ALMENA Q.C.,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
CECIL COUNTY BOARD OF EDUCATION	OF EDUCATION
Appellee.	Opinion No. 17-29

OPINION

INTRODUCTION

Appellant is Almena Q.C., mother of the student at issue. She challenges the decision of the Board of Education of Cecil County ("local board") affirming the local superintendent's decision to suspend her son for ten days with subsequent in-school removal 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 son, J.J., was in the ninth grade in Cecil County at Elkton High School ("Elkton"). J.J. was a member of the junior varsity basketball team. He was invited to join the varsity team for the 2017 playoff season. On February 28, 2017, J.J. was involved in an incident at Harford Technical High School ("Harford Tech") following a varsity playoff basketball game between Harford Tech and Elkton. J.J. did not play in the game, however. (Motion, Ex. 1A).

The incident began at the end of the game when players from the two teams were lining up to shake hands. The players exchanged some words and a verbal altercation occurred. Fans started coming out of the stands, and then Elkton players and fans exchanged punches with Harford Tech fans. The coaches and staff members tried to gain control of the situation and were ultimately able to stop the fighting. (Motion, Ex. 2).

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 J.J. was actively involved in the physical altercation. (Motion, Ex. 1A). According to Elkton's Head Varsity Basketball Coach Joseph Zang, both he and Assistant Coach Herr had to restrain J.J. at different times during the incident because J.J. kept getting free and running back into the stands to the area of the fight. (T. 7-12; Motion, Ex. 1A at 5-6; Exs. 3 & 4 – coaches written statements). Coach Zang also witnessed J.J. kicking near the area where a Harford Tech player was lying unconscious on the ground. (T. 7-8). Coach Zang stated that J.J. was one of the four students mainly involved in the melee. (T. 11). Elkton Principal, John Roush, observed the same conduct on the video recording of the incident. (T. 29-30).

On March 1, 2017, before meeting with students and parents involved in the altercation, Principal Roush and Assistant Principals Anthony Evans and Edmund Fontana reviewed the video footage and read statements from both Coach Zang and Assistant Coach Herr. Mr. Fontana and Mr. Evans met with J.J. that morning and provided him with notice of the allegations against him and an opportunity to respond. (Motion, Ex. 5; T.27). Principal Roush and Mr. Fontana signed a letter formally advising the Appellant of J.J.'s suspension for 10 school days "for participating in a disturbance following the basketball game."[1] (Motion, Ex. 5).

In addition to the 10-day suspension, Mr. Roush referred J.J. to the local superintendent for an extended suspension based on his view that J.J. posed an "imminent threat to the students and staff at Elkton High School." (T. 28). He testified that if J.J. exhibited "this type of behavior . . . at a basketball game . . . you have to weigh the possibility it could happen in the school building; so that entered into any decision to make that determination." (T. 28-30). Mr. Roush also testified that while he considered J.J. to have good grades and an otherwise clean disciplinary history, "the biggest contributing factor was his behavior" and the fact that "[t]he video shows him kicking near where the person was down on the floor." (T. 32-33; 40).

On March 10, 2017, Kyle Longeway, the Coordinator for Student Services and the Superintendent's Designee, conducted a conference with J.J.; his mother, Almena Q. C.; his grandmother, Pastor Almena C.; and his aunt, Youlanda C. Principal Roush and Assistant Principal Evans were also present. (T. 29; Motion, Ex. 6). Mr. Longeway gave notice of the allegations against J.J. and provided him and his family an opportunity to respond. Mr. Longeway found that J.J. was a participant in the event who "was not complying with requests to be removed from the situation, and as a result . . . posed an imminent threat of serious harm to staff and students, not only in that situation but in future situations." (T. 47). Mr. Longeway upheld the 10-day suspension and imposed an in-school disciplinary removal for J.J. from March 20, 2017 through April 20, 2017 in lieu of an extended suspension. Through the in-school disciplinary removal process, J.J. was placed in the Elkton Twilight Program on Mondays through Thursdays and the Elkton Modified Instruction Program on Fridays.[2] (Motion, Ex. 6; T. 47-48).

Appellant appealed to the local board. The local board conducted an evidentiary hearing on April 25, 2017. (Motion, Ex. 2). By Order dated April 28, 2017, the local board upheld the decision of the Superintendent's Designee to suspend J.J. for 10-days and to then place him in the Twilight and the Modified Instruction Programs at Elkton. (Motion, Ex. 1B). On May 4, 2017, the local board issued its written opinion.

