

TRINA C.

Appellant

v.

PRINCE GEORGE'S COUNTY BOARD  
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-03

## OPINION

### INTRODUCTION

In this appeal, Appellant challenges the decision of the Prince George's County Board of Education (local board) upholding the long-term suspension of her daughters, W.S. and S.M., based on their involvement in a physical attack on a school system employee. The local board has filed a Motion to Dismiss maintaining that the appeal was untimely filed. Alternatively, the local board has filed a Motion for Summary Affirmance maintaining that its decision is not illegal and should be upheld. Appellant has not responded to the local board's Motion.

### FACTUAL BACKGROUND

At the time of the incident, W.S. was in the ninth grade and S.M. was in the twelfth grade at Northwestern High School (Northwestern).<sup>1</sup>

On February 2, 2011, a female student, Student X, attacked W.S. in class and became engaged in a physical altercation with her. The teacher was unsuccessful in breaking up the fight and called for school security. Security Assistants Hawkins and Ross arrived in the classroom and had to physically separate and restrain both students after their verbal attempts to stop the fight failed. While security was attempting to restrain the girls, W.S. struck Mr. Hawkins numerous times in the chest and arms. (Mtn. Ex. 1, Hawkins & Ross Statements). As Mr. Hawkins tried to seat W.S. in a chair, she attempted to kick Student X. In doing so, she kicked Mr. Ross who had fallen to the ground with Student X as he tried to restrain her. (*Id.* & Woods Statement). W.S.'s older sister, S.M., entered the room during the fight, jumped on a table and tried to attack Student X who was shielded by Mr. Ross's body. (*Id.*). While Mr. Ross was protecting Student X from the attack, S.M. kicked him in the head. S.M. also picked up a chair and attempted to throw it at Hawkins while he was restraining W.S., but a male student in the

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<sup>1</sup> S.M. graduated at the end of the 2010-2011 school year.

classroom was able to take the chair away from her. (See Mtn. Ex. 1, Ross, Woods & W.S. Record, Pyon & Student Statements, pp. 36, 42, 54 – 56). The students were placed in handcuffs and taken to the security office.<sup>2</sup> Mr. Hawkins and Mr. Ross both suffered injury. (Mtn. Ex. 2).

The Assistant Principal initially recommended both W.S. and S.M. for a five day suspension. After an investigation of the incident, including taking witness statements and the completion of a Security Report, the Principal determined that both girls committed assaults on school system personnel and recommended that they be expelled. (Mtn. Ex. 2).

Appellant requested that the disciplinary action against her daughters be rescinded.<sup>3</sup> (Mtn. Ex. 3). On March 7, 2011, Hearing Officer Smalls conducted administrative conferences for both students to review the expulsion requests. Appellant, her daughters, and an administrator at Northwestern attended the conferences. (Mtn. Ex. 5). The Hearing Officer recommended that the Superintendent's Designee, Ms. Barnes-Shell, deny the expulsion requests and impose long-term suspensions.

On March 18, 2011, Ms. Barnes-Shell issued a decision denying the request to expel W.S. and imposed a long-term suspension considered served as of the date of the letter. Ms. Barnes-Shell administratively transferred W.S. to High Point High School and directed her to participate in counseling or anger management. (W.S. Record, p. 16). On March 29, 2011, she removed the administrative transfer to High Point. (Mtn. Ex. 5).

On March 18, 2011, Ms. Barnes-Shell also issued a decision denying the request to expel S.M. and imposed a long-term suspension through April 4, 2011. In reaching this decision, Ms. Barnes-Shell considered that S.M. was a senior and scheduled to graduate at the end of the 2010-2011 school year. (Mtn. Ex. 6).

Appellant appealed the decisions to the local board. After two postponements at Appellant's request, a hearing examiner for the local board conducted a consolidated hearing on June 1, 2011. Appellant called no witnesses and presented no evidence at the hearing. She asked very few questions of Ms. Barnes-Shell who presented testimony for the school system. The hearing examiner issued a decision recommending that the local board uphold the long-term suspension of W.S., and vacate the long-term suspension of S.M. due to lack of evidence that she came into contact with a school system employee. (Mtn. Ex. 8). Appellant filed exceptions to the hearing examiner's recommendation.

