

L.W.,

Appellant

v.

PRINCE GEORGE'S
COUNTY BOARD OF
EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 23-13

OPINION

INTRODUCTION

Appellant appeals the decision of the Prince George's County Board of Education ("local board") affirming the involuntary and disciplinary transfer of her daughter, Student A, to an alternative school through the remainder of the 2022-2023 school year following a 20-day suspension. The local board responded. Appellant responded and the local board replied.

FACTUAL BACKGROUND

During the 2022-2023 school year, Student A attended the eighth grade at [REDACTED] Middle School ([REDACTED]), part of the Prince George's County Public Schools ("PGCPS"). On the morning of December 6, 2022, the [REDACTED] assistant principal met with Student A and Student B to resolve an issue between the two students regarding an incident that happened over the weekend. Around 45 minutes later, school security notified the assistant principal that Student A and Student C attacked Student B. There are several cell phone videos of the group fight that occurred. The video of the incident reflects Student A and Student C relentlessly punching Student B on her head and body, pulling her hair and stomping on her chest, while she lay on the floor attempting to defend herself. (Local Bd. Response, Ex. C). Student B sustained an injury to her head requiring medical attention. (Local Bd. Response, Ex 1. pp. 15-16). Prior to the December 6, 2022, incident, Student A did not have any disciplinary infractions during the 2022-2023 school year.

On December 6, 2022, school administration at [REDACTED] requested that Student A be expelled from school for "fighting (group)/physical attack." (Local Bd. Response, Ex. 1 p. 3). Student A is a student with an Individualized Education Program ("IEP"). On December 15, 2022, a manifestation determination meeting was convened for Student A. The IEP team for Student A determined that her behavior was not a manifestation of her learning disability. (Local Bd. Response, Ex. 4). On December 19, 2022, PGCPS held an expulsion conference that included Student A, the Appellant, and the [REDACTED] assistant principal. Student A was unable to provide any reasonable explanation for her conduct, but she argued that she had been triggered because students had been making comments about her deceased father.

On January 10, 2023, the PGCPS hearing officer issued a decision denying the request for the expulsion but granting an extended suspension of 20 days “based upon the evidence presented at the expulsion conference and the circumstances of this case.” (Local Bd. Response, Ex. 2). The decision states that the infraction was a “physical attack on another student; group fight causing a material disruption.” *Id.* The decision includes an involuntary transfer of Student A to the Non-Traditional Middle School Campus (with transportation) through the end of the 2022-2023 academic year. The decision informs Student A that she could begin attending the alternative school on January 13, 2023, and return to the boundary school on the first day of the 2023-2024 school year. *Id.*

On January 20, 2023, Appellant through her counsel filed her appeal of the transfer to the Non-Traditional Middle School to the local board. The Appellant waived her right to an administrative hearing and requested oral argument before the local board. On March 2, 2023, the local board virtually held oral argument.

On March 14, 2023, the local board denied Appellant’s appeal on behalf of Student A and ordered that Student A continue to receive educational services at the Non-Traditional Middle School Campus until the end of the 2022-2023 academic year. (Local Bd. Response, Ex. 6).

This appeal followed.

STANDARD OF REVIEW

In student suspension and expulsion cases, the decision of the local board is considered final. COMAR 13A.01.05.06(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.01.05.06(G)(2). 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.01.05.06(G)(3). The Appellant has the burden of proof. COMAR 13A.01.05.06(G)(4).

LEGAL ANALYSIS

Involuntary Transfer

Appellant argues that the local board erred as a matter of law when it upheld the Superintendent’s Designee’s decision to involuntarily transfer Student A to an alternative school for disciplinary reasons through the remainder of the year for 122 days following her 20-day suspension. The Appellant argues that the expulsion was illegal under local board policy and our regulations because the Designee denied the request for expulsion and found no imminent threat of serious harm but transferred the Appellant to an alternative education program where she would receive educational services during an expulsion. We agree with the Appellant.

PGCPS Administrative Procedure 5115(V)(D) provides:

Educational Placement/Services

1. PGCPS has the authority and reserves the right to reassign a student to a different school or to an alternative school for disciplinary reasons.
2. If a student is assigned to an alternative school for disciplinary reasons, it will be considered an extended suspension or expulsion depending on the duration.
3. If a student is assigned to a different school or to an alternative school for safety reasons or upon parental request, it will not be considered an extended suspension or expulsion, but it will be deemed an administrative transfer.

(Local Bd. Response, Ex. 7). The local board policy distinguishes between transfers based on safety reasons (an administrative transfer) versus disciplinary reasons. Appellant's involuntary transfer to the alternative school was for disciplinary reasons and under our regulations and the local board policy it must be considered an expulsion because it is for a period of longer than 45 days.¹

We have previously opined that while a school system may use an administrative transfer for safety reasons following a period of suspension or expulsion, we have been clear that "the transfer cannot be used as a disciplinary act." *D.B. and K.G. Baltimore County Bd. of Educ.*, MSBE Op. No. 19-26 (2019); *see also Shantell D. v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 19-02 (2019) (a school system cannot use an involuntary transfer as a substitute for discipline). The record before us establishes that the involuntary transfer was for disciplinary reasons. Although PGCPS states that the transfer is an administrative transfer; nowhere in the record does PGCPS reference safety concerns about returning Student A to her regular school. Rather, the local board citing to its student discipline policy states that the transfer of Student A was for disciplinary reasons:

Regarding educational placement, PGCPS AP 5115 (V)(D)(1) states in part: 'PGCPS has the authority and reserves the right to reassign a student to a different school or to an alternative school for disciplinary reasons.'

