V.H.,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
ANNE ARUNDEL COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee.	Opinion No. 18-11

OPINION

INTRODUCTION

V.H. (Appellant) appeals a four-day suspension her son received from Anne Arundel County Public Schools (AACPS) during the 2016-17 school year. The Anne Arundel County Board of Education (local board) filed a Motion for Summary Decision. Appellant responded to the motion and the local board replied.

FACTUAL BACKGROUND

During the 2016-17 school year, Appellant's son C.H. was in the tenth grade[1] at Northeast High School. On February 9, 2017, at the beginning of third period, a female student (Student 1) appeared to take a picture of C.H. with her phone. According to Student 1, she was sitting down and looking at her phone when [C.H.] stopped in front of her. She said, "Hey [C]" in order to get his attention and have him move. C.H., apparently believing that Student 1 had taken his picture, extended his middle finger at her and told her not to take his picture. Student 1 denied taking his picture. C.H. then told her he was going to kill her parents, rape her older cousin, and eventually kill her.[2] Another student (Student 2) overheard the comment and said, "Wow." C.H. told Student 2, "I'll kill you too." (Record, Superintendent's Position, Ex. 1-3).

Student 1 told her teacher about the incident and the teacher sent Student 1 to the school office. School administrators interviewed Student 1, the teacher, eight other witnesses, and C.H. The teacher and seven other witnesses did not hear the statements made by Student 1 or C.H. According to C.H., while he was getting his materials for class, Student 1 said, "Hey, [C], look at this." When C.H. looked up, he saw the back of Student 1's phone a few feet away from him. He told her, "Don't fucking record me. Fuck out of here with that shit." When asked about C.H.'s statement, both Student 1 and Student 2 separately denied hearing him say that. Instead, they confirmed that he threatened Student 1 and her family. Later, when a mobile crisis unit

[1] There are some inaccurate references in the record to C.H. being in the eleventh grade. He was in the tenth grade, as confirmed by Appellant. (Appellant's Reply to Motion; Record, Superintendent's Position, Ex. 1).

[2] Although sometimes written as a "direct quote" from C.H., Student 1 did not place these words in quote marks in her statement. Regardless of the exact wording, there is no dispute about the substance of the threats C.H. was accused of making.

responder interviewed C.H. and asked him what he was accused of saying, a school official heard C.H. repeat the same statement that Student 1 and Student 2 claimed he said. (Record, Superintendent's Position, Ex. 3).

That same day, the school principal placed C.H. on temporary suspension for making threats in violation of the student code of conduct. He also telephoned Appellant to discuss the incident. The suspension lasted for four days. In addition, school officials changed C.H.'s schedule and reported the incident to police, who gave C.H. a misdemeanor citation for making threats on school property. (Record, Superintendent's Position, Ex. 1).

Appellant appealed the principal's decision. In an email sent to the principal, Appellant stated that she believed her son was telling the truth and found it far-fetched that he would threaten Student 1 or her parents because he did not know them. Appellant also suggested that her son has a loud voice and other students and the teacher would have heard the threats if he had made them. (Record, Superintendent's Position, Ex. 5).

On February 22, 2017, the principal denied the appeal. He concluded that C.H. violated the student code of conduct based on the nature of the threat and the corroborating statement from Student 2. The principal observed that this was the second time C.H. had been accused of threatening a female student. On November 23, 2015, C.H. reportedly told another female student he was going to "stab her with a knife." In light of these facts, the principal concluded that the four-day suspension was fair and appropriate. (Record, Superintendent's Position, Ex. 3).

On February 24, 2017, Appellant appealed the decision. She suggested that Student 1 and Student 2 talked after the incident to align their version of events with one another. Appellant argued that C.H. did not know Student 1's family and could not, therefore, have known she had an older cousin. She also accused Student 1 of changing her story in the two statements she gave to school officials and concluded this was a sign that she had lied. In addition, Appellant stated that C.H.'s counselor at Thrive Behavioral Health told Appellant that she did not believe C.H. had made the threats because it was "a bit much." (Record, Superintendent's Position, Ex. 6).

On March 15, 2017, Appellant supplemented her appeal. She explained that one of the students in C.H.'s class (Student S) could confirm that C.H. swore and told Student 1 not to take his picture, which Appellant believed corroborated C.H.'s version of events. Appellant did not explain how she knew this information or provide any supporting evidence from Student S. In addition, she claimed that Student 1 was in a gang and included screen shots from an online conversation Student 1 had with another student in 2014. Although it is not entirely clear, it appears the two students were commenting on a Facebook picture of Student 1:

Other student: Are you barefoot?
Other student: Also what's the name of your gang?
Student 1: Yea.
Student 1: Rich homie squad
Other student: Good name.
Student 1: Truee
Other student: Did they take your shoes as part of your initiation to get into the gang?

