

MONICA K.,

Appellant

v.

PRINCE GEORGE'S
COUNTY BOARD OF
EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 18-26

OPINION

INTRODUCTION

Appellant challenges the decision of the Prince George's County Board of Education ("local board") affirming her son's expulsion from school. The local board filed a Motion for Summary Affirmance maintaining its decision is not arbitrary, unreasonable, or illegal. Appellant opposed the motion and the local board replied.

FACTUAL BACKGROUND

In November 2017, Appellant's son, T.S., transferred back into the Prince George's County Public Schools ("PGCPS") when the family returned to Maryland after a brief residency in Washington, D.C. T.S. enrolled in the 10th grade at Dr. Henry A. Wise Jr. High School ("Wise"). There were several suspensions for disciplinary reasons after that date which interfered with his regular attendance at Wise after December 4, 2017. T.S. returned to school on February 16, 2018.

On the morning of his return to school, T.S. was involved in a fight with a student, J.H., in the boys restroom at school. Administrators and security personnel at the school investigated the incident. They interviewed J.H. and two student witnesses, took written statements and reviewed the surveillance video footage.

In his written statement, J.H. described the incident as follows:

I left class and saw [T.S.] then he said something to me at this time he was walking towards main street bridge going toward B side. So he was like wassup with your Bitch ass I said get out my face stop playing with me then he turned around and started following me toward A side Bathroom in front of Mr. [Makell] office so then he went in bathroom, like he hopped in front of me so I turned around and he pulled my book bag and [T.S.] hit me then I fell so he started putting me in head lock that's when I hit my head and after he said these your glasses and he stepped on them.

(Appeal, J.H. Statement). Student witness K.E. heard fighting sounds coming from the bathroom but did not witness the fight and did not identify anyone by name. Student witness G.S. went into the bathroom after the fight was over, but was able to identify J.H. as one of the students in the fight. (Appeal, Witness Statements). Quasheba Hardiman, 10th grade Assistant Principal, noted that T.S. was brought to the security office but declined to give a statement at the time. (Appeal, Hardiman Statement). In addition, several attempts were made by phone to reach the Appellant in order to get a statement from T.S., but the attempts were unsuccessful. (Mayfield Statement). J.H. was treated by the nurse at school for his injuries. T.S., however, was picked up by security personnel before he could see the nurse and was later taken into custody by the Prince George's County Police Department and charged with second degree assault.

There was no security footage of what occurred in the bathroom because cameras are not permitted inside. There was, however, security footage from outside of the bathroom.¹ Dionne Mayfield, Pupil Personnel Worker who investigated the incident, reported that she watched the security footage and “did in fact observe [T.S. and J.H.] walk into the threshold of the restroom.” She stated that “[J.H.] turned around and began to walk away, when [T.S.] was observed grabbing [J.H.] by the backpack and pull[ing] him into the restroom.” She said that the students “were inside for a few minutes and then both students walked out the restroom and went their separate ways.” (Motion, Mayfield Statement).

The following description of the incident is contained in the Security Incident Report:

On February 16, 2018, [T.S.] physically attacked [J.H.] in the Boys bathroom located on the second floor A side hallway of Dr. Henry Wise High School. Investigation revealed that [T.S.] approached [J.H.] in the hallway and attempted to start a fight. [J.H.] walked away and proceeded to the boys restroom. [T.S.] followed him. Upon entering the restroom [T.S.] approached [J.H.] again attempting to start a fight. [J.H.] attempted to leave the restroom but [T.S.] grabbed his book bag and began striking him about the face and body. [J.H.] fell to the ground and struck his head while [T.S.] continued to strike him. [T.S.] stopped punching [J.H.] and noticed a pair of glasses on the floor. [T.S.] asked [J.H.] if those were his glasses. As [J.H.] replied yes, [T.S.] stepped on the glasses and left the restroom. [J.H.] was stopped in the hallway by School Security and escorted to the nurse for treatment. [T.S.] was located by School Security and escorted to the Security Office to be interviewed. After review of the school surveillance camera, it was determined that [T.S.] did assault [J.H.] and would be charged with second degree assault.

