

A.W. and L.W.,

Appellants

v.

BALTIMORE CITY BOARD
OF SCHOOL
COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 19-34

OPINION

INTRODUCTION

A.W. and her mother, L.W., (Appellants) appealed A.W.'s extended suspension from Pimlico Elementary/Middle School. The Baltimore City Board of School Commissioners (local board) filed a response to the appeal, maintaining that its decision was not arbitrary, unreasonable or illegal. Appellants responded and the local board replied.

FACTUAL BACKGROUND

On March 27, 2019, A.W., an 8th grade student at Pimlico Elementary/Middle School (Pimlico), joined in on an attack of another student. The attack involved several students who were punching and kicking the student and stomping on his head. Teachers intervened to deescalate and break up the fight. The student victim went to the hospital by ambulance and suffered a concussion, swollen eye, busted lip and head contusion. One of the teachers suffered a concussion, and swelling and contusions to her right eye and abdomen. (Hearing Examiner Report). Pending an investigation into the attack, A.W. remained at school on March 28 and 29. During the school's investigation, A.W. admitted to kicking the victim. (T.18). It was also determined from the surveillance video that A.W. was an aggressor, and that individuals called out her name two or three times to stop what she was doing. *Id.*

On April 1, 2019, police arrested A.W. at school. A.W. did not return to school because her mother, L.W. was under the impression that she was not permitted to return.¹ On April 9, 2019, Ms. Smith, A.W.'s mother contacted Pimlico to inquire about A.W.'s return. On April 10, Pimlico's Principal conducted a suspension meeting. At the meeting, the Principal recommended A.W. for an extended suspension because she determined that A.W.'s presence at school would pose an imminent risk of serious harm to other students and staff. A.W. received

¹ L.W. claims that when she arrived at the school during the April 1 arrest, a school employee in the front office told her not to bring A.W. back to school. Ms. Smith did not identify the school employee or provide any other information regarding the individual or the context of the conversation. The school Principal testified that she is not aware of anyone at school who told L.W. that A.W. could not return, and that A.W. was free to return to school after the arrest until the April 10 conference because she was not yet suspended from school.

classwork and assignments while awaiting the conference with the Chief Executive Officer's (CEO's) Designee.

Because the principal recommended an extended suspension, Pamela Body, the CEO's Designee, conducted a conference with A.W. on May 1, 2019, after spring break ended.² Ms. Body determined that an extended suspension was warranted and imposed a 44-day suspension based upon the conclusion that A.W. posed an imminent threat of serious harm to the school. Although Ms. Body did not provide detail regarding her imminent threat finding in her May 1 disposition letter, she testified regarding her reasons for the decision. She stated that it was based in large part on the aggressive nature of the conduct involved as seen on the video; A.W.'s admission to her involvement in the fight during the interview and in her written statement; and on the police report which clearly indicated that A.W. participated in the attack of the victim who was seriously injured. (T. 18-19).

Appellants appealed Ms. Body's decision to the local board. On May 22, 2019, a hearing examiner conducted an evidentiary hearing. The Hearing Examiner made multiple findings of fact and conclusions of law and recommended that the local board uphold the extended suspension. The Hearing Examiner noted that A.W. had previously been involved in two disciplinary episodes at school. These included a December 6, 2017 incident in which the Appellant received a nine-day suspension for injuring a student during a fight and a December 17, 2018 suspension for three days for throwing chairs and desks. (Appeal, Ex. 4, p.2).

The local board affirmed the Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendations placing the Appellant on an extended suspension. (Appeal, Ex. 1). This appeal followed.

STANDARD OF REVIEW

In student suspension and expulsion cases, the decision of the local board is final. COMAR 13A.01.05.06(G)(1). The State Board may not review the merits of a suspension or expulsion, but may review whether there are specific factual and legal allegations that the local board has not followed State or local law, policies, or procedures; has violated the due process rights of the student; or otherwise acted in an unconstitutional manner. COMAR 13A.01.05.06(G)(2).

LEGAL ANALYSIS

Procedural Due Process

The Appellants maintain that A.W. was deprived of procedural due process, both under the Constitution and State law, because the conference with the local superintendent occurred more than ten days after the initial suspension by the school principal.

In the student discipline context, procedural due process under the Constitution requires that there be notice of the charges against the student and a meaningful opportunity for the student to be heard when the student has been removed from school. *Goss v. Lopez*, 419 U.S. 565, 581 (1975); *Parent H. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 13-27 (2013).

² Baltimore City Public Schools were closed for spring break from April 15 through April 22 so Ms. Body did not schedule the conference during that time.

In *Goss v. Lopez*, the United States Supreme Court explained that the “necessary” notice and hearing “should follow as soon as practicable.” 419 U.S. at 582-83. The State Board has developed a State regulation to effectuate the due process requirement. COMAR requires that a conference be held within ten school days after an initial suspension by the principal if the suspension exceeds ten days.³ See COMAR 13A.08.01.11(C)(4)(d).

There is no dispute that the CEO’s Designee, Ms. Body, held a suspension conference with the Appellants. The disagreement between the parties, rather, concerns the date of the initial suspension, which served as the trigger to counting the number of days within which the conference with the CEO or Designee had to occur. Appellants maintain that A.W.’s first day of suspension was on April 1, 2019, the date of her arrest. The local board maintains that A.W. was not suspended until April 10, 2019.

