

D.J.,

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL COMMISSIONERS

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-17

OPINION

INTRODUCTION

Appellant, D.J., appeals his extended suspension from Excel Academy at Francis M. Wood High School and his reassignment to the Friendship Preparatory Academy at Calverton Elementary/Middle School. The local board filed a Motion to Dismiss, arguing that the appeal is moot because the school system rescinded the Appellant's suspension and he is attending Friendship Preparatory Academy at Calverton Middle School, a traditional public school. Appellant opposed the Motion.

FACTUAL BACKGROUND

At the start of the 2015-2016 school year, Appellant was attending the 8th grade at the Excel Academy at Francis M. Wood, an alternative high school. Shortly thereafter, on September 21, 2015, Appellant was involved in an incident in which he physically struck his math teacher. Appellant was sitting in a chair with wheels and rolling it around the classroom. The teacher told Appellant to stop, but he did not. Instead he propelled himself and the chair toward the teacher at a fast rate. The teacher extended his foot and hand to brace for the impact from the chair. As the teacher's foot stopped the chair, Appellant jumped up without saying anything and punched the teacher in the face. The teacher then walked into the hallway and requested help from school staff to remove Appellant from the classroom to go to the office. (Motion Ex. F; Appeal, Principal Narrative & Employee Incident Report; Tr.17-19).

The Assistant Principal, Robin Gross-Sutton, spoke with Appellant after the incident. The Appellant claimed that he punched the teacher in response to the teacher kicking him in the ribcage. He also alleged that the teacher had struck him on two prior occasions. The Appellant gave the following written statement:

I was in My class by the computer. I Roled to my friend to get my Pen then I slowly Roled to get my passcode from my teacher When I got Next to my teacher He kicked Me right Near My ribcage so I got up and Swong At him. Last week He Hit me two times once in My face the other time He Hit Me In the back of the Head. (sic)

(Motion, Ex. B). The teacher reported to Ms. Gross-Sutton that he did not strike the Appellant during the chair incident or on any other occasion. The school did not receive any other reports, either from students or staff, that the teacher had kicked the Appellant during the chair incident

or hit him on any other occasion. The record does not contain any evidence that the school conducted any investigation, however.¹ When Vice Principal Gross-Sutton spoke to Appellant's mother about the chair incident and informed her of her son's allegations, the mother stated that the Appellant had never mentioned anything about it to her. (Tr.40; Motion, Ex. B).

Assistant Principal Gross-Sutton informed the Appellant that he was being proposed for an extended suspension for physical contact with school personnel and provided him with written notice of the extended suspension without stating the number of days. It included notice that a parent conference would be held. (Motion, Ex. C). Appellant began serving that suspension on or about September 22, 2015. (Motion, Ex. F).

On October 2, 2015, Barbara Cooper, Educational Specialist in the Baltimore City Public Schools' (BCPS) Office of Climate and Suspension Services, held a suspension conference with Appellant, his mother and his legal counsel. (Motion, Ex. F). During the conference, Appellant admitted to punching his teacher in the face, but again claimed that it was in response to the teacher kicking him in the ribcage. He again claimed that he had prior confrontations with the teacher, but that he did not disclose the conduct to anyone. *Id.* Ms. Cooper recommended that the extended suspension be upheld. The "Proposed Extended Suspension or Expulsion Conference Report" from the Office of Suspension Services, dated October 5, 2015, stated the disposition of the case as follows:

[D.J.] will continue to be excluded from school due to extended suspension and transferred to a new school. He will receive weekly work packets from his school, #178, until his suspension has ended, effective October 9, 2015. His new school assignment will be start (sic) on October 12, 2015 @ Friendship Preparatory Academy at Calverton E/M School. Disposition Letter will be mailed to the parent.

Id.

By letter dated October 5, 2015, Everett X. Garnett, Director of the BCPS Office of Climate and Suspension Services, informed Appellant's mother that Appellant's suspension was upheld. He advised that he was transferring the Appellant to the Friendship Preparatory Academy at Calverton Elementary/Middle School. (Motion, Ex. G). The letter did not state the end date of the suspension, nor did it explain the reason for the transfer to the new school.

Appellant's mother appealed the extended suspension to the local board. The local board referred the matter to a hearing examiner who conducted a hearing on October 29, 2015. During the hearing, Appellant was represented by counsel who cross-examined the school system's two witnesses, Appellant's math teacher at Excel Academy and the Vice Principal of Excel Academy. The math teacher testified that he did not kick or strike the Appellant at any time. (Tr. 18-19). Counsel for the Appellant did not call the Appellant to testify on his own behalf or call witnesses to support his version of the events.

¹ We are concerned by the school system's apparent lack of formal investigation into the Appellant's claim that the teacher physically struck him. Any such allegations should be taken seriously to determine appropriate next steps, including a potential referral to Child Protective Services.

