SHEREE L.,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
PRINCE GEORGE'S COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee.	Opinion No. 18-29

OPINION

INTRODUCTION

Sheree L. (Appellant) appeals the de facto expulsion of her son A.L. from Suitland High School. 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 2017-18 school year, A.L. attended the ninth grade at Suitland High School, part of Prince George's County Public Schools (PGCPS). On February 13, 2018, an assistant principal saw A.L. put what appeared to be a plastic bag in his pants in a second floor stairwell. The assistant principal reported the incident to a police officer who happened to be on the school's campus at the time for an unrelated matter. The police officer found A.L. with a clear plastic bag in his hands containing pills and escorted him to the security office where an additional search uncovered approximately 100 pills, including 12 over-the-counter allergy pills; 25 pills for high-blood pressure; 25 non-steroid pain pills; and 38 ulcer pills. A.L. told the officer he found the pills on the way to school, but A.L.'s stepfather disputed that account and claimed the pills came from home. Police arrested A.L. for possession of a controlled dangerous substance (for the prescription medications). There was no evidence that A.L. provided the pills to any other student. According to PGCPS records, A.L. had 11 disciplinary referrals dating back to 2012, including two referrals for possession or use of a weapon on school grounds during the 2016-17 school year. (Appeal, Security Incident Report).

The school's principal filed a request for A.L's expulsion. On February 26, 2018, the school held a disciplinary conference with Appellant, A.L., and the school's assistant principal. Aaron Price, Sr., the chief hearing officer for PGCPS, conducted the hearing. He found that A.L. violated the student code of conduct by possessing prescription drugs. Mr. Price declined the request for expulsion "conditioned upon required parent shadowing for the full school day five school days between February 28, 2018 through March 9, 2018. Additionally the student will be subject to a daily progress (attendance) report from February 28, 2018 through May 1, 2018." Mr. Price instructed Appellant to contact the principal to schedule a conference prior to A.L.'s return to school. He also advised her that she had ten days to appeal his decision to the local

board. (Appeal, Price Letter).

On June 6, 2018, the Office of the Public Defender filed an appeal of A.L.'s suspension with the local board.[1] The appeal letter explained that Mr. Price verbally advised Appellant that if she could not "shadow" A.L. for the five consecutive days that she should arrange with school administrators to shadow him on other days. According to Appellant, she became ill not long after the expulsion conference and was not able to attend school with A.L. on February 28. When A.L. arrived to school that day without Appellant, the school's assistant principal turned him away. A.L. attempted to return to Suitland multiple times in March and April but was turned away each time. Appellant attempted to contact the school's principal about setting up a schedule for shadowing and also discuss how A.L. could obtain his school work while he was out of school. According to Appellant, some teachers provided work, but assignments were sporadic. Appellant ultimately shadowed A.L. for three consecutive days in March and April 2018, but was unable to shadow him for the remaining two days because of her doctor's appointments. As of May 7, 2018, school records showed A.L. marked absent for the majority of days between February 26, 2018 and May 7. A.L. remained out of school at the time of the appeal to the local board. (Appeal, June 6, 2018 Request for Appeal to Local Board).

On July 3, 2018, the local board responded by letter. The local board agreed that the "shadowing" condition was not reasonable. The board determined, however, that Appellant's appeal was filed three months beyond the deadline and no one had requested an extension of time in which to file the appeal. The board dismissed the appeal as untimely. (Appeal, Local Board Decision).

This appeal followed. Following the appeal to the State Board, Appellant, A.L., and school officials met to discuss A.L's return to school and the provision of compensatory educational services. Although A.L. would be required to repeat the ninth grade, PGCPS school officials presented Appellant with two alternative plans that would allow her son to obtain additional credits and graduate on time. PGCPS also agreed to pay for private tutoring. (Appellant's Response to Motion).

STANDARD OF REVIEW

In student suspension and expulsion cases, the decision of the local board is considered final. COMAR 134.01.05.05. 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; violated the student's due process rights; or the local board has acted in an unconstitutional manner. COMAR 134.01.05.05.

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 134.01.05.05. A decision may be considered "otherwise illegal" if it is: (1) Unconstitutional; (2) Exceeds the statutory authority or 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.01.05.05C.

[1] The Office of the Public Defender did not represent A.L. at the time of his expulsion hearing.

LEGAL ANALYSIS

At the outset, we must consider whether this appeal is moot. The local board admits that the hearing officer was wrong to condition A.L.'s return to school on Appellant "shadowing" him for five consecutive school days. A.L.'s subsequent exclusion from school because of the lack of "shadowing" became a *de facto* expulsion, in violation of the school discipline regulations. *See* COMAR 13A.08.01.11B(2)-(3) (requiring that a suspension of more than 11 days, or expulsion of more than 45 days, from school requires "an imminent threat of serious harm to other students and staff"). It also led to A.L. missing months' worth of school assignments, again in contravention of the law. *See* COMAR 13A.08.01.11F (requiring each board to institute education services for suspended or expelled students, including daily classwork and assignments for students not placed in an alternative education center). The school system has agreed to pay for private tutoring and to work with A.L. and Appellant to ensure that he is able to graduate on time.

