CORNELIU CRACIUNESCU,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
MONTGOMERY COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee	Opinion No. 00-36 (Revised)

OPINION

This is an appeal of the ten-day suspension of Appellant's son from Montgomery Blair High School for violating the local board policy regarding *Appropriate Use of Computer Networks* (IGT-RA). Appellant argues that his procedural due process rights were violated when the principal of Montgomery Blair High School failed to answer his *Complaint from the Public.* Appellant also contends that the Montgomery County Board of Education violated his procedural due process rights by failing to hold a full evidentiary hearing or oral argument. Lastly, Appellant alleges constitutional violations of free speech.

The local board has filed a Motion for Summary Affirmance, maintaining that there are no genuine disputes of material fact and that the due process rights of Appellant's son were not violated. Appellant has filed comments in opposition to the board's motion and memorandum.[1]

FACTUAL BACKGROUND

The record discloses that during the 1999-2000 school year, Appellant's son, Cosmin, was a sophomore student at Montgomery Blair High School. On November 15, 1999 Principal Phillip Gainous suspended Cosmin for ten days (through November 30, 1999) for using the school's computer network to visit several inappropriate websites and to print detailed information on how to build bombs. Because of the nature of the student's conduct, Mr. Gainous indicated that Cosmin would need to receive a psychological evaluation before he returned to school.[2]

[1]In his opposition Appellant reiterates arguments raised before the local board as well as those stated in his appeal to the State Board.

[2]IGT-RA, IV(E)(1) states, "All use of computer facilities, networks, and other technology resources must be for educational purposes as defined in Section III C." Cosmin accessed "The Anarchy Cookbook." *See* Shetterly memo of December 12, 1999. Security was contacted who, in turn, notified the Fire Marshall's office. The fire and police officials who interviewed Cosmin determined that the child possessed enough information and knowledge about making bombs to

On November 16, 1999, Appellant obtained an evaluation of his son from a licensed psychologist at Kaiser Permanente. Without describing the evaluation instruments that were used, the psychologist concluded that Cosmin did not pose a danger to himself or others. The school, nonetheless, wished to conduct its own evaluation. In his letter of November 29, 1999, Appellant objected to the school psychologist originally identified to conduct the evaluation, but indicated his willingness for another school psychologist, "designated through mutual consensus," to conduct the evaluation. It was thus clear on November 29, 1999 that an evaluation by a school psychologist would not occur before the conclusion of the ten-day suspension period on the following day. Therefore, Appellant's son was placed on home and hospital instruction, so that he could receive educational services until the evaluation was complete.

Appellant seemed to accept the fact that some punishment was justified, but objected to the length of the suspension. On November 23, 1999, an appeal conference was arranged with the area field office. Unfortunately, the November 29, 1999 follow-up letter from the area field office contained two inaccurate statements. The first stated that the principal had recommended that Appellant's son be expelled; yet, in his suspension letter of November 15, Mr. Gainous had not recommended expulsion. The second inaccurate statement indicated that the Field Office Supervisor was "extending the suspension to allow the school time to set up an IEP meeting..." Use of the term, "extended suspension," was inaccurate. Although Appellant's son was not reinstated to school immediately following the ten-day suspension period, he was administratively placed on home and hospital instruction until completion of the evaluation. The Field Office issued a "Corrected Copy" on December 10, 1999 that deleted reference to an expulsion recommendation, but did not correct the reference to an extended suspension. This letter as well as the original letter of November 29, 1999 directed any further appeal to the Deputy Superintendent of Schools. On December 13, 1999, Appellant filed an appeal with the Deputy Superintendent.

Appellant had already filed a *Complaint from the Public* on December 7, 1999 in which he requested that his son's suspension be rescinded and expunged from his school records. The principal denied this complaint and the relief requested on December 8, 1999. Mr. Gainous noted that Appellant's refusal to permit the evaluation by the original school psychologist had caused a delay in the child's reinstatement to school and that educational services were being provided in the interim, as is standard practice.

Appellant's December 13th letter of appeal to the Deputy Superintendent of Schools led to a meeting with the Deputy Superintendent's designee the following day. The hearing officer considered all issues raised by Appellant with the Deputy Superintendent. He reviewed the seriousness of the incident, and the disruption his actions caused to the school community. The hearing officer noted that as a result of the psychological assessment, Cosmin had been reinstated

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put into action what he had learned. Police officials felt the case serious enough to search the Craciunescu home. A report was sent to the Federal Bureau of Investigation.

to Montgomery Blair High School.[3] He concluded that the principal was justified in suspending Appellant's son for ten days and recommended upholding the ten-day suspension.