(Appeal, Security Incident Report).

Based on the results of the investigation, Byonka Gregory, Principal of Wise, requested that T.S. be expelled for a physical attack on a student resulting in serious bodily injuries.

¹ The security footage was no longer available at the time of the hearing before the local board because it had been destroyed. It is not a part of the record in this case, however, the statement of an investigator who viewed the footage is available.

On February 27, 2018, Aaron E. Price, Sr., Chief Hearing Officer, conducted a conference regarding the request for expulsion.² (Appeal, Price Letter). During the conference, T.S. claimed that J.H. was the aggressor in the incident, and that it was J.H. who followed him into the bathroom and started the fight. He maintained that he was acting in self defense. (Local Board Hearing Record). Mr. Price considered the information in the case. He noted that T.S. and J.H. were involved in an intense verbal dispute approximately one week prior to this incident.³ He noted that T.S. admitted to being involved in the physical altercation. He also noted that J.H. suffered serious bodily injury in the form of bruising, light sensitivity, head injury, headaches, alteration in skin integrity, tooth displacement, and muscle skeletal joint pain/displacement of the jaw. (Appeal, Price Letter). Mr. Price granted the expulsion request with readmission at the beginning of the 2018-2019 school year. He placed T.S. at Croom High School subject to an intake conference with the school's principal, and referred the Appellant to Croom for enrollment there.

Appellant appealed the decision to the local board. A committee of the local board conducted a hearing on April 19, 2018. At the hearing, T.S. made the following statement, in part, giving his explanation of what occurred:

I was standing in the hallway, after they kept me in the office, I was standing in the hallway, [J.H.] walked past, said what he said, he said "Yo, b-word, I'm from here." I went back and forth with the same energy so once that happened, I walk towards the bathroom and once I walked towards the bathroom [J.H.] followed me in to the bathroom and once [J.H.] followed me in to the bathroom punched me in my lip, once he punched me in my lip I grabbed on to him and fell to the floor. Just like I told them in the other meeting, once I fell to the floor, [J.H.] is a bigger person then me, so I was on the floor, so to avoid him from hitting my face I had to grab his back, and once I grabbed his back I was holding on to [J.H.] laying on my back on the floor. Then I ended up flipping [J.H.] until we got side to side, and once we got side to side I pinned him on his back and once I pinned him on his back, he punched me, I punched him it was a fight. It was a actual fight. At first it was just a punch and I grabbed him and we ended up on the floor. So once we ended up on the floor, it was 2 other students who came in to the bathroom and once they came in to the bathroom they tried to break the fight up, break the fight up. And then once I got up [J.H.] took – my shoe came off when we fell during the incident. So when I grabbed him and we fell on the floor my shoe came off, so once [J.H.] was leaving out the bathroom he picked up my shoe and threw my shoe at me cause I was still sitting on the floor. So once [J.H.] left out the bathroom I put my shoe back on and seen his glasses, once I seen his glasses I stomped on his glasses. After the fight we left the bathroom.

² T.S.'s brother picked up school work for T.S. to complete after several attempts by the guidance secretary to reach the Appellant. (Mayfield Statement).

³ T.S. denied that he was involved in the disagreement. He claims that it was his friends who were involved. (Local Board Hearing Record).

(Local Board Hearing Record).

In a decision issued on May 25, 2018, the local board upheld the expulsion finding that T.S. committed a physical attack that resulted in serious bodily injury to J.H. The committee noted that there was sufficient information to support the conclusion of the school investigation that T.S. was the aggressor in that T.S. pulled J.H. into the restroom to fight by grabbing onto his backpack and pulling him inside. In addition, the committee noted the relatively minor injuries suffered by T.S. compared to the more serious ones suffered by J.H. The local board concluded that T.S.'s return to school would have posed an imminent threat of serious harm to the other student involved and that the expulsion was limited to the shortest period of time practicable.

