

PASTOR ALMENA C.
(RE:R.C.),

Appellant

v.

CECIL COUNTY BOARD
OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 17-28

OPINION

INTRODUCTION

Appellant is Pastor Almena C., grandmother and legal guardian of the student at issue in this case.¹ She challenges the decision of the Board of Education of Cecil County (“local board”) affirming her grandson’s extended suspension with placement in an alternative program for his participation in an altercation following a high school basketball game. 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

During the 2016-2017 school year, Appellant’s grandson, R.C., was in the eleventh grade in Cecil County at Elkton High School (“Elkton”). On February 28, 2017, R.C., along with his aunt, Almena Q. C., and a cousin who does not attend Elkton, was a spectator at the varsity playoff basketball game between Elkton and Harford Technical High School (“Harford Tech”). His other cousin, J.J., who also attends Elkton, is a member of the Elkton basketball team and was also present at the game, but he did not play.

The game took place at Harford Tech. At the end of the game, a disturbance occurred in the gym when players from the two teams were lining up to shake hands. The players exchanged some words and a verbal altercation ensued. Fans then started coming out of the stands and Elkton players and fans exchanged punches with Harford Tech fans.² The coaches and staff members tried to gain control of the situation and were ultimately able to end the incident. During the incident, however, a Harford Tech student was knocked unconscious on the gym floor and required medical attention. (Motion, Ex. 1).

Elkton administrators and staff members, as well as law enforcement officials, investigated the incident by reviewing video footage and interviewing witnesses. Elkton administrators determined that R.C. was actively involved in the incident. *Id.* According to Joseph Zang, Elkton’s Head Varsity Basketball Coach, R.C. came out of the stands and went across the gym to the area of the bleachers where the Harford Tech fans were located. (T.7-9,

¹ The student’s aunts, Almena Q. C. and Youlanda C. are also mentioned in the appeal, but Pastor C. is the Appellant.

² The Harford Tech team made it out of the gym before things escalated.

13).³ He stated that “[R.C.] was everywhere it seemed, but mainly on the pile of people in the bleachers. He was definitely the aggressor.” (Motion, Ex. 3; T.13). The incident report, prepared by Anthony Evans, Assistant Principal at Elkton, stated:

Following the Boys Basketball game at Harford Technical High School, student [R.C.] was involved in a brawl. [R.C.] ran across the floor as a conflict began between both teams. [R.C.] followed our basketball players across the court and confronted the Harford Tech fan section. [R.C.] was an aggressor during the altercation. Multiple times [R.C.] jumped into the bleachers attempting to strike parents and students. He had to be restrained several times during the incident. Finally, [R.C.] was detained by the Harford County Sheriff’s Office.

(Motion, Ex. 3). In addition, the Incident Report provided by the Harford County Sherriff’s Office identified R.C. as “a clear agitator and instigator during the entire incident.” It stated that once the fight broke out, R.C. was “continually charging students from Harford Tech in an aggressive manner swinging his arms, after being removed several times by numerous staff members.” *Id.*

On March 1, 2017, the day after the incident, Elkton Principal, John Roush, Assistant Principal Evans, and Assistant Principal, Edmund Fontana, reviewed the video footage and the statements prior to meeting with various parents and students involved. Because R.C. has an Individualized Education Program (“IEP”), Mr. Fontana participated in a Manifestation Determination Meeting that morning, attended by R.C.’s aunt and representative, Youlanda C. All parties involved in the meeting agreed that R.C.’s behavior was not a manifestation of his disability. (Motion, Ex. 4).

In addition, Mr. Fontana and Mr. Evans met with R.C. that morning and provided him with notice of the allegations against him and an opportunity to respond. R.C. chose not to respond and provided no explanation for his conduct. (T. 37-38). Principal Roush and Mr. Evans signed a letter formally advising the Appellant, Pastor C., of R.C.’s suspension for 10 school days (March 1 through March 14) with a recommendation for an extended suspension “for participating in a disturbance following the basketball game.”⁴ (Motion, Ex. 5). Mr. Roush referred R.C. to the local superintendent for an extended suspension based on his view that R.C. posed an “imminent threat to the students and staff at Elkton High School.” (T.32). He testified that R.C. “was out of control at the basketball game,” that he “did not adhere to any direction from adults or people that were in supervisory positions there that night,” and that “he would get stopped, and then he would enter back into the fray, and that happened repeatedly.” *Id.*

On March 10, 2017, Kyle Longeway, the Coordinator for Student Services and the Superintendent’s Designee, conducted a conference with R.C., the Appellant Pastor C., and R.C.’s aunts. Principal Roush and Assistant Principal Evans were also present. (T. 40-43). Mr.

