

SHARON S [REDACTED],

Appellant

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 05-14

OPINION

This is an appeal of the expulsion of Appellant's son, B.S., from Oakland Mills High School for assaulting another student without provocation. The local board has filed a motion to dismiss or in the alternative, motion for summary affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant has filed a response to the motion claiming that local board's decision was illegal for several reasons including violations of her son's due process rights.

FACTUAL BACKGROUND

In the spring of 2004, Appellant's son, B.S., was a tenth grade student at Oakland Mills High School ("OMHS") in the Howard County Public School System ("HCPS"). On April 14, 2004, B.S. signed a memorandum acknowledging that he understood the rules and policies of certain conduct in school. One of those policies listed is violence and school safety. The Code of Student Conduct also lists various infractions of school rules and policies and the consequences of violating the rules, including "Physical Attack on Students or Others. *See* The Student Code of Conduct, HCPS, 2003-2004. The consequence of violating this policy includes expulsion from school.

On May 10, 2004, another student, J.S., accidentally bumped his baseball bag into B.S. B.S. then pushed J.S. and they went their separate ways. The next day, J.S. came over to B.S.'s lunch table to talk with another student at that table. B.S. told J.S. the he didn't like him and ordered him to leave. J.S. left with the other student. That same day, right after school, J.S. was on his way to the baseball field for an interscholastic game. B.S. came up from behind J.S. and shoved him in the back. J.S. told B.S. to "chill out". The baseball coach then interceded and told B.S. to leave the field. As he walked away, B.S. continued to yell at J.S. apparently trying to egg J.S. on into a fight. J.S. proceeded to the dugout. B.S. finally walked away.

Approximately fifteen minutes later, B.S. returned to the field with three of his friends. They jumped the fence and proceeded toward J.S. whose back was to the group. As J.S. turned around, B.S. punched him in the face. B.S. then sprinted from the field.

On May 12, 2004, the Assistant Principal of OMHS, Steven Levy, held a conference with B.S. who admitted that he went to the baseball field with the intent to hit J.S. and did hit him because J.S. had “disrespected” him. (Memorandum of Assistant Principal Levy, 5/19/05). Based upon HCPS’ policies and code of student conduct, the Principal, Marshall Peterson, suspended B.S. for ten days with a recommendation for an extension of that suspension. (Letter to Appellant, 5/17/05).

Because the Principal recommended that the suspension be extended beyond the initial ten days, the matter was reviewed by the Superintendent’s designee, Dr. Craig Cummings, who found that B.S. had violated policies 3445 (Violence and School Safety), 3431 (Discipline), and the Code of Conduct (Physical Attack on Student; Inciting and/or Participating in a Disturbance; Threat to Student, Physical or Verbal; Fighting, Intimidation). Dr. Cummings noted that B.S. had incurred four previous suspensions. He also noted that B.S. did not express any remorse nor did B.S. acknowledge that his reaction was extreme given the circumstances. (Suspension Hearing, 5/26/04). Based upon the seriousness of B.S.’s premeditated actions, Dr. Cummings expelled B.S. from the Howard County School System. (Letter to Appellant, 5/27/04).

Appellant filed an appeal with the local board on June 4, 2004. A hearing was held before the local board on August 19, 2004. The local board upheld the expulsion of B.S. but asked the Superintendent to consider limiting the expulsion to a maximum of one year, with reconsideration for a shorter term and readmission into an alternative placement. The local board’s request to the Superintendent was based upon the fact that B.S. had entered a counseling program and had stated at the local board hearing that he should have acted differently. (Local board decision, 10/27/04). Appellant was informed of the local board’s decision by telephone that same day.

By letter dated August 30, 2004, Appellant requested that the expulsion period be shortened and that B.S. be offered an alternative placement. She explained that B.S. was in a counseling program. The superintendent denied this request, explaining that B.S. had the opportunity to remove himself from the situation and did not do so, and that an attack during an athletic event had the potential to harm many others. He encouraged Appellant to enroll B.S. in one of the alternative programs that Appellant had investigated and stated that he would reconsider reinstatement after May 27, 2005, one year from the date the expulsion was imposed. (Letter of September 9, 2004).

This appeal followed.

