DOROTHY FARLEY,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
CARROLL COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee	Opinion No. 03-18

OPINION

This is an appeal of a five-day suspension of Appellant's son, D.F., from Liberty High School based on a violation of Carroll County Board Policy ADD, *Serious Threats and Violent Acts Prohibited.* The local board has filed a Motion for Summary Affirmance on grounds that the Appellant's son is not entitled to an evidentiary hearing regarding a suspension of less than ten days, that there were no due process or other violations, and that the local board's decision was not arbitrary, unreasonable or illegal. Appellant has filed a response opposing the local board's motion.

FACTUAL BACKGROUND

In May 2002, the Maryland State Police were called to Liberty High School after a note was discovered which read:

> I hate you.
> I am going to proceed, this school will be history the flames will eat us alive, and I will ascend to the high heavens where my lord will reward me for killing those American bastards
> die
>
> Love,
> Amanda Green

Maryland State Police Trooper J. Johnson responded to Liberty and an investigation ensued whereby handwriting samples were collected and the Trooper and school personnel conducted interviews. Two of the handwriting samples were examined by an expert forensic document examiner at the Maryland State Police Crime Lab. Trooper Johnson stated in the police report that the results of the forensic document examination indicated that D.F. had written the note and signed the other student's name to the note. On June 3, 2002, Trooper Johnson returned to the school and relayed the results of the examination to Mrs. Florence Oliver, then Assistant Principal of Liberty, and D.F. in the presence of his mother. D.F. was read his rights and charged on a Juvenile Complaint Referral to the Department of Juvenile Services.

D.F. was subsequently suspended for five (5) school days beginning June 4, 2002. He served three of the suspension days in June since it was the end of the school year, and was required to serve the remaining two days of suspension at the beginning of the 2002-2003 school year.

Prior to D.F. returning to Liberty for his 10th grade year, Mrs. Farley requested that Principal Oliver reconsider the suspension decision. On August 15, 2002, Principal Oliver informed Mrs. Farley in writing that the suspension would stand. On August 20, 2002, Robert Smith, III, Counsel for Appellant, requested an appeal of Principal Oliver's decision and an abeyance of the five-day suspension. On August 23, 2002, Stephen Guthrie, Assistant Superintendent of Administration and the Superintendent's designee, upheld Mrs. Oliver's decision. Mrs. Farley subsequently appealed to the local board.

Appellant argued that two contradictory pieces of evidence existed: the Maryland State Police forensic examination of the threatening note and the results of a private polygraph examination that D.F. had taken earlier in August. As indicated in his letter memorandum to the local board, Mr. Guthrie, the superintendent's designee, found the forensic examination more reliable:

> According to Trooper Johnson's report, Forensic Document Examiner Expert, Joan DiMartino, conducted the examination of the threatening note and a sample of D.F.'s handwriting and concluded that D.F. did prepare the threatening note and signed Amanda Green's name to it. The results of a private polygraph examination provided by Mrs. Farley concludes that D.F. was being truthful when stating that he did not write or help anyone to write a note threatening to burn down the school. In considering the existence of these two pieces of evidence, Mr. Guthrie concludes that the private polygraph is not of sufficient weight to outweigh the conclusion of a State Police investigation.
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> If the submission of the polygraph to the State Police changes the results of their investigation, then Carroll County Public Schools could consider upholding the appeal based on this evidence.

See 9/30/02 letter from Guthrie to Krebs.

By a unanimous decision with one abstention, the local board upheld the decision of the Superintendent's designee, citing its reliance on the investigation conducted by the Maryland State Police. Appellant appealed the local board's decision to the State Board and requested an evidentiary hearing for expungement of the five-day suspension from D.F.'s school record, arguing that the facts of the case warranted presentation of evidence and testimony of witnesses, and that because there was no evidentiary hearing at the local board level, Appellant was denied his right to due process.

