

DARNELL & TILLIE L [REDACTED],

Appellant

v.

ANNE ARUNDEL COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-20

OPINION

This is an appeal of an expulsion of Appellants' son from Broadneck High School for making threatening remarks to a teacher in violation of the Board of Education of Anne Arundel County Policy No. 902.3. The local board has filed a Motion for Summary Affirmance maintaining that there is no dispute of material fact regarding any issues. Appellant has submitted a response opposing the Motion. The local board has also submitted a Motion to Strike certain information filed by Appellants in their opposition to the Motion for Summary Affirmance.

FACTUAL BACKGROUND

T.L., Appellants' son, was a twelfth grade student at Broadneck High School in Anne Arundel County at the beginning of the 2003-2004 school year. On September 16, 2003, T.L. was involved in an incident which led to his expulsion. As set forth in the local board's decision, the facts of that incident are as follows:

Mrs. Pamela Sawyer, T.L.'s math teacher, was administering a quiz on September 16, 2003. T.L. was unable to finish the quiz on time. Mrs. Sawyer asked for papers to be turned in but T.L. continued to work on the quiz until the second bell rang for change of classes. Mrs. Sawyer took his paper and T.L. complained that he needed more time to complete the quiz. Mrs. Sawyer would not allow the extra time. Mrs. Sawyer wrote him an admission pass to his second period class and offered to discuss the matter with him after school. T.L. returned to Mrs. Sawyer's class that afternoon and argued about his need for additional time to finish the quiz. Mrs. Sawyer refused. T.L. became angry and yelled "I hope you rot in hell". Mrs. Sawyer asked what he meant by that remark and he made an additional threatening remark: "If I didn't love school so much, you'd be lying on the floor bleeding and that is not a threat, that's a fact, lying on the floor, bleeding."

Local Board Decision at 2-3.

Mrs. Sawyer, reported the incident to the school administration. The Assistant Principal, William Eggert investigated the incident. Mr. Eggert reviewed statements by Mrs. Sawyer and two other teachers who witnessed T.L.'s remarks. A conference was held with the student and Mrs. L■■■■, his mother, wherein the student gave his version of the incident. As a result of the investigation, Mr. Eggert concluded that the student had made a threatening remark to his math teacher and recommended that T.L. be expelled.

Dr. Jose Torres, Assistant Superintendent for Student Support Services, acting as the Superintendent's designee, reviewed the investigative report and information sent by Appellants and held a conference with the parents. Dr. Torres agreed with the recommendation and expelled T.L. for the remainder of the school year.¹ Even though T.L. was removed from Broadneck High School, Dr. Torres offered him a placement at Mary Moss Academy and the opportunity to attend evening high school to complete credits for graduation. The student was also required to attend the Responsible Action Program before he could return to the regular school program.² *See* Local Board Decision at 4.

Appellants appealed the expulsion decision to the local board. During that process, Appellants argued that T.L. should not have been removed from the regular school program for half the school year; the teacher's statements were not accurate; and the investigation³ was incomplete and statements relating to T.L.'s psychological needs were prejudicial. Appellants requested the following remedies:

- a) reversal of the expulsion and readmission of T.L. to Broadneck;
- b) expungement of Dr. Chase's investigative report from school records; and
- c) permission for T.L. to take the SAT.

After a hearing on the matter on November 12, 2003, the local board issued a written opinion and order dated December 3, 2003, upholding the expulsion. The local board stated that the Appellants offered no witnesses or documents to support their argument that T.L. did not

¹The record revealed that an earlier incident occurred with this student on September 12, 2003 in which there was profane language used in an outburst with another student or students in the cafeteria. However, the decision to expel the student was not based upon the September 12, 2003 incident because the cafeteria incident was too remote in time and not as flagrant a breach of conduct. Therefore, only the threatening remark made to the math teacher on September 16, 2003 was considered in the expulsion. *See* Local Board Decision at 4.

