

J.M.,

Appellant

v.

PRINCE GEORGE'S
COUNTY BOARD OF
EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 17-22

OPINION

INTRODUCTION

J.M. (Appellant) appeals the decision of the Prince George's County Board of Education (local board) affirming his expulsion after bringing a firearm to school. The local board filed a Motion for Partial Dismissal and For Remand. Appellant responded to the Motion and the local board replied.

FACTUAL BACKGROUND

Appellant is a 16-year-old student who started the 2016-17 school year as an eighth-grader at Thurgood Marshall Middle School. At Thurgood Marshall, Appellant was accused of fighting, sexual harassment, making a threat to an adult, and other disruptive behavior. In November 2016, Prince George's County Public Schools (PGCPS) transferred Appellant for non-disciplinary reasons to Green Valley Academy School (Green Valley), an alternative school. He had only a few minor disciplinary incidents after transferring to Green Valley until the events that led to this appeal. (Appeal, Ex. A).

On January 10, 2017, Oliver Bridges, the program coordinator at Green Valley, saw Appellant enter the school carrying a black book bag. Possessing book bags on school grounds is prohibited by Green Valley school policy, which requires that all instructional materials be kept in classrooms. Appellant gave the book bag to another student, who put it in his locker. Afterwards, Mr. Bridges could smell marijuana coming from the school lockers. He reported the matter to Myra Saunders, the investigative counselor for Green Valley. Ms. Saunders, Mr. Bridges, and two other staff members searched the locker. Inside the black book bag, they discovered a loaded Glock 17 9 mm handgun with two ammunition clips (one empty and one loaded with 16 rounds). School officials presented the items to Prince George's County police, who arrested Appellant. (Appeal, Ex. A; Motion, Attachment pg. 9-15).

That same day, Green Valley Principal Gordon Libby sent a request for expulsion to the PGCPS CEO. On January 19, 2017, Appellant and his mother met with the CEO's designee for an expulsion conference. On January 25, 2017, the CEO's designee informed Appellant's mother by letter that Appellant would be expelled from PGCPS for one year based on the information presented at the conference. The letter stated that Appellant would be enrolled at Annapolis Road Academy during his expulsion and provided contact information for the school. (Appeal, Ex. B).

Appellant, through counsel, appealed to the local board. During a hearing on March 2, 2017, Appellant’s counsel raised several issues, including which party should bear the burden of proof before the local board and whether Appellant had received education services during his period of suspension and eventual expulsion. (Appeal, Ex. A).

On March 13, 2017, the local board upheld Appellant’s expulsion. The board found that Appellant “never refuted that the loaded firearm belonged to him or that he brought the weapon with him in his book bag onto school grounds.” The board determined that the one-year expulsion was required under COMAR 13A.08.01.12-1(B)(1), which reflected the federal law requirement that a student be expelled for a minimum of one year for bringing a firearm onto school property. Additionally, the board observed that Appellant signed a student code of conduct that mandates expulsion for possession of a firearm at school. The board concluded that Appellant’s possession of a firearm “is an action that inherently poses an imminent threat of serious harm if the student were to return” and that the expulsion was for the shortest practicable amount of time. (Appeal, Ex. A).

This appeal followed.

STANDARD OF REVIEW

In student suspension and expulsion cases, the decision of the local board is considered final. COMAR 13A.01.05.05(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).

The State Board exercises its independent judgment in interpreting the education law of Maryland. COMAR 13A.01.05.05E.

LEGAL ANALYSIS

Appellant does not challenge the merits of his expulsion. Rather, he raises two issues related to the expulsion that he asks the State Board to address.

Educational services

Appellant argues that he was denied educational services between January 9, 2017, when he was suspended from school, and February 13, 2017, when he was enrolled in an alternative education program. Appellant maintains that this failure violated COMAR 13A.08.01.11(F). That provision states the following:

F. Minimum Education Services. In order to establish accountability and keep suspended or expelled students on track with classroom work, as is reasonably possible, each local board shall institute education services that at a minimum provide that:

- (1) Each student suspended or expelled out-of-school 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; and
- (2) Each 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 with those out-of-school suspended/expelled students and their parents.

The local board concedes that Appellant did not receive classwork or assignments prior to enrolling at Annapolis Road Academy. The board acknowledges that its decision failed to address this issue and requests that the State Board remand the case in order for it to consider the nature and amount of education services that were missed and to devise an appropriate remedy. Appellant does not object to a remand. Accordingly, we remand the case to the local board for it to address the issue of education services.¹

Burden of persuasion before the local board

Appellant argues that the local board violated his due process rights by improperly placing the burden of persuasion on Appellant. Thus, he asserts that the expulsion decision did not comply with state law. The local board contends that its allocation of the burden to Appellant was not illegal.

