SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 2000 Term

FILED
July 10, 2000
DEBORAH L. McHENRY, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 26904

RELEASED
July 10, 2000
DEBORAH L. McHENRY, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

J. M., L. M., HIS NATURAL MOTHER AND GUARDIAN,
AND P. M., HIS NATURAL FATHER AND GUARDIAN,
Plaintiffs Below, Appellants

v.

THE WEBSTER COUNTY BOARD OF EDUCATION,
Defendant Below, Appellee

Appeal from the Circuit Court of Webster County
Honorable Jack Alsop, Judge
Case No. 99-P-8

AFFIRMED

Submitted: April 12, 2000
Filed: July 10, 2000

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Clarksburg, West Virginia
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JUSTICE McGRAW delivered the Opinion of the Court.
JUSTICE STARCHER concurs in part, and dissents in part,
and reserves the right to file a separate opinion.

SYLLABUS BY THE COURT

1. "Where the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review." Syl. pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995).

2. "Three factors to be considered in deciding whether to address technically moot issues are as follows: first, the court will determine whether sufficient collateral consequences will result from determination of the questions presented so as to justify relief; second, while technically moot in the immediate context, questions of great public interest may nevertheless be addressed for the future guidance of the bar and of the public; and third, issues which may be repeatedly presented to the trial court, yet escape review at the appellate level because of their fleeting and determinate nature, may appropriately be decided." Syl. pt. 1, *Israel v. West Virginia Secondary Schools Activities Comm'n*, 182 W. Va. 454, 388 S.E.2d 480 (1989).

3. "Because the State has a compelling interest in providing a safe and secure environment to the school children of this State pursuant to *W. Va. Const*. art. XII, section 1, and because expulsion from school for as much as 12 months pursuant to the provisions of the Productive and Safe Schools Act, W. Va. Code, 18A-5-1a(g) [1995] is a reasonably necessary and narrowly tailored method to further that interest, the mandatory suspension period of the Act is not facially unconstitutional." Syl. pt. 3, *Cathe A. v. Doddridge County Bd. of Educ.*, 200 W. Va. 521, 490 S.E.2d 340 (1997).

4. Under W. Va. Code § 18A-5-1a (1996), both a principal and the members of a county board of education may examine the facts surrounding an alleged violation of the statute, at their respective hearings. Both principals and members of the board of education have the authority and discretion to end expulsion proceedings if either determines that a student has not violated the statute.

5. When a county board of education expels a student for twelve months for a violation of W. Va. Code § 18A-5-1a (1996), the county superintendent of schools still has the power to reduce the student's punishment, if the superintendent finds it disproportionate to the student's actions. However, the superintendent must make a public record of this decision, and provide the reason for the reduction, as set forth in the statute.

McGraw, Justice:

J.M., a minor, appeals an order of the Circuit Court of Webster County that upheld a decision of the Webster County Board of Education expelling him for possession of a firearm on school property in violation of W. Va. Code § 18A-5-1a (1996), also known as the "Safe Schools Act." He argues that the actions taken against him by the principal of his high school and the county board of education were procedurally deficient, and that, although he had a gun on his person, he did not have the necessary intent to be found in violation of the statute. For the reasons set forth below, we affirm the decision of the trial court.

I.

BACKGROUND

We relate the facts with some detail because these details are important to appellant's argument. On Tuesday, May 12, 1999, appellant J.M., a 15-year-old student at Webster County High School, misbehaved and was reported to the principal. For this infraction,[1] the principal suspended J.M. for two days, effective noon that same day. The principal called J.M.'s mother, who was a teacher at a local elementary school, to come to the high school and retrieve J.M. On their way back to the mother's

[1]The record reflects that this was at least the tenth time that school year that J.M. had been disciplined for behavior problems.

place of employment, J.M.'s father happened to see the two of them drive by, so he followed them to the elementary school to learn why J.M. was not in class.

