

STATE OF MICHIGAN
COURT OF APPEALS

RILEY STANSKY, a Minor, by his Next Friend,
MICHAEL STANSKY

UNPUBLISHED
October 25, 2012

Plaintiff-Appellant,

v

No. 305287
Marquette Circuit Court
LC No. 10-048285-CZ

GWINN AREA COMMUNITY SCHOOLS and
MICHAEL R. MAINO,

Defendants-Appellees.

Before: MURPHY, C.J., and SAWYER and HOEKSTRA, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition. We affirm.

On May 4, 2010, an extreme bullying incident occurred between plaintiff Riley Stansky and another ninth grade student. The two boys were in the locker room after gym class when the other boy threw a toothbrush that hit a locker next to plaintiff. Plaintiff picked up the toothbrush and chased the other boy into the bathroom stalls where he fell and cut his hand, sustaining a two-inch gash in his hand.

During the incident and while the other student was on the ground in the bathroom stall, plaintiff shoved the toothbrush at him. Plaintiff picked up the toothbrush and said, "I'm going to stick this up your butt." The toothbrush touched the victim's testicles as plaintiff shoved it at him.

An investigation occurred and the school determined that plaintiff's actions were intentional and not a manifestation of his educational disability. Plaintiff does not dispute that his actions met the definition of assault. Plaintiff was suspended for 180 days with the opportunity to be reinstated after 90 school days if certain conditions were met.

Plaintiff's parents appealed the decision on several grounds, including that the student handbook indicated that each assault would result in a suspension of 5 to 10 days and possible referral for expulsion. The school board unanimously upheld the original suspension.

Plaintiff filed suit alleging that the 180-day suspension violated Riley’s due process rights because it was arbitrary, unreasonable, and contrary to the published student handbook such that Riley had no notice of this severe consequence.

The trial court granted summary disposition for defendants, finding that the suspension was within the range contemplated by the Board of Education’s policies as well as the student handbook. The trial court also determined that the suspension was reasonable and not arbitrary or capricious.

We review a trial court’s decision on a motion for summary disposition de novo on appeal. *MEEMIC Ins Co v DTE Energy Co*, 292 Mich App 278, 280; 807 NW2d 407 (2011). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. *Henry Ford Health Sys v Esurance Ins Co*, 288 Mich App 593, 597; 808 NW2d 1 (2010). A motion for summary disposition may be granted when there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10).

School authorities have wide latitude and discretion in fashioning rules to maintain order and discipline in the schools, *Davis v Hillsdale Community Sch Dist*, 226 Mich App 375, 380; 573 NW2d 77 (1997), but authorities may not act arbitrarily or capriciously. *Id.* Additionally, “courts must give great deference to a school administration’s construction of its own rules and regulations.” *Birdsey v Grand Blanc Community Sch*, 130 Mich App 718, 724; 344 NW2d 342 (1983).

If a student in sixth grade or above commits a physical assault against another student the school board “shall suspend or expel the pupil from the school district for up to 180 school days.” MCL 380.1310(1). A school district “shall develop and implement a code of student conduct and shall enforce its provisions with regard to pupil misconduct” MCL 380.1312(8).

Similarly, the school board administrative policy § 5610.02 states that “[t]he Board shall suspend or expel a student in grade six or above for up to 180 school days if the student commits physical assault at school against another student.” The administrative policy § 5110 also states that “[t]he guidelines and procedures by which students are to function while attending school in the District are to be contained in one (1) or more student handbooks.”

The student handbook contains a section titled “student rights & responsibilities/cause effect discipline code.” The definition and effect of assault are as follows:

ASSAULT

A violent physical attack against another person.

A. Each Offense

1. Five to 10 days suspension and possible referral for exp[ul]sion.

At the end of the student rights & responsibilities/cause effect discipline code section of the handbook is a sub-section titled “suspensions and expulsions procedures.” That subsection provides:

The administrator issuing the suspension may consider extenuating circumstances and/or unusual situations when determining the length of a suspension and adjust the number of days called for or other actions called for in the “Cause-Effect Disciplinary Code” when it is in the best interest of the student and/or school community.

