

RALPH CRUZ & ANGELA MORALES,

Appellants

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 02-56

OPINION

This is an appeal of a 30-day suspension of Appellants' son from Mt. Hebron High School for fighting with another student. Appellants argue that the school system committed various due process violations. The local board has submitted a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellants have submitted a lengthy opposition to the local board's motion.

FACTUAL BACKGROUND

At the time of the incident on May 16, 2002, Appellants' son David was an 11th grade student at Mt. Hebron High School in Howard County. As set forth in the local board decision, the facts of that incident are as follows:

[A] fight began between David and another student in the parking lot. While [Mr. Miller] managed to separate the two students and was attempting to take both back to the office, David started fighting a second time, more aggressively than the first, and was furiously throwing punches at the other student. Mr. Miller then had to forcefully push David away to make him stop fighting. Mrs. Bohn, the principal, then arrived, and David turned on Mr. Miller uttering obscenities ("F - - - off") and made disparaging remarks about a forty-year-old man taking action against a 17 year old.

Local Board Decision at 2. The incident continued as the principal escorted David from the parking lot into the front office where he lunged at the student with whom he had been fighting, who was now sitting on the sofa in the office, and began fighting again. In the process of separating the students, the principal was struck in the head. *See* 5/20/02 memo from Bohn to Plunkett.

David's mother was called to come get David from school. When she arrived, she spoke briefly in the hallway with Mr. Ruehl, the Assistant Principal. Mr. Ruehl was handling the matter in the absence of the principal who was seeking medical attention for injuries received during the incident. (Tr. 37).

Based on the events that transpired, the principal, Mrs. Veronica Bohn, suspended David for ten days with a recommendation that the suspension be extended further. *See* 5/17/02 letter from Bohn to Appellants. In her memorandum of recommendation, Mrs. Bohn recounted the incident and stated the following:

The safety of students and staff is in jeopardy when the intervention of staff members does not bring a fight or disruption to an end. My injury which caused me to be examined and treated medically – initial visit and two follow-up visits – was a result of David Cruz’s reconvening the fight after two staff interventions. Because of David Cruz’s blatant disregard for staff intervention and the dangerous situation staff and students were placed in during this fight, I am requesting the suspension be extended beyond ten days.

Mrs. Bohn also indicated that the school resource officer had filed a police report on the incident. *See* 5/20/02 memo from Bohn to Plunkett.

Thereafter, a central office suspension conference was held as part of the extended suspension deliberations. Dr. Craig Cummings, coordinator of alternative education programs, acted as the hearing officer and conducted the conference with the Appellants and David. Upon reviewing the matter Dr. Cummings recommended that David be suspended for 30 days and receive four sessions of anger management with a counselor or psychologist. (Tr. 92).

Mr. Roger Plunkett, acting as the superintendent’s designee, further reviewed the matter. Mr. Plunkett determined that David violated Policy 3431 on discipline and suspended David for 30 days. Because of the end of the school year, David’s suspension, which began on May 17, 2002, was to end on September 18, 2002. Additionally, because of the serious nature of the David’s actions, Mr. Plunkett indicated that David would be transferred to Centennial High School and would be required to meet with his school counselor or the school psychologist at least four times to work on improving his anger management skills.

Appellants further appealed to the local board. Following a full evidentiary hearing, the local board unanimously upheld the suspension decision. The local board found that there were no due process violations and that the penalty imposed on David for his actions was appropriate.

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).

Procedural Arguments

Appellants allege various due process violations regarding procedures followed by the principal and the hearing officer. However, it is well settled that whether or not any violations occurred, the full evidentiary hearing before the local board at which Appellants had the opportunity to present testimony, other evidence, and cross examine witnesses, cured any alleged deficiency that may have existed. *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).

Appellants also maintain that they were not informed of any right to have legal representation or to present witnesses at the suspension conference conducted by the hearing officer. Because there is no statutory or legal obligation to inform a parent of the opportunity to bring legal counsel or witnesses to a suspension conference, we find that no violation occurred on this basis.

Substantive Arguments

As to the merits of the case, Appellants argue that the decision to suspend their son was motivated by retaliation against them for questioning the procedures used by the school system in this matter. However, Appellants have failed to provide any evidence to support this allegation. The principal, Mrs. Bohn, testified that her decision was based solely on David's actions: "There was - the only thing was the incident, the fact that it happened three times. It was a serious event." (Tr. 90). Additionally, this matter was reviewed by Dr. Cummings and Mr. Plunkett who exercised their independent judgment in concluding that the extended suspension was appropriate. Thereafter, the local board conducted its own independent review of the case and found that David's actions constituted a serious breach of the student code of conduct.

