

M.A.H.,

Appellant

v.

PRINCE GEORGE’S
COUNTY BOARD OF
EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 23-27

OPINION

INTRODUCTION

Appellant appeals the July 17, 2023, decision of the Prince George’s County Board of Education (“local board”) to modify her student’s 20-day suspension to a 10-day suspension. Appellant is seeking to have the suspension rescinded and expunged from her child’s record. The local board filed a response. Appellant responded, and the local board replied.

FACTUAL BACKGROUND

Appellant is the parent of the Student enrolled in the 7th grade at a Prince George’s County Middle School during the 2022-2023 school year. The Student receives special education services under the Individuals with Disabilities Education Act (“IDEA”). On January 13, 2023, the Student brought two Gel Blaster guns (“Blasters”) to school in their backpack to play with after school with a friend. Blasters are green and white guns that shoot water-based pellets in an automatic fashion, sounding like a real weapon. (PGCPS 21, 34). The Student gave one of the Blasters to Classmate A, who placed it in their backpack. Later that day, Classmate B, seeing the Blaster in Classmate A’s backpack, retrieved it and fired it in the classroom. No injuries were reported. (PGCPS 11, 22).

The school confiscated both Blasters, and the Student was interviewed by the Assistant Principal. The Student was very honest and remorseful. They indicated that they knew the Blasters were not allowed on school property, which is why they hid them in their backpack. The Assistant Principal informed the Student that this was a violation of the student code of conduct, and she would call their parent for a meeting. (PGCPS 33).

On January 17th, the day after a school holiday, Appellant went to the school. At a conference with the Assistant Principal, security, the Guidance Counselor, and a bilingual staff member serving as an interpreter, the school detailed the facts of the incident and explained they would be putting together discipline paperwork. (PGCPS 34). Under the school system’s Student Rights & Responsibilities Handbook, bringing a loaded and operable weapon onto school property can be a level 5 infraction. (PGCPS 36). Ultimately, the school recommended the

student for expulsion based on “possession of a weapon/firearm (2) on school property, distribution of weapon on school property.” (PGCPS 22).

On January 23, 2023, the Student’s Individualized Education Program (IEP) team met to conduct a manifestation determination meeting, consistent with the IDEA. The IEP team determined that the behavior was not a manifestation of the Student’s disability. Therefore, the school proceeded with the expulsion request. (PGCPS 36).

On January 31, 2023, the local CEO’s Designee conducted a virtual expulsion conference attended by the Appellant, the Student, Assistant Principal, and an interpreter. In a letter dated February 6, 2023, the Designee acknowledged that the student had two character references from the community; no history of prior disciplinary referrals, suspensions, or expulsion; and attended school for all but 2.5 days that school year. Based on the circumstances of the case and the evidence presented, the Designee denied the expulsion, instead instituting a 20-day suspension (i.e., an extended suspension) with a return to school date of February 15, 2023. (PGCPS 10-11).

Appellant appealed the Designee’s decision to the local board, and a virtual hearing was held on March 22 and 24, 2023 by a Hearing Examiner. Appellant was represented by a non-attorney advocate, and legal counsel represented the local school system. On May 9, 2023, the Hearing Examiner issued a “Findings of Fact, Conclusions of Law and Recommendation” memo to the local board. The Hearing Examiner found that the Designee failed to make a determination as to whether the Student’s return to school prior to the completion of the suspension period would pose an imminent threat of serious harm to other students and staff, consistent with COMAR 13A.08.01.11B(3). After reviewing prior State Board decisions on the imminent threat of serious harm analysis, the Hearing Examiner found there was no testimony to support that the Student posed an ongoing, continuing, future threat if they were to return to school after the initial 10-day suspension. The Hearing Examiner recommended that the local board reverse, rescind, and expunge the extended suspension of 20 days, and order that the Student’s record reflect that they were only suspended for a period of 10 days. (PGCPS 30-51).

On July 17, 2023, after reviewing the hearing transcripts and exhibits, the local board issued an order adopting the recommendation of the Hearing Examiner.¹ The Student’s 20-day suspension was reversed, rescinded, and expunged, and the Student’s record was corrected to reflect a 10-day suspension. (PGCPS 19).

This appeal followed.

STANDARD OF REVIEW

In student suspension and expulsion cases, the decision of the local board is considered final. COMAR 13A.01.05.06G(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,

¹ Pursuant to COMAR 13A.08.01.11C(4)(g), the local board shall have 45 days from the date the appeal was received to hear the appeal and issue a decision. We note that in this case the local board’s final decision was issued well past the 45-day timeline. This issue was not raised by the Appellant, and as the Student was returned to school before the timeline passed, the Student was not prejudiced by this delay. However, we take this opportunity to reiterate the importance of the 45-day timeline in ensuring a fair and timely resolution to student discipline matters.

policies, or procedures; violated the student’s due process rights; or that the local board acted in an unconstitutional manner. COMAR 13A.01.05.06G(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.01.05.06G(3).

