GABRIELLE G.,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
MONTGOMERY COUNTY BOARD OF EDUCATION	OF EDUCATION
Appellee.	Opinion No. 17-14

OPINION

INTRODUCTION

Gabrielle G. (Appellant) appeals the decision of the Montgomery County Board of Education (local board) suspending her son for 44 days. The local board filed a Motion for Summary Affirmance. Appellant filed a response and the local board replied.

FACTUAL BACKGROUND

Appellant's son D.G. attended the eighth grade at Montgomery Village Middle School (Montgomery Village) during the 2015-16 school year. In January 2016, Assistant Principal Michelle Fortune received a call from a principal at Francis Scott Key Middle School (Francis Scott Key) concerning an inappropriate email sent to one of his students. The email subject line stated "Suck a dick" and the text of the body contained no message, except an indication that it was "Sent from Alto."[1] The email came from a Montgomery County Public Schools (MCPS) student account assigned to D.G. (T. 29, 30; Supt. Ex. 3).

Ms. Fortune requested that the school's technology staff review D.G.'s email to confirm whether he sent the message. School staff found the email in the "trash" folder of D.G.'s account. They also found another email with the subject line "Deez nuts" in the trash folder, with language in the body of the email indicating that it was "Sent from Alto." Ms. Fortune received a screen shot showing the trash folder and the emails. (Supt. Ex. 3).

After Ms. Fortune confronted D.G., he admitted sending all of the emails in his trash folder, except for the message sent to the student at Francis Scott Key. Ms. Fortune discussed the appropriate use of technology and asked him to write an apology note to the Francis Scott Key student, which D.G. did. The apology note stated: "I'm sincerely sorry for what I sent to you. I didn't mean to hurt your feelings." (Supt. Ex. 4).

On April 3, 2016, Ms. Fortune received three emails from a Gmail account later identified as D.G.'s personal account.[2] The emails stated:

[1] Alto is an app that allows a user to organize multiple email accounts in one location. *See* http://www.altomail.com (last accessed March 13, 2017).

[2] Gmail is an email program offered by Google. The emails, which include misspellings, are reproduced here as they are found in the record.

11:13 p.m.
Subject: My bae
Message: [Three open-mouthed emoticons] cute

11:21 p.m.
Subject: You
Message: Your voice is sexy and I like ur smile

11:34 p.m.
Subject: [Laughing face emoticon]
Message: I would love to suck your toes

(Supt. Ex. 6).

Ms. Fortune alerted other school system employees about the emails, including Sharon Vaugh, an IT systems specialist for MCPS. Ms. Vaughn confirmed that the email came from a private email address and that there had been no activity in D.G.'s school email since March 23, 2016. At that time, Ms. Vaughn found no inappropriate emails in D.G.'s school inbox or trash folders. (Supt. Ex. 7).

According to Ms. Fortune, she met with D.G. in her office the next day. D.G. acknowledged that he sent the email from his personal account, but claimed the email was meant for someone else. He promised the mistake would never happen again. Ms. Fortune declined to discipline D.G., believing that the email was sent by mistake. (T. 37-38). D.G. later denied that this meeting took place or that he sent the email. (Supt. Ex. 14).

The final day of school for students was June 17, 2016. Starting on June 21, 2016, Ms. Fortune began receiving a series of emails, which were sent to her school account from D.G.'s personal Gmail account and his school account. The messages stated:

- Tuesday, June 21, 2016

8:16 p.m. (personal account)
Subject: You
Message: I still wanna suck your toes. [Four smiling emoticons, one open-mouthed emoticon] Your toes be on fleek.

11:19 p.m. (personal account)
Subject: You
Message: Your feet are sexy

11:20 p.m. (personal account)
Subject: You
Message: Your feet are sexy

- Wednesday, June 22, 2016

10:33 p.m. (personal account)
Subject: Fwd: You
Message: Are you gonna let me rub your feet

- Thursday, June 23, 2016

8:33 p.m. (personal account)
Subject: Toes
Message: I wanna kiss your toes.

- Friday, June 24, 2016

8:30 p.m. (school account)
Subject: Lil sexy mama
Message: Sent from kik[3]

8:32 p.m. (school account)
Subject: RE: Lil sexy mama
Message: I want to suck your toes
Sent from kik

8:39 p.m. (school account)
Subject: I can rub your thighs if you want me to
Message: Sent from kik

After receiving this last series of emails on June 24, Ms. Fortune confirmed that the school account belonged to D.G. As for the personal account, it contained D.G.'s full name and was the same Gmail account he admitted using when he sent the April emails. Ms. Fortune called D.G.'s mother and left a message for her in which she said, "I'm receiving these messages. I would like to talk to you about them on Monday." (T. 43).

