ATANYA C.,	BEFORE THE
Appellants	MARYLAND
v.	STATE BOARD
DORCHESTER COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee	Opinion No. 09-26

OPINION

INTRODUCTION

In this appeal, the Appellant challenges the Dorchester County Board of Education's ("local board") decision affirming the Superintendent's suspension of her daughter for the remainder of the 2008-2009 school year. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal.

FACTUAL BACKGROUND

During the 2008-2009 school year, Appellant's daughter, J.C., was a 9th grader at Cambridge-South Dorchester High School (Cambridge-South). On the morning of September, 10, 2008, J.C. and Student B fought in the school cafeteria. (Offense Report). The Assistant Principal, Robin Mackert, and another teacher, Ms. Thomas, were the first to intervene and attempt to stop the fight. (Tr. at 36, 48). A crowd quickly formed, knocked Ms. Thomas to the ground and trampled her several times. (Tr. at 36, 53; Local Board Decision at 2). As a result of being knocked over and stepped on by the crowd, Ms. Thomas injured her knee and back and required medical attention. (Tr. at 54). The Principal, Dr. Hosch, and another teacher, Mr. Bromwell, eventually succeeded in separating J.C. and Student B and took them to different locations. (Tr. at 18, 44; Local Board Decision at 2).

J.C. claimed that Student B bumped into her near the lockers and made an insulting comment prior to the fight in the cafeteria. (Tr. at 69). When they saw each other again in the cafeteria, the girls proceeded to fight. (Offense Report). After the fight, J.C. expressed no remorse for her actions and told Mr. Bromwell that the fight was not over. (Tr. at 20, 67). Dr. Hosch remained with J.C. after the fight out of concern that she would go after Student B if she were left unattended. (*Id.* at 20-21).

The record reflects that in the previous school year, in April 2008, J.C. received a three day suspension for fighting. She apparently attended anger management counseling with a social worker.

(Local Board Decision p.6, Ex. D). The fight that lead to the expulsion here occurred in September 2008.[1]

The administration at Cambridge-South recommended that the Superintendent expel J.C. for fighting and disturbing school activities.[2] (Bromwell Letter, 9/10/08). Ann Singleton, the Superintendent's Designee, conducted an investigation and held disciplinary conferences. (Tr. at 90-93). Based on her investigation, Ms. Singleton concurred with the administration's expulsion recommendation, finding that J.C. had an opportunity to avoid the fight but chose instead to confront and fight with the other student. Ms. Singleton found that J.C.'s actions were particularly serious because a teacher was injured in the incident. (PPW Meeting/Conference Summary). By letter dated, September 22, 2008, the Superintendent advised Appellant that he was suspending J.C. for the remainder of the school year. (Bromwell Letter, 9/10/08).

Appellant appealed the Superintendent's decision to the local board. (Hildenbrand Letter, 10/17/08). The local board held an evidentiary hearing on October 30, 2008. The local board affirmed the Superintendent's decision to expel J.C., finding that J.C.'s actions were in direct violation of the school system's disciplinary policy and exhibited a disregard for the safety and well being of fellow students and school staff. (Local Board Decision). Although Appellant maintained that J.C. should have received a more lenient punishment, the local board disagreed given the nature of the incident, J.C.'s lack of remorse, and her prior disciplinary history. (*Id.* at 6).

Appellant subsequently filed this appeal to the State Board.

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 may not review the merits of the suspension or expulsion. COMAR 13A.01.05.05G(2). The State Board will, however, review the local board's decision if the Appellant makes "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) & (3).

A decision may be considered "otherwise illegal" if it is:

(1) Unconstitutional;
(2) Exceeds the statutory authority or jurisdiction of the local board;
(3) Misconstrues the law;

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[1] In Maryland, the terms long-term suspension and expulsion are used interchangeably. We do so herein.

[2] The Dorchester County Sheriff's Department charged both J.C. and Student B with second degree assault and disturbing school operations. (Offense Report).

(4) Results from an unlawful procedure;
(5) Is an abuse of discretionary powers; or
(6) Is affected by any other error of law.

COMAR 13A.01.05.05C.

ANALYSIS

The Appellant challenges the legality of this expulsion decision. The Appellant claims that her daughter's punishment was an abuse of discretion because it was too harsh given the circumstances of the case. She also asserts that the expulsion violated the compulsory attendance law. We consider here whether this expulsion decision is illegal.

The expulsion occurred at the beginning of the school year and extended for the full school year. During the time of the expulsion, the student was given "periodic homework assignments." We requested further information from local board counsel who reported to our counsel by phone that, at the request of her mother, the student was sent English and Math homework, but there was no follow-up, no review, no grading, no interaction between the educators and the student for the full year. In this case, the student was a 9th grader.

