

TERESA P.,

Appellant

v.

ANNE ARUNDEL COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 18-12

OPINION

INTRODUCTION

Appellant challenges the decision of the Anne Arundel County Board of Education (“local board”) affirming two separate three-day suspensions that her son received for “Disrespect Toward Others.” The local board filed a Motion for Summary Affirmance maintaining its decision is not arbitrary, unreasonable, or illegal. Appellant opposed the motion and the local board replied.

FACTUAL BACKGROUND

The incidents at issue in this appeal occurred in March of the 2016-2017 school year. At that time, Appellant’s son, Z.P., was in the eighth grade at Lindale Middle School (“Lindale Middle”).

The first incident took place on March 9, 2017. Z.P. was not dressed in his uniform. The Assistant Principal, Charles Renaldo, asked Z.P. to leave the classroom because he would not remove his jacket and did not have a uniform pass. In front of the entire class of students, Z.P. responded, “I’m ready to kick your ass, just leave me alone.”¹ Z.P. received a three-day suspension for “Disrespect Toward Others.”² (Record, Exs. 1, 2, 3, 13).

The second incident took place on March 17, 2017. Z.P. was in the hallway screaming at another student after the tardy bell had rung. Mr. Karr, the physical education teacher, attempted to intervene. Z.P. yelled at Mr. Karr, “Get your ass out of my business.” He then continued to yell threats at another student who was further down the hallway. (Record, Exs. 1, 4, 5, 13). Z.P. provided a written statement in which he admits to cursing at Mr. Karr. (Record, Ex. 6). He received a three-day suspension for “Disrespect Toward Others.”

Prior to the March incidents, Z.P. was involved in seven other incidents during the 2016-2017 school year for which he received disciplinary action. The offenses included cutting class,

¹ Z.P. later apologized to Mr. Renaldo for his conduct. (See Appellant’s Email to Connolly, 10/1/17).

² There appears to be a typographical error in the March 10, 2017 letter from Mr. Renaldo and Mr. Nash to Appellant that indicates that the suspension was for two days. (Record, Ex. 3). All other documentation reflects that the suspension was for three days.

leaving class without permission, insubordination, disrespect toward others and chronic classroom disruption. (Record, Ex. 1). In those cases, the school contacted Z.P.'s parents or imposed in-school consequences, such as supervised time-out, the decision-making room, and in-school intervention. *Id.*

On June 5, 2017, Appellant appealed the March 9 and March 17 disciplinary actions. (Record, Ex. 10). That same day, Mr. Nash, Principal of Lindale, denied Appellant's request to overturn the suspensions. He stated the following:

The AACPS Student Code of Conduct establishes on page 4 of the Student Handbook that students will show respect by "using positive words" and "refraining from using profanity in school." Disrespect toward others, a violation of the Student Code of Conduct, for which [Z.P.] was suspended, is defined on page 27 of the Student Handbook in this way: Disrespect Toward Others:
Inappropriate comments or physical gestures to others.

(Record, Ex. 11).

On July 3, 2017, Appellant appealed the suspensions because she believed the penalties were too harsh. (Record, Ex. 12). She argued that the school system was treating her son unfairly and that other students had not received suspensions for the same type of behavior. She named several students who used profanity in interactions with teachers or with other students, but who did not receive suspensions. *Id.*

In addition, Appellant provided explanations for the March 9 and March 17 incidents. With regard to the March 9 incident, Appellant claimed that Mr. Renaldo yelled at Z.P. and got into his personal space, which frustrated Z.P. and provoked him to react. She believes that Mr. Renaldo should have contacted her to bring a uniform to school rather than sending her son to get a uniform pass. With regard to the March 17 incident, Appellant claimed that Mr. Karr had been bullying her son for all of middle school and was not supposed to interact with Z.P. She claimed that the incident occurred after Mr. Karr taunted and provoked Z.P. by following him down the hallway and getting in his walking path. Appellant maintained that Mr. Karr was untruthful about the incident. *Id.*