³ The Transcript is attached to the local board’s Motion for Summary Affirmance as Exhibit 2.

⁴ The letter is mistakenly dated February 28, 2017, rather than March 1, 2017.

Longeway gave notice of the allegations against R.C. and provided him and his family an opportunity to respond. They explained that R.C. was trying to help his cousin who was on the bleachers involved in a physical altercation with a Harford Tech parent. R.C. stated the following, as described in Mr. Longeway's notes:

I was coming down the bleachers at the end of the game. I saw a confrontation across the court. I ran across the court to see [if J.J.] was ok. My Aunt Almena was there and shut me down. The Harford Tech players left. [Elkton] students and players and family went across the court. Harford Tech fans were on the middle of the court. We just started fighting. Everyone was fighting including me to protect myself and look for my cousin[s J.J. and A]. I saw my big cousin fighting a grown man. I was trying to get over there and telling people there was a grown man fighting my cousin. It didn't seem like anyone was helping, so I tried to get over there. Someone grabbed me and I saw my cousin was ok and the man was gone. I left and went to the car. I am not sure how it all initially started. I would not have done anything differently – I was trying to protect my family.

(Motion, Ex. 3).

Based on the information shared during the conference, Mr. Longeway imposed a 35-day suspension (March 2- through May 10) and placement in the Cecil Alternative Program at the Providence School during that time. (Motion, Ex. 6). Despite the explanation for R.C.'s conduct, Mr. Longeway found the extended suspension to be appropriate because R.C. posed an imminent threat to the students and staff at Elkton High School. His conclusion was based on the fact that R.C. had to be removed several times from the altercation and continued to go back, even when the adults present were working to intervene and bring the situation back to a safe and orderly environment. (T. 41-44). Mr. Longeway found that R.C. was a willing participant who failed to avail himself of numerous opportunities to remove himself from the incident and that R.C.'s conduct actually escalated the incident. *Id.* Furthermore, R.C. had indicated that he would not have done anything differently in this situation. (T.43; Motion, Ex. 3).

Appellant appealed to the local board. The local board conducted an evidentiary hearing on April 25, 2017. (Motion, Ex. 2). At the hearing, R.C.'s aunt, Youlanda C., presented evidence and examined and cross-examined witnesses. R.C.'s other aunt, Almena Q. C., testified that this was an isolated incident and that R.C. kept coming back into the crowd of people because she was calling for help for her son who was being assaulted by the father of a Harford Tech student in the bleachers. (T.54-56). Pastor Almena C. echoed this information in her testimony. She also testified that the alternative program could not meet R.C.'s needs. (T. 71-73). R.C. testified that he was trying to get to his cousin to help him. (T. 84-85).

By Order dated April 25, 2017, the local board upheld the decision of the superintendent's designee to suspend R.C. for an additional 35 days following the principal's

initial 10-day suspension. (Motion, Ex. 1B). On May 2, 2017, the local board issued its written opinion. The opinion states:

After carefully weighing all of the evidence and testimony and having the opportunity to judge the credibility of the witnesses, the Board was convinced that [R.C.] was an active participant in the melee who willingly put himself into the fray, descending from the bleachers on to the court, aggressively charging over to the home (Harford Tech) side and diving into the crowd.

Despite being restrained and pulled out of the fight, [R.C.] was out of control, repeatedly re-entering the fray and ignoring directions from persons of authority, while an injured student lay unconscious on the floor. Despite a lack of prior disciplinary record, under these circumstances the Board could not conclude that the Superintendent's designee's assessment (that [R.C.'s] return to EHS prior to the completion of the extended suspension period would pose an imminent threat of serious harm to other students or staff) was erroneous. . . .