J.M.'s father was extremely upset to learn of his son's two day suspension and, as a result, made a decision to remove J.M. from school and "put him to work" immediately. Toward this end, the father went to the high school and demanded the contents of J.M.'s locker and announced that he was withdrawing J.M. from school. The father then went to a local lumber yard to obtain a job for J.M., but was unable to find the owner of the business.

J.M.'s father then returned to the elementary school where J.M.'s mother was employed and retrieved J.M., who allegedly did not wish to accompany his father. The two made a second attempt to find someone at the lumber yard, but failed. They then proceeded home and parked in the garage. Upon exiting the family truck, J.M. hit the family lawnmower with the truck door, to the extreme displeasure of his father. At that point, the father picked up an axe or hatchet and declared to J.M. that, if the truck door were damaged, that he, the father, would "pole-ax" him, and that he, J.M., might just "end up like that Linkous boy." [2]

The father then went out into the yard, leaving J.M. in the house alone. The family kept several firearms in the home, most of them in a gun cabinet. With his father outside, J.M. searched for and

[2]It was apparently well known in Webster County that one Mr. Linkous had been charged recently in connection with the shooting death of his own son.

found the keys to this gun cabinet. Using the keys, J.M. secured all of the firearms by locking them into the gun cabinet. After locking the cabinet, J.M. hid the keys under some clutter in the corner of the room. After hiding the keys, J.M. discovered on top of the cabinet a box of ammunition and one last gun, a .45 caliber revolver with a nine inch barrel. According to J.M., before he could secure the .45, he looked out the window and saw his father returning. Not wanting his father to discover him with the gun, J.M. stuck the .45 in the back of his pants and pocketed the shells.

After the two shared some uncomfortable silence, J.M.'s father lay down to take a nap. J.M. took this opportunity to remove himself from his father vicinity and departed, leaving on foot for a friend's house, where he hoped to await his mother's return from work. About 15 minutes later, J.M.'s father awakened and was enormously disappointed to learn of J.M.'s unauthorized exodus. He set off down the road in his truck to find J.M., who had covered about half a mile in his abortive bid for freedom. J.M. had not discarded the gun or ammunition, and both were still concealed upon his person.

Having reacquired J.M., the father proceeded again to the lumber company, where he intended to sign J.M. up for a job as soon as possible. After reaching the lumber yard, J.M.'s father left J.M. in the truck while he went inside to inquire about the job. J.M.'s father learned that he would have to have a form signed at the school before J.M. could be allowed to work at the lumber yard. J.M.'s father returned to the truck, and the two drove to the school to obtain the proper form.

At the school, they parked near the main entrance and J.M.'s father left J.M. at the truck while he went in search of the principal. School was over for the day, so J.M.'s father had no luck finding the principal and returned to the truck. J.M., who was some six feet, three inches in height, and weighed close to three hundred pounds, had lettered in football and had a close relationship with his football coach. Hoping that J.M.'s football coach might be able to provide a signed form, J.M.'s father drove them to another building on school property in search of the coach. J.M. was not in favor of this visit with the coach, but acceded to his father's demands and accompanied him into the building, with the gun and ammunition still hidden in his pants.

Upon finding the coach, J.M.'s father embarked upon an animated recounting of the events of the day. The record indicated that J.M.'s father was quite upset and made use of some colorful language in expressing his distaste for J.M.'s behavior. After several minutes, this heated discussion culminated in J.M.'s father speculating as to just what sort of unsavory employment J.M. might have to resort if he did not start taking his educational responsibilities more seriously.

The coach found the particular expletives chosen by J.M.'s father to be quite objectionable, and feared that the argument might escalate into a physical altercation, so he asked J.M.'s father to go outside and calm down. He complied, leaving J.M. and the coach alone. After his father left the room, J.M. took out the loaded gun and fifty-six additional rounds of ammunition, and surrendered them to the coach, asking the coach to "take care of them," and adding that he thought his father "was going to kill him." The coach secured the gun and ammunition in a filing cabinet and took J.M. to the nearby state police

barracks and reported the incident to the troopers, and subsequently reported the incident to the school principal and the superintendent.

