

TANYA J [REDACTED],

Appellant

v.

BALTIMORE CITY BOARD  
OF SCHOOL COMMISSIONERS,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 03-19

### OPINION

Appellant challenges the local board decision's on remand, adopting the hearing examiner's recommendation to uphold the long term suspension of her sixth grade daughter from Lakeland Elementary/Middle School for assaulting a teacher.<sup>1</sup>

Appellant claims that the local board failed to follow its own Board Rule 507.09 by failing to notify her daughter, Tanora, of the discipline imposed within ten days of her removal; the local board acted illegally because it failed to provide Tanora with due process of law under Board Rule 507.05 and .09; and the school system did not comply with Board Rule 506 by failing to document attempts to modify Appellant's behavior. The local board has filed a Motion for Summary Affirmance maintaining that Appellant's due process rights were not violated, the local board followed all State and local laws, policies and procedures, and its decision was not unconstitutional or otherwise illegal. Appellant has submitted a reply opposing the motion.

### FACTUAL BACKGROUND

Appellant's daughter, Tanora, was a sixth grade student at Lakeland Elementary/Middle School in the Baltimore City Public School System ("BCPSS") for the 2001-2002 school year. On October 4, 2001, she got into an altercation with her art teacher. According to the art teacher, Tanora jumped out of her seat knocking over her chair, knocked all her belongings off her desk, and tore up the art work of another student. She then shoved the teacher out of the way in attempting to leave the room, and in doing so, injured the teacher's arm, drawing blood. The teacher went to the Baltimore City Clinic for treatment.

---

<sup>1</sup>The State Board initially reviewed this appeal last summer and found that the local board violated its own rule by failing to notify the Appellant by certified mail of the CEO's decision to impose a long-term suspension. The State Board remanded the matter to the local board for the scheduling of a hearing on the merits of the long-term suspension. *See Tanya J [REDACTED] v. Balto. City Bd. of School Commissioners*, MSBE Op. No. 02-41 (August 27, 2002).

Tanora maintains that she was attempting to leave the room to avoid a confrontation with the teacher and only “bumped shoulders” with the teacher. Her mother came to the school and requested that an administrator talk to the students who saw the incident, but the administrator denied this request.

The principal at Lakeland Elementary/Middle met with Appellant and Tanora on October 5, 2001, to discuss the incident and to inform them that Tanora was being proposed for a long-term suspension. Both were also informed that a conference would be held at the Office of Attendance and Suspension Services, and that they would be notified, via letter, of the date and time.

On October 17, 2001, Ms. Toby Epstein, Student Support Associate, conducted the conference at the Office of Attendance and Suspension Services. Ms. Epstein reviewed the school’s account of the incident and also listened to Tanora’s version of events. Tanora indicated that, “Most of that stuff I didn’t do. I did bump into her.” (See CEO Exhibit 6). At the conclusion of the conference, Ms. Epstein explained the expulsion and appeal processes. Ms. Epstein’s disposition was to continue Tanora on the suspension, pending the CEO’s decision regarding expulsion. Tanora was referred to the Upton School #303 for home teaching. On October 30, 2001, the CEO sent Tanora a letter upholding the expulsion.

On January 24, 2002, the CEO notified Tanora that she had been reinstated to the BCPSS and assigned to Green Spring Middle School #82.

Appellant subsequently filed an appeal with the State Board arguing that her daughter had been denied an opportunity to appeal her expulsion due to the local board’s failure to notify Appellant and her daughter of the disciplinary action via certified mail. As noted above, the State Board found in favor of the Appellant and remanded the case to the local board for a hearing on the merits of the expulsion.

On remand, a hearing on the long term suspension was held on October 24, 2002, before a local hearing examiner, who recommended that the suspension be upheld. The local board adopted this recommendation on December 23, 2002. This appeal followed.

## ANALYSIS

The decision of a local board 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 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.01.01.03(E)(4)(b).

