

T.G.,

Appellant

v.

PRINCE GEORGE'S
COUNTY BOARD OF
EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 18-10

OPINION

INTRODUCTION

T.G. (Appellant) appeals his expulsion from Green Valley Academy. The Prince George's County Board of Education (local board) filed a Motion to Dismiss. Appellant responded and the local board replied.

FACTUAL BACKGROUND

During the 2016-17 school year, T.G. attended the ninth grade at Surratsville High School, part of Prince George's County Public Schools (PGCPS). Over the course of the year, he received multiple disciplinary referrals and suspensions from school. In April 2017, the CEO's designee expelled T.G. for possession of a handgun. The designee determined that based on T.G.'s actions and his prior conduct that his return to school posed an imminent threat of serious harm to the school community. T.G. was expelled beginning on April 3, 2017 with readmission to begin in January 2018. In the interim, school officials assigned T.G. to Green Valley Academy, an alternative middle and high school. T.G. did not appeal this expulsion to the local board.¹ (Appeal; Motion, April 5, 2017 letter).

On September 20, 2017, T.G. became involved in a group fight that resulted in serious bodily injuries and led to the discipline that he now appeals. According to T.G., the fight began between other students on a school bus and continued outside after the bus arrived at school. As school staff attempted to intervene to stop the fight, T.G. claimed that another student swung at him and that he and the other student then began to fight. It is not clear from the record whether T.G. caused any serious injuries during the fight. (Appeal; Motion, October 3, 2017 letter).

On September 25, 2017, T.G.'s principal recommended him for expulsion. On October 2, 2017, PGCPS held a conference that included T.G., his guardian (R.B.), and the Green Valley Academy principal. On October 3, 2017, the CEO's designee and the PGCPS chief hearing

¹ The parties dispute whether T.G.'s guardian filed an appeal with the local board. Although T.G.'s counsel argues that she attempted to do so, the local board presented an affidavit from the CEO's chief hearing officer explaining that T.G.'s guardian told him she decided not to pursue an appeal. Regardless, this earlier expulsion is not part of the current appeal. (Appeal; Motion, Price Affidavit).

officer issued a decision denying the request for expulsion, but granting an extended suspension of approximately seven school days. The decision included an administrative transfer to Annapolis Road Academy and instructed T.G. that he could begin attending the new school immediately as of the date of the decision. The decision stated that T.G.'s guardian should contact the principal of Annapolis Road Academy to schedule a conference prior to his return to school. The decision informed T.G. that he had 10 days to appeal the extended suspension decision to the local board. Neither T.G. nor his guardian appealed the decision. (Motion, Oct. 3, 2017 letter).

On October 9, 2017, T.G.'s guardian attempted to enroll him at Annapolis Road Academy. In her affidavit, T.G.'s guardian states that school officials were rude, told T.G. that they did not have to enroll him, and asked him why he should be allowed to attend the school. T.G.'s guardian decided to leave the school with T.G. after the assistant principal left the room to contact T.G.'s former school and then instructed a staff member over a walkie talkie to stop the registration process. It is unclear from the record whether Annapolis Road formally denied T.G. admission to the school. Whether the school intended it to be or not, though, T.G.'s guardian viewed this as a denial of admission. (Appeal, R.B. affidavit).

A week later, T.G.'s guardian contacted the CEO's designee to inform her that T.G. had been denied admission to Annapolis Road, but she did not receive a response. In the meantime, she requested school work packets from T.G.'s former school, Green Valley. T.G.'s guardian received work packets, upon her request, but she found that T.G. had difficulty completing the packets without receiving instruction from a teacher. (Appeal, R.B. affidavit).

On November 2, 2017, T.G.'s guardian contacted an attorney with Disability Rights Maryland. The attorney emailed counsel for PGCPSS, who put her in touch with Aaron Price, the CEO's chief hearing officer. Mr. Price told the attorney he would investigate the matter and a few days later told the attorney that T.G. and his family should attempt to enroll again at Annapolis Road. The family did not attempt to re-enroll because T.G.'s guardian informed the attorney that she did not have transportation to the school. On November 30, the attorney attempted to follow-up with Mr. Price, but instead was transferred to the CEO's designee, Dr. Rosemary Ilogu. During the conversation, Dr. Ilogu allegedly stated that the family should "swallow its pride" and return to Annapolis Road to enroll. Dr. Ilogu also indicated that she would reissue the decision and transform it into an expulsion so that T.G. could receive transportation to Annapolis Road. Alternatively, Dr. Ilogu promised to contact Green Valley to see if T.G. could return there. On December 7, 2017, Dr. Ilogu told the attorney that she was urging Green Valley to accept T.G., but was informed that the victim of the fight was still at the school. Around this time, T.G.'s attorney left Disability Rights Maryland and referred the case to the Maryland Office of the Public Defender.² (Appeal, Nicole Joseph affidavit).