The local board considered Appellant's appeal on June 27, 2011. By letter dated July 12, 2011, counsel to the local board conveyed the local board's decision to the Appellant. The local board determined that a long-term suspension for both students was warranted and rejected the

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<sup>2</sup> Security reported that S.M. was combative on route to the security office, that she refused to follow directions and had to be carried down the hallway. (W.S. Record, Byrd & Cooper Statements, pp. 29 – 30).

<sup>3</sup> Appellant also claimed that the security officers injured W.S. by using excessive force in restraining her daughter. She has filed charges against them.

hearing examiner's recommendations that it vacate S.M.'s suspension. The local board found that there was sufficient evidence in the record, including the witness statements, to conclude that W.S.'s and S.M.'s conduct resulted in assaults to school system employees. The letter explained that "both of [Appellant's] daughters intentionally participated in a fight in a classroom that resulted in PGCPs employee(s) being physically struck when they attempted to stop the fighting" and that but for "the participation of both of [Appellant's] daughters in the fight, no employee would have had to undertake any actions to stop the fight." (Mtn. Ex. 9).

Appellant requested that the local board reconsider its decision, claiming that the Principal's expulsion request was retaliatory, presumably for her filing charges against school personnel. On August 3, 2011, legal counsel for the local board advised the Appellant that the local board had denied her request for reconsideration, finding no evidence that the Principal's action was retaliatory. The letter advised the Appellant that she could appeal the local board's decision to the State Board within 30 days of the date of the letter. (Mtn. Ex. 10).

Appellant filed her appeal to the State Board by letter dated September 12, 2011.

### STANDARD OF REVIEW

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 13A.01.05.05G(2).

### LEGAL ANALYSIS

The local board has filed a Motion to Dismiss the appeal based on untimeliness. COMAR 13A.01.05.02B(1) provides that an appeal to the State Board "shall be taken within 30 calendar days of the decision of the local board" and that the "30 days run from the later of the date of the order or the opinion reflecting the decision." An appeal is deemed transmitted within the limitations period if it has been delivered to the State Board or deposited in the United States mail, as registered or certified, before the expiration of the time period. COMAR 13A.01.05.02B(3).

The local board issued its decision in this case through a July 12, 2011 letter from board counsel, finding that the conduct of both children warranted long term suspensions. An appeal of that decision should have been filed with the State Board on or before August 11, 2011. Appellant requested that the local board reconsider its decision. The local board issued a second letter from board counsel, dated August 3, 2011, denying the reconsideration and reaffirming the decision. An appeal of that decision should have been filed with the State Board on or before September 2, 2011. Each letter advised the Appellant of her right to appeal the local board's decision to the State Board within 30 days of the date of the letter.

Appellant filed her appeal with the State Board on September 12, 2011, after the expiration of the 30 day time frame using the date from either letter. Time limitations are generally mandatory and will not be overlooked except in extraordinary circumstances such as fraud or lack of notice of the decree. *See Scott v. Board of Educ. of Prince George's County*, 3 Ops. MSBE 139 (1983).

Appellant maintains that she left several messages for a particular employee at the Maryland State Department of Education (MSDE) headquarters indicating her intent to file a State Board appeal, and on two occasions she spoke with the employee, who failed to instruct her on how to file such an appeal. We have verified with this employee that he spoke with the Appellant regarding the disciplinary issues she raises in the case on two occasions, August 15, 2011 and on or about September 12, 2011. He has no record of Appellant leaving messages for him. Although this employee does not handle State Board appeals, it is his business practice to advise those who call concerning student disciplinary issues that there is an appeal process in place at both the local and State level to deal with such matters. It is the employee's recollection that during their conversation on August 15, Appellant stated that she was already engaged in the review process and the employee advised Appellant that he was unable to discuss the substance of her issues as these were matters that could be appealed to the State Board. Appellant did not seek further information at that time. It was in their later conversation, on or about September 12, that Appellant indicated her intent to file an appeal with the State Board. Through their discussion, Appellant realized she had missed the filing deadline and blamed the employee.

The onus was on the Appellant to timely file an appeal to the State Board. She did not. Thus, the appeal is untimely and we could dismiss it outright on this basis alone. Nevertheless, we address the merits below.

Appellant maintains that the school system violated her rights because they were not provided any opportunity to question the school security assistants and other staff who intervened in the fight. Appellant believes that such questioning was important given her belief that school personnel exaggerated the events that transpired in an attempt to protect themselves against her charges of excessive force.