The next day, the principal and the superintendent of schools held an "informal conference" with J.M., his mother, coach Rogers, the county prosecuting attorney, and a local state police trooper. J.M., his mother, and coach Rogers gave their accounts of the events. Apparently, the principal and superintendent then continued this conference with J.M. and his mother after the others had left, and attempted to persuade J.M. and his mother to stipulate to a 365 day suspension, which they refused.

At the conference, the principal determined that J.M. probably had violated the Act, and by letter dated that day, May 13, 1999, notified both the superintendent and J.M.'s mother that J.M. would be suspended for a period of ten days. The principal then notified J.M.'s parents by letter dated May 18, 1999, that the board of education would hold a hearing on May 24, 1999, and that J.M. had the right to be represented by counsel at the hearing.

At the board hearing of May 24, 1999, J.M. was represented by counsel, and had the opportunity to present evidence, call witnesses, and cross-examine witnesses. J.M., his father, his mother, and coach Rogers all testified about the events of May 12. After the hearing, the board voted to suspend J.M. for 365 days and place him in an alternative education program. The board notified his parents of this decision by letter dated the next day.

Subsequently, J.M. appealed this decision to the Circuit Court of Webster County, which conducted a hearing on August 2, 1999. At that hearing, J.M., his mother, his father, and coach Rogers all testified again. At the close of the hearing, the judge denied J.M.'s request for an injunction, and ordered the parties to submit briefs. Thereafter, the court issued an order on August 23, 1999, which upheld J.M.'s suspension, from May 13, 1999, to May 12, 2000. It is from that order that J.M. now appeals. For the reasons set forth below, we affirm the decision of the trial court.

II.

STANDARD OF REVIEW

In this case, we are asked to review the lower court's interpretation of the Safe Schools Act. In such a case, our review is *de novo*. "Where the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review." Syl. pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995); Syl. pt. 1, *McKinley v. Fairchild Intel, Inc.*, 199 W. Va. 718, 487 S.E.2d 913 (1997).

III.

DISCUSSION

First, because J.M.'s period of expulsion was scheduled to end effective May 12, 2000, we must address the question of mootness. We were faced with a similar question in the case of *Cathe*

A. v. Doddridge County Bd. of Educ., 200 W. Va. 521, 490 S.E.2d 340 (1997), where the expulsion of the student in that case had also ended before we had the opportunity to decide the case. We noted that our treatment of technically moot cases is guided by the test established in syllabus point 1 of *Israel v. West Virginia Secondary Schools Activities Comm'n*, 182 W. Va. 454, 388 S.E.2d 480 (1989):

> Three factors to be considered in deciding whether to address technically moot issues are as follows: first, the court will determine whether sufficient collateral consequences will result from determination of the questions presented so as to justify relief; second, while technically moot in the immediate context, questions of great public interest may nevertheless be addressed for the future guidance of the bar and of the public; and third, issues which may be repeatedly presented to the trial court, yet escape review at the appellate level because of their fleeting and determinate nature, may appropriately be decided.

Id. As we went on to note in *Cathe A.*, each of the three factors is present in this case, in that there may well be other students whose cases are awaiting the outcome of this appeal, students and administrators are interested in how the statute should be applied in the future, and a statute that calls for one year expulsions, by its very nature, will continue to spawn controversies with limited life spans that end before the appellate process can run its course.

Cathe A. was not the first time we addressed the Safe Schools Act. Nor is the instant case the first in which we have been faced with the expulsion of a fifteen-year old boy who was found with a gun on his person while on school premises. In *Phillip Leon M. v. Greenbrier County Board of Education*, 199 W. Va. 400, 484 S.E.2d 909 (1996), the student also had a gun at school, and was also expelled for a year, but we were asked to address a different issue. In that case we examined whether or

not the state had to provide some sort of alternative education for students expelled under the Safe Schools Act, and held:

> [T]he "thorough and efficient" clause of Article XII, Section 1 of the *West Virginia Constitution* requires, the creation of an alternative program for pupils suspended or expelled from their regular educational program for a continuous period of one year for the sole reason of possessing a firearm or other deadly weapon at an educational facility.

