

F.W.,

Appellant

v.

BALTIMORE COUNTY  
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 23-12

## OPINION

### INTRODUCTION

Appellant appeals the January 30, 2023, decision of the Baltimore County Public Schools Chief of Schools to uphold the decision to assign Appellant's child to the eLearning program based on an adjudication for a sexual offense in another state. The Baltimore County Board of Education ("local board") filed a motion to dismiss. Appellant responded, and the local board replied.

### FACTUAL BACKGROUND

The Appellant's child is sixteen years old and enrolled in the 10<sup>th</sup> grade in Baltimore County Public Schools ("BCPS"). At age 13, the student committed a sexual offense in a different state. In July 2021, the juvenile court in that state issued an Adjudication and Disposition Order suspending the disposition of the case for two years on condition that the student "exhibits good behavior and complies with the terms of [the] Order[.]" The student was required to comply with placement at, and successfully complete, a rehabilitative program, as well as not have any unsupervised contact with the victim and continue with therapy upon completion of the rehabilitative program. (Appellant, Ex. A).

Upon completion of the rehabilitative program, the student returned to reside in Baltimore County with the Appellant.<sup>1</sup> In August 2022, the Appellant attempted to enroll the student in their zoned high school. The Appellant spoke with the school Pupil Personnel Worker, who inquired where the student attended ninth grade. When the Appellant provided the name of the rehabilitative program, the Pupil Personnel Worker inquired about the nature of that program. The Pupil Personnel Worker set up a meeting with the Appellant and the student. At the meeting, the student was asked why they attended the rehabilitative program, and the student explained it was because they committed a sexual offense in another state. (Appellant, Ex. B).

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<sup>1</sup> Prior to attending the rehabilitative program, the student was enrolled in the eighth grade at a BCPS middle school. The student attended in-person in the spring of 2021. The family did not report the pending charge to BCPS. (Appellant, Ex. C).

Shortly after the meeting, the high school informed the Appellant by phone that the student would not be allowed to enroll for in-person instruction and, instead, would be assigned to the BCPS eLearning program. The Appellant was told that the student's enrollment would be re-evaluated after the student was adjudicated. Appellant did not receive any of this information in writing, nor was the Appellant provided with an explanation for the student's denial of enrollment for in-person learning. (Appellant, Ex. B).

In late October or early November, the Appellant called the Pupil Personnel Worker to inquire about enrolling the student in Crossroads Center, a BCPS alternative school, instead of the eLearning program. The Appellant was concerned that the student struggled with the eLearning program and was failing all their classes during the first grading period. The Pupil Personnel Worker informed the Appellant the student must remain in the eLearning program. (Appellant, Ex. B).

In November, the Appellant retained legal counsel, who arranged a meeting with the zoned high school's Principal and the Pupil Personnel Worker. At the December 9, 2022, meeting, the Principal informed the Appellant that a BCPS hearing officer made the decision to deny the student's entrance to the high school and re-assigned the student to the eLearning program due to a reportable offense. (Appellant, Ex. B).

On December 16, 2022, counsel for the Appellant sent a letter to BCPS appealing the decision to remove the student to the eLearning program. On January 23, 2023, the BCPS Chief of Schools, Dr. Michael Zarchin, scheduled a meeting with the Appellant and their counsel. The purpose of the meeting was for the Appellant to produce information that demonstrates BCPS' decision to move the student to eLearning was incorrect. (Appellant, Ex. C).

On January 30, 2023, Dr. Zarchin sent a letter to the Appellant's counsel denying the appeal. Dr. Zarchin found that BCPS was not required to "ignore" the student's offense because it occurred in another state. Dr. Zarchin stated that BCPS has a responsibility to "review the matter and consider whether [the student's] in-school presence poses a threat to students or staff or will cause a substantial disruption to the educational process." In accordance with BCPS Rule 5561, he found that based on the limited information at his disposal, he did "did not have sufficient information to determine that [the student] is not a threat to students or staff" (emphasis in original). Dr. Zarchin found it reasonable to assign the student to eLearning. He required the Principal and the Supervisor of eLearning to look into barriers that may be impacting the student's performance. Citing Superintendent Rule 5561 VIII.F, the letter noted that the decision of the Chief of Schools is final. (Appellant, Ex. C).

This appeal followed.

## STANDARD OF REVIEW

In cases where there is no local board decision to review, the Board must consider whether the case is ripe for review and whether it has jurisdiction to review the case. In such cases, we exercise our independent judgment to decide the extent of our power under State education law. *See R.L. v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 17-27 (2017). The State Board shall exercise its independent judgment on the record before it in the

explanation and interpretation of the public school laws and State Board regulations. COMAR 13A.01.05.06E.

