JONATHAN FITZSIMMONS,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
NEW BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS,	OF EDUCATION
Appellee	Opinion No. 02-26

OPINION

This is an appeal of a student suspension from Southwestern High School in the Baltimore City Public School System ("BCPSS") for the possession of a knife at school. Appellant concedes that he brought the knife to school but argues that he did so at the direction of his teacher. He maintains that the penalty was too severe, that the school system did not comply with its own rules on suspension, and that he was not given a chance to make up his work. The local board has submitted a Motion for Summary Affirmance maintaining that expulsion was the appropriate remedy for bringing a weapon to school, that the school system complied with all its procedural requirements, and that it is Appellant's obligation to obtain make up work from the school. Appellant submitted a Motion to Deny Summary Affirmance, reiterating his arguments.[1]

BACKGROUND

When this appeal was filed, Jonathon was a 14 year old regular education student enrolled in the ninth grade at Southwestern High School. In the Introduction to Technology Systems class, his instructor, Mr. Jerry M. Boland, Jr., requested that the students bring tools to school to cut cardboard for a construction project. As a result of that request, Appellant brought a switchblade knife to school on October 15, 2001. During his first period Technology Systems class, Appellant showed the knife to Mr. Boland. Mr. Boland informed the Appellant that the class would not be working on the construction project that day and advised him to put away the knife and not show it to anyone.

At the end of the day, Appellant was in the cafeteria for a school assembly. As he was standing up to leave, the knife fell out of his pocket onto the floor. Mr. Randolph Willis, one of the assistant principals, saw Appellant picking up the knife and requested that Appellant hand it over to him. Appellant did so. Mr. Willis proposed Appellant for suspension by the principal immediately. At the Principal's office, Appellant made a written statement that he had found the

[1]Counsel for the local board also filed a Motion to Strike Appellant's Motion to Deny Summary Affirmance because it was untimely filed. While it initially appeared that the Motion to Deny Summary Affirmance was received by mail at the State Board one day late, evidence that the Motion to Deny was actually timely received by hand-delivery was subsequently found.

knife in the grass near the school parking lot.

The next day, on October 16, 2001, Appellant prepared a second statement which contradicted the first, indicating that he had found the knife in the glove compartment of his mother's car and had taken the knife from the car to school. He explained that he had been afraid to disclose that he had brought the knife to school at Mr. Boland's direction to bring in "tools" for cutting cardboard because he was afraid that he would get Mr. Boland in trouble.

On October 17, 2001, Appellant and his mother had a conference with Mr. Jerome Ball, Assistant Principal at Southwestern, and with the Ninth Grade Administrator. Possession of a knife on school property is a Level III violation of the BCPSS disciplinary code and the standard punishment for this violation is expulsion. (BCPSS Student Discipline Code, p. 66 of *Information Guide for Parents and Students*.) Accordingly, Mr. Ball referred the incident to the BCPSS Office of Suspension Services for long-term suspension/expulsion for the possession of a knife at school. Appellant signed a notice which informed him of the proposed discipline and that it was his and his parent's obligation to obtain make-up work.

On October 29, 2001, Appellant and his mother met with Ms. Mildred Owens, Student Support Associate in the Office of Suspension Services. At the end of the conference, Ms. Owens recommended leniency based upon Mr. Boland's instruction to bring cutting tools to school and recommended that Appellant continue on suspension.

On November 9, 2001, BCPSS Chief Executive Officer Carmen Russo wrote a letter to Appellant informing him that due to the seriousness of the offense, expulsion was appropriate. However, she also stated that based upon Ms. Owens' recommendation for leniency, she was reinstating him to Southwestern High School.[2] Appellant was instructed to contact the principal to return to school. (Letter of November 9, 2001.) Although Appellant had been reinstated to school as of November 9, 2001, for unknown reasons he did not return to school until December 13, 2001.

Appellant filed a timely appeal of the CEO's decision and a hearing was held on December 12, 2001. At the hearing, Appellant requested that he be given leniency, that his expulsion be overturned, and that he receive tutoring because school officials failed to provide him with make-up work and he was now failing all his classes. The Hearing Officer found that while Mr. Boland had instructed his students to "bring tools to school that were appropriate for cutting cardboard", (Decision of December 20, 2001, p. 7), "Respondent's judgment in selecting a knife such as the one he bought to school as a cutting tool must be criticized". (Decision, p. 9.) She held:

> ...regardless of his age, his choice showed poor judgment, and he should have discussed the matter with his parents before he brought the knife to school. Thus, it is my conclusion that suspension was appropriate and necessary to allow time

[2]Under BCPSS practice a student that is suspended generally returns from suspension to a school different from the one he/she had been attending.