ANALYSIS

The decision of a local board with respect to a student suspension or expulsion is considered final. Md. Educ. 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 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 if it finds that the local board did violate State or local law, policies, or procedures; the due process rights of the student; or whether the local board acted in an otherwise unconstitutional manner. COMAR 13A.01.05.05G.(3)

Before the local board, Appellant argued that her son's expulsion violated State law because it denied him an education for the school year. (Appeal Information Form). The local board reviewed the HCPS policies on student violence. HCPS policy #3445-R II.B states:

It shall be a violation of this policy for any student, employee, or third party on school grounds, a school bus, or in connection with any school-sponsored activity, to use profanity toward, defame, harass, threaten, intimidate, assault, batter, or haze another.

Further, the Student Code of Conduct provides that a physical attack on students or others may be punished by exclusion or expulsion from school.

There is no question that B.S. assaulted and battered (*i.e.*, physically attacked) J.S. B.S. admitted to doing so. The only question remaining is whether the length of the expulsion violated State or local law, as Appellant has alleged.

As noted above, the local board upheld the expulsion based upon the fact that B.S. "engaged in a premeditated assault, without provocation, on another student". While harsh, this action does not violate State or local law.

Before the State Board, Appellant also argues that B.S.'s due process rights were violated because he did not receive a written decision until October 27, 2004, 41 school days after the hearing, and because his expulsion was for most of the school year.

Section 7-305 of the Education Article provides, in pertinent part:

Each decision and order of the Board shall be delivered in writing, unless it shall immediately follow the hearing in which case it shall be delivered orally and thereafter in writing, with copies to all parties.

Appellant concedes that she was informed orally of the local board's decision by telephone on August 19, 2004, the day of the local board hearing, and thereafter in writing. (Appellant's Response, p. 14). While the length of time between the decision and the receipt of the written decision is not optimal, it is not a violation of Section 7-305. Appellant was on notice that she would have to make other arrangements for B.S.'s education, whether public, private, or home schooling, before the 2004-05 school year started. She in fact made some inquiries about

alternative programs and found that B.S. could start at least some programs in the second semester of the school year.¹

Appellant also alleges for the first time that the HCPS violated B.S.'s right to a free, appropriate public education (FAPE) because the school system should have known that he was in need of special education services as far back as elementary school; that his high school disciplinary record demonstrated he should have been evaluated to determine if he was a student in need of special education services; therefore, the school system should be deemed to have knowledge that B.S. was a student with a disability.

All the events on which these claims are based occurred well before the incident that gave rise to the expulsion. However, Appellant did not raise these issues before the local board. The State Board has consistently declined to address issues that have not been reviewed initially by 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 these matters for the first time on appeal to the State Board.

This notwithstanding, we note that B.S. did receive behavioral interventions by the student support team in elementary school as a result of which his case manager found that B.S. was happier and more ready to work, and that his verbal and physical aggression lessened. (Student Behavioral Plan, 2/2/98, Attachment 4 to Appellant's response). In addition, there is no evidence in the record other than Appellant's claim that the aggressive behavior continued through middle school.²

With respect to his high school behavior, the majority of B.S.'s infractions were minor, such as tardiness and classroom disruptions. His prior suspensions were for insubordination and/or profanity. (Discipline record). These behaviors, without more, do not automatically give rise to an evaluation for special education services. Further, Appellant could have requested an evaluation for special education services for B.S. at any time and, by law, the school system

¹The record does not reflect whether Appellant enrolled B.S. in any program. The psychologist's report notes that when she examined B.S. in December 2004 and January, 2005, he was between jobs. (Attachment 6 to response, p. 2)

²Appellant also alleges that records are missing from B.S.'s file. Appellant does not specify what records are missing. It is noted that an IEP team was convened for B.S. on December 22, 2004, which met again on March 1 and March 8, 2005. We believe the records' issue should be addressed by the IEP team. Appellant's FAPE claim includes allegations that school officials failed to report incidents of B.S.'s abuse in the second and fourth grades, some six to eight years ago. This allegation, if genuine, should be raised with the appropriate local school system officials.

would have had to evaluate him. Appellant never made such a request.

CONCLUSION

Because we find no due process violations or other illegalities in the proceedings and considering the gravity of the incident, we uphold the expulsion made by the Board of Education of Howard County.

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April 20, 2005