On April 1, 2019, the police arrested A.W. and removed her from school. This was not a decision made by the school administration, and, therefore does not count as the first day of her suspension. Police removal is addressed by local board policy which states that “[i]f a student is removed by law enforcement, that student’s potential suspension shall be delayed until the student returns to school whereupon s/he will receive immediate due process.” Bd. Policy JKA-RB-II.G.4. That is exactly what happened here. Although the fight took place on March 27, A.W. was not yet suspended when the police removed her from school on April 1. The Principal explained that the school’s internal investigation was temporarily halted due to the police involvement and the school had not yet moved forward with discipline. Instead, A.W. received due process the moment she returned to school for the conference with the Principal on April 10. It was at this point that the Principal suspended A.W. and recommended an extended suspension to the local Superintendent.

Although A.W.’s mom, L.W., claims that an employee in the front office told her that A.W. could not return to school at the time that the police arrested her, she has not identified the individual, or followed up or returned to the school to get clarification with whom she spoke. L.W. provided no information regarding this person’s name, position, title, or the individual’s authority to issue such a directive, and no context within which the alleged statement was made. The Principal testified at the hearing that that she had no knowledge of anyone at the school restricting A.W.’s attendance. She testified that A.W. was free to return to school after the arrest until the date of the April 10 conference. There is insufficient evidence here to support a finding that Appellant was banned from school or suspended prior to the April 10th initiation of the suspension. Thus, we find that the May 1 conference with the Superintendent’s Designee took place within 10 school days of the initial suspension and no due process violations occurred.

Imminent Threat of Serious Harm Determination

COMAR 13A.08.01.11(B)(3)(a) provides that an extended suspension or an expulsion may not be imposed unless the superintendent or designated representative has determined that:

- (i) **The student’s return to school prior to the completion of the suspension period would pose an imminent threat of serious harm to other students and staff;** or

³ At or before the conference, the student must receive oral or written notice of the charges against the student. COMAR 13A.08.01.11(C)(3)(c). Although the Appellants raised this issue below, they do not raise it now as an issue to be resolved in this appeal.

- (ii) The student has engaged in chronic and extreme disruption of the educational process that has created a substantial barrier to learning for other students across the school day, and other available and appropriate behavioral and disciplinary interventions have been exhausted.

(Emphasis added). The Appellant maintains that the determination by Ms. Body that A.W.'s return to school posed an imminent threat of serious harm to others and staff was conclusory and lacked factual support.

Ms. Body made an individualized imminent threat determination regarding A.W. Her May 1 disposition letter states that “[b]ased upon the evidence presented, it has been determined that: A.W.’s return to Pimlico Elementary/Middle School would pose an imminent threat of serious harm to other students or staff.” The letter does not provide more specificity or any details to support the determination.

Even if there was a defect in the Designee’s letter, the full evidentiary hearing before the local board cured any procedural errors that occurred previously in the case. *See D.B. and K.G. v. Baltimore County Bd. of Educ.*, MSBE Op. No. 19-26 (2019); *Mobley v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 15-09 (2015) (citing cases). During the hearing, Ms. Body testified that her decision was based on her review of all of the material that was submitted in the case. (Tr. 30-32). This included all of the victim and witness statements, the description of the assault, A.W.’s disciplinary record, and any other suspension documents that existed. She also testified that her decision was based in large part on the aggressive nature of the conduct involved as seen on the video; A.W.’s admission to her involvement in the fight during the interview and in her written statement; and on the police report which clearly indicated that A.W. participated in the attack of the victim who was seriously injured. (T. 18-19).

We have previously upheld disciplinary decisions where the imminent threat determination derived from the violent actions of a student during a fight, even absent any past disciplinary history. *See Pastor Almena C. v. Cecil County Bd. of Educ.*, MSBE Op. No. 17-28 (2017). Here, there is also disciplinary history to support the determination. Specifically, the Recommendation of the Hearing Examiner, which was adopted by the local board in its decision, states with regard to the imminent threat determination, that A.W. was involved in 2 prior disciplinary actions that resulted in a 3-day suspension and a 9-day suspension, one of which involved physical harm. (Appeal, Ex. 4, p. 7). In addition, the Hearing Examiner recognized that the school Principal determined that A.W. was the “major aggressor” in the incident based on the surveillance video. (*Id.* at p. 7). Thus, there was sufficient evidence in the record to support the imminent threat determination.⁴

CONCLUSION

For all of these reasons, we affirm the decision of the local board upholding the extended suspension in this case.

⁴ We acknowledge that A.W. remained in school for 2 days after the attack without incident. A mere two days in school without involvement in another fight does not dispel the notion that A.W.’s presence in school prior to completion of the suspension period would pose an imminent threat of serious harm to other students and staff.

Signatures on File:

Warner I. Sumpter
President

Jean C. Halle
Vice-President

Gail H. Bates

Clarence C. Crawford

Charles R. Dashiell, Jr.

Vermelle D. Greene

Justin M. Hartings

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

David Steiner

September 24, 2019