Appellants also maintain that the penalty imposed on David was too harsh and was inconsistent with the penalty given to the other student.¹ However, we find sufficient evidence in this record to support the local board's decision to uphold David's suspension. David was clearly the aggressor in at least two of the fights that contributed to the whole incident. He was the one who failed to heed the commands of school staff and continued to fight after order had been restored. We therefore find that the severity of the punishment and the difference in punishment between his and the other student's was warranted. As the local board states in its decision:

¹The other student was suspended for less than ten days.

David initiated the fight on school grounds by pushing the other student, and he then refused to heed the intervention of staff by reconvening the fight on two other occasions. On one of those fights, the principal was struck and sustained an injury requiring medical attention. The events can be reasonably viewed as three separate fights, three separate occasions in which David disrupted the safety and discipline of the school and created a threat to the health and safety of others. This was no ordinary fight; David's actions were extreme and excessive. He was insubordinate to the staff who intervened and tried to restore order, and he verbally assaulted Mr. Miller by uttering profanities and challenging comments, all directed at a teacher who was only doing his job. David caused a serious breach in school discipline and order. The imposition of a 30-day suspension and an administrative transfer were in accordance with the conduct and appropriate given David's specific actions.

Local Board Decision at 6-7. We concur. *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).

Miscellaneous Claims

Appellants also claim that the suspension prevented David from attending summer school; caused David not to complete his eleventh grade courses; caused him to start his senior year late on September 18; and will prevent him from finishing high school at Mt. Hebron with his fellow students. As to the summer school issue, summer school is a supplemental program which is not a part of the regular core curriculum or requirements of the Howard County Public School System. Mr. Plunkett, who is also responsible for administering the summer school program in Howard County, testified that he was unaware of any request by Appellants to enroll David in summer school. Additionally, given that David was permitted to do make up work while on suspension, it is unclear how the suspension could have caused him not to complete course work. Although Appellants made reference at the hearing to the need for certain software to complete some of the work, it does not appear that Appellants sought the assistance of school staff in remedying whatever alleged problems they may have encountered. Moreover, a review of his transcript discloses that David was suffering from poor grades prior to the suspension. Finally, while David's suspension did last into the following school year and resulted in a transfer to a different school, as stated above, the penalty was not unduly harsh. These were the consequences of David's own actions.

School System Disciplinary Policies

Appellants maintain that testimony at the hearing before the local board suggests that David's suspension was based on a policy different from the one which they were advised of by

school officials. Specifically, Appellants are concerned that David was disciplined for assaulting a staff member, a charge of which they were not aware.

Mrs. Bohn's letter to Appellants indicates that David was suspended for violating the Student Code of Conduct and Policy 3431. Mr. Plunkett's letter to the Appellants regarding the suspension specifically states that David "violated policy number 3431-Discipline." Policy 3431 is the school system's general umbrella policy covering all discipline and its corresponding regulations set forth the manner in which disciplinary consequences are meted out. Policy 3431 states that "[u]sing the Howard County Student Code of Conduct and Course of Disciplinary Action, school personnel are responsible for taking appropriate action when a student's actions or presence in the school is not conducive to a safe and orderly environment." The Student Code of Conduct lists fighting and physical attack on students as offenses. The Student Code of Conduct also indicates that the penalty for these offenses may include suspension and alternative placement.

The local board determined more specifically that David violated policy 3445 - Violence and School Safety for willfully attempting to inflict injury upon the other student. The policy states: "It shall be a violation of this policy for any student . . . on school grounds . . . to use profanity toward, defame, harass, threaten, intimidate, assault, batter, or haze another." 3445-R at 2. We find that Policy 3445 comes under the umbrella of Policy 3431. Based on the record in this case, there can be no dispute that Appellants were aware that the behavior for which David was disciplined resulted from fighting with and assaulting another student. At a minimum, Ms. Morales' participation in the suspension conference with the hearing officer put her on notice of the issues.

Appellants seem to be confusing Policy 3431 and 3445 with Policy 3414 - Student Assault and /or Battery on School Staff. Although Mr. Plunkett did make reference during the hearing to the consequences imposed for assaulting a staff member while he was discussing the decision to transfer David to another school, (Tr. 56), the local board never made any determination that David had violated that policy or that he had committed an assault on a staff member. Nor did the local board uphold the disciplinary action on the basis of such a violation. The local board did note, however, that the principal was struck and injured during one of the fights in which David was the aggressor. This fact contributes to the seriousness of what occurred during the incident.

CONCLUSION

For all of these reasons and finding no due process violations or other illegalities in the proceedings, we affirm the 30-day suspension decision of the Board of Education of Howard County.

Marilyn D. Maultsby
President

Reginald L. Dunn
Vice President

JoAnn T. Bell

Philip S. Benzil

Dunbar Brooks

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

December 4, 2002