(Local Bd. Reply at p. 3).

Determination required for Expulsion.

COMAR 13A.08.01.11(B)(2) provides that an expulsion may occur under the following circumstances:

¹ See COMAR 13A.08.01.11(B)(2) defines expulsion as "the exclusion of the student from the student's regular school program for 45 school days or longer." PGCPS AP 5115(III)(B) defines expulsion as "a student's removal from school for 45 days or more."

(a) The superintendent or designated representative has determined that the student's return to school prior to the completion of the expulsion period would pose an imminent threat of serious harm to other students or staff;

(b) The superintendent or designated representative limits the duration of the exclusion to the shortest period practicable; and

(c) The school system provides the excluded student with comparable educational services and appropriate behavioral support services to promote successful return to the student's regular academic program.

PGCPS AP 5115 (III)(A) parallels this requirement and provides that an expulsion may only be used "following a determination that the student's return to school prior to the completion of the expulsion period would pose an imminent threat of serious harm to other students or staff." *See* Local Bd. Response, Ex. 7.

Our previous opinions are clear that the imminent threat of serious harm determination necessary to impose an expulsion must be made explicitly and cannot simply be implied by a recitation of the allegations. *See R.P. v. Baltimore County Bd. of Educ.*, MSBE Op. No.16-18, p.5 (2016) and *D.B. and K.G. Baltimore County Bd. of Educ.*, MSBE Op. No. 19-26, p. 3 (2019). Here the Designee and the local board failed to make any such determination. Rather, the Designee imposed the expulsion based upon a determination of "physical attack on another student; group fight causing a material disruption." The local board fails to mention any reasoning whatsoever to support its denial of Appellant's local board appeal. The record before us falls far short of any basis to impose an expulsion compliant with our regulations and the local board policy. Accordingly, we reverse the local board decision affirming the involuntary and disciplinary transfer to the Non-Traditional Middle School. *See* Appeal at p.5.

The Student's Return to ██████████ Regular School Program

As part of the remedy for the failure to comply with the regulation, the Appellant requests an order for PGCPS to return Student A to ██████████. The Appellant argues that because our regulations refer to "the student's regular academic program" in the definition of expulsion, that the Appellant must be returned to ██████████ from the alternative middle school. *See* COMAR 13A.08.01.11(B)(2). We do not agree with such an interpretation. When we promulgated the regulations containing the language of the "the student's regular academic program" we explicitly stated that this language does not create "a new right for a disciplined student to attend a particular school – a right not possessed by any other student." *See* [Transmittal Memorandum to the State Board of Education](#), January 28, 2014, *Adoption of COMAR 13A.08.01.11*. *See also Bernstein v. Bd. of Educ. of Prince George's County*, 245 Md. 464, 472 (1967) (It is well established, in Maryland, that absent a claim of deprivation of equal educational opportunity or unconstitutional discrimination, there is no right or privilege to attend a particular school); *Carolyn B. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 15-20 (2015).

We were clear that we did not want our regulations to be interpreted in a way that could result in the need to move the victim of assault to another school because a perpetrator would have the right to return to the school from which she was expelled. Specifically, we stated:

It is the belief of the State Board of Education that school discipline regulations are built, in part, on local control and encourage discretion and reasonableness in imposing discipline. Local control, discretion, and reasonableness apply to the decision about returning the student to his/her regular academic program.

To this Board, it would violate the rule of reason for these regulations to be interpreted to require any school system to return a student to a particular school or classroom if the superintendent or principal believes that the decision raises serious safety concerns or has serious impacts on school security.

Id. at p.8.

We recognize that the Appellant was the aggressor in a violent group fight at [REDACTED] and her 20-day suspension still stands. We also recognize it has been well over 20 days since her suspension ended. However, the record fails to discuss any safety concerns about returning the Appellant to [REDACTED]. It is unclear to us if Student B, the victim of the attack, remains enrolled at [REDACTED]. If the local board has serious safety concerns about returning the Appellant to [REDACTED], the local board may evaluate those safety (and non-disciplinary) concerns and transfer the Appellant to an agreed upon school for the remainder of the academic year. *See e.g., M.S. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 18-09 (2018) (ordering PGCPS to rescind M.S.'s expulsion and allow him to attend an agreed upon school placement outside of his boundary school).

CONCLUSION

For all the reasons set forth herein, we find that PGCPS violated the disciplinary regulation set forth in COMAR 13A.08.01.11 and its disciplinary policy set forth in PGCPS AP 5115. We reverse the decision of the local board affirming the involuntary and disciplinary transfer to the Non-Traditional Middle School.

As a remedy for these violations, we direct PGCPS:

- (1) To meet with Student A and her mother to establish an agreed upon plan for compensatory services, placement alternatives, credit recovery, etc. if appropriate.
- (2) To share this decision with the administrators at [REDACTED] as well as the PGCPS office of appeals and all school principals with a cover memo stating the distinction between administrative and disciplinary transfers and informing all that a transfer for disciplinary reasons must meet the standards required for extended suspension or expulsion pursuant to COMAR 13A.08.01.11.
- (3) To report to this Board on or before June 22, 2023, on the accomplishment of each of the above-described actions.

Signatures on File:

Clarence C. Crawford
President

Susan J. Getty
Vice-President

Chuen-Chin Bianca Chang

Charles R. Dashiell, Jr.

Jean Halle

Rachel McCusker

Joshua Michael

Lori Morrow

Warner I. Sumpter

Holly Wilcox

Abstained:
Shawn D. Bartley

Absent:
Gail H. Bates
Joan Mele-McCarthy

May 23, 2023