ROLANDO L.,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
MONTGOMERY COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee.	Opinion No. 10-55

OPINION

INTRODUCTION

Appellant filed an appeal of the decision of the Montgomery County Board of Education (local board) placing his son in an alternative school in lieu of expulsion for a semester. The local board filed a Motion for Summary Affirmance maintaining that its decision was not arbitrary, unreasonable or illegal. The Appellant replied and the local board responded.

FACTUAL BACKGROUND

During the 2009-2010 school year, Appellant's son, ML, was attending the 8th grade at Lakelands Park Middle School (Lakelands Park). In February of 2010, ML and another student reported to school administrators that they were receiving threatening calls on their cell phones. They reported that the caller directed them to go to a nearby shopping center after school. Lakeland's Educational Facilities Officer advised the students not to go, and directed them to tell their parents and have the parents call the police and the cell phone provider. The two students later informed the school counselor that they went to the shopping center and someone identified as "WorseNightmare" had contacted them on Facebook over the weekend and stated "I can see you." (Motion, Ex. 3). The school principal contacted the police to report this. (*Id.*).

On March 5, ML reported receiving another message, this time from "NightmareOver" on Facebook. ML also reported that he was receiving messages on postcards in his locker with the word "dead" on the front and a student's name on the back. By mid-March, other students' names began appearing on messages. Students were frightened and parents were calling the school to express their concern. The messages continued, threatening that students and staff would be killed. The messages were also laced with profanity, racial slurs, and had overtones of

gang participation. (Motion, Ex. 3). ML informed the school administration that his father was aware of the problem and the threats. (Motion, Ex. 4A).

During March, the Maryland School Assessments were scheduled to take place. Parents expressed their concerns about safety to school administrators. Many indicated that they were reluctant to send their children to school. Over 200 parents attended a parent/community meeting held to address the school and community concerns. The principal sent a letter home to parents and sent a voice mail message via the language line to explain the actions being taken to identify the source of the Facebook postings. The principal sent a second letter home to parents with the students, asking that parents monitor the use of electronics by their children. On April 9, 2010, an email message, through Connect-Ed, was sent to the Appellant's home, advising the Appellant to check with ML about the letter from the principal. ML chose not to give the letter to his parents and they did not inquire about it. (Motion, Ex. 4A).

The police and the State's Attorney's Office, working with Comcast, narrowed the area where the messages were originating and determined they were coming from the Appellant's home. Although ML was interviewed by school staff on several occasions about the messages, he admitted that he was the author only once the location was pinpointed by police. (Motion, Ex, 3).

The school principal suspended ML for 10 days and recommended him for expulsion based on his involvement in the incident.[1] (Motion, Ex.1). She considered the incident to be extremely serious given that ML had threatened to kill specific students, had threatened to kill every teacher at the school, and also threatened to kill everyone at the school as a whole. (*Id.*; Motion, Ex. 2).

On April 27, 2010, Jevoner Adams, Supervisor of the Student Services Appeals Unit, met with ML, his parents, an interpreter, the school pupil personnel worker, and the principal and vice principal of the school. ML displayed remorse for his actions during the meeting. He explained that the whole incident began as a game when he and eight friends created "WorseNightmare" based on the movie "Saw." ML stated that he later created "NightmareOver" with a friend. The Appellant, a native of Peru and speaker of Spanish, argued that the school had not communicated effectively with him and ML's mother about the situation. Appellant stated his belief that one of the problems was the translation of words from Spanish to English because

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[1] MCPS Regulation JFA-RA, Students Rights and Responsibilities, which sets forth the Countywide Disciplinary infractions, states that a conference is the minimum penalty for threats (verbal, electronic, or written), and the maximum penalty is police referral and expulsion.

some words have multiple meanings when translated. (Motion, Ex. 3). Dr. Adams upheld the suspension and forwarded the recommendation for expulsion to the Larry A. Bowers, the Superintendent's Designee. (*Id.*).

Mr. Bowers referred the case to a Hearing Officer for review. On May 7, 2010, the Hearing Officer met with ML, his parents, an interpreter, the pupil personnel worker, and the principal and assistant principal. The principal related the chronology of events from February through April, the disruption to the community and to the operation of the school, ML's involvement, and the efforts of the police, the State's Attorney's Office and Comcast to track down the source of the messages and put an end to them.

ML was again remorseful for his actions. He explained that his friend had told him to stop because people were scared and the police would become involved, but he did not stop. He stated that threats are perceived differently in Peru and he was not aware of the significant fear he was causing. (Motion, Ex. 4A). ML's mother claimed that she was not made aware of the incident in a timely fashion and stated that there was a lack of communication about it from the school. (Motion, Ex. 4A). Appellant pleaded his son's case, stating that ML would like to return to school as he had learned his lesson and promised never to do anything of the sort again. (Motion, Ex. 4A). Appellant also presented information from a therapist at the Crisis Center indicating that ML had been evaluated and needed no interventions based on the incident. (*Id.*; Crisis Center Documentation Attached to Appeal).

The pupil personnel worker provided ML's educational history. ML enrolled in MCPS on May 5, 2006, coming form Lima, Peru. His elementary grades in Lima were above average for grades 1 – 4, and his grades for the 5th grade at Brown Station Elementary School were average. ML went on to attend Lakelands Park for middle school. In grades 7 and 8 he was receiving Level 2 ESOL services. ML's grades at the time of the incident were as follows: Physical Education - A; Reading - B; ESOL Level 2 - D; U.S. History - B; Math - C; and Science 8 - E. (Motion, Ex. 4A).

