

CONSTITUTIONAL LAW—Due Process;
STUDENTS—Discipline

HUDSON MAYBERRY, III, *Appellant*

v.

ANNE ARUNDEL COUNTY BOARD OF EDUCATION,
Appellee

No. 98-17
March 25, 1998

OPINION

In this appeal, Hudson Mayberry, III disputes his extended suspension based on a violation of his Conditional Reinstatement Contract. Specifically, Appellant maintains that “the superintendent herself failed to consider the investigation and report of her designee, and further, failed to render specific findings pursuant to Education Art. Sec. 7-305 prior to taking further action.” Additionally, Appellant argues that the basis and reasons for the decision are not supported by sufficient evidence, and the alleged violations that the local board found as justifying the disciplinary action are not the same as those with which he was initially charged. Accordingly, he maintains that the local board’s decision was arbitrary, capricious, and illegal.

The local board has filed a Motion for Summary Affirmance asserting that Appellant’s due process rights were not violated because the superintendent can designate a representative to conduct investigations and make recommendations in student suspension and expulsion cases, and Appellant was informed of the violations in a timely manner. The local board also asserts that assuming *arguendo* Appellant was denied due process at the original stages of the suspension, any violation of due process was cured at the hearing before the local board.

BACKGROUND

Hudson Mayberry, III has a history of being argumentative and confrontational towards his teachers. This behavior led to his removal from Glen Burnie High School and his placement at the Anne Arundel County Learning Center. In March 1996, he was expelled from the Learning Center because of a confrontation with his Social Studies teacher. Thereafter, on January 23, 1997, Hudson was admitted to Northeast High School under the terms of a Conditional Reinstatement Contract.¹ While a student at Northeast, Mayberry received 11 disciplinary referrals for tardiness, foul language, and other infractions and was suspended from school on two occasions.

On Friday April 4, 1997, at approximately 11:45 a.m., Appellant created a disturbance in the gymnasium lobby by being verbally abusive and threatening to his weight-lifting teacher, Brandt Schranberger. Approximately 70 witnesses were present, including various teachers and administrators. The following Monday at 8:00 a.m., the school principal, Roy Skiles, and the assistant principal, Craig Reynolds, met with Appellant and his father. At the meeting, the principal read the statements of witnesses that were taken immediately after the incident. The principal explained that he believed the confrontation violated Appellant’s Conditional Reinstatement Contract and that Appellant may have committed a verbal assault. The principal then advised Appellant and his father that Appellant would be suspended for verbal assault in violation of his Reinstatement Contract and that an investigation of the matter would take

¹The Contract included the following conditions:

- (1) Hudson will go to school each day that there is not a legal excuse for an absence;
- (2) Hudson will attend every class to which he is assigned unless excused by the teacher;
- (3) Hudson will complete and turn in all classwork and homework assigned to the best of his ability;
- (4) Hudson will pass a majority of courses attempted;
- (5) Hudson will be familiar with and obey all school rules at all times.

place in order to consider an extended suspension. At that time, Appellant was given an opportunity to present his side of the story and to respond to the witness statements.

Thereafter, the matter was referred to Leon Washington, the Superintendent's Special Assistant for Student Discipline. Mr. Washington conducted further interviews of witnesses² and determined that Appellant did not commit a verbal assault. Nevertheless, Mr. Washington recommended that Appellant be placed on extended suspension for insubordination and disrespectful conduct in violation of his Conditional Reinstatement Contract. Mr. Washington met with Appellant, his parents and his attorney on April 14, 1997, and advised them of his findings and the "new charges" involving insubordination. Additionally, Mr. Washington provided Appellant with information regarding the appeal process. Appellant was given an opportunity to dispute Mr. Washington's findings at this meeting.

After a review of Mr. Washington's recommendations, Leslie A. Mobrey, Director of Student Services, wrote a letter to Appellant's father, dated April 28, 1997, which indicated that Hudson had been found in violation of his Reinstatement Contract. The letter advised:

This is to inform you that the **Superintendent has approved** Mr. Skiles' request [for an extended suspension]. Accordingly, effective this date, Hudson is placed on extended suspension from Northeast High School pending the start of home teaching. Hudson will remain on home teaching until the end of the 1996-97 school term. An alternative placement will be sought for Hudson prior to the start of the 1997-98 school term. [Emphasis added].

On August 27, 1997, a unanimous local board upheld the superintendent's decision in a detailed memorandum of opinion. The board concluded:

²Two adult witnesses and 65 student witnesses were questioned.

It is apparent to this board that Hudson's behavior on April 4 was inappropriate, disruptive, and contrary to the established rules of behavior. As a result, the decision of the Superintendent, as contained in the April 28 letter . . . was justified. Without question, Hudson violated his Conditional Reinstatement Contract as a result of his disruptive behavior.