> for investigating the entire matter. I also conclude the facts mitigate against expulsion in Respondent's case.

(Decision, p. 9.)[3]

As to Appellant's claim that he was failing his classes because no make-up work was provided and that the school should provide extra tutoring, the Hearing Officer found that Appellant's Progress Report indicated that he was failing two courses from which he had been absent 7 times and 11 times respectively, *before* the incident, (Decision, p. 7), and that Appellant had not sustained his burden of proving that he attempted to get his make-up work. (Decision, p. 10.) She found that it was Appellant's responsibility to contact the school after receipt of the November 9, 2001 letter and that there was no evidence of contact with the school until Appellant's return to school on December 13, 2001. (Decision, p. 10.) Without evidence of his attempt to contact the school, she concluded:

> Without this, I conclude that Respondent's case was handled in a timely manner and see no factual basis for BCPSS having a duty to provide special remedial support for Respondent. Furthermore, no legal authority was cited by Respondent's Counsel to support the remedies put forth for tutoring or other remediation.

(Decision, p. 10.) The Hearing Officer recommended that the local board modify the expulsion to suspension and that it affirm all other aspects of the CEO's decision.

On January 22, 2002, the local board unanimously affirmed the recommendation of the Hearing Officer modifying Appellant's expulsion to a long-term suspension. (Order of March 14, 2002.) It also ordered that Appellant's record be expunged concerning this matter. Appellant then filed this appeal to the State Board.

ANALYSIS

The decision of a local board with respect to a student suspension or expulsion is considered final. Md. Educ. Code Ann. § 7-305. Therefore, the State Board's review is limited to determining whether the local board violated State or local law, policies, or procedures; whether the local board violated the due process rights of the student; or whether the local board

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[3]The hearing examiner also noted that although the technology teacher, Mr. Boland, impressed the hearing examiner as a good, caring, and well meaning teacher, Boland apparently did not consider the fact that when he asked students to bring tools to school, those items might be inherently dangerous or items that would violate BCPSS policy. Furthermore, Boland seemingly failed to consider the full implications of his instructions or to discuss with his superiors his idea for having students bring in such tools, nor did he think about the need to have a plan for securing or storing the tools. *See* Decision, p. 8. The record discloses that Mr. Boland was reprimanded for his poor judgment in making this request of his students.

acted in an otherwise unconstitutional manner. COMAR 13A.01.01.03(E)(4)(b).

Due Process Issues - Mootness

Appellant claims that the local board denied him due process because sections 506 and 507 of the Rules of the New Board were not followed. Based upon these violations, Appellant claims that his suspension/expulsion should be rescinded.

Based upon our review of the record, we believe that the relevant section, 506.06, was followed. That section relates to "Special Procedures with Regard to Weapons" and states:

> If a student possess[es], carries or causes to be carried a weapon of any kind on to school property or possess[es] a weapon off of school property under circumstances that bear direct connection to a school activity, the student shall be expelled by the Chief Executive Officer. Weapons shall include, but are not limited to, any firearm as defined in 18 U.S.C. Section 921, ammunition, razors, brass knuckles, chains, pipes, black jacks, clubs, nightsticks or martial arts devices, such as nunchaku.
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> The minimum expulsion for possession of a firearm is one year. However, the Chief Executive Officer may specify, on a case by case basis, a shorter period of expulsion or an alternative educational setting.

In this matter, Appellant brought a knife onto school property for which expulsion is mandatory. The CEO, based on recommendations of the student support associate, granted leniency and reinstated Appellant to his home school 23 days after he had been removed from school. We find no violation of section 506 under these circumstances.

On the other hand, although we believe that 507.09 was violated, we find that the issue is moot. 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, 23 (1997); *See also Bonita Mallardi v. Carroll County Board of Education,* MSBE Opinion No. 00-07, (February 3, 2000); *Walter Chappas v. Montgomery County Board of Education*, MSBE Opinion No. 98-16 (March 25, 1998).

