

MR. AND MRS. D,

Appellants

v.

BALTIMORE COUNTY BOARD OF
EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR08-04

ORDER OF DISMISSAL

In this appeal, Appellants challenge the expulsion of their son, Q.D., from George Washington Carver Center for Arts and Technology (“Carver”) for sexual assault, harassment, interfering with a student’s right to attend school or classes, and physical attacks on a student. Appellants also challenge their son’s administrative transfer to another school based on the victim’s fear of Q.D.’s presence at Carver. The local board has filed a Motion to Dismiss both aspects of the appeal: the expulsion because it is moot and the transfer because Appellants failed to exhaust their administrative remedies. Alternatively, the local board has filed a Motion for Summary Affirmance of the transfer.

Case Facts

In May 2007, a student at Carver reported that five boys, including Q.D., had been sexually harassing him, thereby subjecting him to verbal and physical abuse.¹ The investigation of the incident revealed significant and intense sexual harassment had occurred. (Motion, Ex. 17 at Sup. Exs. 4). The victim and witness identified Q.D. as an aggressor.² (*Id.*). The victim felt unsafe and was afraid to come to school. (Motion, Ex. 17 at Supt. Ex. 3).

The principal suspended Q.D. from Carver and recommended his expulsion. (Motion, Ex. 17 at Supt. Ex. 1). On September 26, 2007, the local board issued a final decision upholding the expulsion. (Motion, Ex. 18).

Q.D. served his expulsion from May 9, 2007 until August 27, 2007. He was reinstated at Carver for the 2007-2008 school year. At Carver, Q.D. and the victim of the prior incidents were in many of the same classes because they were both in the same grade of the carpentry magnet program. On August 31, 2007, Donald T.A. Fair, acting as the Superintendent’s designee,

¹Q.D. was in the 9th grade at the time of the alleged incidents.

²Q.D. denied some of the allegations against him. (Motion, Ex. 17 at Supt. Ex. 5).

advised Appellants that Q.D. was being administratively transferred to Woodlawn High School³ due to the victim's continuing fear and apprehension concerning Q.D.'s presence in school. (Motion, Ex. 21). Q.D. was offered the opportunity to transfer to Lansdowne or Kenwood High Schools in order to enroll in carpentry classes, however, Appellants declined those transfer opportunities due to logistical problems related to Q.D.'s participation in after school activities. (*Id.*).

The Superintendent ordered the administrative transfer to Woodlawn. Appellants were advised of their right to further appeal that decision to the local board. (*Id.*).

On November 5, 2007, Appellants filed this appeal with the State Board.

Analysis

Expulsion

The local board issued its written decision in this case by order dated September 26, 2007. The appeal should therefore have been filed with the State Board no later than Friday, October 26, 2007. It was not filed, however, until November 5, 2007. 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 Education of Prince George's County*, 3 Op. MSBE 139 (1983). Appellants have offered no reason why they did not appeal the local board's decision on the expulsion in a timely manner. We therefore find it to be untimely filed.⁴

Administrative Transfer

The appeal of the administrative transfer was handled separate from the expulsion appeal at the local level. Ms. Batoff, as the Superintendent's Designee, issued a final decision on that matter on December 12, 2007. She specifically advised Appellants of their right to appeal her decision to the local board within 30 days. Appellants did not file any such appeal, thus failing to exhaust the administrative remedies available to them.

The State Board has consistently declined to address issues that have not been reviewed initially by the local board. *See McDaniel v. Montgomery County Board of Education*, MSBE Op. No. 03-22 (complaints from public not raised before local board deemed waived); *Craven v. Board of Education of Montgomery County*, 7 Op. MSBE 870 (1997) (failure to challenge suspension before local board constituted waiver); *Hart v. Board of Education of St. Mary's County*, 7 Op. MSBE 740 (1997) (failure to raise issue of age discrimination below constituted

³Woodlawn is Q.D.'s home school.

⁴Because we find that the appeal of the expulsion was untimely filed with the State Board, there is no reason to consider the local board's argument that the appeal is moot.

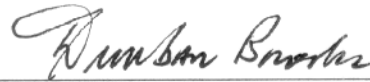
waiver on appeal). Because there is no local board decision on the administrative transfer in this case, there is nothing for the State Board to review.

Conclusion

Therefore, finding no extraordinary circumstance that would merit an exception to the mandatory thirty day deadline for filing an appeal of the local board's expulsion decision, and finding that Appellants failed to appeal to the local board the decision of the superintendent's designee affirming the administrative transfer, it is this 30th day of April, 2008, by the Maryland State Board of Education,

ORDERED, that the appeal referenced above be and the same is hereby dismissed for untimeliness and for failure to exhaust administrative remedies. *See* COMAR 13A.01.05.03C(1)(a) & (e).

MARYLAND STATE BOARD OF EDUCATION
By:



Dunbar Brooks
President