Catherine E. Gilbert, Regional Assistant Superintendent, reviewed the case. On July 6, 2017, Ms. Gilbert found that the school acted within the provisions of the Code of Conduct with regard to both suspensions and denied the Appellant's request to overturn them. (Record, Ex. 13). She explained that the penalty imposed was consistent with the infraction, Disrespect Toward Others, in that a one to three day suspension was indicated at both a Level 2 and Level 3. She stated that "discipline sanctions are based on an individual student's behavior and the facts and circumstances surrounding each situation; therefore, [Appellant's] report of disciplinary measures enacted when other students misbehaved cannot be considered as reasons to overturn [Z.P.'s] suspensions." (Record, Ex. 13). On further appeal, Kathryn L. Kubic, Associate Superintendent, upheld the suspension decisions. (Record, Ex. 15).

On July 25, 2017, Appellant appealed to Monique H. Jackson, Deputy Superintendent acting as the Superintendent's Designee. (Record, Ex. 16). Ms. Jackson reviewed the case,

including information submitted by the Appellant and information that she obtained from school personnel. In a letter dated August 10, 2017, Ms. Jackson upheld the suspension decisions. She explained that the penalties imposed regarding each incident fell within the prescribed levels of appropriate sanctions. She stated that “[d]isrespect to administrators and staff is not acceptable behavior by our students.” (Record, Ex. 17).

Appellant appealed to the local board. (*See* Email to Connelly, 10/1/17). In her appeal, Appellant reiterated her prior arguments but also claimed that Z.P. had been bullied since the third grade. She stated that Z.P. “has been called a ‘Nigger’ by students and mistreated by faculty members” at Lindale. She had specific complaints about Mr. Karr and his alleged mistreatment of students. She stated that Z.P. “doesn’t like it when he gets treated unfairly, yelled at, or when people try to invade his personal space.” She further stated that she became aware that Z.P. had ADHD when he entered the eighth grade and that he is taking medication for it. *Id.*

In a decision issued on November 15, 2017, the local board upheld the suspensions finding that there were no violations or misapplications of policy, regulations or law. The local board noted that the appeal letter was the first time Appellant mentioned ADHD, and that Z.P.’s student record contained no mention of ADHD or requests for an IEP or 504 Plan for Z.P. (Local Board Decision). The local board did not address any of the bullying or harassment allegations.

Appellant appealed to the State Board. Appellant maintains that the school system misapplied the Code of Conduct which resulted in punishments that were too harsh for the conduct and that other students at Lindale have not received the same punishment as her son for the same types of actions. She also provides her rendition of facts for each of the disciplinary events involving Z.P. during the 2016-2017 school year.³ In addition, Appellant raises concerns about bullying and harassment against her son at Lindale, including allegations against Mr. Karr.

STANDARD OF REVIEW

In student suspension and expulsion cases, the decision of the local board is considered final. COMAR 134.01.05.05(G)(1). 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; violation the student’s due process rights; or the local board has acted in an unconstitutional manner. COMAR 134.01.05.05(G)(2). The State Board may reverse or modify a student suspension or expulsion if the allegations are proved true or if the decision of the local board is otherwise illegal.⁴ COMAR 134.01.05.05(G)(3).

LEGAL ANALYSIS

³ These disciplinary actions are part of Z.P.’s record. To the extent that the Appellant is now attempting to dispute these incidents, the time has passed. They should have been addressed with the teacher or administrators at the time they occurred, not in this appeal.

⁴ To the extent that the Appellant challenges the factual underpinnings of the March 9 and March 17 incidents based on the weight given the evidence, we will not review such claims given the standard of review set forth here.

Appellant challenges the local board's decision affirming the two three-day suspensions of her son for "Disrespect Toward Others." Specifically, Appellant maintains that the school system improperly applied the Code of Conduct which resulted in punishments that were too harsh, and that the school system does not consistently apply the disciplinary policy to all of the students. The Appellant also raises some bullying and harassment allegations.

Improper Application of Code of Conduct

Z.P. received suspensions for the offense "Disrespect Toward Others" for his conduct on March 9 and March 17. Under the Anne Arundel County Public Schools' ("AACPS") Code of Conduct, "Disrespect of Others" includes "inappropriate comments or physical gestures to others." The offense is punishable by consequences ranging from Level 1 to Level 5.⁵ (Record, Exs. 8, 9). The Code of Conduct provides administrators with flexibility in responding to disciplinary matters. It encourages progressive discipline while recognizing that higher level consequences may be appropriate in cases involving serious offenses or where there are repeated chronic or cumulative offenses. (See AACPS Code of Conduct).