On December 11, 2015, the hearing examiner issued a decision recommending that the extended suspension be affirmed. (Hearing Examiner Report at 6). He acknowledged that Appellant had initially asserted that he was struck by the teacher during his conference, but that Appellant presented no testimony during the hearing to contradict the testimony of the math teacher who stated that he never struck him. The hearing examiner also acknowledged that there was no evidence of prior incidences of the teacher striking Appellant. The hearing examiner also found that BCPS had provided Appellant with adequate due process when he was given notice of the charges against him and an opportunity to tell his side of the story at the suspension conference on October 2, which took place within 10 school days of the suspension. *Id.* On January 12, 2016, the local board voted to accept that hearing examiner's recommendation to affirm the extended suspension. (Motion, Ex. J).

Thereafter, Appellant filed this appeal to the State Board. On March 7, 2016, while the appeal was pending, Dr. Garnett advised Appellant's mother that the extended suspension had been rescinded and expunged from Appellant's record. He also referenced the fact that Appellant was administratively transferred on October 12, 2015 to the Friendship Preparatory Academy pursuant to Board Policy JFC and Administrative regulation JFC-RA.²

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

Mootness

The local board argues that the appeal should be dismissed for mootness because Appellant's extended suspension has been rescinded and expunged. It is well established that a question is moot when "there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the courts [or agency] can provide." *In Re Michael B.*, 345 Md. 232, 234 (1997); *See also Arnold v. Carroll County Bd. of Educ.*, MSBE Op. No. 99-41 (1999); *Farver v. Carroll County Bd. of Educ.*, MSBE Op. No. 99-42 (1999); *Chappas v. Montgomery County Bd. of Educ.*, 7 Op. MSBE 1068 (1998).

Counsel for the Appellant maintains that the appeal is not moot because the Appellant was not returned to the Excel Academy at Francis M. Wood High School, his educational placement prior to the suspension. Counsel argues, therefore, that there is still a controversy between the parties.

We agree that the controversy between the parties is over the school system's decision to administratively transfer Appellant to the Friendship Preparatory Academy instead of allowing him to remain at Excel Academy. Although the parties argue over the transfer decision, neither the hearing examiner's recommendation nor the local board's decision address this aspect of the

² Administrative transfers are initiated by the school system without the consent of the parent, student or guardian and approved when "unexpected circumstances arise." BCPS Administrative Regulation JFC-RA(I)(L).

case. We, therefore, remand this issue to the local board for it to provide a rationale for the transfer decision.

In its rationale, the local board should address the transfer decision in terms of the school system's transfer policy, as well as how the transfer relates to COMAR 13A.08.01.11(C)(5). COMAR 13A.08.01.11(C)(5) states that a "student suspended or expelled from school shall be allowed to return to school on the same day that the terms and conditions of the suspension or expulsion are met. . . ." In addition, the local board should address the transfer in terms of BCPS Administrative Regulation JKA-RB(V)(I), which states that the CEO has the authority, upon conclusion of the extended suspension or expulsion, to order that "the students be reinstated in their original school, except that a reinstated student shall not be assigned to a school at which any victim(s), who were directly injured as a result of the offense, attend(s) or is employed at, without the written consent of the victim(s) and their parents."

As to the extended suspension, counsel for the Appellant argues various procedural violations. The school system rescinded the extended suspension and expunged it from Appellant's record.³ Thus, the procedural issues surrounding the extended suspension are moot because there is no effective remedy that the State Board can provide on that issue.

Although we find the procedural issues regarding the disciplinary process to be moot, we note that in another BCPS student discipline case decided last month in which the suspension was rescinded, we addressed the procedural violations raised by the appellant because we found it to be in the public interest to address the disciplinary procedures set forth in COMAR 13A.08.01.11 in order to give guidance to BCPS and other school systems. In *K.B. v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Opinion No. 16-12 (2016), this Board explained the process for expulsions as set forth in regulation and explained how BCPS violated that process. We have decided to address the procedural issues raised in this case with regard to an extended suspension for the same reason that we did so in *K.B.*

Notice of Duration of Disciplinary Action

At the outset we point out that BCPS failed to provide the Appellant with notice of the duration of the disciplinary action. Dr. Garnett's October 5, 2015 letter did not specify the time frame for removing Appellant from Excel Academy, referring to it only as a "suspension." (Motion, Ex. G). Nor did it clearly explain that the transfer to Friendship Preparatory Academy was a change in school placement after the extended suspension had ended. Although the October 5, 2015 conference report states the duration of the extended suspension in the disposition section, there is no evidence that BCPS had made this document available prior to counsel receiving the document packet from the school system several days before the hearing. This explains the assumption made by Appellant's counsel that BCPS essentially expelled Appellant from Excel Academy and placed D.J. at Friendship Preparatory Academy for the duration of the expulsion.