The local board also recognized that T.S. had a lengthy prior disciplinary history. Specifically, the record shows that prior to the February 2018 incident, T.S. had been involved in other disciplinary incidents, mostly during elementary and middle school, but also during his short time at Wise. From 2009 to 2018, T.S. had nearly 60 instances of school disciplinary issues that required some form of disciplinary action, half of which involved short term suspensions for actions such as disruption, disrespect, physical attack on student, fighting; threat to student; bullying, vandalism; or profane/inappropriate language. (Motion, Disciplinary Record).

In its decision, the local board also addressed compensatory services for T.S. At the local board hearing, Appellant revealed that Croom High School would not admit T.S. because he was in the tenth grade and Croom is a school that serves only eleventh and twelfth graders. When asked by board members to explain why he would refer T.S. to Croom given that he was in the tenth grade, Mr. Price explained that T.S. was referred there based on the number of credits T.S. had amassed and the types of classes T.S. was taking, not based on his grade level at Wise. (Local Board Decision, p.7, n.6). Mr. Price stated that he would have rectified the issue if he had been made aware of the discrepancy at the time it happened, but that he did not hear about it until much later and then the Appellant discontinued communications with school representatives. *Id.* The local board expressed its frustration with Mr. Price's lack of knowledge surrounding Croom's enrollment procedures and his failure to articulate how such an oversight could occur. The Committee Chair requested that the parties work together the day following the hearing to ensure that T.S. was enrolled in the appropriate alternative school by the beginning of the following week. Appellant declined the solution offered by the Committee Chair and decided to keep T.S. out of school.

Appellant appealed to the State Board. The local board has acknowledged that the expulsion should have expired at the end of the 2017-2018 school year and has made arrangements for T.S.'s return to school at the beginning of the 2018-2019 school year. The local board has also made arrangements for the provision of compensatory services to T.S. to include both tutoring and counseling services. (Local Board's Reply to response; Letter from Mason, 8/2/18). Thus, the only issue before the State Board is whether or not the expulsion should be upheld or reversed and expunged from T.S.'s education record.

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). Therefore, the State Board will not review the merits of the decision unless there are “specific factual and legal allegations” that the local board failed to follow State or local law, policies, or procedures; violation the student’s due process rights; or the local board has acted in an unconstitutional manner. COMAR 13A.01.05.05(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.01.05.05(G)(3).

LEGAL ANALYSIS

Improper Application of Code of Conduct

The Appellant maintains that the local board imposed a harsher punishment than T.S. deserved under the Code of Conduct. Specifically she disputes that J.H.’s injuries qualified as “serious bodily injury” which raised the penalty to expulsion, as opposed to just “bodily injury” which would have resulted in an extended suspension. She maintains that the penalty was not limited to the shortest period practicable as required by COMAR 13A.08.01.11(B).

The PGCPS Code of Conduct distinguishes between physical attacks that cause “bodily injury” and those that cause “serious bodily injury.” The former can result in an extended suspension (10-45 days) and the latter can result in an expulsion (more than 45 days). The Code of Conduct specifies that an expulsion is warranted where there is “serious bodily injury or severe physical damage or harm caused to the structure or function of the body caused by an outside agent or force requiring extensive medical treatment or hospitalization.” The examples listed are substantial risk of death, temporary or permanent loss of any body part, unconsciousness, disfigurement and/or prolonged physical pain.

(Appeal, Code of Student Conduct MOU, p.33).

With regard to J.H.’s injuries, Mr. Price noted that J.H. suffered bruising, light sensitivity, head injury, headaches, alteration in skin integrity, tooth displacement, and muscle skeletal joint pain/displacement of the jaw. He also indicated during that local board hearing that J.H. has sought additional medical treatment for his injuries beyond that provided by the school nurse. In a case like this, where the degree of injury and medical treatment is at issue, we would have preferred more documentary evidence or testimony regarding J.H.’s injuries. Nevertheless, there is sufficient information in the record (i.e. tooth and jaw displacement, head injury) to convince us that the injuries suffered by J.H. rise to the level of serious bodily injury. We find that the expulsion through the end of the 2017-2018 school year was appropriate, aligned with the PGCPS Code of Conduct, and was limited to the shortest amount of time practicable.⁴

⁴ The Appellant takes issue with the fact that the school had information about J.H.’s injuries because he was seen by the school nurse while T.S. was not, that T.S. was found to be the aggressor rather than J.H., that J.H. did not receive any punishment for his involvement in the incident, and that J.H. is a known bully and was involved in other fights after the incident in this case. None of these claims are relevant to whether or not T.S. violated the Code of Conduct.