## LEGAL ANALYSIS

The Appellant requests this Board overturn Dr. Zarchin's decision to uphold the student's removal to eLearning. The Appellant argues through counsel that BCPS's decision to remove the student from in-person learning is illegal as the decision-making process was in contravention of COMAR 13A.08.01.17(C)(5) and because the reportable offense statute, Md. Code, Educ. §7-303(g)(1), does not apply to the current situation. The Appellant also argues that the decision was arbitrary and unreasonable because it does not comply with State and local policies and because BCPS failed to take an individualized approach to the student's exclusion from in-person learning. In response, the local board filed a motion to dismiss the appeal arguing that the State Board does not have jurisdiction over the matter.

The merits of the dispute have not been briefed and we only consider our jurisdiction over the dispute. Two parts of the Maryland Code, Education Article establish the State Board's quasi-judicial jurisdiction. Under Md. Code, Educ. §4-205(c)(2), the local superintendent decides all controversies and disputes that involve the rules and regulations of the local board, and the proper administration of the local school system. Decisions of the local superintendent may be appealed to the local board of education, and decisions of the local board may be appealed to the State Board. *See* Md. Code, Educ. §4-205(c)(3).

Additionally, the State Board retains a grant of original jurisdiction through Md. Code, Educ. §2-205, which permits the State Board to determine the true intent and meaning of State education law and to decide all cases and controversies that arise under the State Education statute and State Board rules and regulations. *See Sartucci v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-31 (2010). This category of cases applies to State education law, regulations, or a policy that implicates State education law or regulations on a statewide basis. *Id.*; *see also In Re: Board of Education of Howard County v. Renee Foose*, MSBE Op. No. 17-08 (2017) (discussing the State Board's jurisdiction). This is especially true where there is no useful purpose to be served by requiring a lower level administrator or agency to decide a question of statewide applicability. *See Bd. of Educ. for Dorchester Cnty. v. Hubbard*, 305 Md. 774, 789 (1986) (quoting *Board of Education of Garrett County v. Lendo*, 295 Md. 55, 65–66 (1982)).

The local board provides a number of arguments in support of their contention that the State Board lacks jurisdiction over this case under either title of the Education Article, including that the Appellant failed to exhaust their administrative remedies by not appealing Dr. Zarchin's decision to the local board of education for review; that no unusual circumstances necessitate the State Board's exercise of original jurisdiction; and that the appeal fails to raise a "novel" question related to the State Board's reportable offense regulation. The Appellant in response argues that they exhausted the administrative remedies available to them under BCPS Rule 5561, and that the current policy and practice of BCPS will evade State review and continue to violate the Maryland reportable offense law and due process.

We note absent from either party's filings is mention of the recent changes to Maryland's reportable offense law. During the 2022 legislative session, the General Assembly passed House

Bill 146 - *Education - Reportable Offenses, Student Discipline, and School Disruptions - Presence of an Attorney and Reporting* (2022 Md. Laws, Chap. 742). Beginning July 1, 2022, statutory changes went into effect, including amendment of Md. Code, Educ. §7-303 (the statutory section governing reportable offenses) to require the local school system to invite the student’s attorney to participate in the conference between the family and school personnel, as well as amendment of Md. Code, Educ. §7-305 (the statutory section governing suspension and expulsion procedures). Specifically, Educ. §7-305(h) requires, “[t]he provisions of [the discipline statute] apply to...any removal or exclusion of a student from the student’s regular school program arising out of a reportable offense[.]”

These amendments to the Education Article represent a marked change in the procedural requirements associated with a reportable offense – a change that the State Board has not yet had an opportunity to consider. While the local board makes compelling jurisdictional arguments, we cannot ignore the fact that this case implicates interpretation of new State education law. The removal of a student from their regular school program is a matter of the highest importance, and the sound interpretation and implementation of the reportable offense law impacts every local school system. Accordingly, we choose to exercise our authority under Md. Code, Educ. §2-205 and find we have jurisdiction over the case at hand as it involves a question of State law that has not yet been considered by the State Board.

CONCLUSION

We deny the local board’s motion to dismiss as the State Board retains original jurisdiction over the present matter. We direct the parties to prepare filings to include the applicability of Md. Code, Educ. §7-303 and §7-305 to the case. The briefing schedule is as follows:

- The Appellant’s brief is due June 9, 2023;
- The local board’s response is due June 23, 2023;
- The Appellant’s response is due June 30, 2023; and
- The local board’s reply is due July 10, 2023.

Signatures on File:

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Clarence C. Crawford  
President

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Susan J. Getty  
Vice-President

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Shawn D. Bartley

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Chuen-Chin Bianca Chang

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Charles R. Dashiell, Jr.

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Jean Halle

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Rachel McCusker

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Joshua Michael

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Lori Morrow

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Warner I. Sumpter

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Holly Wilcox

Absent:  
Gail H. Bates  
Joan Mele-McCarthy

May 23, 2023