

PATREESE M [REDACTED],

Appellant

v.

PRINCE GEORGE'S COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 05-39

### OPINION

This is an appeal of the expulsion of Appellant's daughter, D.T., from Potomac High School for possession and use of a weapon. The local board has filed a motion to dismiss or in the alternative, motion for summary affirmance, maintaining that the Appellant failed to show that, in expelling the student, the local board either did not follow the law, or that it violated the student's due process rights, or acted unconstitutionally. The Appellant did not file a response to the motion.

### FACTUAL BACKGROUND

On or about April 22, 2005, the Appellant's daughter, D.T., became involved in an altercation with another student at Potomac High School in the Prince George's County School System. ("PGCPS").<sup>1</sup> The principal of Potomac, Sandra Nelson, was summoned to the scene where she "smelled an irritant (pepper spray or mace)". The school nurse was assisting a student who was "crying hysterically and trying to rub her eyes". The victim indicated that D.T. had hit her in the face and sprayed her eyes with mace. She reported that she had temporarily lost sight in both eyes. (Investigation Report 5/6/05 and Hearing Officer Report 7/28/05).

When questioned, D.T. admitted to hitting the victim but denied using mace on her. There were, however, several eyewitnesses to the altercation who reported seeing D.T. spray the mace and that it was on D.T.'s keychain. Other students reported that they heard D.T. say "When I drop my keychain somebody pick it up." (Memo from Assistant Principal Spence to Principal Nelson, 4/25/05). D.T. could not account for the whereabouts of her keychain.

Jacqueline Bryan, Pupil Personnel Worker, investigated the incident. Ms. Bryan found that the victim stated that D.T. approached her in the hallway, sprayed an unknown substance in her eyes and began hitting her in the face with her fists. The victim reported losing sight in both eyes. The substance was never recovered but several students witnessed the incident and reported that they actually saw D.T. spray something into the victim's eyes. (Investigation Report of 5/06/05). Additionally, Principal Nelson stated that after checking on the victim in the restroom,

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<sup>1</sup>Apparently, D.T. had previously been assaulted by the other student off school grounds and that student was to appear in juvenile court the day of the altercation.

when she returned to the hallway the irritant was “still in the air and caused an irritation in my throat causing me to cough periodically”. (Statement of Nelson, undated) Another faculty member, Thomas Steele, also provided a statement that he “noticed an acrid odor in the hallway and felt a burning sensation in my eyes, nose and throat, similar to a low level of CS gas.” (Statement of Steele, 4/22/05).

Based upon Ms. Bryan’s report, Dr. Andre Hornsby, then Chief Executive Officer of the PGCPS, wrote to the Appellant that he had decided that there were grounds for D.T.’s expulsion. (Letter of 5/18/05). On May 26, 2005, Dr. Robert Anderson, Assistant Supervisor, acting as the superintendent’s designee, convened a three member panel to discuss the proposed expulsion with D.T. Based upon that discussion, the panel found that D.T.’s expulsion was warranted. (Letter of 6/03/05).

The Appellant appealed that determination to the Board of Education of Prince George’s County. The board appointed Verjeana C. McCotter-Jacobs, Esquire, to hear the appeal and issue findings of facts, conclusions of law and a recommendation to the local board. After a hearing, Ms. McCotter-Jacobs issued on July 28, 2005 her findings, recommending that the board uphold the decision to expel D.T. from the PGCPS. However, she noted that since the victim had assaulted D.T. two weeks earlier,<sup>2</sup> she suggested that D.T. attend anger management/coping classes and that the board reconsider reinstatement after the conclusion of the classes and before the start of the school year. (Recommendation - Summary Report, 7/28/05).

On August 2, 2005, the board, through its student appeals committee, reviewed the record of the proceedings and the exhibits, the Hearing Examiner’s findings of fact and conclusions of law and recommendation. The local board concurred with the recommendation and voted to uphold the decision to expel D.T. The Appellant and D. T. were informed of the opportunity to attend an alternative school. (Letter of 8/9/05).

This appeal followed.

#### STANDARD OF REVIEW

The decision of a local board with respect to a student suspension or expulsion is considered final. Md. Educ. Code Ann. § 7-305. The State Board may not review the merits of the student expulsion, but may review to determine 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.01.05.05.G(2). The State Board may reverse or modify a student suspension or expulsion

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<sup>2</sup> The victim of the mace attack was not prosecuted by the Department of Juvenile Services due to her lack of a past history with the Department. She was placed on informal supervision and required to participate in the CHOICE program, participate in 20 hours of community service and to refrain from any physical or verbal contact with D.T.

only if it finds that the local board did violate State or local law, policies, or procedures; the due process rights of the student; or acted in an otherwise unconstitutional manner. COMAR 13A.01.05.05G.(3).

### ANALYSIS

Before the local board, Appellant argued that her daughter was an honor roll student and that it was unfair and unreasonable to expel her daughter because she was a very good student and had never been in trouble before. Moreover, the Appellant argued that there wasn't any proof that her daughter had mace, "even the security personnel state they didn't find anything at the scene." (Request for Appeal to local board 7/5/05).

Before the State Board Appellant argues for the first time the fact that "Potomac High School accused my daughter of using mace although no mace was found on the scene and the security cameras and the security guards state the tapes didn't reveal my daughter using mace."<sup>3</sup> (Letter of Appeal, 8/15/05). She also stated that her daughter wrote a letter of apology to the PGCPs and requested that she be allowed to return to school. (Letter of 7/27/05).

Applying the standard of review, the State Board may only overturn a decision on discipline if it finds that the local board violated State or local law, policies, or procedures; the due process rights of the student; or that the local board acted in an otherwise unconstitutional manner. In this case, the Appellant argues that the expulsion was unfair and unreasonable and that there was no evidence that her daughter used mace.

We note, however, that the local board had physical evidence that some irritant like mace was used on the victim; there was eye witness testimony that D.T. fired the irritant and that D.T. had earlier told other students that if she dropped her keys, pick them up for her. D.T. admitted that she no longer had her keys.

Lacking any allegations that the local board violated State or local law, policies, or procedures; the due process rights of the student; or that the local board acted in an otherwise unconstitutional manner, we uphold the local board's decision to expel D.T.

### CONCLUSION

Because we find no due process violations or other illegalities in the proceedings, we

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<sup>3</sup>The State Board will not consider issues that were not first presented to the local board. See *Craven v. Board of Education of Montgomery County*, 7 Op. MSBE 870 (1997) (failure to challenge suspension before local board constituted waiver); *Hart v. Board of Education of St. Mary's County*, 7 Op. MSBE 740 (1997) (failure to raise issue of age discrimination below constituted waiver on appeal). Thus, we find that Appellant has waived her right to raise the allegations concerning the security tapes for the first time on appeal to the State Board.

affirm the disciplinary decision of the Prince George's County Board of Education.

Edward L. Root  
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David F. Tufaro

December 6, 2005