Perhaps recognizing that the local board has already provided the bulk of the relief she is seeking, Appellant has revised her appeal to request only that the State Board order PGCPS "to train district staff, administrators and educators on the requirements in COMAR 13A.08.01.11 and to produce materials and proof of such trainings to the State Board." (Motion Response). The local board explains that its previous CEO distributed a memorandum to staff regarding disciplinary procedures and minimum alternative education services in the spring, and the current Interim CEO is distributing a copy of the memo to PGCPS administrators to ensure that staff members are aware of the requirements. In-service training will be conducted, as well, and the local board agrees that it shall provide documentation to the State Board. (Local Board Reply).

It is well established that a question is moot when "there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the courts [or agency] can provide." *In Re Michael B.*, 345 Md. 232, 234 (1997); *see also Arnold v. Carroll County Bd. of Educ.*, MSBE Op. No. 99-41 (1999); *Farver v. Carroll County Bd. of Educ.*, MSBE Op. No. 99-42; *Chappas v. Montgomery County Bd. of Educ.*, 7 Op. MSBE 1068 (1998). We have previously dismissed cases when there is "no longer an existing controversy between the parties and no effective remedy that the State Board can provide." *See D.G. v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Ord. No. 16-16 (2016). In light of the fact that the local board has agreed to the relief requested by Appellant, we would ordinarily dismiss this case as moot without further comment.

This is not, however, the first time we have found serious breakdowns in the PGCPS discipline process. Between 2017 and 2018, we have reviewed six appeals (including this one), all of which found fault with PGCPS procedures:

> • *A.M. v. Prince George's County Bd. of Education*, MSBE Op. No. 17-05 – Despite a hearing officer intending to impose a suspension of 10 days, the student remained out of school for 26 days, faced a "confusing scenario" to navigate in order to request an appeal, and may have not received appropriate comparable educational services

during the time he remained out of school. We remanded the case for the local board to conduct an appeal of the student's 10-day suspension. (Issued January 24, 2017).

• *J.M. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 17-22 (2017) – Student did not receive required educational services between January 9, 2017, when the school suspended him, and February 13, 2017, when he enrolled in an alternative school. The local board acknowledged the error and consented to a remand of the case to address the issue. (Issued June 27, 2017).

• *M.S. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 18-09 (2018) – The school suspended the student on June 2, 2017, but did not schedule an expulsion conference until 54 days later. This led to the student missing the final seven days of school and being ineligible to attend summer school. The student also had difficulty enrolling in school because of a miscommunication between the prior school and the assigned school. We reversed and remanded the decision in order for the school system to come up with an appropriate plan for compensatory services and placement alternatives. We required the local board to report back to us by April 24, 2018. (Issued March 20, 2018).

• *T.G. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 18-10 (2018) – Student had difficulty enrolling in the alternative school assigned to him and remained out of school for most of the 2017-18 school year without receiving education services. We required the local board to locate T.G. and his guardian, put a plan in place to return him to school, and report back to the State Board by April 24, 2018. (Issued March 20, 2018).

• *Monica K. v. Prince George's County Bd. of Educ.,* MSBE Op. No. 18-26 (2018) – The school's hearing officer assigned Appellant's son, T.S., a tenth grader, to a school serving only eleventh and twelfth graders. The local board appropriately addressed the issue of compensatory services, but we criticized the school system for its failure to appropriately place the student. (Issued August 28, 2018).

These opinions catalog a host of errors, many stemming from missteps in the disciplinary process, miscommunications regarding assigned schools, and a failure to provide required educational services to disciplined students. Although it is commendable that the local board has recognized its errors in this case and sought to rectify them, those errors should have never occurred in the first place. We have serious reservations about whether training sessions will be enough to ensure that PGCPS appropriately follows the disciplinary process for students, many of whom are at a critical juncture in their lives. *See M.S.*, MSBE Op. No. 18-09 (citing an

increased risk of dropping out of school, related diminished earning capacity, and increased likelihood of ending up in adult prison for students excluded from school for lengthy periods of time). Central office oversight is critical to ensure that future communication breakdowns and inappropriate disciplinary practices (such as conditioning a student's future attendance at school on a parent shadowing the student) do not reoccur. The local board is on notice that it has a severe problem and it must take all necessary steps to solve it.

CONCLUSION

We dismiss this appeal as moot because the local board has agreed that the hearing officer imposed an unreasonable condition on A.L.'s return to school, will provide compensatory services to A.L. so that he may graduate on time, and will report to this Board on its training practices. We direct the local board to file a report, on or before November 1, 2018, on its training activity planned for the 2018-2019 school year with an evaluation component to assess the impact of the training.

Signatures on File:

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Justin M. Hartings
President

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Stephanie R. Iszard
Vice-President

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Chester E. Finn, Jr.

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Vermelle D. Greene

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Michele Jenkins Guyton

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Jean C. Halle

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Rose Maria Li

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Joan Mele-McCarthy

_____
Michael Phillips

_____
David Steiner

_____
Warner I. Sumpter

September 25, 2018