Syl. pt. 4, in part, *Phillip Leon M. v. Greenbrier County Board of Education*, 199 W. Va. 400, 484 S.E.2d 909 (1996).

We later examined the constitutionality of the statute in question. In *Cathe A., supra,* we were asked whether or not the requirement of a one-year expulsion for violating the statute could pass constitutional muster; we answered that question in the affirmative:

> Because the State has a compelling interest in providing a safe and secure environment to the school children of this State pursuant to *W. Va. Const.* art. XII, section 1, and because expulsion from school for as much as 12 months pursuant to the provisions of the Productive and Safe Schools Act, W. Va. Code, 18A-5-1a(g) [1995] is a reasonably necessary and narrowly tailored method to further that interest, the mandatory suspension period of the Act is not facially unconstitutional.

Syllabus Point 3, *Cathe A. v. Doddridge County Bd. of Educ.*, 200 W. Va. 521, 490 S.E.2d 340 (1997).[3]

[3]We also stated in that case that circumstances might exist where the state would, temporarily, not have to provide alternative schooling for a student suspended under the Act. *See* syllabus point 5, *Cathe A. v. Doddridge County Bd. of Educ.*, 200 W. Va. 521, 490 S.E.2d 340 (1997).

Turning again to the instant case, J.M. claims that the principal and the board did not follow the prescribed procedures outlined in the Act. Thus he argues that the circuit court erred when it found that any procedural deficiencies alleged by J.M. did not warrant a reversal of his expulsion. J.M. also argues that the lower court erred when it made certain determinations about the nature of the offense. Specifically, J.M. questions that portion of the lower court's order of August 23, 1999, in which the court found that possession of a gun on school property in violation of the Act was an offense *malum prohibitum*, and therefore did not require intent or knowledge by the offender for a court to still find the offender guilty of a violation. However, the court also ruled that, even if a violation of the Act were instead an offense *malum in se*, which would require a finding of knowledge or intent on the part of the offender, that J.M. possessed the requisite guilty knowledge or intent to be found in violation of W. Va. Code § 18A-5-1a (1996).

Before addressing these specific assignments of error, we shall analyze the procedural requirements of the Safe Schools Act. The Code section that governs this case calls for a student's expulsion in certain situations:

> (a) A principal shall suspend a pupil from school or from transportation to or from the school on any school bus if the pupil, in the determination of the principal, after an informal hearing pursuant to subsection (d) of this section, has: (i) Violated the provisions of subsection (b), section fifteen, article two, chapter sixty-one of this code; (ii) violated the provisions of subsection (b), section eleven-a, article seven, chapter sixty-one of this code; or (iii) sold a narcotic drug, as defined in section one hundred one, article one, chapter sixty-a of this code, on the premises of an educational facility, at a school-sponsored function or on a school bus. . . .

> (f) The county board shall hold the scheduled hearing to determine if the pupil should be reinstated or should, or under the provisions of this section, must be expelled from school . . .
>
> (g) Pupils may be expelled pursuant to the provisions of this section for a period not to exceed one school year, except that if a pupil is determined to have violated the provisions of subsection (a) of this section the pupil shall be expelled for a period of not less than twelve consecutive months:

W. Va. Code § 18A-5-1a (1996). So in order to determine if J.M.'s actions violated W. Va. Code § 18A-5-1a (1996), we must first examine section 61-1-11a,[4] which deals with carrying firearms on school property:

> (b)(1) It shall be unlawful for any person to possess any firearm or any other deadly weapon on any school bus as defined in section one, article one, chapter seventeen-a of this code, or in or on any public or private primary or secondary education building, structure, facility or grounds thereof, including any vocational education building, structure, facility or grounds thereof where secondary vocational education programs are conducted or at any school-sponsored function.

