

X.S.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 22-03

OPINION

INTRODUCTION

This appeal involves the 43-day suspension of R., an eighth grade student in ██████ Middle School (“█MS”) during the 2019-2020 school year. The Montgomery County Board of Education (“local board”) responded to the appeal. The Appellant replied and the local board filed a response. The Appellant submitted two other filings, which we struck from the record because they did not comply with the regulatory requirements. COMAR 13A.01.05.04(E).

FACTUAL BACKGROUND

In early October 2019, Naviance, a career readiness software tool utilized by the local board, notified Montgomery County Public Schools (“MCPS”) officials that an unauthorized user accessed individual account information for more than 1,300 students at Wheaton High School (“WHS”). The personal information in each student’s Naviance account included 18 categories of data: (a) Name; (b) Ethnicity; (c) Gender; (d) GPA; (e) Date of Birth; (f) Grade Level; (g) Student ID #; (h) Weighted GPA; (i) Highest ACT Score; (j) Highest IB Score; (k) Student Address; (l) Home Phone Number; (m) Email Address; (n) Assigned Counselor; (o) Highest SAT Score; (p) Highest PSAT Score; (q) Mobile Phone Number; and (r) Nickname. MCPS and Montgomery County Police identified the individual responsible for the attack on the WHS Naviance account as R., an eighth grade student at █MS.

During a meeting with █MS officials, R. admitted that he targeted WHS and was responsible for the data breach involving 1,343 students, but he failed to advise them, at that time, that he had accessed thousands of Naviance student records at other MCPS schools. Therefore, based on what he believed was an isolated incident involving one MCPS school, █MS Principal, Mr. ██████ A█████, determined that R. should perform 23 hours of community service, one minute for each student’s downloaded data, and prepare and present three public service announcements addressing digital citizenship as a consequence for the data breach.

On Wednesday, November 13, 2019, R. was suspended from school for 2.5 days, with a return date of Monday, November 18, 2019, for a separate act of misconduct involving the taking of a teacher’s personal information without consent, sharing the information with another student, and making a “prank call” to the teacher. The Principal determined R.’s conduct created a hostile educational environment for the teacher and violated R.’s obligation to act as a good

digital citizen. On November 18, 2019, MCPS learned R. had personally hacked the Naviance system in five (5) different school accounts, prior to the discovered hacking of the 1,343 WHS accounts and had downloaded data for 5,170 students, including those students at ■MS. When confronted about the hacking of the five Naviance systems, R. eventually admitted he was responsible for the intrusions that occurred between September 12 and September 14, 2019.

The MCPS Chief Technology Officer described R.'s conduct as a cyber-attack that performed a "mass scraping of information to a particular database" at each school, and that R. had to separately attack five different Naviance systems and scrape the data.

In this appeal, in defense of his son, Mr. S. characterizes his son's actions as "naïve" and that he was only trying to prove the vulnerability of the Naviance system. He emphasized his son's excellent academic record, his awards for leadership and volunteering. He pointed out that his son had suffered chronic bullying, racial harassment and discrimination based on his ethnicity from students and at least one teacher. Mr. S. asserts that his son's intent was to be a "brave whistleblower"; alerting MCPS to flaws in the Naviance security system. He asserts that his son's actions did not cause harm or disruption in the schools.

MCPS counters that MCPS personnel spent upwards of 250 hours investigating and responding to R.'s cyber-attacks, with most of the time being devoted to the password reset, training guidance personnel, and assisting students with account issues. For example, MCPS personnel had to: (a) reset every student password; (b) prepare and distribute public statements related to the attack to all stakeholders; (c) respond to many phone calls from concerned parents; provide system-wide training to ensure counselors and other school staff could assist students with their new password; and (e) attend PTA meetings and other community gatherings to address the incident. The Principal concluded R.'s conduct caused disruption within the ■MS classrooms, including time school administrators had to take to counteract the notoriety R. had attained in the school community through his cyber-attack.

On November 18, 2019, the Principal determined a 10-day suspension with a recommendation for expulsion was the appropriate disciplinary response for R.'s cyber-attack of the Naviance systems at the five MCPS schools. He based this decision, in part, on the breadth of the attack; the fact that R. had to access each school separately; and R.'s failure to be forthcoming about his cyber-attack when administration spoke with him about the WHS intrusion. In addition, the Principal concluded that R., a straight A student, should have realized the accessed data was sensitive, and he should have known that accessing data violated his ■MS digital citizenship responsibility and the privilege of attending the magnet technical school. (*Id.*).