Other student: It's cool. I know a lot of gangs don't like you to talk about it. I get it.
Student 1: Yea it was apart of the contract sorta thing. Kinda difficult to explain.

(Record, Superintendent's Position, Ex. 7).

On March 22, 2017, the associate superintendent responded to Appellant's appeal. She explained that she reviewed the record, including the additional information provided by Appellant. She also responded to two questions posed by Appellant: (1) Was C.H. provided due process? and (2) Was a four-day suspension appropriate? The associate superintendent found that C.H. received due process because he was informed of the alleged offense, given the opportunity to respond, and other potential witnesses were interviewed by school officials. The associate superintendent concluded that the four-day suspension was justified. Although she acknowledged that other students did not hear the remarks, she found that the consistency of statements from Student 1 and Student 2, along with C.H.'s repetition of those words to a member of the school crisis team, were sufficient to indicate that C.H. made the threats. The associate principal also observed that C.H. had previously been accused of making a threat in November 2015, but no action was taken at the time because the school could not corroborate the threat. Later, C.H. was "involved in several incidents in which he made threatening statements," leading to a suspension for one day on December 1, 2015, and a two day suspension starting December 3, 2015. (Record, Superintendent's Position, Ex. 8).

Appellant appealed the decision, reiterating many of the concerns she previously raised about the evidence against C.H. She further explained that Student S, who reportedly could corroborate C.H.'s statements, told C.H.'s girlfriend that C.H. did not make the threats. There was no documentation to support this claim. On August 15, 2017, the superintendent's designee upheld the suspension. She determined that C.H. received appropriate due process and that the four-day suspension was appropriate in light of the evidence. (Record, Superintendent's Position, Ex. 9, 10).

On September 8, 2017, Appellant appealed to the local board. She argued that Student 1 had changed her story between the statements she gave; that aside from Student 2, no other students or teacher heard C.H. make the threats; and that others would have heard if C.H. made the threats. She also accused Student 1 and Student 2 of being bullies and making up the incident. (Record, Superintendent's Position, Ex. 11).

As part of her appeal, Appellant attached numerous exhibits. Appellant included a Facebook conversation she had with C.H.'s ex-girlfriend, who was told by Student S that C.H. swore but did not make threatening statements. (Record, Parent Submission, Ex. 6). Appellant also included a photo of Student 1 posted on Facebook. In a conversation about the photo, Student 1's mother described her as "dramatic," which Appellant offers as evidence that Student 1 tells "dramatic lies." Appellant also included Student 1's "gang" conversation and explained that "gangs seek revenge." (Record, Parent submission, Ex. 8).

In addition, Appellant provided an email conversation she had with another student (Student V) who admitted lying for a friend in elementary school about an incident that led to C.H. being disciplined. Appellant argued that Student 1 and the "lying" girl from elementary school were friends and suggested that Student 1 was similarly making up a story about threats. Appellant included a Facebook photo that showed Student 1 and the "lying" elementary student

together to prove the friendship. During their email conversation, Student V provided Appellant with Student 1's phone number, explaining that they were no longer friends. Appellant wrote back that she might call Student 1, but decided to message her through Facebook instead. (Record, Parent Submission, Ex. 3).

Appellant provided the local board with the Facebook conversation she had with Student 1.[3]

> Appellant: Would you consider doing the right thing and telling the truth. I know [C] and I know he did not say those things to you. You would not even have to tell the local school. I am gathering statements to send to a person at the board of ed to have this removed from [C's] file. I just need a statement as to the fact that this was not true.
>
> Student 1: I forgive [C] for saying it, but I won't just lie to you saying he didn't say it. He in fact did say it but is there any other way he could get out of this. Sorry [ma'am], if he had never had said such a thing none of this would be an issue. I apologize that your son has to [go] through with this, but I'm not going to say he didn't do it if he actually did. From what I've heard he is gathering people to say he never said it? I'm sorry [ma'am] but that's not the appropriate way to handle a serious situation like this. It just happened to scare me so I told a teacher. I know you say he may have not said it but wouldn't you have done the same thing if someone had said something to you like that? I've heard he has also done other things which is the reason why I considered to tell a teacher. It's not my business to know what he's done before though. Thank you. I do not feel guilty because I did tell the truth! I'm sorry I'm not the person to cause people trouble but yes in fact he did say that.
>
> Appellant: Since so many that were there have said he did not say it and it is not his talking style I know he did not say it. [C] has not asked anyone either. I had the investigation started after reading all the statements and talking to some of those around.
>
> Student 1: [Ma'am] I'm sorry you feel this way. This all wouldn't [have] been an issue [if] he didn't say it. Hope everything gets figured out during this investigation but I will continue to not talk to you and I will not lie for your son to get his way out of this! I'm sorry that's just not me. I'm trying to be very respectful with you and I'm being very honest with you.
>
> Appellant: So why would he say this to a person he does not really know and has never spent time with. [C] was never friends with you or your family.
>
> Student 1: Please stop messaging me, [you're] only causing more damage to the situation.
>
> Appellant: I just want to know why you think he knows your family. Since it

[3] This conversation is presented as shown in Appellant's exhibit, save for the correction of typographical errors.