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 J.J.'s temporary placement at the Elkton Twilight Program and Modified Instruction Program, he returned to his regular classes at Elkton and successfully completed the 2016-2017 school year. (Local Board Reply, Roush Affidavit with grade report).

STANDARD OF REVIEW

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

[2] Pursuant to COMAR 13A.08.01.11(C)(1)(a), the in-school disciplinary removal was not recorded as a suspension in J.J.'s educational record. The only record of a suspension is the ten-day suspension that was imposed at the school level by Mr. Roush. (T. 55).

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;
(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 10-day suspension with the subsequent in-school disciplinary removal in lieu of an extended suspension. 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 reversal or modification of the discipline.

Racial Motivation and Lack of Due Process

Appellant alleges that the disciplinary decision in this case was racially motivated. In her June 8, 2017 filing, Appellant states that she "[b]elieve[s] that what was done to [J.J.] was a racial act. All the students involved were black students coming up against white superiors and didn't have a chance in hell to be heard." In this case, in our view, there were multiple opportunities for J.J. to be heard - - the March 1st meeting, the March 10th conference, and the April 25th evidentiary hearing. Those opportunities were more than sufficient to provide J.J. with due process. *See Parent H. Montgomery County Bd. of Educ.*, MSBE Op. 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 Opinions MSBE 649 (1997); *Hanson v. Somerset County Bd. of Educ.*, 7 Opinions MSBE 391 (1996).

At the meetings and hearing, the evidence presented was incontrovertible. The video showed J.J. engaged in the fight. Fighting at a school event is a serious violation of the Code of Conduct. Discipline of some sort is almost always to be imposed. *See Maryland Guidelines for a State Code of Conduct* at 22.

We note here that the school system complied with proper procedure by first making a determination that J.J. posed a continuing danger to the students and staff at Elkton prior to removing him from school. *See* COMAR 13A.08.01.11(C)(2)(d) (For a suspension 10 days or

less, "[a] student whose presence in school poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be removed immediately from school…."). Although the Appellant questions how school officials could return J.J. to school if they really believed he was a threat, in many cases a return to school is reasonable after the student has had a cooling off period during which the student can reflect on the conduct that occurred.

With regard to the in-school removal, it is permitted under COMAR 13A.08.01.11(a). In this case, Mr. Longeway imposed the in-school removal in lieu of an extended suspension. The in-school removal is not considered a day of suspension if the student (1) is afforded the opportunity to appropriately progress in the general curriculum; (2) receives the special education and related services specified on the student's IEP, if the student is a student with a disability in accordance with COMAR 13A.05.01; (3) receives instruction commensurate with the program afforded to the student in the regular classroom; and (4) the opportunity to participate with peers as they would in their current education program to the extent appropriate. The Appellant contends that the Twilight Program met for only 2 hours a day and J.J.'s grades are not where they should be. However, Principal Roush testified that the Twilight Program gave J.J. the opportunity to keep up with his regular classes and then return to his regular program on April 20, 2017. (T. 33-34; 47-48). J.J. also attended the Elkton Modified Instruction Program on Fridays for the entire school day. (T. 37).

The Appellant testified to J.J.'s good record at school in an effort to show that the discipline imposed was too harsh. She asserts that the school system failed to consider that J.J. takes honors classes and is an honor roll student with no "prior referrals or disciplinary actions" against him. (Appellant's Response, May 4, 2017). We have considered whether the local board's decision not to mitigate J.J.'s discipline based on his good school record was 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). Given the facts in this case, we cannot conclude that the local board's decision not to mitigate the discipline was violative of all fact and logic.

Finally, we turn to the assertion that the discipline imposed here was racially motivated because all the students were black and all the administrators were white. The fact of racial

differences between students and administrators alone is not sufficient to show that the discipline decision was racially motivated. An allegation of racial bias must be supported by sufficient facts. *See, e.g., Lynn v. Anne Arundel County Bd. of Educ.,* MSBE Op. No. 04-20 (2004). There are no facts here sufficient to support the allegation.

CONCLUSION

For the reasons discussed above, the Appellant has failed to demonstrate that the local board's decision violated J.J.'s due process rights or was otherwise illegal. Accordingly, we uphold the decision of the local board affirming the 10-day suspension and subsequent in-school disciplinary removal.

Signatures on File:

_____
Andrew R. Smarick
President

_____
Chester E. Finn, Jr.
Vice-President

_____
Michele Jenkins Guyton

_____
Justin Hartings

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Stephanie R. Iszard

_____
Rose Maria Li

_____
Michael Phillips

_____
Irene M. Zoppi Rodriguez

_____
David Steiner

August 22, 2017