

JONI WEBSTER,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-43

OPINION

In this appeal, the parent of a student at Briggs Chaney Middle School contests the local board ruling to expel her son, Wesley, based on Wesley's possession and sale of marijuana on school grounds. The local board has filed a Motion for Summary Affirmance, maintaining that Appellant's argument on appeal raises no procedural due process issues; therefore, it is inappropriate for the State Board to substitute its judgment for that of the local board. Appellant has not submitted a response to the motion.

BACKGROUND

Wesley was an eighth grade student at Briggs Chaney Middle School during the 1999-2000 school year. On December 10, 1999, a teacher observed Wesley and another student acting suspiciously in the boys' locker room. The two students moved to three different locations within the room before entering a bathroom stall together. One of the boys peeked through the stall opening to determine the whereabouts of the teacher covering the boys' locker room. The teacher reported his observations to the resource teacher who, in turn, informed Principal Laurence Hansch.

Mr. Hansch called Wesley to the office and informed him that the other student who was found to be in possession of marijuana stated that Wesley had sold the drug to him for four dollars. Wesley denied having sold marijuana to the other boy and denied being in the bathroom stall with him. Wesley asserted that one of his teachers provided him with four dollars in single, one-dollar bills. Yet, the teacher reported that she had given Wesley only a single dollar bill. Moreover, Wesley claimed that the teacher who identified him in the boys' locker room did not know him. Yet, the teacher who identified Wesley had been Wesley's teacher and had been assigned to Briggs Chaney Middle School for five years. Given the foregoing, by letter dated December 13, 1999, Mr. Hansch suspended Wesley for selling marijuana and recommended expulsion.

On December 23, 1999, Dr. Betty Howard, supervisor of pupil services (Spring Mill Office), conducted an investigative conference regarding the incident. As a result of that conference, Dr. Howard upheld the ten-day suspension and concurred in the recommendation for expulsion. Pending a final decision on expulsion, she placed Wesley on home and hospital

teaching. The recommendation for expulsion was then forwarded to the deputy superintendent, who, acting on behalf of the superintendent, assigned the matter to a hearing officer.

The hearing officer held a conference with Wesley, Appellant, and Appellant's attorney on January 11, 2000. Based on the conference, as well as his review of the record, the hearing officer recommended that:

The ten (10) day suspension is warranted and should stand. The recommendation for expulsion should be adopted. Because of the seriousness of this event, Wesley should be expelled from Montgomery County Public Schools from now through the second semester of the 1999-2000 school year. In July 2000, Wesley may make application for reentry through the expulsion review board...

By letter dated January 31, 2000, the deputy superintendent informed Appellant that he had accepted the hearing officer's report and recommendations. By letters dated February 9 and 22, 2000, Appellant appealed to the local board but did not request an evidentiary hearing.

After reviewing the materials submitted by the parties, the board concluded that the appeal could be decided without an evidentiary hearing. The local board stated:

Upon consideration of all of the materials, the Board of Education hereby affirms the decision of Dr. Seleznow to expel Wesley Smith, for the reasons stated in Mr. Webster's report of January 28, 2000, and the superintendent's memorandum of March 10, 2000. Wesley's act of using and selling marijuana on school grounds is not only a violation of Board policy but contravenes Maryland law. Such conduct cannot be tolerated. As noted, however, Phillip¹ may apply for readmission to Montgomery County Public Schools for the 2000-2001 school year by submitting an application by July 1, 2000, at which time an Expulsion Review Board will determine if Wesley can re-enroll.

ANALYSIS

_____ The decision of a local board concerning a student suspension or expulsion is considered final. MD. CODE ANN., EDUC. § 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

¹As indicated by all other references to Appellant's son, his name should read "Wesley."

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).

In this case, Appellant has raised no procedural due process violations. Rather, Appellant disagrees with the local board's credibility determinations, and believes her son is innocent of the charges. However, based on our review of the record, we believe the decision of the local board was reasonable. Appellant argues that "all of the evidence you have against him [Wesley] is hearsay." As the State Board noted in *Kaleisha Scheper v. Baltimore County Board of Education*, 7 Op. MSBE 1122 (1998): "The State Board may not substitute its judgment for that of the local board on credibility determinations unless there is independent evidence in the record to support the reversal of a credibility decision." See *Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-03 (1994). We find that no such independent evidence exists in this case. Moreover, the State Board declared in *Kaleisha Scheper v. Baltimore County Board of Education*, 7 Op. MSBE at 1125, "It is a well settled principle in criminal jurisprudence that the testimony of a single eyewitness, if believed, is sufficient to sustain a criminal conviction...See *Branch v. State*, 305 Md. 177, 184 (1986)" (quoting *Mecca Warren v. Board of Education of Baltimore County*, 7 Op. MSBE 328, 329 (1996)).

Here, the record discloses that Wesley's credibility regarding this incident is suspect. Wesley's claim that the teacher who observed him in the bathroom stall did not know him is directly contradicted by the fact that the teacher was one of Wesley's teachers and has been assigned to Briggs Chaney Middle School for five years. Wesley's claim is also undermined by the fact that the student who purchased the marijuana identified Wesley as the seller. Further, Wesley claimed that another teacher had provided him with four one-dollar bills whereas this teacher reported that she had only given Wesley a single one-dollar bill. As found by every level of review in this case, Wesley's version of events is inaccurate and does not withstand scrutiny. See *Margaret Wadding and Gary Struble v. Board of Education of Montgomery County*, MSBE Opinion No. 00-14 (February 23, 2000).

CONCLUSION

Based upon our review of the record, we find no due process violation or other illegality in the proceedings. We, therefore, affirm the decision of the Board of Education of Montgomery County.

Philip S. Benzil
President

Marilyn D. Maultsby
Vice President

Raymond V. Bartlett

JoAnn T. Bell

Reginald L. Dunn

George W. Fisher, Sr.

Walter S. Levin, Esquire

Judith A. McHale

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

September 26, 2000