Here, Z.P. received two three-day suspensions. This is consistent with a Level 2 or Level 3 consequence for the "Disrespect of Others" offense. We find that the three-day suspensions are appropriate and aligned with the AACPS Code of Conduct given Z.P.'s inappropriate comments to an administrator and a teacher, and given his prior disciplinary history. Z.P. had already received Level 1 consequences for similar behaviors to no avail. The school system properly applied the disciplinary policy. Although the Appellant believes that the suspensions are too harsh a punishment for Z.P.'s actions, they conform to the AACPS Code of Conduct.

Inconsistent Application of Code of Conduct

The Appellant claims that the school system did not consistently apply the Code of Conduct to all students with similar offenses. We note that it is often difficult to compare student discipline cases because each case is determined based on the facts and circumstances of the case itself and this information is different for every student and scenario. Appellant would have to provide evidence that the actions of the other students she named were essentially the same as Z.P.'s, and that they all had a similar disciplinary history. We point out here that Z.P.'s disciplinary history for the 2016-2017 school year, prior to March 9 and March 17, reflects a number of incidents in which Z.P. did not receive suspensions. This prior history was a factor in the decision-making process in Z.P.'s case that resulted in suspensions for the March 9 and March 17 incidents. While the Appellant has named several individuals who she maintains used profanity in the same way as Z.P., she has not presented the necessary evidence to demonstrate inconsistent application of the Code of Conduct.

Bullying/Harassment Concerns

Appellant makes various allegations that Z.P. was bullied or harassed by students and by Mr. Karr. With regard to Mr. Karr, Appellant indicates that at some point she spoke with the principal, Mr. Nash, about Mr. Karr's treatment of Z.P. She believed Mr. Nash was going to speak to Mr. Karr, therefore, she did not fill out a *Bullying, Harassment, or Intimidation*

⁵ Level 1 consequences include parent conference, restitution, supervised time-out outside of classroom, temporary removal from class, and a warning. (Record, Ex. 9).

Reporting Form. The specifics and timing of that interaction are not entirely clear and there is no simultaneous documentation to support it.

As we have previously noted, the harassment, bullying and intimidation of students is a serious issue. *See David & Linda S. v. Baltimore County Bd. of Educ.*, MSBE Op. No. 10-40 (2010). State law defines bullying, harassment and intimidation as conduct that "(1) physically harms an individual; (2) damages an individual's property; (3) substantially interferes with an individual's education or learning environment; or (4) places an individual in reasonable fear of harm to the individual's person or property." Md. Code Ann., Educ. §7-424.3. AACPS has in place a policy and regulation for handling bullying, harassment and intimidation complaints, which includes requesting an investigation and completing a *Bullying, Harassment, or Intimidation Reporting Form*. (AACPS Policy JCC and JCCA-RA). We recommend that the Appellant complete the designated form and formally initiate an investigation of her claims. The school system should then conduct an investigation per its policy and regulations.

ADHD Claims

Appellant maintains that her son received an ADHD diagnosis when he entered the eighth grade and suggests that his conduct was a result of this condition. Although she states that Mr. Nash and Mr. Renaldo were aware of the diagnosis, there is no documentation in Z.P.'s student record of his ADHD or any request from the Appellant for an evaluation for special education services or a 504 plan. Appellant can request that the local school system perform a special education evaluation to determine if Z.P. qualifies.⁶

CONCLUSION

For the reasons discussed above, we affirm the local board's decision upholding the suspensions.

Signatures on File:

Andrew R. Smarick
President

Chester E. Finn, Jr.
Vice-President

Michele Jenkins Guyton

Justin M. Hartings

Stephanie R. Iszard

⁶ We have long declined to extend our jurisdiction to resolve special education disputes because there are other existing forums available. *See Semere D. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 17-09 (2017) (citing cases).

Rose Maria Li

Michael Phillips

David Steiner

March 20, 2018