New Board Rule 507.09 provides that "a decision must be rendered and communicated to the parent(s) within ten school days of the removal, or the suspension/expulsion will be rescinded immediately. The student will then be entitled to return to the same school." In this case, the student was removed from school on October 15, 2001 and reinstated effective November 9, 2001. While that period of removal violates the strict ten school day rule, the State Board cannot provide Appellant with any remedy beyond that which he has already received. The CEO had already returned the Appellant to his same school as of November 9, 2001, and the local board has expunged any mention of the disciplinary action from his records, effectively rescinding the action. Since there is no further remedy the State Board can offer on these issues, we find that

this issue is moot.

Remedial Actions for Lack of Make-up Work

Appellant claims that the Hearing Officer "erred in her conclusion that the Appellant's case was handled in a timely manner as it related to make-up work." (Motion to Deny Summary Affirmance, p. 7.) He requests tutoring or some other form of remedial action. Appellant acknowledges that the school system's rules provide that "it is the parent's or the student's responsibility to obtain work during the period of absences through special arrangement made with the school administrator". (Motion to Deny Summary Affirmance, p. 7.) At the hearing, Appellant's mother testified that she repeatedly contacted school administrators and faculty to get her son's make-up work. However, there was also testimony at the hearing that the school gave Appellant's name to the Guidance Office where the parent is to pick up the work and that Appellant received make-up work in three out of four of his classes. (Tr. 71-2, 85.) Moreover, although the mother testified that she made notes of telephone calls to the school and sent the school letters and faxes, she was unable to proffer any notes, faxes, or letters to support these claims.

The question of whether the school appropriately provided make-up work for Appellant is essentially a credibility dispute left to the trier of fact. It is evident based on the Hearing Officer's decision that she found the testimony of school officials more credible than the testimony presented on behalf of Appellant *See, e.g., Board of Trustees v. Novik*, 87 Md. App. 308, 312 (1991), *aff'd*, 326 Md. 450 (1992) ("It is within the Examiner's province to resolve conflicting evidence. Where conflicting inferences can be drawn from the same evidence, it is for the Examiner to draw the inferences."); *Board of Educ. v. Paynor*, 303 Md. 22, 36 (1985) ("[N]ot only is it the province of the agency to resolve conflicting evidence, but where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences"). The State Board may not substitute its judgment for that of the local board unless there is independent evidence in the record to support the reversal of a credibility decision. *See Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994); *accord, William Mace v. Harford County Bd. of Educ.,* MSBE Opinion No. 01-15 (April 24, 2001); *Kaleisha Scheper v. Baltimore County Bd. of Educ.*, 7 Op. MSBE 1122 (1998); *Corey Williamson v. Bd. of Educ. of Anne Arundel County*, 7 Op. MSBE 649 (1997); *Mecca Warren v. Bd. of Educ. of Baltimore County*, 7 Op. MSBE 328 (1996). Based upon our review of the record, we find that Appellant has provided no basis for reversing the credibility determinations made by the Hearing Officer and affirmed by the local board.

Appellant also claims that by failing to provide him with make-up work, the school system denied him a free appropriate public education under Md. Educ. Code Ann. §§ 7-301, 7-304, and 7-305. (Letter of Appeal, p. 3.) First, "free appropriate public education" is a term of art under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1400 *et seq*., not the Maryland Code, and it concerns special education services for students with disabilities. Because Appellant is not a special education student, the provisions of IDEA do not apply to him. Second, while § 7-304 requires that the local school systems establish special programs for disruptive students and § 7-301 compels student attendance in school, these sections do not

require that a student suspended or expelled for one disciplinary incident be automatically placed in such a program. Finally, § 7-305 sets forth the procedures for suspensions and expulsions. Nothing in this section requires that a regular education student who has been suspended or expelled receive remedial assistance or an alternative placement.[4]

CONCLUSION

For these reasons and finding no due process violations or other illegality in the proceedings, we affirm the suspension decision of the New Baltimore City Board of School Commissioners.

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June 26, 2002

[4]COMAR 13A.08.01.03 & .04 provides that a suspension is a lawful absence for which make-up work may be provided. As noted above, Appellant received make-up work for three of his four classes.