LEGAL ANALYSIS

Appellant, through a non-attorney advocate, requests the State Board reverse and rescind the local board decision, expunging all disciplinary records. In the alternative, Appellant requests that “all references to a weapon/firearm/non-firearm by expunged from [the Student’s] educational records and be replaced with only a Response Level 1 to a Response Level 3 intervention, with no references to a weapon of any kind.” (Appeal 5). Appellant argues that the local board adopted the Hearing Examiner’s recommendation of reducing the suspension to 10 days without any justification and that the Student did not present a threat to the school. Appellant further takes issue with disciplinary documentation that states the Student brought a “weapon/firearm” to school. The local board rejects Appellant’s claim that it mischaracterized the Gel Blaster, and further states Appellant fails to allege a basis to overturn its decision under State regulations.

Unauthorized Practice of Law

As a preliminary matter, we address the issue raised by the local board that Appellant is inappropriately represented by a non-attorney advocate. Under COMAR 13A.01.05.04D(1), a party may be accompanied, represented, and advised by counsel at all stages of an appeal. Appellant’s advocate argues that this language does not preclude her from representing Appellant. This interpretation of law is inconsistent with prior decisions of the State Board. The appeal procedures do not allow for representation by third parties other than an attorney. *See Mr. and Mrs. Vernon C. v. Prince George’s County Bd. of Educ.*, OR 22-07 (2022). However, in view of the totality of the circumstances of this case – specifically that the filings are complete, and Appellant is a non-native speaker who presumably requires some accommodations to access her appeal rights – we will not prejudice the Appellant by dismissing her appeal.

Standard of Review

Appellant states that the State Board may apply the standard of review under COMAR 13A.01.05.06A (i.e., considering whether a local board decision is arbitrary, unreasonable, or illegal), to the case at hand. However, the State Board has adopted a more specific standard of review for suspension and expulsion cases, even those involving appeals of suspensions for ten days or less. *See Michael D. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 20-07 (2020). Under COMAR 13A.01.05.06G(2), the State Board only reviews the merits of the suspension 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.

Imminent Threat of Serious Harm

Appellant argues that the State Board should overturn the local board's decision because the CEO's Designee made an error by not making a finding that the student presented a threat to the school when he issued the 20-day suspension. However, the local board's decision to reverse, rescind, and expunge the 20-day suspension and order a 10-day suspension supersedes the Designee's decision. Therefore, only the decision of the local board is before us. We review that decision under the aforementioned standard of review.

Under COMAR 13A.08.01.11B(5), a "long-term suspension" means the removal of a student from school for a time period between 4 and 10 school days for disciplinary reasons by the principal. There is no heightened standard for removal necessary for a school system to implement a long-term suspension, such as a finding of imminent threat of serious harm. Therefore, the fact that the Hearing Examiner found no evidence that the Student presented an imminent threat of serious harm does not invalidate the long-term suspension.

Appellant further argues that there was no justification for imposing the 10-day suspension. Appellant fails to provide any substantive argument or evidence to support that the long-term suspension is illegal. In contrast, the local board contends that that 10-day suspension is consistent with the Student Rights & Responsibilities Handbook, which provides a long-term suspension is appropriate for behavior "that significantly disrupts the education environment in the school...and affects the safety of others." (PGPCS, Ex. 3). While Appellant may feel the long-term suspension is unfair, that is not the standard of review the State Board must apply in a suspension case. The State Board has previously held that unsupported claims that the local board failed to follow local policy and that a punishment is too severe does not make a suspension illegal. *See M.S. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 20-04 (2020). Therefore, we decline to overturn the local board's decision on this basis.

Non-firearm Gun

Appellant also takes issue with documentation stating the student brought a "weapon/firearm/non-firearm" on school property. The Student received the suspension for "possession of gun (non-firearm) on school property." (PGCPS 10). Under the Student Rights & Responsibilities Handbook, a "non-firearm gun" includes pellet guns, BB guns, and airsoft guns. As there is no dispute that the Blaster fires water-based pellets, it is clear the Blaster meets the definition of a non-firearm gun. We see no reason to overturn the local board's decision based on this language.

Appellant also expresses concern about the impact of this language and the disciplinary records on the Student's educational experience and future. We note that it does not appear that the Appellant raised this issue before the local board; therefore, the local board did not have the opportunity to address this argument. As such, the State Board will not hear this argument now.

CONCLUSION

For the foregoing reasons, we affirm the decision of the local board to rescind, reverse, and expunge the 20-day suspension and order a 10-day suspension.

Signatures on File:

Clarence C. Crawford
President

Joshua L. Michael
Vice-President

Shawn D. Bartley

Chuen-Chin Bianca Chang

Susan J. Getty

Nick Greer

Irma E. Johnson

Rachel McCusker

Samir Paul

Holly Wilcox

Abstained:
Monica Goldson
Joan Mele-McCarthy

December 5, 2023