Because the issue of an expelled student's access to education services is one with serious consequences for both students and school systems, we consider the legality of a long-term suspension during which the school system provides little or no educational services to the expelled student.

The State Board has wrestled with this type of issue in the past recognizing that the right to receive a public school education is balanced by the legal right of a school system to suspend or expel students as a form of discipline for particular actions. *Compare* Md. Educ. Code Ann. §7-101 (all students admitted free to public schools); §7-301(a)(1) (compulsory attendance law) *with* §7-305 (authorizing suspensions and expulsions). Indeed, the Appellant argues that the year-long suspension is illegal because it violates the compulsory school attendance law.

That very issue arose in 1990 in *Adam W. Mc. v. Harford County Board of Education*, 5 Op. MSBE 578 (1990). In that case, the local board expelled Adam for the balance of the school year for drinking on school property. He was not given access to any education services. The State Board at the time stated:

> It should be noted that the penalty in this case is perhaps somewhat more severe than would be the situation if Harford County provided alternative education for students expelled for disciplinary reasons. But severe disciplinary measures have been upheld by the Supreme Court in *Ingraham v. Wright*, 97 S. Ct. 1401 (1977), on the theory that school systems must be given great latitude.

> Finally, while Maryland requires that children six years old and those under sixteen "shall attend a public school regularly during the entire school year . . ." (Section 7-304 Educ. Statute), Adam was sixteen at the time of his expulsion and cannot claim the protection of law as a means of getting some alternative form of public education for the balance of the academic year.

5 Op. MSBE at 581.

The implication, but not the holding, in that case is that the compulsory school attendance law could be looked to "as a means of getting some alternative form of public education for the balance of the school year." Because Adam was over 16, the State Board concluded that he could not invoke that "protection of law," and, therefore, his expulsion was not illegal.

The issue arose again several years later when a nine year old girl was expelled in November 1997 for the rest of the school year for making a bomb threat. *Melissa A. v. Anne Arundel County Board of Education*, 7 Op. MSBE 1253 (1998). The State Board considered the severity of that punishment in light of the fact that the record did not disclose "that Melissa is being provided an alternative form of public education." *Id.* at 1258-59.

The Board held:

> We believe this is a violation of the local board's legal responsibilities with respect to the compulsory attendance law and the provision of a public education. *See* COMAR 13A.01.03E(4)(c) & E(1)(c) regarding standards of review for student discipline. *See also* Reed, Education and the State Constitutions: *Alternative for Suspended and Expelled Students*, 81 Cornell L. Rev. 582 (1996) and cases cited therein.

Id. at 1259.

If that were the end of that case, we would look to that case as precedent to guide our decision today. According to our records, however, the Public School Superintendents' Association of Maryland (PSSAM) requested that the State Board revisit that decision on the grounds that the State Board's rationale would require every school system to provide access to education services to every expelled student who was under 16. PSSAM argued that such a holding was too broad. They asserted that the State Board could have ruled more narrowly, under the unique circumstances of the case, that expulsion of a nine year old for a full year without providing access to education services was an abuse of discretion.

Thereafter, the Anne Arundel County Board of Education filed a Motion to Vacate the Decision. The State Board granted the motion stating: "[T]here being no objection filed by the

Appellant, and for good cause shown by readmission of Melissa to school for the 1998-1999 school year. . . . the matter referenced above be and is the same hereby vacated" *Id.* at 1259.

A vacated decision cannot stand as precedent in this matter. Yet, the issue is before us. Thus, we review anew the question of the legality of suspending a student for a long period of time, providing only minimal education services during the time of the suspension.

We review this question through the legal prism of the abuse of discretion standard.[3] As stated previously, a disciplinary decision of a local board may be reversed if it is an abuse of discretion. COMAR 13A.01.05.05G(3) and (C)(5).

> "Abuse of discretion" is one of those very general, amorphous terms that appellate courts use and apply with great frequency but which they have defined in many different ways. It has been said to occur "where no reasonable person would take the view adopted by the [trial] court," or when the court acts "without reference to any guiding rules or principles." It has also been said to exist when the ruling under consideration "appears to have been made on untenable grounds," when the ruling is "clearly against the logic and effect of facts and inferences before the court," when the ruling is "clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result," when the ruling is "violative of fact and logic," or when it constitutes an "untenable judicial act that defies reason and works an injustice."

King v. State, 407 Md. 682, 687 (2009).

The Court of Special Appeals has recently explained that those general terms, when applied, mean that "[t]he decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *State v. WBAL-TV*, 2009 WL 215764 (Md. App. July 17, 2009).

We apply that abuse of discretion standard to facts of this case.