At the hearing, Appellant chose not to call any witnesses or to introduce other evidence. She did not call her daughters or other witnesses to testify and present their accounting of events. Appellant also had the opportunity to cross-examine the Superintendent's Designee, Ms. Barnes-Shell, who was present at the hearing and was one of the decision-makers in her daughters' cases.

Moreover, at least as to W.S., the real issue seems to be whether striking the security personnel while they were trying to break up the fight amounts to a physical attack on school personnel, a purely legal issue that we address below. The security personnel stated that they were struck by W.S. while breaking up the fight. Appellant acknowledged in her letter dated February 2, 2011 and at the hearing that W.S. accidentally struck an employee. There does not appear to be a conflict concerning the evidence on this point. Just a conflict as to what the evidence means.

Thus, taking all of this into consideration, there is no credible argument that the local board violated the Appellant's due process rights based on her inability to confront and cross-examine the school security assistants and other school staff who intervened in the fight.

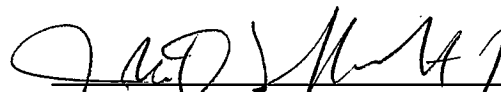
In addition, the Appellant maintains that there was insufficient evidence to support the charges against her daughters. Her daughters were found to have committed a physical attack on a Prince George's County Public School (PGCPS) Employee. The offense is defined in the Code of Student Conduct (Administrative Procedure 10101) as "[t]he act of assaulting, or an attempt to assault, any administrator, teacher, or other staff member, either on school property . . . . (p.19). An assault is defined as "[p]hysically pushing, hitting, or otherwise attacking another student, staff member, or other person, lawfully on school property." (p.18). A physical attack on a PGCPS employee is a level IV offense subject to expulsion.

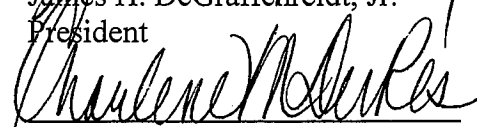
Based on the totality of the witness accounts of the fight, we believe that there is sufficient evidence to find that both students committed the offense charged. In particular there are witness statements that W.S. struck Mr. Hawkins and Mr. Ross. There are witness statements that S.M. kicked Mr. Ross and attempted to throw a chair at Mr. Hawkins. Although Appellant claims that her daughters' actions were directed at Student X and security personnel were inadvertently struck while trying to break up the fight, her daughters failed to disengage from the fighting when they were directed by school personnel to cease. They continued fighting with the other student, even as they were being restrained. In the process, they struck school system employees. Once they failed to heed the directives to stop and comply with school system personnel, they each knowingly assumed the risk that their actions could result in striking the employees.

Moreover, in S.M.'s case, the evidence supports the fact that she kicked an employee and attempted to throw a chair at an employee. Although Appellant claims that S.M. was concerned that her sister was being hurt as the security personnel restrained her, there were other ways that S.M. could have addressed the situation.

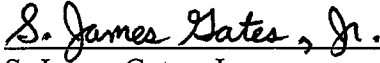
### CONCLUSION

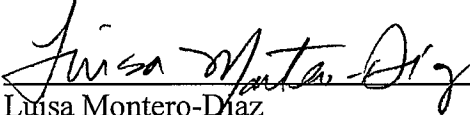
For the reasons stated above, we affirm the decision of the local board.


  
James H. DeGraffenreidt, Jr.  
President

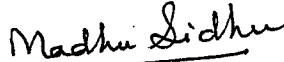
  
Charlene M. Dukes  
Vice President

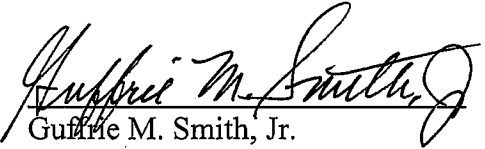
  
Mary Kay Finan


  
S. James Gates, Jr.


  
Luisa Montero-Diaz

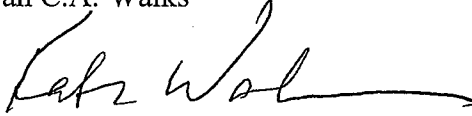
  
Sayed M. Naved

  
Madhu Sidhu

  
Guifre M. Smith, Jr.

  
Donna Hill Staton

  
Ivan C.A. Walks

  
Kate Walsh

January 24, 2012