### Ten Days Notice

Appellant claims that the local board violated its own policies by not complying with Rules 507.5 which requires a conference with the Chief Executive Officer or designee no later than ten school days after the student's removal. As the hearing examiner found, this issue was previously rejected by the State Board in Opinion No. 02-421. The State Board found that Tanora was removed from school on October 4, 2001, and the conference was held with Ms. Epstein, the CEO's designee, on October 17, 2001, within the 10 school day period. *See* Opinion No. 02-41, p. 4.

### Behavior Modification

Appellant also claims that the local board violated its own policies by not making attempts to modify Tanora's behavior prior to proposing her for long-term suspension/expulsion as required by Rule 506. However, at the hearing, the school system presented testimony that measures were taken to modify Tanora's behavior prior to the long-term suspension/expulsion. Ms. Williams, Mr. Webb, and Ms. Ferris all testified to previous disciplinary incidents and conferences that were held with Tanora's parent regarding her disciplinary problems. (Report of Hearing Examiner, p. 3-4 and 7). The Hearing Examiner also noted that pursuant to the BCPSS Student Discipline Code, p. 66 of CEO Exhibit #5, suspension and expulsion were appropriate consequences for the infraction of "assault on school staff" without regard to behavior modification measures. (Report of Hearing Examiner, p. 4).

### Due Process

With respect to Appellant's due process claim, the full evidentiary hearing before the local board at which Appellant had the opportunity to present testimony, other evidence, and cross-examine witnesses cured any alleged deficiency that may have existed. *See Ralph Cruz & Angela Morales v. Howard County Board of Education*, MSBE Opinion No. 02-56 (December 4, 2002) (alleged violations by principal and hearing officer cured by full evidentiary hearing before local board); *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).

### Merits of the Suspension/Expulsion

As to the merits of her claim, Appellant presented evidence at the local hearing that Tanora had accidentally bumped into Ms. Williams and that the teacher hit her hand on the pencil sharpener and then told the class that she should have put her finger in the pencil sharpener and

blamed the injury on Tanora. (Report of Hearing Examiner, p. 5). She also offered four letters from other students in the class that corroborated Tanora's version of the events. (Respondent's Exhibit #3).

The local board, however, presented evidence to the contrary. Ms. Williams testified that Tanora intentionally ran into her at full force and scratched her arm and finger with her fingernails. A cut on her hand was bleeding and required medical attention and later became infected. The principal testified that the suspension conference was extremely confrontational and that Tanora's mother insisted that the teacher had put her finger in the pencil sharpener and tried to frame Tanora for the injury. Mr. Webb testified that Tanora had some behavioral problems and had altercations with other teachers. (Report of Hearing Examiner, p. 4).

The question of whether Tanora assaulted the teacher or whether the teacher accidentally hit her hand on the pencil sharpener is essentially a credibility dispute left to the trier of fact. It is evident based on the Hearing Examiner's report that the hearing examiner found the testimony of school officials more credible than the testimony presented on behalf of Tanora. *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."). *Board of Educ. v. Paynor*, 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").

The State Board may not substitute its judgment for that of the local board unless there is independent evidence in the record to support the reversal of a credibility decision. *See Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994); *accord, William Mace v. Harford County Bd. of Educ.*, MSBE Opinion No. 01-15 (April 24, 2001); *Kaleisha Scheper v. Baltimore County Bd. of Educ.*, 7 Op. MSBE 1122 (1998); *Corey Williamson v. Bd. of Educ. of Anne Arundel County*, 7 Op. MSBE 649 (1997); *Mecca Warren v. Bd. of Educ. of Baltimore County*, 7 Op. MSBE 328 (1996). Based upon our review of the record, we find that Appellant has provided no basis for reversing the credibility determinations made by the Hearing Officer and affirmed by the local board.

## CONCLUSION

For these reasons and finding no due process violation or other illegality in the proceedings, we affirm the decision of the Baltimore City Board of School Commissioners upholding the student suspension.

Marilyn D. Maultsby  
President

JoAnn T. Bell  
Vice President

Philip S. Benzil

Dunbar Brooks

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

April 29, 2003