The student here was in the 9th grade. She had been involved in at least two fights at school. The expulsion occurred at the beginning of the school year and extended for the full school year. That is indeed harsh punishment, but we do not second guess the decision of the local board. We recognize that the safety of teachers and students is a paramount public concern. When schools are unsafe, when students behavior threatens the disciplinary fabric of the school, schools have the authority and

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[3] Although the Appellant asserts that the decision herein violates the compulsory attendance law, we do not believe that the plain language of that statute can be stretched so far to find within it an unfettered right to education services upon expulsion.

obligation to discipline those students and, given the facts of each case, to discipline appropriately. In this case, a year- long expulsion was the penalty for this student's assaultive behaviors. It is our view that, although the penalty was harsh, imposing it was not *per se* an abuse of discretion.

What may tip the scales toward an abuse of discretion finding, however, is imposing a long-term suspension without giving the student access to any but the most minimal education services. In this case the student was a 9th grader. She was provided English and Math homework periodically, but there was no follow-up from the school. We have considered whether access to homework is sufficient to tip the scales away from an abuse of discretion finding.

In this day and age, as everyone from parents to the President focuses on education as the absolute necessity for a student to have a chance at success in the future, we view a policy of long-term suspensions without access to some education services as a serious public education policy issue. Students who receive such punishment may very well feel the effects of that punishment throughout their whole lives. While that may seem to be a melodramatic statement, we do not believe it is an overstatement. When students return to school after a period of expulsion, they usually do not advance to the next grade. They are more likely to become dropouts. If they do not dropout, they will have difficulty adjusting in classes in which their peers are younger than they are. More discipline problems will likely ensue. *See Comment, Educating Expelled Students After No Child Left Behind: Mending An Incentive Structure That Discourages Alternative Education and Reinstatement*, 55 UCLA L. Rev. 1909, 1942 (2008); *Comment, Suspending and Expelling Children from Educational Opportunity: Time to Reevaluate Zero Tolerance Policies*, 50 Am. U. L. Rev. 1039, 1064-64 (2001). The consequences for students expelled for long periods without access to education services can be exceedingly negative and potentially devastating.

Moreover, the school system and the student are poorly served if the student returns to the school only to resume dysfunctional behavior because no effort was made during the period of expulsion to help the student educationally or socially. We reiterate, however, the safety of students and teachers in their schools is a paramount concern. Like the negative consequences for the expelled student, threats to safety are also exceedingly negative and potentially devastating to the entire school community.

With all these considerations in mind, we decide the case before us on the narrowest of grounds, balancing the safety issues and education issues. We find that the local board did not abuse its discretion. Access to homework provides the barest education minimum acceptable in this expulsion context.

This case, however, has raised a serious issue for us - - whether there should be some requirement that schools provide access to some education services - - more than just homework - - to expelled students. We use this opportunity to announce our intention to review all sides of this issue. We want to involve all stakeholders in the discussion and in creating a solution. We believe that for this issue the regulatory arena is the more appropriate one to develop this significant education policy.

We also announce here our intent to expedite the appeals in cases where the suspension is for six months or longer. In this case, because of the time period allowed for briefing and responses, as well as our heavy docket of cases, the expulsion time period expired before we issued our decision. We will avoid that time lag in the future by allowing an expedited briefing schedule. COMAR 13A.01.05.04(B)(1). When an appeal is filed, all parties will be notified of the opportunity for an expedited schedule.

CONCLUSION

While we affirm the decision of the local board by the barest of margins, we put all school systems on notice, that future expulsion -sans - education cases will be reviewed most carefully for abuse of discretion. With all the caveats included herein, and for the reasons set forth, we affirm the decision of the local board.

James H. DeGraffenreidt, Jr.
President

Charlene M. Dukes
Vice President

Ivan C.A. Walks

Guthrie M. Smith, Jr.

Madhu Sidhu

Dissent:

We, the undersigned, dissent. We would have reversed the decision of the local board on the grounds that access to homework alone is not sufficient to avoid an abuse of discretion finding in this case. We do not condone the student's conduct here, but we consider her age and how early she is in

her high school career. To be cut off from school completely and from all meaningful education services may have a devastating effect on her and is perhaps a missed opportunity for reform. When we balance the impact on her individually against the effect of her conduct on the school environment, we find the scales tip toward an abuse of discretion finding. We believe the local board's decision is "beyond the fringe of . . . minimally acceptable."

We agree with the majority, however, that the issue of long-term suspension and meaningful access to education services deserves a full review which should include public input from all stakeholders, as well as a review of local school system practices, and a review of local and national data on the educational effects of long-term suspension. We fully support this Board's intention to develop a solution to the educational policy problems presented by long term suspensions.

Mary Kay Finan

Mary Kay Finan

S. James Gates, Jr.

Donna Hill Staton

Donna Hill Staton

Kate Walsh

Kate Walsh

August 25, 2009