ANALYSIS

It is well established that the decision of a local board with respect to a student suspension or expulsion is considered final. Md. Code Ann., Educ. §7-305. Therefore, the State Board's review is limited to determining whether the local board violated State or local law, policies, or procedure; whether the local board violated the due process rights of the student; or whether the local board acted in an otherwise unconstitutional manner.

Appellant maintains that the local board's decision was based upon a flawed investigation by the Maryland State Police and the principal of Liberty High School, and that due process was denied to D.F. because, had an evidentiary hearing been held, witnesses would have been able to testify and be cross-examined. The local board in its Motion for Summary Affirmance maintains that because the subject of the appeal was less than a 10 day suspension, Appellant is not legally entitled to an evidentiary hearing.[1] Furthermore, the local board argues that Appellant was afforded due process because he was given an opportunity to respond to the notice of the charges submitted by the local board.

Under *Goss v. Lopez*, 419 U.S. 565 at 581 (1975), the United States Supreme Court has held that for a suspension of 10 days or less, due process requires only 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. The suspension in this case was for five days. Due process therefore does not entitle Appellant to a full evidentiary hearing before the local board or the State Board.[2]

Appellant argues that because the investigation was flawed, an evidentiary hearing is warranted. A review of the record discloses that the school and State Police officials investigated the incident, as well as met with D.F. and his mother who were given an opportunity to respond. Moreover, as the local board notes in its memorandum:

> [T]he Appellants had the opportunity to have this type of hearing [evidentiary] in juvenile court yet chose, instead, to accept the Department of Juvenile Justice's offer to close the case at intake. Tellingly, in his January 16, 2003, letter asking the County Board

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[1]It should be noted that counsel for Appellant, by his own admission in the appeal, agrees that there is no entitlement to an evidentiary hearing for a suspension of less than ten days. *See* Appeal of Decision at p. 9.

[2]*Accord, Black v. Carroll County Board of Education*, MSBE Op. No. 02-24 (2002) and *Ali v. Howard County Board of Education*, MSBE Op. No. 00-15 (2000), citing *Goss v. Lopez.*

> to reconsider its decision, Appellants' counsel concedes, on page 5 thereof, that '[i]n retrospect, it may have been better to simply oppose any closing of the case and stand trial, thereby affording D.F. an opportunity and venue within which to subpoena the above-cited materials [*i.e.*, the forensic hand-writing examiner's report], which he needs to defend himself at this juncture.' Accordingly, the Appellants had the opportunity to try this case at the juvenile court level, where subpoenas *could* have been issued for documents and witnesses. The Appellants made a tactical decision to avoid such a trial and accepted closure of the case at intake; notwithstanding, the Appellants *now* seek to conduct the same type of 'guilt or innocence' hearing before the County Board that they *could have* conducted had the case gone to juvenile court. However, county boards are ill equipped for conducting such trials, and the proof of 'guilt or innocence' months after the fact misconstrues the role of school boards in suspension appeals.

See Board memorandum at 6.[3]

The local Board Policy ADD prohibits serious threats and violent acts against students, staff and other persons who use school facilities and prohibits serious threats and/or violent acts against any persons on school property, school buses, or at any event sponsored by a school. The policy goes on to set forth the following definition of a serious threat:

> The definition of a serious threat of violence is a verbal or nonverbal declaration of intent or determination to inflict significant injury to persons and/or damage to property with the perceived ability/intention to carry through on the threat.

The record shows that, after reviewing the note, the school conducted its own investigation, contacted the police, and questioned D.F. and other students to determine if Board Policy ADD was violated. The record further indicates that the local board relied upon results from the State Police investigation. We believe that reliance was reasonable.

Based on the local board's investigation, its compliance with Board Policy ADD, and reliance upon the results of the State Police investigation, we find sufficient record evidence to support the local board's decision to uphold D.F.'s five-day suspension.

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[3]A local board of education does not have subpoena power.

CONCLUSION

Finding no due process violations or other illegalities in the proceedings, we affirm the decision of the Board of Education of Carroll County upholding the five-day suspension.

Marilyn D. Maultsby
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April 29, 2003