W. Va. Code § 61-7-11a (1995).[5]

There is no question that J.M. had a firearm on his person while on school grounds. However, J.M. argues that he had not intended to be upon school grounds and was transported to the

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[4]The other Code section referenced is W. Va. Code § 61-2-15, which deals with assault or battery upon school employees. No such assault or battery occurred in this case, so we need not discuss this provision.

[5]The statute goes on to list certain exceptions to this general rule, none of which, however, apply in this case.

school by his father and against his will. Thus he argues that his lack of the mental element or *mens rea* of "intent" makes it impossible for him to be guilty of "possession" as contemplated by the statute. He also argues that the offense in question is *malum in se*, and thus requires an intent element, and that the lower court erred in determining that violating the statute was *malum prohibitum*. J.M. goes on to argue that by ruling that the offense requires no intent or knowledge, the lower court essentially gave strict liability effect to the statute. He claims that this ruling, if upheld, would leave no room for discretion by either principals or boards of education when the circumstances of a particular case, such as this case, might warrant.

In an earlier case, we discussed this distinction, drawing upon the well-known criminal law treatise authored by LaFave & Scott:

> It has been said that a crime of which a criminal intent is an element is *malum in se*, but if no criminal intent is required, it is *malum prohibitum*; and that generally a crime involving "moral turpitude" is *malum in se*, but otherwise it is *malum prohibitum*. In a general way, it may be said that crimes which are dangerous to life or limb are likely to be classified as *malum in se*, while other crimes are more likely to be considered *malum prohibitum*.

State v. Vollmer, 163 W. Va. 711, 714, 259 S.E.2d 837, 839 n. 4 (1979), (quoting LaFave and Scott, *Criminal Law* at 29 (1972)). From even this short discussion, it is evident that making such a determination is not an exact science. We do not find it necessary to explore this fine distinction in our criminal jurisprudence to decide the outcome of this case. We are also reluctant to accept either J.M.'s or the lower court's categorization of the statute. If we adopt J.M.'s interpretation, we invite an appeal to this court on nearly every expulsion, challenging proof of a student's intent. If we adopt the view that

the statute calls for a mechanical adherence and expulsion in every circumstance when a student has a gun on his or her person, we remove the discretion of the principal and the board of education. We decline to follow either approach.

While we are aware that almost any student charged with any violation at school is likely to make all manner of excuses for his or her actions, we also recognize that there might be circumstances where a child is found with a gun at school, but could not be said to be "in possession" of that gun in a manner that violates W. Va. Code § 18A-5-1a (1996). For example, an older student might secretly place a gun in the bookbag of a second grade boy who was either unaware of the gun, or had been told that the older student would beat him up if he disclosed the weapon. However, in that hypothetical case, just as in this case, it would be up to the finder of fact to determine if that second grader "possessed" a firearm on school property. With regard to the statute under consideration, W. Va. Code § 18A-5-1a (1996), we have two fact finders, the principal and the board of education. In order to elaborate upon this point, we shall examine the statute, and we divide it, for purposes of explanation, into two general parts:

1. *The Principal's Duties*

As we have noted, the statute in question, W. Va. Code § 18A-5-1a (1996), demands that a principal suspend a student who, among other things, possesses a firearm on school property. There are obviously several elements to both the offense and the process for dealing with an offending student, and we will attempt to address these in a logical fashion.