(Motion, Ex. 1A at 7).

Thereafter, Appellant filed an appeal to the State Board. While this appeal was pending, the 2016-2017 school year ended. The local board submitted the affidavit of Principal Roush stating that following R.C.'s temporary placement at the Cecil Alternative Program, he returned to his regular classes at Elkton and successfully completed the 11th grade. He attached a copy of R.C.'s grade report for the 2016-2017 school year. (Motion, Ex. 8). The grade report shows improvement in R.C.'s 3rd and 4th quarter grades as compared to his 1st and 2nd quarter grades in all classes except for English.⁵ *See Id.*

STANDARD OF REVIEW

In student suspension and expulsion cases, the decision of the local board is considered final. COMAR 134.01.05.05. 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; or the local board has acted in an unconstitutional manner. COMAR 134.01.05.05. 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. COMAR 134.01.05.05.

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

- (1) Unconstitutional;
- (2) Exceeds the statutory authority or jurisdiction of the local board;

⁵ The extended suspension spanned a period in both the 3rd and 4th quarters. The school system's third quarter ended March 31, 2017 and the fourth quarter ended June 13, 2017.

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

COMAR 13A.01.05.05C

LEGAL ANALYSIS

Appellant challenges the local board's decision affirming the extended suspension and placement in the Cecil Alternative Program. As stated above, the State Board will only review the merits of such a decision if there are specific allegations of illegality which if proved true could lead to a reversal or modification of the discipline imposed.

Racial Motivation

At the center of this case is the Appellant's strong belief that the discipline imposed was a result of racial bias on part of the school staff and the local board. We address this issue first.

Appellant alleges that the disciplinary decision in this case was racially motivated because nobody at the school system level has listened to the explanation given by R.C. and his family about his actions that day – that R.C. was trying to come to the aid of his family because his aunt was screaming for help as R.C.'s cousin was assaulted by a Harford County parent. We have no reason to doubt that explanation. The record reflects Mr. Longeway and the local board considered the explanation given for R.C.'s conduct but did not find it exculpatory. The question is whether the decision of the local board not to mitigate R.C.'s discipline because he was trying to help a family member was a racially biased decision.

R.C. entered and re-entered the fray out of family loyalty. The desire to protect one's family is a strong value. It is a value present in all races of people. Sometimes, in acting in concert with our values, there are adverse consequences. R.C.'s conduct, however justified he and his family believe it to be, resulted in adverse consequences which in light of all the circumstances, we believe were appropriate.

There was an unconscious student on the floor of the gym. Those in charge at the game were trying to de-escalate the situation by removing person after person from the area, including R.C. Yet R.C. kept running back into the fray. We have searched the record for facts that would indicate that the discipline imposed here was a result of racial bias, but the State Board has repeatedly held that allegations of racial bias with no factual basis are insufficient. *See, e.g., Lynn v. Anne Arundel County Board of Education*, MSBE Opinion No. 04-20 (2004). There is simply no evidence in the record that the discipline imposed was discriminatory based on racial bias.

Imminent Threat of Serious Harm Determination – Abuse of Discretion?

The primary basis for the Appellant’s appeal is her disagreement with the local board’s conclusion that there was sufficient evidence to find that an extended suspension was warranted in this case because R.C. posed an imminent threat of serious harm to Elkton students and staff. Appellant argues that there is no basis for the “imminent threat” finding given that this was an isolated incident that took place at Harford Tech after a highly charged playoff basketball game where there was insufficient security to protect the students and others in attendance. She explains that R.C. kept pulling away from those restraining him because he was trying to get to his aunt who was calling out for someone to help his cousin who was being assaulted by the father of a Harford Tech student on the bleachers. She points out that nobody in charge was helping R.C.’s cousin who was being attacked and that they were simply standing there preventing people from coming over to the area. She notes that R.C. has had no previous history of behavioral problems, has never disrupted anything at Elkton, and is a good student despite his learning disabilities. She also points out that R.C. did not hurt anyone or anything during the incident. She believes that all of this information should have mitigated the punishment imposed on R.C.⁶

Appellant’s assertion that there was no basis for the imminent threat finding is essentially an assertion that the local board’s decision constituted an abuse of discretion. The abuse of discretion standard is a very high standard:

“Abuse of discretion” . . . 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 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 the court deems minimally acceptable.” *State v. WBAL-TV*, 187 Md. App. 135, 152-153 (2009).