A few minutes later, Ms. Fortune received two more emails:

8:47 p.m. (school account)
Subject: Yea. Shut off my privileges now. I think not. I can do this all danm day. Lemme suck your toes.
Message: Sent from Alto

8:55 p.m. (school account)
Subject: I wanna suck your face
Message: Sent from Alto

No messages were sent the following day, Saturday, June 25, 2016. The messages began

[3] Kik is an instant messenger app designed for smartphones. *See* https://www.kik.com/about (last accessed March 13, 2017).

again on Sunday, June 26, 2016 and continued into the early morning hours of Monday, June 27.

4:09 p.m. (school account)
Subject: You
Message: Kiss me baby I want your bodg
Sent from kik

4:11 p.m. (school account)
Subject: You
Message: I want to suck your toes and rub your thighs
Sent from kik

4:12 p.m. (school account)
Subject: You
Message: Whats your phone number
Sent from Alto

4:36 p.m. (personal account)
Subject: Re: Toes
Message: Can I lick your feet and rub your body?

11:05 p.m. (personal account)
Subject: You
Message: You should let me rub your feet and your tastey asssss

- Monday, June 27, 2016

1:17 a.m. (school account)
Subject: You
Message: I want to make yoh wet and watch your titties jiggle
Sent from School

1:21 a.m. (school account)
Subject: You
Message: No more holding back. The first day I saw you, my eye lit up. I want to rub your body
Sent from Alto

Ms. Fortune reported the email messages to Principal Edgar Malker, the MCPS IT department, and other staff members. That Monday morning, June 27, the MCPS IT department blocked D.G. from using his school email account. (T. 46; Supt. Ex. 9). Later that day, Ms. Fortune received two final messages:

12:25 p.m. (personal account)
Subject: Re: Toes
Message: Fuck you

12:25 p.m. (personal account)
Subject: You
Message: I can still text your email

On June 27, 2016, Principal Edgar Malker met with Appellant to discuss the emails. Principal Malker showed Appellant copies of the emails, including those sent earlier in the year. He described her as being "a little bewildered or baffled" at the news. Appellant told him that the emails did not sound like something her son would write. She claimed Ms. Fortune had a grudge against her family because Appellant believed Ms. Fortune had previously worked at an apartment complex where Appellant lived and had unsuccessfully tried to have the family evicted. (T. 173-175; 379).

On June 28, 2016, Principal Malker sent a letter to Appellant informing her that D.G. was suspended for 10 days, beginning on August 29, 2016. Principal Malker explained that D.G. violated MCPS Policy IGTA-RA and Maryland law by using email to harass someone with lewd, lascivious, or obscene messages. He notified Appellant that he was requesting D.G. be expelled from MCPS and provided her with information on how to appeal the decision. (Supt. Ex. 10; T. 176). By separate letter, Principal Malker issued a "no trespass" order against D.G., prohibiting him from entering Montgomery Village. (Supt. Ex. 11).

Appellant appealed the suspension decision. On July 11, 2016, an investigative conference occurred, during which Principal Malker recounted D.G.'s history of sending inappropriate emails. D.G. denied having sent any inappropriate emails to Ms. Fortune or meeting with her in April to discuss them. He claimed he had not used his school email account since May 2016 and maintained that he never shared his email passwords with anyone. D.G. stated he was not "into" the acts described in the emails to Ms. Fortune. Appellant repeated her claim that Ms. Fortune was targeting D.G. based on a previous grudge. During the conference, a pupil personnel worker reviewed D.G.'s history. Although he had never been suspended, she observed that he had numerous referrals to administrators for disruption, fighting and physical aggression, harassment, and noncompliance. (Supt. Ex. 12).

On July 18, 2016, Steven Neff, Director of the Division of Pupil Personnel Services, upheld the 10-day suspension. He concluded the suspension was justified based on D.G.'s "repeated harassment towards a staff member." (Supt. Ex. 12). That same day, Mr. Neff referred the principal's request for expulsion to Dr. Andrew Zuckerman, Chief Operating Officer of MCPS, acting as the superintendent's designee. (Supt. Ex. 13).

On July 26, 2016, a hearing officer met with Appellant to consider whether to recommend expulsion. D.G. again denied sending the April email or the June emails to Ms. Fortune. He claimed to have "shut down" his personal Gmail account prior to the June emails being sent and created a new one. D.G. contended that Ms. Fortune sent the emails to herself to set him up and that she was excited about "messing up his future." Appellant explained that they do not own a computer and that D.G.'s cell phone was temporarily disconnected for a period of time in June. She repeated her claim that Ms. Fortune previously worked for an apartment complex, a claim that the hearing officer observed had not been substantiated. (Supt. Ex. 14).