Although not mentioned first in the statute, the first step of the process starts with the principal of the school where the alleged violation has occurred. Once someone reports an incident, if the principal believes that the alleged violation would warrant suspension, he or she must hold an "informal hearing" with the student and the student's parents:

> (d) . . . If the principal determines that the alleged actions of the pupil would be grounds for suspension, he or she shall conduct an informal hearing for the pupil immediately after the alleged actions have occurred. . . .[6]
>
> The pupil and his or her parent(s), guardian(s) or custodian(s), as the case may be, shall be given telephonic notice, if possible, of this informal hearing, which notice shall briefly state the grounds for suspension.
>
> At the commencement of the informal hearing, the principal shall inquire of the pupil as to whether he or she admits or denies the charges. If the pupil does not admit the charges, he or she shall be given an explanation of the evidence possessed by the principal and an opportunity to present his or her version of the occurrence. At the conclusion of the hearing or upon the failure of the noticed student to appear, the principal may suspend the pupil for a maximum of ten school days, including the time prior to the hearing, if any, for which the pupil has been excluded from school.

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[6]The statute goes on to say that:

> The hearing shall be held before the pupil is suspended unless the principal believes that the continued presence of the pupil in the school poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process, in which case the pupil shall be suspended immediately and a hearing held as soon as practicable after the suspension.

W. Va. Code § 18A-5-1a(d) (1996).

W. Va. Code § 18A-5-1a (1996). So, in other words, if the principal hears that a student might have a weapon, and the principal believes this is a credible allegation, the principal phones the parents and has them come down to the school for a meeting with the principal and student. If the principal does not find the allegation credible, he or she need proceed no further.

If the principal does proceed, at this "principal's informal hearing," the principal is to make a "determination" as to whether or not the student violated the statute. Thus the principal becomes the finder of fact at this stage in the process. The Code permits the principal to make a "determination." At this point, should the principal determine that, for example, a student has found an abandoned gun and prudently turned it in to his or her teacher, the principal would be free to end the inquiry, and would be under no obligation to suspend the student.

However, if the principal determines that the student probably did violate the statute, then that principal has certain obligations under the Code:

> (a) *A principal shall suspend* a pupil from school or from transportation to or from the school on any school bus *if the pupil, in the determination of the principal,* after an informal hearing pursuant to subsection (d) of this section, has: (i) Violated the provisions of . . . subsection (b), section eleven-a, article seven, chapter sixty-one of this code; [by possessing a firearm on school property]

W. Va. Code § 18A-5-1a (1996) (emphasis added). So again, a principal must only suspend a student when, after hearing of the potential misconduct, the principal calls the parents, has an informal hearing and finds, *in the determination of the principal*, that the student has violated the code. If the principal

determines that, for some reason, the student is not "guilty" of possessing a firearm on school property, the principal may end the proceedings. If the principal finds otherwise, the parties move on to the next step.

In this case, J.M. argues that there is no evidence that his father received notice of the informal hearing, and that the hearing was somehow irregular and insufficient under the statute because the state trooper and prosecutor also attended. He also argues that nothing in the record shows that J.M. was notified of the possible grounds for his suspension, or that the principal inquired of J.M. as to whether he admitted or denied the charges. We find these arguments unpersuasive.

There is little question that J.M., after a trip to the state police barracks with his coach, would not realize that the informal hearing concerned the incident with the gun. His mother was notified and was present, and the record suggests that the father was aware of the proceedings as well. The addition of the police and prosecutor no doubt made the meeting more intimidating to J.M., but did not deny him the opportunity to give his side of the incident. Because the entire purpose of the hearing was to inquire as to what J.M. was doing with the gun, it would be incredible if the principal did not ask J.M. if he admitted or denied the charges. Thus we refuse to reverse on the basis of any of these alleged procedural deficiencies.

2. *Board of Education's Duties*

As quoted above, if the principal determines that the student violated 61-7-11a (1996), then he or she must suspend the student, and turn the process over to the board of education. First the

principal must report the suspension, in writing, to the parents of the student.[7] The principal must then notify the superintendent and must actually request, via the superintendent, that the board of education expel the student from school:

> If a student has been suspended pursuant to this subsection [subsection (a)], the principal shall, within twenty-four hours, request that the county superintendent recommend to the county board that the student be expelled. Upon such a request by a principal, the county superintendent shall recommend to the county board that the student be expelled. Upon such recommendation, the county board shall conduct a hearing in accordance with subsections (e) and (f) of this section to determine if the student committed the alleged violation. If the county board of education finds that the student did commit the alleged violation, the county board of education shall expel the student.

