapid succession. A.D. then ran away from Irvin out of fear that the hitting would continue.

Local Board Decision at 2.

The incident first came to the attention of the school system the following day when the physical education teacher observed a large bruise on A.D.'s arm. When the teacher inquired about the bruise, A.D. refused to tell him what happened and who was involved. The school conducted an investigation. On September 17, A.D. finally disclosed to school officials that Irvin had hit him in the arm causing the bruise. On the day A.D. identified Irvin, the principal, John Seaman, met with Irvin who first denied hitting A.D., but later admitted to it. Mr. Seaman suspended Irvin for one day for assault and assigned Irvin to attend "Saturday School for Conflict Management." Mr. Seaman later met with Appellant, Irvin's mother, but did not change his decision regarding the suspension.

Appellant appealed Mr. Seaman's decision to the local superintendent. Gregory C. Eckles, acting as the superintendent's designee, reviewed the case. On October 5, 2001, Dr. Eckles met with Appellant who maintained that Irvin's punishment was too harsh for mere horseplay with another student and that it was unfair that both students did not receive the same penalty. Dr. Eckles also spoke with the two students involved, both of whom gave accounts of the events as they transpired.[1] Dr. Eckles upheld the one day suspension finding the fact that Irvin hit A.D. several times sufficient to justify the decision. Dr. Eckles also agreed with the principal's decision to suspend Irvin and not A.D. based on Dr. Eckles' belief that Irvin was clearly the aggressor in the situation. However, Dr. Eckles changed the wording of the suspension to reflect that it was based on a fight instead of an assault to indicate that both students were involved.

On appeal to the local board, Appellant also maintained that the suspension decision was based on racial discrimination. In a letter to the local board, Dr. Eckles responded as follows:

> Mrs. Black stated in her letter of November 6, ". . . the decision is unfair and unjust and that it is clearly a racially discriminatory action. . ." In my review of the facts of this case I have found that Mr. Seaman's decision to suspend Irvin for aggressive behavior is consistent with the practice of principals across the county at the high school level. Because safety is of the utmost importance to the administration, teachers and the school board, students must be given a clear message that such behavior will not be tolerated. In other cases students have received a three or five day suspension for aggressive behavior. I found no evidence that either the incident or the disciplinary action was racially motivated and I was not racially motivated in making my decision.

In a unanimous decision, the local board upheld the one day suspension stating, in part:

> There is no dispute that Irvin did in fact hit another student – Irvin admitted to doing so. Furthermore, proper procedures were followed as the school investigated the incident and disciplined Irvin for his actions. Therefore, both the decision to suspend Irvin and Dr. Eckles' decision to uphold the suspension were done in full accordance with Board policy.

Local Board Decision at 3.

[1]Appellant was present at Dr. Eckles' meeting with Irvin on October 25.

ANALYSIS

It is well established that the decision of a local board of education 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 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.01.01.03E(4)(b).

Appellant maintains that the decision to suspend her son for one day was motivated by racial discrimination, yet Appellant has failed to provide any evidence to support this allegation. It is well established that the mere allegation of discrimination without any supporting factual specifics is insufficient to sustain a claim. *See, e.g., Hurl v. Howard County Board of Education*, 6 Op. MSBE 602, 604-605 (1993), *aff'd*, 107 Md. App. 286 (1995) (no right to a full evidentiary hearing unless there are specific allegations of unlawful discrimination or arbitrariness); *Anderson and Blake v. Board of Education of Prince George's County*, 5 Op. MSBE 415, 417 (1989) (allegation must include specific facts to support charge of discrimination or arbitrariness to be entitled to hearing).

Appellant also alleges that proper procedures were not followed by local school system officials. The substance of Appellant's argument appears to be a claim of due process violations at the local level. The suspension in this case was for one day. Under *Goss v. Lopez*, 419 U.S. 565, 581 (1975), for a suspension of 10 days or less, due process only requires that the student be given oral or written notice of the charges against him and if he denies them, an opportunity to present his side of the story. Additionally, local board policy JDG requires that "[t]he student or his/her parent or guardian shall be given a conference with the principal and any other appropriate personnel during the suspension period."

The record in this case reveals that school officials investigated the incident over a period of several days. The principal interviewed both Irvin and A.D. Irvin admitted to hitting A.D. after initially denying that he had done so. The principal then placed Irvin on a one day suspension. Appellant met more than once with school administrators to discuss the suspension. Irvin was given the opportunity to present his side of the story at each of the meetings with school administrators at which he admitted to hitting A.D. We find that this procedure afforded Irvin the process he was due. *See Junaid Ali, et al. v. Howard County Board of Education*, MSBE Opinion No. 00-15 (March 22, 2000) (finding no due process violations).

Additionally, Appellant makes various allegations which go to the merits of the suspension decision. For example, she maintains that the one day suspension was too harsh a penalty given the behavior at issue and the fact that the other student involved received no disciplinary action. Based on the board's determination that Irvin was the aggressor, we find sufficient record evidence to support the local board's decision to uphold Irvin's one day

suspension for fighting with another student.[2] *See, e.g. Crawley v. Baltimore County Board of Education*, 7 Op. MSBE 1101 (1998) (upholding expulsion of student for fighting); *Brown v. Baltimore County Board of Education*, 7 Op. MSBE 510 (1997) (upholding initial suspension and subsequent expulsion of student for fighting).

As to Appellant's disagreement concerning the local board's interpretation of the facts of this case, 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 o draw the inferences."); *Board of Educ. v. Paynter*, 303 Md. 22, 36 (1985) ("[N]ot only is it the province of the agency to resolve conflicting evidence, but where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences.").

CONCLUSION

For these reasons and finding no due process violations or other illegalities in the proceedings, we affirm the one day suspension imposed by the Board of Education of Carroll County.

Marilyn D. Maultsby
President

JoAnn T. Bell

Philip S. Benzil

Dunbar Brooks

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Edward L. Root

Walter Sondheim, Jr.

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[2]COMAR 13A.08.01.11C(1) permits a school system to suspend or expel a student "when the behavior of a student is disruptive and detrimental to the operation of the school." Additionally, local board policy JDG allows a principal to suspend for less than 10 days a student under the direction of the principal for cause.

John L. Wisthoff

DISSENT

Based upon my review of the record in this matter and the fact that both students were involved in fighting, I would have imposed the same penalty on both students. For these reasons, I would reverse the decision of the Board of Education of Carroll County.

Reginald L. Dunn
Vice President

June 26, 2002