The hearing officer recommended denying the request for expulsion, but extending the

suspension to 44 days. She concluded that D.G.'s return to school prior to the end of the suspension period would "pose an imminent threat of serious harm to other students and staff." While on suspension, she recommended that D.G. attend an alternative education program. The hearing officer reasoned that sending 18 inappropriate emails to an assistant principal during the course of a week was "not an impulsive act" and that D.G. failed to take responsibility for his actions despite substantial evidence and no other plausible explanation. She found he failed to comprehend the negative effect that his behavior had on Ms. Fortune and that the alternative program would provide needed emotional and social support. The hearing officer also recommended that D.G.'s future use of technology be closely monitored. (Supt. Ex. 14).

On August 11, 2016, Dr. Zuckerman adopted the hearing officer's recommendation to suspend D.G. for 44 days, beginning at the start of the 2016-17 school year and ending on November 2, 2016. During the period of suspension, he ordered D.G. to attend an alternative education program at the Blair G. Ewing Center. (Supt. Ex. 15).

Appellant appealed the decision to the local board. In her appeal letter, she maintained D.G.'s innocence, accused Principal Malker of lying, and claimed Ms. Fortune had sent the emails to herself and then deleted all of her email accounts. Appellant stated that D.G. would never attend an alternative education program. (Supt. Ex. 16).

The local board assigned the matter to a hearing examiner, who conducted a hearing on October 5, 2016.[4] Appellant was represented by counsel and testified on her son's behalf. During the hearing, Appellant's attorney argued that there was not sufficient evidence to show that D.G. sent the emails and that Appellant did not receive proper notice of the basis for D.G.'s suspension. (T. 412-17). Ms. Fortune testified that she was "disturbed" by the emails, found them unsettling, and had been concerned for her safety, even contacting the police to report the incident. (T. 50-51). She denied having ever worked for an apartment complex and another school employee confirmed that the apartment complex had no record of her working there. (T. 51; 165-66).

On October 31, 2016, the hearing examiner recommended upholding the suspension. In a 35-page decision, the hearing examiner concluded that MCPS did not violate D.G.'s due process rights because Appellant had notice of the accusations against D.G. prior to any discipline being issued and she had multiple opportunities to challenge the decision, including the right to call and cross-examine witnesses. The hearing examiner determined that it was more likely than not that D.G. sent the emails. The hearing examiner found no evidence to support a claim that D.G.'s emails were hacked. He also made credibility determinations about the witnesses and found that the MCPS witnesses were more credible than Appellant. Specifically, the hearing examiner found Appellant lacked credibility based on her false accusation that Ms. Fortune had worked for an apartment complex that tried to evict her. As to Appellant's claim that her son was without a cell phone during a period in which the emails were sent, the hearing examiner observed that D.G. had been at a cousin's home and the record was silent on whether he could access the Internet there. He observed that the pattern of emails was not "random," and that the emails responded to real-life events, such as when Ms. Fortune called Appellant to complain about the emails. (Motion, Ex. B).

[4] The hearing was originally scheduled for September 9, 2016, but was postponed at the request of Appellant's counsel, with the understanding that the time limitations required by regulation were waived as a result.

On November 9, 2016, the local board heard oral argument in the case. The board issued its decision on November 21, 2016, adopting the hearing examiner's recommendation and upholding the 44-day suspension. The board concluded there was sufficient evidence to show that D.G. sent the emails: both accounts belonged to D.G.; he never shared his passwords; a network security advisor for MCPS confirmed the emails were sent from D.G.'s school account; and the emails twice reacted to Ms. Fortune's actions. The board observed that there was no evidence in the record that anyone else sent the emails and the June emails used language consistent with that of the earlier message in April sent from D.G.'s account. The board rejected Appellant's claim that D.G.'s due process rights were violated, explaining that he received notice of the charges and an opportunity to present his side of the story, including a full evidentiary hearing. Finally, the board disagreed with Appellant's claim that there was no imminent threat of serious harm justifying a 44-day suspension. The board found that the emails were lewd and inappropriate, sent deliberately over a period of seven days, and caused Ms. Fortune to fear for her safety. The board credited Principal Malker's characterization of the emails as threatening, intimidating, harassing, sexually harassing, and brazen. The board described D.G. at a "crossroads concerning his behavior" and expressed its hope that D.G. would take advantage of the emotional and social support offered from the alternative education program. (Appeal).

This appeal followed.