On December 2, 2019, a hearing officer conducted a suspension hearing with the student, R.; his parents; their attorney; and the Principal to determine if a suspension beyond 10 days was warranted for R.'s cyber-attack on the Naviance system at the five different schools. At the hearing, R. acknowledged he had not complied with the core values of the MCPS Digital Citizenship program. He advised the hearing officer that he knew his conduct was wrong and that he understood the Naviance information was sensitive. R. further stated that after two students in his science class expressed an interest in securing information about other students, he complied by engaging in the cyber-attack. R.'s counsel acknowledged that R.'s conduct was

a breach of trust. The hearing officer recommended that R. be suspended for 43 days, instead of an expulsion, for his cyber-attack at the five separate schools. Her decision was based, in part, on the chronic disruption R.'s conduct caused at ■MS and to the thousands of student users of Naviance across the district; R.'s failure to "recognize the extremely disruptive nature of his conduct" on other students, families or the school system; R.'s demonstrated "disregard for the importance of respecting the confidential information of others"; and the fact that R. was more remorseful for what he viewed as "the impact of the suspension...on his education, rather than the impact of his action on others." The hearing officer agreed with the Principal that R. should not return to ■MS at the conclusion of his suspension because R., who enrolled in ■MS through the lottery, was a "guest student." Given the nature and seriousness of the offense, the impact on ■MS, a magnet school focused on technology, and R.'s violation of a core value of Digital Citizenship, it would not be appropriate for him to continue as an out-of-area student. On December 19, 2019, Dr. Andrew Zuckerman, the Superintendent's designee, informed R.'s parents that he had upheld the Principal's 10-day suspension, and extended the suspension to a total of 43 days. He informed R.'s parents that R. would be withdrawn from ■MS for the second semester, and he should enroll in his home school, ■■■■■ Middle School. He also stated that during the period of the extended suspension, R. should be enrolled in alternative education programs at the Blair G. Ewing Center.¹

On December 19, 2019, Appellant appealed the Superintendent's 43-day suspension decision to the local board. The local board referred the matter to hearing examiner Gregory Szoka, Esq. for review. At the hearing, convened on January 15, 2020, the hearing examiner received testimony from six witnesses over a period of six hours and reviewed 17 exhibits introduced by the Superintendent and 12 exhibits introduced by the Appellant. Appellant contended at the appeal hearing that MCPS failed to provide comparable educational services during R.'s suspension. Appellant alleged that MCPS abruptly removed R. from Google classroom and denied him access to his assignments, and that MCPS failed to provide him with daily work and weekly assignments. Appellant acknowledged that R. was permitted to participate in two Saturday activities at an MCPS school during the suspension – a language class and a tutoring program. Appellant contended that the decision to impose an extended suspension under COMAR lacked a rationale. He argued that R. was a hero for highlighting alleged security flaws in the Naviance system and that R. should have been returned to school at the end of the initial ten days of suspension because of his academic success and lack of disciplinary offenses in prior school years.

On January 27, 2020, the hearing examiner issued a written report with factual findings, conclusions of law, and recommendations. The hearing examiner concluded MCPS did not immediately provide comparable services for R., and he recommended that the Superintendent determine whether R. required compensatory service for said delay, and, if so, which services would be required for R. to successfully return to his regular education program. The hearing examiner also determined that: (a) R. was not a hero for his hacking of the Naviance system; (b) R. "engaged in accessing the Naviance system and taking possession of records of 6,000 MCPS students at the [six] schools"; (c) R. "made no attempt in the fall of 2019 to bring his hacking of

¹ The Appellant indicates that R. was enrolled in the alternative program on January 2, 2020.

the Naviance system to the attention of anyone at MCPS'; (d) R.'s failure to inform MCPS officials in October, 2019 about his earlier cyber-attack on the five separate Naviance system in the other MCPS schools "caused additional costs and time to be expended by MCPS personnel"; and (e) R.'s conduct was his "third inappropriate [personal] data collection episode of the [2019-2020] school year." The hearing examiner concluded that the Superintendent's 43-day suspension was "appropriate as other disciplinary interventions had been attempted without success and the exclusion from school was commensurate for such a cyber-attack."

In January 2020, Appellant requested in-person oral argument before the local board prior to its review of the recommendations of the hearing examiner, in accordance with Regulation BLB, (B)(5). The oral argument was postponed from January 29, 2020 to February 11, 2020 at Appellant's request. At that time, Appellant waived his right to an oral argument before the local board within 45 days of his appeal request. The oral argument was postponed again at the Appellant's request. But, because of COVID-19, the oral argument subsequently was indefinitely postponed. The local board did not resume in-person meetings until late spring of 2021 because of the impact of COVID-19. When contacted in April 2021 about his request to present oral argument to the local board, the Appellant did not respond by the May 4th deadline. Thus, the local board conducted a paper review of Appellant's local appeal of the Superintendent's decision at its May 25, 2021 meeting.

On May 25, 2021, the local board concluded the Superintendent's 43-day suspension of R. for his acknowledged cyber-attack was appropriate under the law, and was not arbitrary, unreasonable, or illegal. The Board further determined that Appellant's complaint about the educational services R. received during his suspension was mooted by the conclusion of the 2019-2020 school year and the passage of time.

This appeal ensued.