Plaintiff claims that defendants arbitrarily deviated from the handbook’s disciplinary code, and that there was no notice that a 180-day suspension would result from a simple assault. Therefore, according to plaintiff, the arbitrary nature of defendants’ conduct is a de facto violation of due process.

Adequate notice of a 180-day suspension was provided because the statutes and school board policies specifically allow up to a 180-day suspension for assault, and the handbook allows an administrator to adjust the length of a suspension based on circumstances and the best interests of the school community.¹

Additionally, we find that, based on the wide latitude and great deference that is to be given school authorities when formulating and interpreting school policies, defendants’ actions were neither arbitrary nor capricious and the 180-day suspension was a reasonable use of the school authorities’ power and discretion to maintain order and decorum in the school. *Davis*, 226 Mich App at 380-381. The trial court properly granted summary disposition for defendants.

Defendants raise two other issues in their appellate brief, but an appellee cannot obtain a decision more favorable than the decision rendered by the trial court unless a cross appeal is filed. *Truel v Dearborn*, 291 Mich App 125, 137; 804 NW2d 744 (2010). Defendants’ issues were not properly preserved for appeal; therefore, we decline to review them.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer

¹ We note that a hearing by the Gwinn Area Community Board of Education was held June 21, 2010, at which time the board reviewed and upheld the original 180-day suspension given to the student for the assault against another student.

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HOEKSTRA, J., (*dissenting*).

Because both the procedure used and the penalty imposed upon plaintiff by defendants do not comply with the Gwinn Area Community Schools' Student Handbook (hereafter "the handbook"), and because plaintiff had a right to expect that the handbook contained the applicable penalties and procedures for student misconduct in the school district, I respectfully dissent.

In this case, plaintiff claims defendants violated his due process rights and engaged in arbitrary and capricious conduct by assessing a 180-day suspension sanction for his assault on a fellow student despite the fact that the handbook stated that the penalty for assault is "five to 10 days suspension and possible referral for expulsion." The trial court granted summary disposition in favor of defendants because it concluded that "the range of 5 to 10 days or expulsion in this Court's judgment is certainly fairly and reasonably encompasses a suspension somewhere between expulsion and a 5-day suspension." To resolve plaintiff's appeal of this decision requires a careful examination of the school district's policies and procedures.

In compliance with MCL 380.1312(8), which directs school districts to "develop and implement a code of student conduct," the school district has a written code entitled Bylaws and Policies. Section 5600 of the school district's Bylaws and Policies addresses student discipline and directs the superintendent to "promulgate administrative guidelines for student conduct," and to "publish to all students and their parents the rules of this District regarding student conduct, the sanctions which may be imposed for breach of those rules, and the due process procedures that will follow in administering the code of conduct." Further, it provides that "the principal shall have authority to assign discipline to students. . ."

Presumably, to carry out the mandate of their Bylaws and Policies, section 5110 of the Gwinn Area School Administration Guidelines provides:

The guidelines and procedures by which students are to function while attending school in the District are to be contained in one (1) or more student handbooks. The principals at the elementary and secondary levels, working with each other are to develop appropriate handbooks which are consistent in content with relevant Board of Education policies and with these guidelines.

Section 5110 of the Administrative Guidelines further directs that the handbook should have a section that addresses the schools systems code of conduct. The code of conduct must cover “those behaviors that will not be tolerated,” which includes “any form of violence, rowdyism, or harassment,” and further, is to “provide a description of the consequences and disciplinary sanctions up to and including expulsion for noncompliance.”

A handbook was created in compliance with these mandates, and the version of the handbook in effect at the time of plaintiff’s discipline contains a section entitled “**STUDENT RIGHTS & RESPONSIBILITIES/CAUSE EFFECT DISCIPLINE CODE.**” In this section, various offenses are defined and the sanction for each offense is stated. For “assault” the handbook provides:

“A. Each Offense

1) Five to 10 days suspension and possible referral for expulsion.”

