

A.M.,

Appellant

v.

PRINCE GEORGE'S  
COUNTY BOARD OF  
EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 17-05

## OPINION

### INTRODUCTION

Appellant challenges his suspension from school for possession of a weapon, shakedown, strong arm and extortion. The local board has filed a Motion to Dismiss for failure to exhaust administrative remedies claiming that the Appellant never appealed to the local board and there is no local board decision to review. Appellant responded to the motion and the local board replied.

### FACTUAL BACKGROUND

Appellant is a ninth grade student with an Individualized Education Program (IEP) for an emotional disability. He attends Crossland High School (Crossland).

On September 20, 2016, the principal of Crossland recommended that the Appellant be expelled from school for possession of a weapon, shakedown, strong arm and extortion related to an incident that occurred on September 19, 2016. (Appeal, Ex. C). The record, however, contains few facts about the incident or what happened. Appellant's removal from school began on September 20, 2016. On September 27, 2016, the school system conducted a manifestation determination meeting. The IEP team found that the conduct was not a manifestation of the Appellant's emotional disability. (Appeal at 2).

On October 7, 2016, counsel for the Appellant appealed the expulsion recommendation. (Appeal, Ex. A). She maintained that the school system had committed various procedural violations during the handling of the case. *Id.* In response, Aaron E. Price, Chief Hearing Officer, contacted counsel by phone to discuss the matter. Mr. Price explained that Appellant would be receiving a suspension and not an expulsion. (Appeal at 2). During the conversation, counsel also requested that that Appellant be transferred to a different school. (*Id.* at 3; Appeal, Ex. B). Mr. Price, however, apparently did not docket the appeal.

By letter dated October 13, 2016, Mr. Price denied the principal's expulsion request and imposed a suspension not to exceed 10 school days from Appellant's initial exclusion from school which was on September 20. (Appeal, Ex. C). Mr. Price stated that Appellant could return to Crossland on October 26, 2016 with an IEP meeting to take place upon his return. *Id.*

Appellant's counsel responded by email to Mr. Price the same day. She pointed out that a return date of October 26 would result in Appellant's removal from school for 26 days, not 10 days. (Appeal, Ex. D). The next day, Mr. Price responded that a corrected letter would go out. He also indicated his willingness to transfer the Appellant to a smaller environment that would be more conducive to his needs, specifically Croom High School. *Id.*

In the corrected letter dated October 14, 2016, Mr. Price stated that Appellant's exclusion from school was a "long term" suspension not to exceed 10 school days. He stated that any days between October 4, 2016 through October 14, 2016 that were delineated as suspensions would be changed to reflect an authorized absence from school. (Appeal, Ex. E).

Counsel responded by email that same day, indicating that despite what the letter said, Appellant had still been issued an "extended suspension" beyond the 10-day period and that the school system had not followed the proper review and appeal process. With regard to the transfer request, she sent another email indicating that Croom was not an acceptable environment for Appellant because transferring him to an alternative school would only prolong Appellant's removal from a regular program. She proposed a transfer to either Wise High School, Oxon Hill High School, or Bowie High School. *Id.* Mr. Price responded that none of the requested schools were available for transfer, thus he would instruct Crossland staff to be ready to receive the Appellant at school. He further noted that transfer requests must be made during the transfer period. *Id.*

In additional emails on October 14, counsel explained that it was not an ordinary transfer request. She stated "[i]n light of the serious violations in this case we are asking for transfers as a remedy" and again requested Wise, Bowie, or Oxon Hill. *Id.* Mr. Price responded as follows:

[T]he student will be permitted to return to school. The first days of the suspension will be imposed as a long-term suspension. Any and all days beyond that that the student was out as a result of this incident attributable to the school will be covered [sic] to an excused absence. Consequently, the student is entitled and will receive make-up work for the time out of school. I am concerned regarding safety and will propose that the student be involuntarily transferred to Croom HS.

I will be available to discuss this matter, if you choose, on Monday.

*Id.*

On Monday, October 17, 2016, counsel emailed Mr. Price stating that the Appellant continued to be improperly excluded from school. In addition, she explained that the offer to convert the suspensions to excused absences was of no consequence because suspensions are already considered to be excused absences. She maintained that the remedy for all of the procedural violations was to return Appellant to a regular school program and not to place him at an alternative school. She stated that she was "requesting an appeal and evidentiary hearing" on the transfer as well as on the suspension. *Id.*

On October 19, 2016, the interim principal at Crossland contacted counsel and asked her to attend a meeting the next day. (Appeal at 3). On October 20, 2016, counsel, Appellant and the Appellant's mother attended a meeting at Crossland where they learned that the Superintendent's Designee in the case was Dr. Tasheka Green, Area II Instructional Director. The meeting was rescheduled for October 26 so that an attorney from the school system's General Counsel's office could participate. (Appeal at 4).