The Deputy Superintendent formally adopted the recommendation of the hearing officer and stated that any discussion regarding expungement of the suspension record should be directed to the school principal. In his letter of December 23, 1999 to Appellant, the Deputy Superintendent informed Appellant that any further appeal should be addressed to the Montgomery County Board of Education. That appeal was filed on January 20, 2000.

On March 14, 2000, the Board of Education unanimously affirmed the ten-day suspension. Considering the appeal pursuant to MD. CODE ANN. EDUC. § 4-205(c), the board did not find a clearly enunciated violation of the due process rights of the student. Alternatively, the board noted the disruption caused by Cosmin's actions and indicated that if it were to address the merits,

> it would affirm the decision of the superintendent, because the discipline imposed in this case was neither arbitrary nor capricious. Rather, the punishment imposed in this case was highly appropriate, especially since the conduct serving as the basis for the punishment clearly violated school system policy. Moreover, neither the policy, nor the superintendent's action in this case, constituted censorship or in any way violated Cosmin's First Amendment Rights. It is well settled that a student's First Amendment rights may be curtailed in a school setting under certain circumstances. (Footnote omitted.)

The State Board received Appellant's appeal on April 10, 2000.

ANALYSIS

I. Due Process

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 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).

Both the Superintendent's designee and the Montgomery County Board of Education considered the appeal on the basis of a ten-day suspension. The student's prolonged absence from school and receipt of home and hospital instruction were due to the time required for completion of the psychological evaluation. Appellant added to the delay by refusing on

[3]Cosmin was reinstated to Montgomery Blair High School on December 16, 1999.

November 29, 1999 to accept the first individual identified to do the assessment. Although the area field office used the term, "extended suspension," based on our review of the record we

concur with the local board that the postponement was not disciplinary, but to allow the principal "time...to review the results of the psychological evaluation."[4]

In *Ali, et al. v. Howard County Board of Education*, Opinions of MSBE, No. 00-15 (March 22, 2000), the State Board explained the process due for a suspension of ten days or less: "Under *Goss v. Lopez*, 419 U.S. at 581,[5] for a suspension of 10 days or less, due process only requires that the student be given oral or written notice of the charges against him and if he denies them, an opportunity to present his side of the story. Due process does not entitle Appellants to a full evidentiary hearing before the local board or the State Board." In this case, Appellant's son received oral and written notice of the charges and was afforded several opportunities to tell his side of the story. He thus received ample due process.

II. Violation of Freedom of Speech Right

Appellant claims that the local board acted in an unconstitutional manner when it upheld the disciplinary action taken against his son, violating his son's First Amendment right to freedom of speech. Appellant argues that his son's actions were within his constitutionally protected rights and that the local board "cannot bring any proof of substantial disorder as required by law." While students are entitled to free speech rights in the school setting, those rights are subject to certain limitations based on the special characteristics of the school environment. *See G.F. v. Anne Arundel Board of Education*, 7 Op. MSBE 1336 (1998). One such limitation on the free speech rights of students is that schools are permitted to prohibit speech if the speech would "substantially interfere with the work of the school or impinge upon the rights of other students." *Tinker v. Des Moines School Dist*., 393 U.S. 503, 509 (1969); *accord, Bethel School District v. Fraser*, 478 U.S. 675 (1986).

Pursuant to Montgomery County Board policy, *Appropriate Use of Computer Networks* (IGT-RA), violations are punishable up to expulsion. In its decision in this case, the board noted, "neither the policy, nor the superintendent's action in this case, constitute censorship or in any way violated [Appellant's] First Amendment Rights. It is well settled that a student's First Amendment rights may be curtailed in a school setting under certain circumstances" (footnotes omitted). By printing detailed information on how to make bombs, Appellant's son's actions materially disrupted the school environment and had the potential to threaten the security of the school community. The misuse of the school's computer by Appellant's son caused serious concern for the safety of all students and staff at the Montgomery Blair High School.

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[4]Field office letter of December 10, 1999.

[5]*See Goss v. Lopez*, 419 U.S. 565 (1974).

CONCLUSION

For all of these reasons, we find that there were no due process violations or other illegalities in the proceedings. We therefore affirm the decision of the Board of Education of Montgomery County.

Philip S. Benzil
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John Wisthoff

October 25, 2000 (Revised)