STANDARD OF REVIEW

In student suspension and expulsion cases, the decision of the county board is considered final, COMAR 13A.01.05.06(G)(1), and "the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal." COMAR 13A.01.05.06(A); *see also, Mallardi v. Carroll County Bd. of Educ.*, MSBE Op. No. 00-07. The burden is on the Appellant to show by a preponderance of the evidence that the county board's decision was arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06(D). A decision may be found arbitrary or unreasonable only if "it is contrary to sound educational policy" or if "a reasoning mind could not have reasonably reached the conclusion of the local board or local superintendent reached." COMAR 13A.01.05.06(B).

The State Board only reviews the merits of a county board's student discipline decision 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). *See also Shantell v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 19-02. The State Board may reverse or modify a student suspension if the allegations are proved true or if the decision of the local board

is otherwise illegal. COMAR 13A.01.05.06(G)(3). A local board decision may be considered “otherwise illegal” if it is:

- (1) Unconstitutional;
- (2) Exceeds the statutory authority of jurisdiction of the local board;
- (3) Misconstrues the law;
- (4) Results from unlawful procedure;
- (5) Is an abuse of discretionary powers; or
- (6) Is affected by any other error of law.

COMAR 13A.01.05.06(C).

State law provides that “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 program shall receive daily classwork and assignments from each teacher, which shall be reviewed and corrected by the 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 the classwork assignments and school-related issues by phone or email with those out-of-school suspended/expelled students and their parents.”

COMAR 13A.08.01.11(F).

The school system shall ensure students receive “daily classwork and assignments from each teacher,” which is to be reviewed and corrected on a weekly basis. *Shantell D. v. Baltimore City Bd. of School Comm’rs*, MSBE Op. No. 19-02.

LEGAL ANALYSIS

Merits of the Discipline

The Appellant argues that the discipline imposed was too severe because there was no damage to the Naviance system, no harm to the school system, and because his son’s actions revealed flaws in system security. He characterizes his son’s actions as those of a good faith whistleblower.

We do not agree. The many hours of work the school system spent in addressing the problem caused by R.’s actions belie that argument. Moreover, R. did not come forward immediately as a true whistleblower to disclose his actions and what he learned about the flaws in the security system. Thus, we find that there is a strong factual basis supporting the 43-day suspension. The discipline was imposed within the parameters of the law.

Moreover, there is no evidence that R.'s procedural due process rights were violated. Before the local board upheld the Superintendent's 43-day suspension for R.'s misconduct at ■MS, Appellant received notice of the principal's expulsion recommendation, presented his many concerns to the principal and to the hearing officers, shared much documentary and testimonial evidence, had oral argument with the appointed hearing examiner, and presented written argument to the local board. Accordingly, Appellant has failed to prove by a preponderance of the evidence that he was not provided appropriate notice of the charges against R. or a full opportunity to present his grievances regarding R.'s proposed discipline. *See, M.S. v. Montgomery Cty. Bd. of Educ.*, MSBE Op. No. 20-04 (by providing appellant multiple opportunities to tell his side of the story, MCPS afforded him the due process required by law and policy).

Provision of Education Services

There is no dispute that the school system did not immediately provide all appropriate educational services to R. during his suspension. The hearing officer so held. The local board argues that this issue is now moot.

An issue is moot if "there is no longer an existing controversy between the parties, so that there is no longer any effective remedy" to be provided. *State v. Neiswanger Mgmt. Servs., LLC*, 457 Md. 441, 445 (2018). R., who has completed both 8th and 9th grade since the completion of the local appeal hearing on January 27, 2020, enrolled as a 10th grade student at ■■■■■ High School ("■CHS") in September, 2021.

It appears that R. made appropriate academic progress in his first semester of the 2019-2020 school year, when he was suspended from ■MS. Further, R.'s academic records from the 2nd semester of the 2019-2020 school year, and the entirety of the 2020-2021 school year, reflect continued academic progress in the State-approved MCPS curriculum. Moreover, as noted during the local appeal, MCPS provided R. with dual enrollment classes at ■MS and the alternative education setting. This arrangement allowed R. to remain enrolled in certain ■MS courses while he physically attended classes at the alternative placement.

Because of COVID, so much time has passed between the suspension and R.'s current education situation, it is not possible to correct any failure to immediately provide appropriate education services to R.'s educational needs today. We agree that the issue is moot.

In our view, it is time to leave this difficult chapter behind and focus on R.'s continued success in school.

CONCLUSION

For all these reasons, we affirm the decision of the local board in this matter.

Signatures on File:

Clarence C. Crawford
President

Charles R. Dashiell, Jr.
Vice-President

Shawn D. Bartley

Gail H. Bates

Chuen-Chin Bianca Chang

Susan J. Getty

Jean C. Halle

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Holly C. Wilcox

Absent:
Vermelle Greene
Warner I. Sumpter

January 25, 2022