The Hearing Officer recommended that 10 day suspension be upheld and the expulsion be held in abeyance. She stated the following:

> Although [ML] engaged in threatening staff and students via Facebook, it is not clear that he understood the magnitude of his actions. [ML] should receive consequences for his action. Although this hearing officer questions the use of culture (as explained by [ML] during his comments) as an excuse for his

> actions, coupled with language issues, it certainly played a part in this incident. [ML's parents] are commended for taking [ML] to the Crisis Center and imposing consequences. In making the case for leniency, [Appellant] said that "his son is a child and will make mistakes." While this may be true, it is also important to understand the role fear played in all of this, the total disruption to the school, and the significant safety issue posed. An enormous amount of investigative time was expended by school staff, the police department, and the State's Attorney's Office. Moreover, the disruption to the school, especially during MSA testing was immeasurable.

The Hearing Officer recommended that ML receive instruction through the Home and Hospital Teaching office for the remainder of the 2009-2010 school year and that he be assigned to the Randolph Academy Alternative Program through the first semester of the 2010-2011 school year. (Motion, Ex. 4A).

Mr. Bowers upheld the Hearing Officer's recommendation. He stated that if ML successfully completed the exit criteria established by staff at the alternative program, ML would be referred back for appropriate placement.[2]

Appellant appealed Mr. Bowers' decision to the local board. He maintained that Mr. Bowers did not consider the Crisis Center report or the fact that the police acknowledged that this was all "a big mistake" and merely "irresponsible children [at] play." He claimed that the school was responsible in part for a "total lack of communication from February 26th to April 15th." (Motion, Ex. 5).

The local Superintendent responded to the appeal in a memorandum to the local board. He noted that there was no evidence to support the Appellant's contention that the police concluded this was all just a "big mistake." He also noted that Mr. Bowers did consider the information from the Crisis Center that indicated that there were no mental health issues preventing ML from returning to school, but that the Crisis Center has no authority over the disciplinary policies, procedures, or practices of MCPS. He also highlighted the communications

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[2] Despite the references to the Randolph Academy, as it turned out, ML's alternative placement was at the Needwood Academy. Although the Randolph Academy had been the alternative placement for high school students assigned for disciplinary reasons, at the beginning of the 2010-2011 school year, rising ninth grade students could be assigned to Needwood Academy as the alternative placement. Needwood Academy offers a full day program whereas Randolph Academy offers a half day program. (Local Board Reply).

the school made with parents over the incident. (Motion, Ex. 6). The Appellant submitted a response to the Superintendent's memorandum. (Motion, Ex, 7).

In a decision dated July 26, 2010, the local board affirmed Mr. Bowers' decision finding that the assignment to the alternative program was warranted given the seriousness of ML's actions. The local board further found that Mr. Bowers had taken all relevant and mitigating information into account in making his decision. (Motion, Ex. 6).

The appeal followed.

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).

ANALYSIS

The Appellant essentially argues that the escalation of threats and the disruption to the school could have been prevented if the school system had contacted the Appellant when ML's complaints about the threatening messages began in February. The Appellant argues, therefore, that because of this failure to properly communicate with him, the local board's decision was illegal, unconstitutional, a violation of ML's due process rights, and a violation of State or local law, policies or procedures.

Even if there could have been specific communication between the school and the Appellant regarding ML's initial complaints about the threatening messages, this does not amount to any sort of violation that would require review of the merits of the disciplinary decision. The possibility that the Appellant could have intervened at an earlier time if he had known about the threats in February does not absolve ML of his responsibility for his actions. When school officials became aware of ML's involvement as the initiator of the threats, the school system followed proper procedure in handling the disciplinary infraction, provided the Appellant with all appropriate communications regarding the incident, and provided review of the disciplinary decision at multiple levels.

The Appellant also alleges various violations by the school system related to the actions of law enforcement in questioning ML and searching the Appellant's home. The Appellant does not provide any specific information about these alleged infractions or how the actions of law enforcement are attributable to the school system.

We note that the Superintendent's designee assigned ML to an alternative placement for the first semester of the 2010-2011 school year, rather than acting immediately on the recommendation of the school principal to expel ML. The local board upheld the decision, stating in part as follows:

> [T]he Board concludes that [ML's] actions were very serious, and that serious consequences are warranted. While the Board acknowledges that the record does not contain evidence to establish any intent by [ML] to carry out the threats that he made, it is apparent that the threats were intended to cause fear and consternation. Although [ML's] parents argue that he did not fully appreciate the consequences of his actions at the time he was committing them, the Board notes that [ML] certainly should have been aware at least in part of the scope and magnitude of the investigation taking place. The appeal conference indicates that [ML] was interviewed six times prior to his admitting involvement. It is difficult to concede that [ML] was not aware that his conduct was causing very serious concerns. Yet throughout that period of time, [ML] chose neither to admit his involvement or bring the activity to an end.

(Motion, Ex. 8). While we understand the Appellant's desire to have ML return to a regular education program, there is no legal basis for reviewing the merits of the disciplinary decision.

CONCLUSION

For these reasons, we affirm the decision of the local board.

James H. DeGraffenreidt, Jr.
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December 14, 2010