⁶ Appellant mentions that, as of February 28, 2017, Harford County Public Schools has banned R.C. from all Harford County Public School properties for a period of one year. She explains that this is yet another form of punishment and it will prevent R.C. from supporting his peers at events during his senior year at school. This appeal is between Appellant and the Cecil County Board of Education. If the Appellant wishes to challenge the Harford County ban, she must take it up with the Harford County Public Schools.

In our view, the local board's decision that R.C. posed an imminent threat of serious harm to students and staff at Elkton was not an abuse of discretion. The witness accounts and the video of the incident all support the local board's conclusion that R.C. entered into the fray of people involved in the incident, and that each time he was restrained from doing so by those in charge, he pulled free only to attempt to get back in. Appellant's view of the scenario, that nobody was helping R.C.'s cousin, ignores the fact that those in charge were trying to deescalate the situation that was taking place while also dealing with an unconscious student on the floor near the mass of people. R.C. chose to overlook the directions of those in charge who were trying to defuse the situation and he has testified that he would not have changed his behavior in any way had he the opportunity to do so because he was trying to protect a family member. As we have said, family loyalty is a strong value, but it can also lead to strong protective reactions that may be detrimental or harmful to others. R.C. has a family member who attends Elkton. His conduct, combined with his unwillingness to refrain from entering into an altercation when a family member is involved, was sufficient to support the local board's determination that he posed an imminent threat of serious harm to students and staff at Elkton.

Placement in Cecil Alternative School

Appellant raised concerns about R.C. "falling behind" during his placement in the Cecil Alternative Program and the program's ability to meet his needs. Pursuant to COMAR 13A.08.01.11(B)(3)(c), during the period of an extended suspension the school system is required to provide the student with comparable education services and appropriate behavioral support services to promote a successful return to the student's regular academic program. To comply with this provision, as part of the extended suspension, Mr. Longeway placed R.C. at the Cecil Alternative Program at Providence School. Principal Roush testified that R.C. returned to Elkton at the end of the extended suspension period and that he successfully completed the school year and the 11th grade. (Motion, Ex. 8). The grade report shows that most of R.C.'s grades improved during the 3rd and 4th quarters, exceeding his past performance at Elkton. To the extent that Appellant may have any concerns related to R.C.'s IEP, she would have to pursue those matters through the special education process.

Due Process

It is not entirely clear if the Appellant is alleging a violation of due process in the appeal. She states in her response to the local board's motion that she feels that "Elkton High School and the Superintendent's Office [are] using [her] grandson to set an example without due process." The record shows, however, that Mr. Evans and Mr. Fontana met with R.C. the morning of March 1st and notified him of the charges against him and provided him with the opportunity to respond. In addition, Mr. Longeway conducted a hearing on March 10, which the Appellant attended. Nevertheless, to the extent that any due process violation may have occurred at the school level, and we do not conclude that such a violation occurred, the evidentiary hearing before a panel of the local board had a curative effect on any deficiencies in the process. See *Parent H. Montgomery County Bd. of Educ.*, MSBE Opinion No. 13-27 (2013); *Venter v. Bd. of Educ.*, MSBE Opinion No. 05-22 (2005); *Williamson v. Bd. of Educ. of Anne Arundel County*, 7 Op. MSBE 649 (1997); *Hanson v. Somerset County Bd. of Educ.*, 7 Op. MSBE 391 (1996).

CONCLUSION

For the reasons discussed above, the Appellant has failed to demonstrate that the local board's decision violated R.C.'s due process rights or was otherwise illegal. Accordingly, we uphold the decision of the local board affirming the extended suspension.

Signatures on File:

Andrew R. Smarick
President

Chester E. Finn, Jr.
Vice-President

Michele Jenkins Guyton

Justin M. Hartings

Stephanie R. Iszard

Rose Maria Li

Michael Phillips

Irene M. Zoppi Rodriguez

David Steiner

August 22, 2017