

LATITIA M.,

Appellant

v.

BALTIMORE COUNTY  
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 10-20

### OPINION

#### INTRODUCTION

The Appellant challenges the decision of the Baltimore County Board of Education (local board) upholding “the decision of the Superintendent’s designee regarding the expulsion of [Appellant’s son] from Parkville High School.” The Appellant questions the validity of the local board’s decision given that the Superintendent’s designee did not expel her son from school, but rather assigned him to an alternative program. The Local Board has filed a Motion to Dismiss the case maintaining that it is moot because the Appellant has declined the school system’s offer to have her son return to Parkville, opting instead to have him finish out the school year at Rosedale Alternative High School (Rosedale). Alternatively the local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal.

#### FACTUAL BACKGROUND

The Appellant’s son, D.B., began the 2009-2010 school year at Parkville High School (Parkville) as a tenth grade student. On November 25, 2009, two of Parkville’s physical education teachers informed Assistant Principal, Russell Valentine III, that they had seen D.B. place what they believed to be a knife in the front pocket of his jeans prior to gym class. (Sup’t. Exhs. 4B, 10; T.18-19, 25-26, 55). Based on this information, Mr. Valentine searched D.B.’s gym locker and retrieved a switchblade knife with a serrated edge from D.B.’s pants. (Sup’t. Exh. 2; T.18-20). When questioned, D.B. admitted to carrying the knife. (Sup’t. Exhs. 2, 3; T.90).

D.B. was charged with the Category 3 offense of possession of a weapon and the Category 1 offense of refusing to cooperate with school rules and regulations, both violations of Baltimore County Public Schools’ (BCPS) Policy 5550 – Disruptive Behavior. (Sup’t. Exh. 1). Category 3 offenses are punishable by assignment to an alternative program or expulsion. (Policy 5550).

The Principal of Parkville, Steven Edgar, suspended D.B. for five days and referred the case to the local Superintendent for appropriate action. (Sup’t. Exh. 1). David Konkle, the

Superintendent's designee, conducted a hearing on December 4, 2009 and found D.B. guilty of both offenses. (Local Bd. Exh. 6). That same day, Mr. Konkle assigned D.B. to an alternative program, effecting an administrative transfer from Parkville to Rosedale. (*Id.*). Mr. Konkle never stated that he was expelling D.B. from Parkville.

Appellant appealed the decision to assign D.B. to an alternative school to the local board. A panel of the local board conducted an evidentiary hearing. In a brief decision, the local board stated that it upheld "the decision of the Superintendent's designee regarding the expulsion of [D.B.] from Parkville High School." (Local Bd. Exh. 3).

On March 18, 2010, the Appellant attended a review and reinstatement meeting conducted by Alan Hill, the BCPS Appeals and Mitigation Officer, to discuss D.B.'s reinstatement options.<sup>1</sup> (Exh. 5). The Appellant agreed that it was in D.B.'s best interest to remain at Rosedale through the end of the school year given that he was making academic progress in the small group learning environment there. (*Id.*). D.B. is scheduled to be reinstated at Parkville on August 30, 2010 for the start of the 2010-2011 school year. (*Id.*).

#### STANDARD OF REVIEW

Because this is a student discipline case involving the removal of a student from the school of attendance, we follow the standard of review used for suspension and expulsion cases. In student suspension and expulsion cases, the decision of the local board is considered final. Md. Code Ann., Educ. §7-305(c). Therefore, the State Board will not review the merits of the decision unless there are "specific factual and legal allegations" that the local board failed to follow State or local law, policies, or procedures; violated the student's due process rights; acted in an unconstitutional manner; or that the decision is otherwise illegal. COMAR 13.01.05.05G(2).

#### LEGAL ANALYSIS

The local board has filed a Motion to Dismiss the case maintaining that it is moot because the Appellant has chosen to have D.B. remain at Rosedale for the remainder of the 2009-2010 school year rather than reinstating him at Parkville on April 19, 2010.

It is well established that a question is moot when "there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the courts [or agency] can provide." *In Re Michael B.*, 345 Md. 232, 234 (1997); *See also Arnold v. Carroll County Bd. of Educ.*, MSBE Op. No. 99-41 (1999); *Farver v. Carroll County Bd. of Educ.*, MSBE Op. No. 99-42 (1999); *Chappas v. Montgomery County Bd. of Educ.*, 7 Op. MSBE 1068 (1998).

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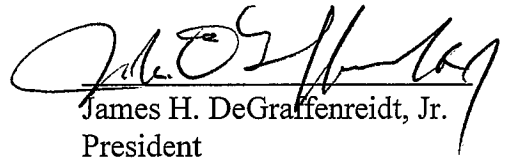
<sup>1</sup>BCPS reviews student placements every two quarters for high school students. D.B. was eligible for reinstatement at Parkville on April 19, 2010. (Local Bd. Motion).

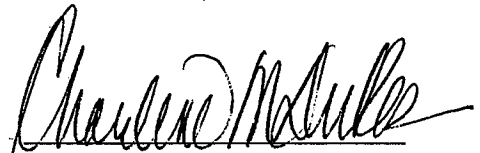
Appellant's appeal is based on the fact that the local board affirmed an expulsion decision that the Superintendent's designee never made. Essentially, the Appellant is requesting that the local board's decision accurately reflect what transpired in the case. Such a correction can be easily made. Because there is an existing controversy and an effective remedy, we do not believe that the matter is moot.


The record is clear that the Superintendent's designee did not expel D.B. from Parkville. Instead, he assigned D.B. to an alternative program. (Local Bd. Exh. 6; T.14). The BCPS disciplinary policy differentiates between an "expulsion" and an "assignment to an alternative program" as two different penalties. See BCPS Policy 5550. Depending upon the penalty chosen, the student's record would presumably reflect either an expulsion or an administrative transfer based on the disciplinary infraction. We believe, therefore, that the local board's order should accurately reflect the action taken by the Superintendent's designee.

CONCLUSION

For the above reasons, we remand the case to the local board to amend its decision to state that it upheld the decision of the Superintendent's designee to assign D.B. to an alternative program.

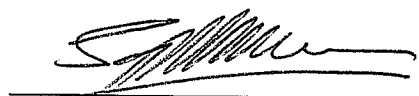
  
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President

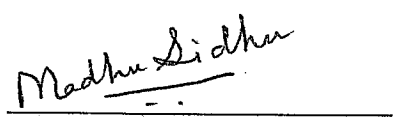
  
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Vice President

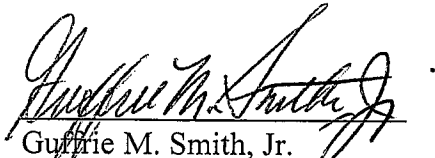
  
Mary Kay Finan

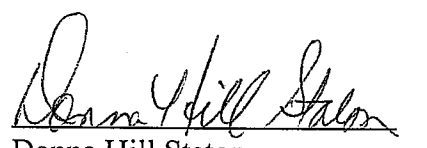
  
S. James Gates, Jr.

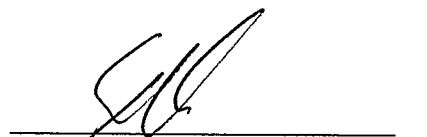
  
Luisa Montero-Diaz

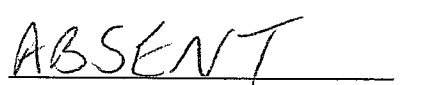
  
Sayed M. Naved

  
Madhu Sidhu

  
Guffie M. Smith, Jr.

  
Donna Hill Staton

  
Ivan C.A. Walks

  
Kate Walsh

April 27, 2010