This was not the case, however. The record shows that Appellant received an extended

³ We note that the letter from Dr. Garnett rescinding D.J.'s extended suspension and expunging it from his record provides no explanation for doing so. We know of two other cases before this Board in which a similar letter was issued in a student discipline case. We caution BCPS from continuing this practice without explanation because it could be viewed as a tactic to intentionally render a case moot to avoid appellate review of BCPS discipline cases.

suspension of 14 school days and then received an administrative transfer out of his regular school program at Excel Academy. Given that the disciplinary procedures set forth in COMAR 13A.01.08.11 are based on the specific time frame of the penalty imposed (short-term suspension, long-term suspension, extended suspension, expulsion), it is a legal requirement that school systems provide the time frame of the disciplinary action in their notifications to the students and parents so that they can understand the process to be followed in each case and their legal rights.

Findings Needed to Impose an Extended Suspension

Appellant's Counsel argues that BCPS imposed an extended suspension without making the requisite findings required by COMAR. COMAR 13A.08.01.11(B)(3)(a) provides that an extended suspension can only occur if the superintendent or designee has determined that the "student's return to school prior to completion of the suspension period would pose an imminent threat of serious harm to other students and staff" or that the "student has engaged in chronic and extreme disruption of the educational process that has created a substantial barrier to learning for other students across the school day, and other available and appropriate behavioral and disciplinary interventions have been exhausted." BCPS placed Appellant on extended suspension without first making the required findings in violation of the regulation.

Timing of Local Board Decision

Appellant's counsel argues that the local board failed to issue its decision within 45 days from the date it received the appeal as required by COMAR 13A.08.01.11(C)(3)(g). In cases of an extended suspension or expulsion, if an individual files an appeal to the local board, "the local board or its designated committee or hearing officer shall have 45 days from the date the appeal was received to hear the appeal and issue a decision." *Id.* This 45 day timeline applies even if the local board elects to use a hearing examiner. COMAR 13A.08.01.11(C)(3)(g)(ii). Thus, whether or not the local board uses a hearing examiner to issue a recommendation, the local board's final decision must be issued 45 days from the date the appeal is received. If the local board determines that it is unable to hear the appeal and issue a decision within the 45 days due to extraordinary circumstances or unusual complexity of the appeal, the local board may petition the State Superintendent for an extension of the timeline. COMAR 13A.08.01.11(C)(3)(h).

In this case, the hearing examiner issued his recommendation approximately 67 days from the date the appeal was received by the local board. The local board issued its final decision approximately 107 days from the date the appeal was received. The local board did not petition the State Superintendent for an extension of the timeline. These actions failed to comply with the regulation.

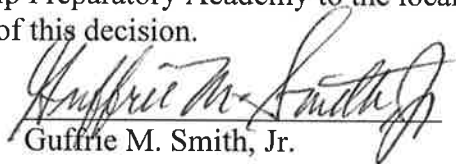
Request to Have BCPS Revise its Discipline Policy

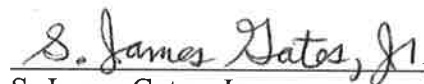
Finally, the Appellant seeks to have the State Board impose requirements on the school system that go beyond the procedural protections afforded by COMAR 13A.08.01.11. Appellant asks that the State Board order the local board to revise its disciplinary policy and regulation to provide students, prior to the local board appeal stage, with an evidentiary hearing before a neutral hearing examiner who will issue a written decision making specific findings under the State standard for extended suspensions and expulsions, during which the student may cross-

examine school administrators and inspect the school system's evidence packet prior to the hearing. (Opposition to Mtn.). When the State Board amended COMAR 13A.08.01.11, it established procedural protections that comply with due process requirements. Individual school systems are free to establish additional procedures, so long as they comply with COMAR. The local board should review its disciplinary policy and administrative regulation to ensure that they comply with COMAR, and also carefully review the manner in which its school system personnel are carrying out those policies. To the extent that the Appellant is trying to force a change in local board policy or regulation, however, the appeals process is not the correct mechanism. As the State Board has previously stated, "this Board will dismiss an appeal that attempts to use a quasi-judicial process to force a change in local policy – which is a quasi-legislative decision." *Regan v. Montgomery County Bd. of Educ.*, MSBE Opinion No. 02-29 (2002).

CONCLUSION


For the reasons stated above, we find that BCPS violated the disciplinary regulation set forth in COMAR 13A.08.01.11. Because BCPS has rescinded and expunged the extended suspension from D.J.'s record, there is no further remedy for D.J. that we can order. We remand the issue of the administrative transfer to Friendship Preparatory Academy to the local board to provide a rationale for the transfer within 15 days of this decision.

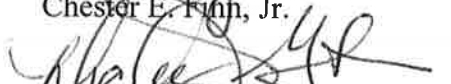

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May 24, 2016