STANDARD OF REVIEW

In student suspension and expulsion cases, the decision of the local board is final. COMAR 13A.01.05.05. Therefore, the State Board will not review the merits of the decision unless 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 the local board has acted in an unconstitutional manner. COMAR 13A.01.05.05. The State Board may reverse or modify a student suspension or expulsion if the allegations are proved true or if the decision of the local board is otherwise illegal. COMAR 13A.01.05.05.

A decision may be considered "otherwise illegal" if it is:

(l) Unconstitutional;
(2) Exceeds the statutory authority or jurisdiction of the local board;
(3) Misconstrues the law;
(4) Results from unlawful procedure;
(5) Is an abuse of discretionary powers; or
(6) Is affected by any other error of law.

COMAR 13A.01.05.05c

LEGAL ANALYSIS

Appellant raises several issues concerning her son's suspension, which we shall address in turn.

Requested relief

Before addressing the merits of Appellant's claim, we must consider whether we are able to offer her the relief she requests. Appellant primarily seeks monetary damages from MCPS based on her belief that her son was falsely accused. The State Board has no authority to assess monetary damages against parties as part of an administrative appeal. *See J.B. v. Harford County Bd. of Educ.*, MSBE Op. No. 17-01 (2017). Accordingly, we decline to consider this request.

In addition, Appellant requests that MCPS terminate Principal Walker and Ms. Fortune and that she receive an apology letter. We have consistently held that parents do not have standing to challenge personnel decisions made at the local level. *See Kristina E. v. Charles County Bd. of Educ.*, MSBE Op. No. 15-27 (2015) (listing cases). For that reason, this requested relief is also unavailable to Appellant.

Appellant does not specifically request any other type of relief, but in light of her *pro se* status, we shall construe the remainder of her appeal as a request to reverse D.G.'s suspension. The power to reverse or modify a suspension is within our power. Although D.G. has already served the suspension, the matter is not moot because the suspension remains on D.G.'s record.

Disposition of the juvenile case

Appellant's chief argument is that a juvenile court found D.G. to be "innocent" of charges related to the inappropriate emails and that the suspension should therefore be reversed. There are no documents from the juvenile case in the record. In her appeal, Appellant included a one-page "Adjudication and Final Disposition Order" signed on November 15, 2016. Based on this order, it appears that D.G. faced two allegations of delinquent acts in juvenile court: (1) harassment; and (2) electronic mail harassment. The Circuit Court for Montgomery County, sitting as a juvenile court, concluded that the charges were not proven beyond a reasonable doubt. (Appeal). Appellant requests that we consider this new evidence as part of her appeal.

Although juvenile proceedings are "civil and not criminal in nature," *see In re Anthony R*, 362 Md. 51, 69 (2000), juvenile courts use the same standard of proof – beyond a reasonable doubt – that is used in a criminal case. That standard is far more stringent than the preponderance of the evidence standard used in administrative proceedings. For this reason, we have previously recognized that "criminal standards do not apply to civil administrative matters such as a student discipline case." *Ross v. Baltimore County Bd. of Educ.*, MSBE Op. No. 99-22 (1999). Moreover, a student can be disciplined for acts that do not constitute a crime or delinquent act. For all of these reasons, the disposition of the juvenile case in D.G.'s favor does not render the local board's decision unconstitutional or otherwise illegal.

Appellant has raised no other claims that the suspension was illegal. Although she continues to maintain that D.G. was innocent, there was substantial evidence in the record to link D.G. to the emails. All of the emails were sent either from D.G.'s personal or school address; the June emails were similar to the April email, which D.G. admitted to Ms. Fortune that he sent; and the content of the emails changed in relation to actions Ms. Fortune took (such as calling his mother and shutting off access to his school account). From our review of the record, MCPS

followed the disciplinary process required by COMAR 13A.08.01.11 and Appellant received notice of the charges and an opportunity to be heard on multiple occasions. Finally, the superintendent based the length of the suspension on his determination that D.G. posed an imminent threat of serious harm to other students or staff. The emails were lewd and inappropriate, targeted an assistant principal, continued for days, and escalated in tone after Ms. Fortune attempted to stop them. The local board credited Ms. Fortune's testimony that she found the emails threatening and was concerned for her safety, as well as the safety of other staff. In light of all of the circumstances, we do not find that the local board acted in an illegal or unconstitutional manner in upholding the suspension.

CONCLUSION

For all of these reasons, we uphold the decision of the local board.

Signatures of File:

_____
Andrew R. Smarick
President

_____
Chester E. Finn, Jr.
Vice-President

_____
Michele Jenkins Guyton

_____
Laurie Halverson

_____
Stephanie R. Iszard

_____
Rose Maria Li

_____
Barbara J. Shreeve

_____
Madhu Sidhu

_____
Guffrie M. Smith, Jr.

_____
Laura Weeldreyer

March 28, 2017