> has really bothered me I am just trying to understand. He has never interacted with you at all. I am just trying to get this taken care of without a hearing at the state level. I have already asked for it with everyone having to testify.
>
> Student 1: I am asking you one last time to please stop harassing me with these messages or I will let my parents know that you are asking me to lie on behalf of your son.
>
> Appellant: I never once asked you to lie. won't bother you just wanted to try to figure this out. You never had to answer any of my questions. No one else complained either.

(Record, Parent submission, Ex. 11).

On November 15, 2017, the local board upheld the suspension. The board found that C.H.'s language was "contrary to the expectation of students as found in the Student Handbook, in that it frightened other students." The board concluded that C.H.'s suspension did not violate any regulations or local policies. (Local Board Decision).

This appeal followed.

STANDARD OF REVIEW

In student suspension and expulsion cases, the decision of the local board is considered final. COMAR 13A.01.05.05(G)(1). The State Board only reviews the merits of the case if there are specific factual and legal allegations that the local board failed to follow State or local law, policies, or procedures; violated the student's due process rights; or that the local board acted in an unconstitutional manner. COMAR 13A.01.05.05(G)(2).

LEGAL ANALYSIS

Appellant argues that the suspension was illegal because it was arbitrary and unreasonable.[4] She argues that Student 1 and Student 2 were "best friends" and made up the statement to get C.H. in trouble. She also maintains that the girls were "part of a gang of people called 'rich homies'" and that the girls were "bound" together in the gang to falsely accuse C.H. Appellant reiterates many of the same arguments raised before the local board about why she believes her son did not make any threats.

Under our standard of review, we do not review the merits of a suspension absent specific allegations of illegality. The bulk of Appellant's argument concerns how much weight the local board should have placed on the statements of Student 1 and Student 2 versus C.H.'s statement and the evidence gathered by Appellant, including various Facebook posts and messages. Fact-finders are "not required to give equal weight to all of the evidence and their failure to agree with an Appellant's view of the evidence does not mean their decisions are arbitrary, unreasonable, or illegal." *Goines v. Prince George's County Bd. of Educ.*, MSBE Op. No. 17-16 (2017). In our view, the local board weighed the evidence within the appropriate legal boundaries.

[4] Appellant and her attorney filed separate responses to the local board's motion. We consider the arguments raised in both filings.

Remaining claims of illegality[5]

Appellant argues that there was no investigation conducted prior to C.H.'s suspension. She points to notes made by a crisis counselor who wrote that C.H. was "being placed in suspension, pending the investigation into the incident." The crisis counselor did not, however, make the suspension decision. As the record shows, the school system obtained statements from Students 1 and 2, C.H., and the other students in the classroom as part of the decision to suspend C.H. C.H. was informed of the accusations and provided with a chance to respond, satisfying the requirements of due process.

Appellant contends that the school system should have provided her a full evidentiary hearing in her appeal to the local superintendent. COMAR 13A.08.01.11 requires a conference with the school principal for a short-term suspension and the opportunity for the student to present his story, but does not mandate an evidentiary hearing on appeal. Therefore, local school systems have discretion on whether to offer evidentiary hearings in short-term suspensions. AACPS has chosen not to do so. *See* Local Board Policy JCH-RA. Although there was no evidentiary hearing, Appellant had the opportunity to present her arguments in writing, along with numerous exhibits in support of her case.

Appellant also suggests that AACPS violated another provision of Maryland's student discipline regulations. The provision she cites, however, concerns extended suspensions and expulsions, neither of which occurred here.

Finally, Appellant alludes to the school system violating C.H.'s civil rights but does not provide any explanation of how this was done or any other argument on this point. We have repeatedly stated that Appellants must support allegations of illegality with evidence. *See Goines*, MSBE Op. No. 17-16.

CONCLUSION

We affirm the decision of the local board because it was not illegal.

Signatures on File:

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Andrew R. Smarick
President

[5] Appellant argues that C.H. has a 504 plan and yet there was no "manifestation determination" meeting prior to his suspension. We have long declined to extend our jurisdiction to resolve special education disputes because there are other existing forums available. *See Semere D. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 17-09 (citing cases). Even so, the local board observes that there is no indication in the record that C.H. was suspended for more than 10 days (either continuously or collectively) during the 2016-17 school year, which is the trigger for a manifestation determination.

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Chester E. Finn, Jr.
Vice-President

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Michele Jenkins Guyton

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Justin M. Hartings

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Stephanie R. Iszard

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Rose Maria Li

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Michael Phillips

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David Steiner

March 20, 2018