On December 8, 2017, the CEO's designee and the chief hearing officer filed a "reconsideration" of the earlier decision. The revised decision found that T.G. posed an imminent threat of serious harm to the school community. In the revised decision, the extended suspension was altered to become an expulsion, and the expulsion was backdated to begin on October 2, 2017. The decision informed T.G. he could enroll at Annapolis Road Academy as of December 11, 2017 and could return to his "boundary school" in September 2018. The revised

² The record is unclear as to when the Office of the Public Defender began representing T.G., but the office currently represents him in this appeal.

decision informed T.G. that he had 10 days to appeal the decision to the local board. (Motion, December 8, 2017 letter).

Neither T.G., his guardian, or his legal counsel appealed the decision to the local board. Instead, T.G., through counsel, filed this appeal directly to the State Board on January 9, 2018. Prior to filing the appeal, on January 6, 2018, T.G.'s guardian attempted to enroll him at Annapolis Road and spoke with the school's vice principal. The vice principal reportedly informed T.G.'s guardian that transportation is not provided if a student is expelled and that the school would soon be moving to a new location that is further from T.G.'s home address. T.G. was not enrolled at Annapolis Road Academy or in any other PGCPs school. (Appeal).

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). There is, however, no local board decision to review in this case. Accordingly, we consider whether the case is ripe for review and whether this Board has jurisdiction to review the case at all. 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).

LEGAL ANALYSIS

Ordinarily, a school discipline case reaches the State Board of Education following a final decision from a local board of education. T.G. never appealed his expulsion to the local board and the local board therefore never issued a final decision. The local board argues that the appeal should be dismissed on that basis, while T.G. maintains that jurisdiction exists.

In *R.L. v. Baltimore City Board of School Commissioners*, MSBE Op. No. 17-27 (2017), we discussed at length the scope of our jurisdiction to consider student discipline matters. Two parts of the Maryland Code, Education Article establish the State Board's quasi-judicial jurisdiction. They are Education Article §4-205 and §2-205. Section 4-205 permits an individual to appeal a local superintendent's decision to the local board of education and to file a subsequent appeal to the State Board of Education. Separately, §2-205(e) permits the State Board to determine the true intent and meaning of the state education law and to decide all cases and controversies that arise under the State education statute and State Board rules and regulations.

In *R.L.*, we explained why we ordinarily require a local board decision in order to review a student suspension or expulsion:

In the usual school discipline case, we would decline to exercise original jurisdiction because the merits of a school discipline decision should be appealed to the local board for decision before any review is sought at the State Board level. That is particularly true because our standard of review in school discipline cases limits the extent to which this Board can consider the merits of the disciplinary decision. Specifically, 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). Thus, it is important that the local board review carefully the merits of each school discipline case before it reaches this Board.

Id.

T.G. argues that COMAR 13A.01.05.05(G)(2) actually permits him to bypass the local board of education because it discusses the State Board's power to review allegations of violations of State or local law, due process, and other claims of unconstitutional action. T.G. ignores, however, that the regulation discusses this power in the context of reviewing a local board decision. Similarly, T.G. maintains that COMAR 13A.01.05.01(B)(9) allows for individuals to appeal decisions from any "individual or entity" in a school system. This COMAR provision does not negate the appeals process created by § 4-205, but merely recognizes that in some situations, such as a request for a declaratory ruling, the local board may not have issued the final decision in a matter.

Alternatively, T.G. argues that a series of recent discipline cases issued by the State Board provides another independent ground for direct review of a suspension or expulsion without a local board decision. In 2016 and 2017, we issued several decisions in student discipline cases that arose out of unusual circumstances. In *K.B. v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 16-12 (2016), a student appealed her suspension directly to the State Board after the CEO and local board failed to issue a timely decision in her case. While the appeal was pending, the school system rescinded the suspension and argued the appeal was moot. *Id.* We decided to address the appeal because it was the first one involving new disciplinary regulations adopted by the State Board and we believed it was "in the public interest" to address the student's claims because they would otherwise be unreviewable. *Id.*

During that same year, we considered two cases in which student discipline was "rescinded and expunged" while an appeal of a local board's decision was pending. See *R.P. v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 16-18 (2016); *D.J. v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 16-17 (2016). In those decisions, we found that the school system violated the disciplinary regulations and we remanded the cases in order for the local board to provide a rationale for the "administrative transfers" that accompanied the "rescinded and expunged" discipline decisions.

In 2017, we issued a decision in another case in which the school system argued that an involuntary administrative transfer did not constitute a student discipline decision. See *R.L. v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 17-27 (2017). Although we concluded that the student could have appealed the transfer to the CEO, we exercised our original jurisdiction to review the case given "recently identified problems in the BCPSS disciplinary process and the use of convoluted procedures of transfers or expungements to obfuscate avenues of review of disciplinary decisions." *Id.* In another 2017 case, we remanded an appeal to the local board after concluding that the school system failed to docket the appeal and then created a "confusing

scenario” for the Appellant to navigate. *A.M. v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 17-05 (2017).