W. Va. Code § 18A-5-1a(a)(1996).[8]

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[7] The principal shall report any suspension the same day it has been decided upon, in writing, to the parent(s), guardian(s) or custodian(s) of the pupil by certified mail, return receipt requested: Provided, That certified mail is not required if one or both of the parents, guardians, or custodians of the pupil are present at the time the suspension is decided upon, or if any one of them acknowledges receipt of the report by signing and dating a copy of the report. The suspension also shall be reported to the county superintendent and to the faculty senate of the school at the next meeting after the suspension.

W. Va. Code § 18A-5-1a (d) (1996).

[8] J.M. argues that the letter of May 13, 1999, in which the principal notified the superintended that J.M. had been suspended for ten days for "brining a loaded handgun on [school] premises," was inadequate because the principal did not expressly ask the superintended to recommend to the board that J.M. be expelled. We disagree. Written notification that J.M. had been suspended for having the gun on school property is equivalent to making that explicit request. If the principal had determined that J.M. actions did not violate the statute, the principal would not have suspended J.M. for the ten day period. Although the letter was not styled as a request for expulsion, its obvious purpose was to notify the superintended of the action taken by the principal, so that the process could move on to the next step.

We also disagree with J.M.'s contention that the absence of a letter from the superintendent to the board recommending J.M.'s expulsion constitutes reversible error. It is clear that board conducted the

(continued...)

Before the board can hold a hearing, the board must provide notice to the student and parents of the charges against the student and the time of the hearing. The hearing itself resembles a trial, in that the student may be represented by counsel and may present and examine witnesses. However, an important difference exists in that the board employs a preponderance of the evidence standard:

> (e) Prior to a hearing before the county board, the county board shall cause a written notice, which states the charges and the recommended disposition, to be served upon the pupil and his or her parent(s), guardian(s) or custodian(s), as the case may be. Such notice shall set forth a date and time at which such hearing shall be held, which date shall be within the ten-day period of suspension imposed by the principal.
>
> (f) The county board shall hold the scheduled hearing to determine if the pupil should be reinstated or should, or under the provisions of this section, must be expelled from school. At this hearing the pupil may be represented by counsel, may call his or her own witnesses to verify his or her version of the incident and may confront and cross-examine witnesses supporting the charge against him or her. The hearing shall be recorded by mechanical means, unless recorded by a certified court reporter. The hearing may be postponed for good cause shown by the pupil but he or she shall remain under suspension until after the hearing. The state board may adopt other supplementary rules of procedure to be followed in these hearings. At the conclusion of the hearing the county board either shall order the pupil reinstated immediately or at the end of his or her initial suspension or shall suspend the pupil for a further designated number of days or shall expel the pupil from the public schools of such county. . . .
>
> (i) In all hearings under this section, facts shall be found by a preponderance of the evidence.

W. Va. Code § 18A-5-1a (e), (f), (i) (1996).

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[8](...continued)
expulsion hearing, and that the superintendent attended and advocated J.M.'s expulsion.

Under this scheme, the board also acts as a finder of fact, and must come to its own conclusions about the actions of the alleged offender, but need not use the "beyond a reasonable doubt" standard that courts employ in regular, criminal proceedings. Just like the principal, the board has the authority to find that a student, even if he or she had a gun, did not violate the statute. Somewhat like a jury, the board listens to "the story" presented by the accused to explain why he or she had a weapon. If they believe it, then they are free to find that the student is not in violation.

Thus, we hold that, under W. Va. Code § 18A-5-1a (1996), both a principal and the members of a county board of education may examine the facts surrounding an alleged violation of the statute, at their respective hearings. Both principals, and members of the board of education have the authority, as finders of fact, to end expulsion proceedings, if either determines that a student has not violated the statute.[9]

Of course, if the members of the board find otherwise, however, they must expel the student, as quoted above.