Imminent Threat of Serious Harm

Appellant argues that the expulsion decision should be reversed because T.S. did not pose an imminent threat of serious harm to other.

COMAR 13A.08.01.11(B)(2)&(3) require that when the superintendent or designated representative make the decision to impose an extended suspension (11-45 days) or an expulsion (more than 45 days), the decision maker must determine that the student's return to school, meaning the school the student was attending at the time the conduct leading to discipline occurred, prior to the completion of the extended suspension or expulsion period would pose an imminent threat of serious harm to other students or staff. We recently discussed the imminent threat of serious harm assessment in *Alexander and Arlene A. v. Harford County Bd. of Educ.*, MSBE Op. No. 18-21 (2018), in which we stated as follows:

The State Board's school discipline regulations were built on the premise that students belong in school unless they pose a serious risk to safety and security in their home school because putting students out of school for any period of time, especially long periods of time, would likely be detrimental to the student in any number of ways. *See The Maryland Guidelines for a State Code of Discipline* (7/22/14). Thus, a student who is not a continuing, pending threat to his fellow students or staff belongs back in his or her school because it is likely the best environment for the student.

We explained that in making the imminent threat of serious harm assessment, school system decision makers should use an individualized approach that takes into consideration the totality of the facts and circumstances surrounding the incident, the student, and the school.

In this case it was Mr. Price who determined that T.S. posed an imminent threat of serious harm to others if he were to return to Wise.⁵ The local board agreed with the assessment. T.S. was found to be the aggressor in the incident because he grabbed J.H.'s backpack to pull him into the restroom as J.H. was attempting to leave. This action indicates that the Appellant chose to escalate the incident into an altercation rather than allow it to subside. In addition, T.S. has a substantial history of disciplinary infractions, including fights with other students, and infractions at Wise in the short period of time he was there. We find that the imminent threat of serious harm decision is supported by the record.

Discrimination/Bias Claims

Finally, Appellant argues that PGCPSS has discriminated against T.S. or acted with bias against him to keep him out of Wise. The Appellant has not presented any evidence of bias or discrimination. While she disagrees with the local board's decision, her disagreement does not render the decision discriminatory.

⁵ In Mr. Price's letter to the Appellant he mistakenly stated that T.S.'s return to school posed an imminent threat of serious harm to the teacher. The local board corrected this mistake in its decision upholding the expulsion and explained that T.S. posed an imminent threat of serious harm to other students. (Local Board decision, p.9).

Provision of Educational Services

The local board appropriately addressed the issue of compensatory services in this case. It vented its frustration with Mr. Price regarding T.S.'s incorrect assignment to Croom. We echo the board's concerns. There needs to be a greater degree of care within the school system in addressing the educational needs of students subjected to disciplinary action. We recognize that the Appellant did not immediately contact Mr. Price when she was unable to enroll her son in Croom and that there were various unsuccessful attempts in March 2018 by Mr. Price and school system attorneys to discuss the case with the Appellant. Nonetheless, Mr. Price should not have referred T.S. to Croom to begin with. It is up to the school system's decision makers to know what the educational system has to offer and to appropriately place students such as T.S.

CONCLUSION

For the reasons discussed above, we affirm the local board's decision upholding the expulsion.

Signatures on File:

Justin M. Hartings
President

Stephanie R. Iszard
Vice-President

Chester E. Finn, Jr.

Vermelle D. Greene

Michele Jenkins Guyton

Jean C. Halle

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

David Steiner

Warner I. Sumpter

August 28, 2018