In sum, we have occasionally in unusual circumstances addressed appeals of student discipline without a local board decision. Those include where the local board has rescinded a decision prior to our review, yet serious allegations remain concerning violations of the disciplinary regulations or where a superintendent and local board have failed entirely to issue a decision. These unusual circumstances do not, however, mean that every student discipline case may now be appealed directly to the State Board. Indeed, in *R.L.*, we stated that in “the usual school discipline case, we would decline to exercise original jurisdiction because the merits of a school discipline decision should be appealed to the local board for decision before any review is sought at the State Board level.” MSBE Op. No. 17-27. Here, the CEO’s designee issued an initial decision and a “reconsideration.” Both decisions explained how they could be appealed to the local board of education. Although T.G. has alleged violations of the student disciplinary regulations, he has not offered any unusual circumstances that would explain his failure to appeal to the local board and we find that none exist on the record before us. Accordingly, we decline to review T.G.’s expulsion.

T.G. has, however, raised several other issues that we shall address separately.³

Enrollment in school

This is the second appeal we have encountered in which a student assigned to Annapolis Road Academy as part of a discipline decision has had difficulty enrolling in the school. *See M.S. v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 18-09 (2018). It appears that in spite of letters from the school system assigning students to this school, they continue to run into obstacles that prevent a speedy enrollment. It is not clear why a letter from the PGCPSS central office placing a student in an alternative school is not enough to ensure enrollment. This is a serious problem, as we have long emphasized the dire consequences that can occur the longer a student is excluded from school. *See id.* (citing an increased risk of dropping out of school, related diminished earning capacity, and increased likelihood of ending up in adult prison). Equally disturbing is the suggestion in the record that PGCPSS would enhance a student’s punishment to better facilitate a transfer to another school or to ensure that a student receives transportation to school. That does not meet the letter of our regulations, nor their spirit.

T.G. has been expelled and has not attended school apparently since October 2017. COMAR 13A.08.01.11F requires that each local board “institute education services” for suspended or expelled students to keep them on track with classroom work. This means that “each student . . . who is not placed in an alternative education program shall receive daily classwork and assignments from each teacher, which shall be reviewed and corrected by teachers on a weekly basis and returned to the student.” *Id.* In addition, the regulation requires that each

³ One such claim is that PGCPSS failed to properly identify T.G. as a candidate for special education services and declined to conduct evaluations to see if he is eligible for special education. T.G. asks that we order PGCPSS to conduct an IEP eligibility meeting. We have long declined to extend our jurisdiction to resolve special education disputes because there are other existing forums available. *See Semere D. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 17-09 (citing cases). These specialized forums exist through IDEA to resolve these complex and fact-intensive matters in a timely fashion. PGCPSS should work with T.G.’s guardian to address her concerns, and she should use these existing avenues if she is dissatisfied with the outcome.

principal “shall assign a school staff person to be the liaison between the teachers and the various students on out-of-school suspension or expulsion and to communicate weekly about classwork assignments and school-related issues by phone or email” *Id.*

“Placing” a student in an alternative education program means more than simply assigning a student to a particular school more than 20 miles from his home, then shrugging when he has no means of transporting himself there. When alerted to T.G.’s enrollment difficulties and transportation issues at Annapolis Road Academy, PGCPS should have immediately assigned him an educational liaison who could coordinate his school work while the school system attempted to address the issue. That did not happen here. Although there are many unanswered questions in the record, what is clear is that T.G. never enrolled in Annapolis Road, or any other school, despite efforts from his guardian and his attorneys to return him to the classroom. In *R.L.*, we observed that there was “no indication in the record that the school made any effort to find the student, contact his mother, or in any way seek him out to return to school. This represents a serious failure on the part of the school system.” MSBE Op. No. 17-27. We find that a similar failure occurred here and a similar remedy is appropriate.

Accordingly, we direct the local board to ascertain the status of this student; determine a plan for his swift return to school if he is not currently enrolled; investigate whether he has received the type of educational services required under the student disciplinary regulations while he was out of school and, if not, provide compensatory services; and report to this Board by April 24, 2018. In addition, we require the Board to review its enrollment policies for Annapolis Road Academy and to report on what steps it has taken to avoid the problems that occurred in this case.

CONCLUSION

We decline to review T.G.’s expulsion because he failed to exhaust his administrative remedies by appealing to the local board. We direct the local board to locate T.G. and his guardian, put a plan in place to return him to school, and report that information to this Board by April 24, 2018. In addition, we direct the local board to review its enrollment policies for Annapolis Road Academy and to report on the steps it has taken to address the issues identified in this appeal.

Signature on File:

Andrew R. Smarick
President

Chester E. Finn, Jr.
Vice-President

Michele Jenkins Guyton

Justin M. Hartings

Stephanie R. Iszard

Rose Maria Li

Michael Phillips

David Steiner

March 20, 2018