²The local school board's policy is that if a student is expelled before November 1 of the school year, he is eligible to return to the regular school program for the second semester if he fulfills the conditions established by the Office of Student Services.

³An investigation for this incident was conducted by Dr. Richard Chase, Special Assistant for Student Discipline.

make threatening remarks to his math teacher; they offered no factual proof to support their allegations; and the board found “ample evidence to support the determination that T.L. engaged in disrespectful conduct constituting a threat toward his math teacher that caused her to fear for her safety.” See Local Board Decision at 4-5.

The local board further indicated that Appellants could achieve much of the relief that they requested. If T.L. fulfilled the conditions established by the Office of Student Services, he could apply for readmission to the regular school program at the start of the second semester. While in evening class he could register for and take the SAT. Expungement, however, was not appropriate in this instance, but T.L. could take anger management classes or other steps to demonstrate that he has learned to control his emotions and manage his behavior.

Appellants appealed the local board decision to the State Board requesting a hearing and arguing that the local board discriminated against them based upon their son’s disability and race and that there was a lack of credible evidence.

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. See Md. 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.01.01.03E(4)(b).

Appellants maintain that the decision to expel their son was motivated by racial discrimination and by discrimination based upon their son’s disability. However, Appellants have failed to provide any evidence that supports these allegations. The mere allegation of discriminatory practices without attempting to provide any factual specifics is insufficient cause for granting a hearing on the allegations. See *Black v. Carroll County Board of Education*, MSBE Opinion No. 02-24 (June 26, 2002), citing *Hurl v. Howard County Board of Education* 6 Op. MSBE 602 (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); and *Anderson v. Blake v. Board of Education of Prince George’s County*, 5 Op. MSBE 415 (1989) (allegation must include specific facts to support charge of discrimination or arbitrariness to be entitled to a hearing).

Appellants further argue that the teacher’s statements regarding the incident were not credible. However, it is well established that 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 to draw the inferences.”); See also, *Board of Education 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.”)

Additionally, Appellants maintain that T.L. should not have been expelled for half of the school year. The local board determined that by engaging in threatening conduct toward his teacher, T.L. violated local board policy 902.3 and in so doing, his behavior warranted expulsion for that time period. Based upon our review of the record, we find sufficient evidence to support the local board’s decision to uphold the expulsion for threatening his teacher. *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); *Butler v. Board of Education of Anne Arundel County*, 7 Op. MSBE 404 (1996) (upholding expulsion of student for striking another student); and *Harrison v. Board of Education of Somerset County*, 7 Op. MSBE 391 (1996) (upholding expulsion of student for assaulting football coach).

Motion to Strike Documents Related to Readmission

State law and regulations of the State board require that a matter must first be decided by the local superintendent and the local board of education before it is submitted to the State Board on appeal. Md. Code Ann. §4-205(c). Accordingly, the State Board has consistently held that an appellant must pursue and exhaust statutorily prescribed administrative remedies in the appropriate manner. *See Linda Kemp v. Montgomery County Board of Education*, MSBE Opinion No. 01-14 (April 24, 2001); *Stewart v. Board of Education of Prince George’s County*, 7 Op. MSBE 1358 (1998); *Jackson-Nesmith v. Board of Education of Charles County*, 7 Op. MSBE 1320 (1998); *Peacock v. Baltimore County Board of Education*, 7 Op. MSBE 1287 (1998); *Hopkins v. Board of Education of Montgomery County*, 4 Op. MSBE 370 (1986).

Here, with their response in opposition to the Motion for Summary Affirmance, Appellants included nine documents that relate to the readmission of T.L. to Broadneck High School after completing the requirements of the expulsion. Readmission was not an issue at the time of this appeal and has not been addressed by the local board. In accordance with the legal principles cited above, before the State Board reviews the matter, the readmission issue must be raised and decided first by the local board.

CONCLUSION

Based upon our review of the record, we find no due process violations or other illegalities in the proceedings. We therefore affirm the expulsion decision of the Board of Education of Anne Arundel County.

Edward L. Root
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April 21, 2004