

MARCIA B.

Appellant

v.

PRINCE GEORGE'S COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-01

OPINION

INTRODUCTION

The Appellant challenges the decision of the Prince George's County Board of Education (local board) upholding the suspension of her daughter for using a cell phone to make a video recording of a student attack on a teacher. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant responded to the Motion and the local board replied.

FACTUAL BACKGROUND

At the time of the incident, Appellant's daughter, R.B., was an eighth grade student at G. James Gholson Middle School (Gholson). On March 30, 2011, R.B. was in class when a student physically attacked the teacher. The attack began in the classroom and moved into the hallway.

Prior to the attack, the teacher had told the student to put away her cell phone. At some point shortly thereafter, the student gave the cell phone to R.B. The student then attacked the teacher and R.B. used the student's cell phone to record the incident. (Mtn. Ex. 1, Investigation Report; Mtn. Ex. 3, Hearing Officer Report).

After the incident, school staff took statements from students in the classroom, teachers, and other staff. Staff did not take a statement from R.B. Several students mentioned that R.B. made a video recording of the incident. The school's surveillance recording, which has no sound, shows R.B. running into and around the hallway where the fight was taking place and recording the incident on the phone. R.B. is the second student to run out of the classroom to view the attack. As she does, she pushes the student in front of her in what appears to be an attempt to get her out of the way so that she can get a better view to record what is taking place. Although there is no sound, R.B. is clearly laughing and interacting with the other students who

are in the hallway watching the events. Before re-entering the room, R.B. holds the phone up to other students showing them the screen. (Surveillance Recording).

The Co-Principal, Ms. Robinson, initiated a request for R.B.'s expulsion for "Inciting Others to Violence or Disruption and Other Acts: Videotaping a Physical Attack on a Prince George's County Public Schools Employee." (Mtn. Ex. 1, Investigation Report).

On April 6, 2011, Ms. Thompson, Pupil Personnel Worker, held a conference with R.B. and her parents regarding the expulsion request. During the conference, R.B. admitted to recording the incident and stated that she "recorded the fight for good." (Mtn. Ex. 3, Hearing Officer Report).

On April 29, 2011, the Principal modified the expulsion request to a long-term suspension ending on May 9, 2011. (*Id.*). Another pupil personnel worker, Ms. Jones, held a conference with R.B. and her parents and imposed the long-term suspension. R.B. served the suspension and returned to school on May 9.¹ (Local Bd's. Reply).

On May 26, 2011, Appellant's May 18th request that the local superintendent expunge the long term suspension from R.B.'s record was denied.

Thereafter, the matter was referred to a hearing officer for the local board who conducted a hearing on June 1, 2011. The hearing officer recommended that the local board uphold the long term suspension. He concluded that R.B. had committed a Level III offense by violating the Code of Student Conduct for "Inciting others to violence or disruption and other acts – Videotaping a physical attack on a Prince George's County Public Schools Employee." He found that the "student's conduct of video recording and being boisterous and disruptive while video recording an in school assault upon a teacher" satisfied the requirement for the charged infraction. (Mtn. Ex. 3, Hearing Officer Report, p. 4).

Appellant filed exceptions to the hearing officer's decision. The local board affirmed the Superintendent's decision and found no basis upon which to expunge the student's record.²

This appeal followed.

STANDARD OF REVIEW

The decision of a local board with respect to a student suspension or expulsion 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

¹ Appellant states that some of R.B.'s classes were changed and that she is banned from walking down certain hallways. (Mtn. Ex. 2, App's Letter to Hite, 5/18/11). This claim is not addressed by the school system.

² The local board mistakenly refers to the offense as a Level IV Offense in the Code of Student Conduct. (Appeal, Hairston Letter, 7/12/11).

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 13A.01.05.05G(2). A decision is illegal if it is unconstitutional; exceeds the statutory authority or jurisdiction of the local board; misconstrues the law; results from unlawful procedure; is an abuse of discretionary powers; or is affected by any other error of law. COMAR 13A.01.05.05C.

LEGAL ANALYSIS

Appellant argues (1) that the Code of Student Conduct failed to put her daughter on notice that her actions could result in such severe disciplinary action, and (2) that the local board lacked sufficient evidence to conclude that R.B. committed the offense.

The Prince George's County Code of Student Conduct (Administrative Procedure 10101) sets forth the school system's disciplinary code. R.B. received a long-term suspension based on the offense of "inciting others to violence or disruption" for videotaping a physical attack on a Prince George's County Public Schools Employee.³ It is a Level III offense which may result in the suspension of the student, or a greater consequence for misbehavior that is serious or recurring. Appellant argues that the provision as set forth in the Code of Student Conduct (Code) did not put her daughter on notice that she could receive such a harsh punishment for using a cell phone to make a video recording of a student attack on a teacher.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires that school rules not be impermissibly vague. *Chicago v. Morales*, 527 U.S. 41, 46 (1991). Generally, a provision is unconstitutionally vague where it "either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." *Kolaendar v. Lawson*, 461 U.S. 352, 357 (1983). The Supreme Court has stated, however, that "maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures. . . ." and that "given the school's need to be able to impose disciplinary sanctions for a wide range of unanticipated conduct disruptive to the educational process, the school disciplinary rules need not be as detailed as a criminal code which imposes criminal sanctions." *Bethel v. Fraser*, 478 U.S. 675, 686 (1986).