The word “burden,” sometimes referred to as “burden of proof,” actually encompasses several different legal concepts, which include the burden of pleading, burden of production, and burden of persuasion. *See* McLain, Maryland Evidence §300:1. The burden of persuasion “refers to the standard of proof by which a party must satisfy the fact finder in order to win a verdict in that party’s favor.” *Id.*

The U.S. Supreme Court has recognized that the “ordinary default rule” is that the party seeking relief bears the burden of persuasion in a hearing. *Schaffer v. Weast*, 546 U.S. 49, 56 (2005). In *Schaffer*, the Court confronted the issue of who bears the burden of persuasion in an administrative hearing challenging an Individualized Education Program (IEP) when the law is otherwise silent. *Id.* at 62. The Court held that the burden is properly placed on the party seeking relief, typically a parent or guardian. *Id.* This is because the burden ordinarily rests with the party “who generally seeks to change the present state of affairs.” *Id.* at 56.

COMAR 13A.08.01.11 establishes the process that local school systems and boards of education must follow when handling school discipline matters. It does not state which party bears the burden of persuasion on an appeal to a local board of education. In Prince George’s County, the local board places the burden of persuasion on students appealing their expulsion to the board. *See* PGCPs Administrative Procedure 5115, Student Appeals of Long-Term

¹ Additionally, Appellant suggests that the local board may need to revisit his current educational placement because he is in the process of being evaluated for special education services. There is no indication that a dispute will arise between Appellant and PGCPs over the provision of special education services. If such a dispute does arise, however, it would need to be resolved through one of the methods outlined in COMAR 13A.05.01.15.

Suspensions and Expulsions (“Appellants shall present their case first and carry the burden of persuasion.”).

Appellant offers several arguments for why it was illegal to place the burden on him during an appeal to the local board. First, he maintains that it is a violation of his right to due process. The Supreme Court has held, however, that “[o]utside the criminal law area, where special concerns attend, the locus of the burden of persuasion is normally not an issue of federal constitutional moment.” *Schaffer*, 546 U.S. at 58. Placing the burden of persuasion on Appellant was not, therefore, a violation of his right to due process.

Next, Appellant argues that COMAR implicitly places the burden of persuasion on local boards because it requires them to produce certain documents prior to a hearing. COMAR 13A.08.01.11(C)(3)(i) states that students or their parents or guardians “[s]hall be provided the school system’s witness list and a copy of the documents that the school system will present at the hearing 5 days before hearing.” We agree with the local board that this is a “discovery rule,” facilitating a smooth hearing process, not a statement as to who bears the burden of persuasion.

Finally, Appellant argues that the balance of interests should favor a student in a disciplinary appeal because he or she is at a disadvantage compared to the local school system. The Supreme Court rejected a similar argument in *Schaffer*, observing that “[v]ery often one must plead and prove matters as to which his adversary has superior access to the proof.” *Schaffer*, 546 U.S. at 60 (quoting McCormick on Evidence §337). The Court found that this disadvantage was blunted in an IEP administrative hearing, in part, by the requirement that school systems share information with parents. *Id.* Similarly, in disciplinary appeals, COMAR requires that school systems provide a witness list and copy of all documents at least 5 days before a hearing to a student’s parent or guardian. COMAR 13A.08.01.11(C)(3)(i). The COMAR requirement therefore minimizes the potential for an unfair advantage on the part of the school system.

In sum, we conclude that PGCPS did not act in an illegal manner by placing the burden of persuasion on Appellant during his appeal to the local board. Because COMAR is silent on who bears the burden in such a proceeding, the default rule is that the party seeking relief bears the burden of persuasion. *See Schaffer*, 546 U.S. at 56. Our conclusion does not mean that a local board is *required* to place the burden of persuasion on an Appellant. Indeed, Montgomery County places the burden of persuasion on the school system under similar circumstances. *See* Montgomery County Board of Education Policy BLB (“In a hearing on a student suspension or expulsion . . . the superintendent shall proceed first and carry the burden of persuasion.”). But in the absence of any legal mandate, a local board may decide who will bear the burden during an appeal before it.

CONCLUSION

For all of these reasons, we remand, in part, the decision of the local board to address the issue of education services, but otherwise affirm the decision of the local board.

Signatures on File:

Andrew R. Smarick
President

Chester E. Finn, Jr.
Vice-President

Michele Jenkins Guyton

Justin Hartings

Stephanie R. Iszard

Rose Maria Li

Michael Phillips

Madhu Sidhu

Guffrie M. Smith, Jr.

David Steiner

June 27, 2017