Local board decision at 8. Additionally, the board found no merit to Appellant's argument that he was denied due process because he was not advised of the charges against him. The board explained:

Hudson also challenges the procedures employed in this case, and contends that no disciplinary action can be taken against him because he was only on notice about the charge of verbal assault. . . The evidence belies this contention, however. Mr. Reynolds testified that he was present when Mr. Skiles told Hudson and his father that he considered Hudson's behavior to be a violation of the Reinstatement Contract and a violation of school rules. Mr. Washington testified that he explained his findings to Hudson, his father, and his attorney, and told them that he could not substantiate the assault charges but did believe that Hudson was insubordinate and disruptive during the April 4 incident. This, Mr. Washington said, violated the Conditional Reinstatement Contract.

Local board decision at 8. Lastly, the local board responded to Appellant's argument that only the Superintendent can decide whether an extended suspension is warranted:

Although this board . . . believes that a superintendent has the power to delegate this responsibility to a designee, the issue does not exist in this appeal. In his April 28 letter to Hudson's father, Leslie Mobrey, Director of Student Services, states that ".... the superintendent has approved Mr. Skiles' request" for an extended suspension. Thus, although we believe that Mr. Mobrey may operate as the superintendent's designee in these kinds of cases, in this instance he merely notified the parent of the superintendent's actions.

Local board decision at 10.

ANALYSIS

The decision of a local board with respect to a student suspension or expulsion is considered final. Md. Educ. Code Ann. § 7-305(a)(7). 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 acted in an otherwise unconstitutional manner. COMAR 13A.01.01.03(e)(4)(b).

Appellant makes two allegations regarding denial of due process. First, Appellant argues that the superintendent improperly delegated the responsibility of deciding whether a suspension is warranted. Specifically, Appellant states that although the local superintendent can designate a representative to make an investigation and conduct a conference, the local superintendent herself must make findings and a decision regarding whether a suspension is warranted. Appellant states that in his case, the superintendent only "approved" the suspension rather than making an independent determination based on her designee's investigation.

Section 7-305(c) of the Education Article discusses the procedure for long term suspensions and expulsions. It provides in pertinent part:

- (c) Procedure for more than 10-day suspension or expulsion. — (1) If a principal finds that a suspension of more than 10 days or expulsion is warranted, he immediately shall report the matter in writing to the county superintendent.
- (2) The county superintendent or his designated representative promptly shall make a thorough investigation of the matter.
- (3) If after the investigation the county superintendent finds that a longer suspension or expulsion is warranted, he or his designated representative promptly shall arrange a conference with the student and his parent or guardian.

- (4) If after the conference the county superintendent or his designated representative finds that a suspension of more than 10 school days or expulsion is warranted, the student or his parent or guardian may:
- (i) Appeal to the county board within 10 days after the determination;
 - (ii) Be heard before the county board or its designated committee; and
 - (iii) Bring counsel and witnesses to the hearing.

In this case, we do not find that the suspension procedure set out in § 7-305 was violated in any manner. Rather, Hudson and his father had a prompt conference with the principal. Then Mr. Washington, the superintendent's representative, conducted an investigation. Because Mr. Washington found a violation of the Reinstatement Contract, he also held a conference that was attended by the Mayberrys and their attorney. After the conference, Leslie Mobrey, the Director of Student Services, authored a letter which indicated that the local superintendent agreed that an extended suspension was warranted. At that time, Appellant was advised of his appeal rights. In light of the evidence in the record, Appellant has failed to illustrate a violation of due process based on the superintendent's delegation of responsibility.

Second, Appellant claims that his due process rights were violated when the school system amended the charges upon which they based his suspension. However, we do not find that the amended charge violated Appellant's due process rights. Rather, Hudson was given notice of the charges at the meeting with Mr. Washington and was given an opportunity to refute those charges. *See Goss v. Lopez*, 419 U.S. 565 (1975); *see also David Lidie v. Board of Education of Baltimore County*, MSBE Opinion No. 97-39 (September 23, 1997 (exclusion of charge before the superintendent's hearing did not violate Appellant's due process rights because he was given notice of the charges and was given an opportunity to refute the charges)). We also note that even if Hudson's due process rights

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were violated by this occurrence, any violation was cured at the local board hearing. See *Corey Williamson v. Board of Education of Anne Arundel County*, MSBE Opinion No. 97-20 (April 30, 1997); (failure to give prompt notice would be cured by local board's full evidentiary hearing on appeal); *Harrison v. Somerset County Board of Education*, MSBE Opinion No. 96-20 (July 30, 1996)(failure of superintendent to meet with student was cured by local board hearing); *West & Bethea v. Board of School Commissioners of Baltimore City*, MSBE Opinion No. 96-47 (failure to hold conference within ten days was cured by the *de novo* hearing on merits before the local board).

CONCLUSION

Because we find no due process violations or other illegality in the proceedings, we affirm the decision of the Board of Education of Anne Arundel County.

Rose La Placa, *President*

Edward Andrews, *Vice President*

Raymond V. Bartlett, Philip S. Benzil, George W. Fisher, Sr., Morris Jones, Walter Sondheim, Jr., John Wisthoff, Edmonia T. Yates

Absent: Judith McHale, Adrienne L. Ottaviani