³ Although the Investigation Report, Hearing Officer Decision, and letter from counsel conveying the local board's decision all refer to the offense as "inciting others to violence or disruption and other acts, the offense as set forth in the Code is "inciting others to violence or disruption." While there is a Level IV offense called "other acts", local board counsel has clarified that the Level IV "other acts" offense was not at issue in this case.

The Code defines the offense of "inciting others to violence or disruption" as follows (p.18):

By words, acts, or deeds, directly instigating or prompting others to commit violence or cause a disruption in any environment in which this Code is applicable, including athletic events.

In our view, this provision is sufficiently descriptive to have placed R.B. on notice that she could be charged with the offense and subject to expulsion by engaging in any action that instigates or prompts others to cause disruption in school. Such action would include using a cell phone in a manner that directly instigates or prompts others to cause disruption in the school. Thus, the offense, as defined in the Code, is not impermissibly vague.

Appellant also maintains that the record lacks sufficient evidence to find that R.B. violated the Code provision.

We have reviewed the evidence in this case, including the video surveillance of the hallway area. The surveillance recording shows that R.B. was one of the first students to run out of the classroom to view the incident. She ran into the hallway while recording the video, pushed a student out of her way,⁴ and ran about the area. She remained in the area after school staff had broken up the attack and continued to record the teacher as she walked down the hallway to get medical attention. The totality of her behavior (running around, laughing, showing other students the cell phone recording, lingering at the site of the incident) may be viewed as contributing to the chaos as school staff attempted to gain control of the situation and normalize the scene. Indeed, a small group of students had gathered and some appeared to be clapping and cheering the incident on. It was not unreasonable for the local board to view R.B.'s behavior as directly contributing to the excitement of others about the incident, causing further disruption to the school environment.

Although Appellant maintains that school officials failed to take R.B.'s statement on the day of the incident, R.B. had ample opportunity to present her side of the story during the various conferences with pupil personnel workers and the hearing officer prior to the local board's decision. Indeed, it was through the conferences that the initial request for expulsion was reduced to a long-term suspension.

Appellant claims that her daughter's motives in making the recording were good. Yet the hearing officer did not find the claim to be credible, particularly since R.B. did not immediately admit that she made a recording or volunteer to give the recording over to school officials. There is simply no credible evidence of her motives. Regardless, we do not find R.B.'s intent material here given that the issue is whether her conduct actually incited others to disruption.

We note that the Appellant believes R.B. should have received the penalty for the

⁴ While R.B. claims the student stepped on her foot and she pushed her off, the recording shows R.B. running out of the classroom with her arm already out and poised to clear her way.

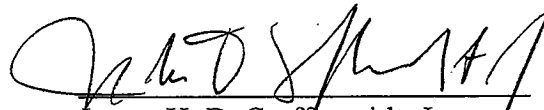
infraction covering cell phone use which is a Level II offense with a lesser penalty. The infraction to which she refers is listed as "Unauthorized Use of Portable Communication Devices" which normally carries a penalty less than a long-term suspension, although serious Level II misbehavior can result in a consequence reserved for Level III or IV offenses. (Code, p.6). The Code defines the offense as follows (p. 20):

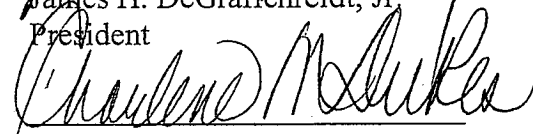
Using any portable electronic device, including but not limited to cell phones, pagers, and wireless e-mail devices, for the purpose of sending and/or receiving messages during the instructional day and/or on the school bus without the expressed consent of the Principal. Use at unauthorized times will be treated as a class disruption. If the device continues to be a disruption, it is subject to confiscation by school personnel until the parent/guardian comes to school to retrieve it.

R.B.'s actions do not fit this definition as it is limited to use of the cell phone to transmit messages.

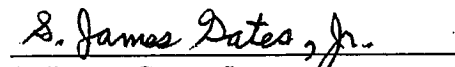
CONCLUSION

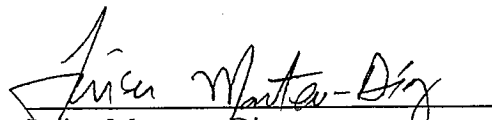
For these reasons, we affirm the decision of the Prince George's County Board of Education.


James H. DeGraffenreidt, Jr.
President


Charlene M. Dukes
Vice President

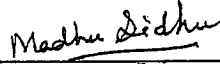

Mary Kay Finan


S. James Gates, Jr.

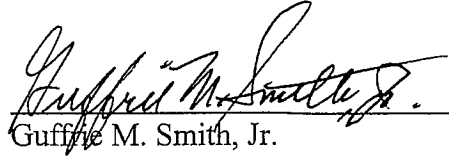

Luisa Montero-Diaz



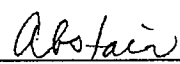
Sayed M. Naved



Madhu Sidhu



Guffie M. Smith, Jr.



Donna Hill Staton



Ivan C.A. Walks



Kate Walsh

January 24, 2012