> (g) Pupils may be expelled pursuant to the provisions of this section for a period not to exceed one school year, except that if a pupil is determined to have violated the provisions of subsection (a) of this section the pupil shall be expelled for a period of not less than twelve consecutive months:

W. Va. Code § 18A-5-1a (g) (1996).

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[9]We note that, pursuant to W. Va. Code § 18A-5-1b (1996), a county board of education may also choose to employ a hearing examiner to conduct the hearing we have described above.

We find, however, that even after making such a determination, there is still an opportunity to reduce the punishment, if the situation warrants. When a county board of education expels a student for twelve months for a violation of W. Va. Code § 18A-5-1a (1996), the county superintendent of schools still has the power to reduce the student's punishment, if the superintendent finds it disproportionate to the student's actions. However, the superintendent must make a public record of this decision, and provide the reason for the reduction, as set forth in the statute:

> Provided, That the county superintendent may lessen the mandatory period of twelve consecutive months for the expulsion of the pupil if the circumstances of the pupil's case demonstrably warrant. Upon the reduction of the period of expulsion, the county superintendent shall prepare a written statement setting forth the circumstances of the pupil's case which warrant the reduction of the period of expulsion. The county superintendent shall submit the statement to the county board, the principal, the faculty senate and the local school improvement council for the school from which the pupil was expelled.

W. Va. Code § 18A-5-1a(g) (1996). So in effect, a student who is found with a weapon at school has several opportunities for exoneration. The principal may find at the informal hearing that the situation is not a violation of the statute. The Board may find at the formal hearing that certain factors explain or excuse the student's conduct. Finally, the superintendent may, after the board hearing, reduce the period of expulsion if he or she feels that circumstances so warrant.[10]

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[10]Some might argue that the principal, the board, and the superintended are actually going through the *malum in se* versus *malum prohibitum* inquiry that we discussed earlier. In essence, the administrators are conducting a similar analysis; they examine the facts of a given case and then compare those facts with what they know about the world, and the behavior of students. But we are not inclined to straight jacket these administrators by reading into the statute a requirement that they must counter every possible common law defense to the crime of possession before deciding that a student has violated, or not violated, the Safe Schools Act. It is important that the administrators realize that they are not wedded to

(continued...)

In this case, J.M. was afforded all of these protections. In each case, the fact finder determined that J.M.'s actions in having the gun tucked into his pants on school property constituted a violation of the statute. From the record we see that, even if the initial taking of the gun were defensible (which we question), J.M. had several opportunities to discard the gun or the bullets. While J.M.'s actions might be excusable to some, they were not to the principal, the board, nor the superintendent.

It may be that some of the school officials misunderstood their duty under the statute. It may also be significant that J.M.'s incident, of May 12, 1999, came just three weeks after the April 20, 1999 massacre at Columbine High school in Colorado, where two students murdered many of their classmates.[11] However, we do not feel it appropriate to undermine the authority of school officials, by rejecting the factual findings of those closest to the events in this case.[12]

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[10](...continued)
either extreme.

[11]We hasten to point out that we have no desire to promote a culture of fear and mistrust in our schools, or the so-called "Columbine Effect," where students are expelled or suspended for petty infractions. *See* John Cloud, *The Columbine Effect*, Time, December 6, 1999. West Virginia is blessed with an historically low crime rate, and Webster County, where most citizens know one another, is especially fortunate in that regard. Proper student discipline is more of an art than a science, and that is why it is important to give principals and local board members the discretion *not to expel*, as well as expel, when a student's actions so warrant.

[12]We are also mindful of the continuing harm an expulsion can have on a student's future, and we do not mean to equate J.M.'s behavior with that of truly disturbed students who have harmed their classmates. Indeed we hope that now that his expulsion has run its course, that he enjoy a successful high-school, and later college, career.

IV.

CONCLUSION

For the reasons stated, the judgment of the Circuit Court of Webster County is affirmed.

Affirmed.