On October 21, Appellant's mother received a letter dated October 9 from the Office of Appeals inviting her to an expulsion conference on October 19. (Appellant's Reply, Ex. G). No expulsion conference took place.

At the October 26, 2016 meeting, the following individuals were present: Dr. Green, Mr. Price, Crossland's acting principal, a pupil personnel worker, associate general counsel for the school system, Appellant, his mother, and Appellant's counsel. (Appellant's Opposition to Motion). At the meeting, the parties agreed that Appellant would be transferred to Surattsville High School, where he is now currently enrolled.

Meanwhile, on October 21, 2016, the State Board received the Appellant's appeal in this case.

### STANDARD OF REVIEW

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

### LEGAL ANALYSIS

This case demonstrates that e-mails are not the most appropriate way to deal with discipline issues. As a result, the school system made substantive and procedural missteps in this case. Although Mr. Price intended to impose on the Appellant a long term suspension lasting 10 school days, the Appellant ended up out of school for approximately 26 days. This ultimately resulted in the imposition of an "extended suspension."

State regulations place various procedural requirements on the school system based on the type of suspension being imposed. *See* COMAR 13A.08.01.11. For example, an extended suspension can only be imposed if the superintendent or designee has determined that the "student's return to school prior to completion of the suspension period would pose an imminent threat of serious harm to other students and staff" or that the "student has engaged in chronic and extreme disruption of the educational process that has created a substantial barrier to learning for other student across the school day, and other available and appropriate behavioral and disciplinary interventions have been exhausted." COMAR 13A.08.01.11(B)(3)(a). In addition, the superintendent or designee must promptly arrange a conference with the student and the student's parent or guardian in the event the superintendent or designee finds an extended suspension is warranted. COMAR 13A.08.01.11(C)(3)(c). Furthermore, in cases of extended suspension, school systems have an obligation to provide comparable educational services and appropriate behavioral support services to promote the successful return of the student to the student's regular academic program. COMAR 13A.08.01.11(B)(3)(c). At a minimum, this includes the provision of daily classwork and assignments from each teacher, to be reviewed and

corrected on a weekly basis. COMAR 13A.08.01.11(F)(1). Due to the delays and the Hearing Officer's back and forth miscommunication with counsel, the school system failed to comply with those requirements.

In an attempt to rectify the situation, the school system adjusted Appellant's record to reflect a 10-day suspension, with all other days showing as excused absences. This act does not address the fact that the student was out of school for 26 days. Although the school system ultimately transferred the Appellant to a school that he was comfortable attending, as far as we can tell from the record, the school system has not provided the Appellant an opportunity to appeal the merits of the underlying suspension. In addition, there are some outstanding issues surrounding whether or not the Appellant received comparable educational services during the time he was not attending school. *See* COMAR 13A.08.01.11(B)(3)(c).

The local board has filed a Motion to Dismiss the case based on the Appellant's failure to exhaust his administrative remedies because there is no local board decision for the State Board to review. It is true that there is no local board decision in this case. The blame for this, however, is not on the Appellant who specifically requested "an appeal and evidentiary hearing" on the transfer and suspension decisions in her October 17, 2016 email to Mr. Price. Rather, it lies primarily with the school system which failed to follow proper procedure and created a confusing scenario for the Appellant to navigate. We decline to dismiss the appeal. Instead, we will remand the case to the local board.

#### CONCLUSION

We remand this case to the local board to conduct an appeal of the 10-day suspension and to determine what educational services the Appellant should receive, if any, as a result of being out of school from the time of his initial exclusion until his enrollment at Surattsville. The local board shall allow the Appellant the opportunity to file a statement in support of his appeal prior to reviewing the matter and shall also expedite the case.

Signatures on File:

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Andrew R. Smarick  
President

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Michele Jenkins Guyton

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Laurie Halverson

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Stephanie R. Iszard

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Rose Maria Li

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Madhu Sidhu

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Laura Weeldreyer

Absent:

Chester E. Finn, Jr., Vice President

Jannette O'Neill González

Barbara J. Shreeve

Guffrie M. Smith, Jr.

January 24, 2017