Further, under the immediately following section entitled “**SUSPENSIONS AND EXPULSION PROCEDURES,**” the handbook provides that:

A student may be suspended for a maximum of ten (10) days *by either the Principal or Assistant Principal* as authorized by the Board of Education for violation of school rules.

* * *

The administrator issuing the suspension may consider extenuating circumstances and/or unusual situations when determining the length of a suspension and adjust the number of days called for or other actions called for in the “Cause-Effect Disciplinary Code” when it is in the best interest of the student and/or school community.

In cases of continued misconduct in which *the Principal recommends expulsion to the Superintendent*, the suspension shall be in effect until an agreement can be reached at an informal meeting arranged by the Superintendent, including the parents and student, or the case is acted upon by the Board of Education. [Emphasis added.]

Reading these sections together reveals, as is relevant to this case, that the policy of the board is to promulgate and publish for the benefit of all students and parents a code of conduct

and the sanctions for violations of the code. This board mandate was effectuated by the production and distribution to students and parents of a student handbook that states with specificity the offenses and their sanctions for student misconduct that is consistent with board policy. The handbook's code of conduct section for the relevant period provides that assault is a sanctionable offense. The handbook further provides a penalty for "each offense" of a suspension for not less than five nor more than 10 days and possible referral for expulsion. Further, it provides that the building principal or assistant principal will determine whether a violation occurred and impose the appropriate sanctions. The "administrator" imposing the sanction is further empowered to consider extenuating¹ circumstances and/or unusual situations in deciding the length of a suspension. Finally, expulsion referrals are reserved for cases of "continued misconduct" and are directed to the superintendent for resolution.

In this case, defendants clearly failed to abide by their own policies and procedures. First, they failed to follow the plain language of the sanction for assault contained in the Student Handbook. Rather than imposing a suspension within the five to ten day period identified in the handbook, defendants imposed a 180-day suspension. Initially, I note that in imposing the sanction, defendants did not indicate that 180 days was a departure from the five to ten day policy based on any extenuating circumstance and/or unusual situation. Defendants attempt to justify their sanction by relying on the fact that state law and board policy authorizes imposing suspensions of up to 180 days for assaultive conduct. I find that argument unavailing because the board mandated the promulgation of a handbook for distribution to students and parents in order to inform them of the sanctions for particular code of conduct violations. Moreover, the sanctions for code of conduct violations were to be "consistent in content with relevant Board of Education policies and with these guidelines." Because the handbook is presumptively consistent with this directive, plaintiff had the right to rely on the penalties stated in the handbook as being those that would be imposed for the stated violations.

Defendants also argue that the 180-day suspension imposed in this case is less severe than the maximum penalty of expulsion. I would conclude that this argument is also without merit because pursuant to the handbook, expulsion is a different form of punishment that has separate consequences and procedures attendant to it and cannot be equated to a suspension penalty. Further, the handbook dictates that expulsion is reserved for cases of "continued misconduct" and is imposed in addition to a period suspension. Moreover, the suspension continues to run while the referral for expulsion is considered by the superintendent.

Further, I would find that the procedure used in this case was inconsistent with the handbook. A reasonable reading of the handbook reveals that imposition of suspensions for code of conduct violations is to occur at the principal level, whereas referrals for expulsion are to be directed to the superintendent. Here, the record shows that plaintiff's case went directly to the superintendent. I would conclude that the procedures for suspension set forth in the handbook

¹ Extenuate means "to make or try to make seem less serious." *Random House Webster's College Dictionary* (1992).

created a reasonable expectation that building principals would administer suspensions within the limits provided, and that only referrals for expulsion would be handled by the superintendent.

For these reasons, I would conclude that the trial court erred in granting defendants' motion for summary disposition, and accordingly, I would reverse

/s/ Joel P. Hoekstra