T.R. and B.J.,	BEFORE THE
Appellants	MARYLAND
v.	STATE BOARD
CAROLINE COUNTY BOARD OF EDUCATION	OF EDUCATION
	Opinion No. 20-06
Appellee.	

OPINION

INTRODUCTION

T.R. and his mother ("Appellants") appeal the decision of the Caroline County Board of Education ("local board") upholding his placement on home instruction upon notification of T.R.'s arrest for reportable offenses. The local board filed a response to the appeal, arguing that its decision should be upheld. Appellants responded and the local board replied.

FACTUAL BACKGROUND

T.R. is a Caroline County Public School ("CCPS") student currently in his senior year. Until the end of the 2018-2019 school year, T.R. was an excellent student taking a challenging course load at Colonel Richardson High School ("Colonel Richardson"). (T.8, 13-14). T.R. was class president, a National Honor Society scholar, and a player on the football and wrestling teams. (T.43). He has no noteworthy school disciplinary history. *Id*.

On August 17, 2019, T.R. was arrested in Dorchester County and charged with the following offenses: (1) possession of a firearm (minor); (2) handgun on person; (3) loaded handgun on person; and (4) loaded handgun in vehicle. (Response to Appeal, Ex. A – Sup't. Ex. 1). Three of these charges are reportable offenses and they are all misdemeanors.[1] T.R.'s case was ultimately transferred to the juvenile system.

On August 22, 2019, T.R.'s mother notified Derek Simmons, CCPS's Director of Student Services, of T.R.'s arrest. Mr. Simmons explained that once the school system received the reportable offense notice from law enforcement, a decision would be made whether T.R. would remain at Colonel Richardson, be placed in an alternative school (Caroline Innovative Pathways) or be placed on home instruction. (T.32). That same day, the Dorchester County Sheriff's Office faxed an Arrest Report to the Superintendent notifying her of the charges against T.R. pursuant to the reportable offense law. *Id*.

On August 29, 2018, after a conference took place with Nikki VonDenBosch, Principal at Colonel Richardson, and various school system personnel about the reportable offense, the Superintendent decided to place T.R. on home instruction until disposition of the reportable

[1] Possession of firearm (minor) is not a reportable offense.

offense charges. (T.10; Local Bd. Decision). The Superintendent concluded that placing T.R. in an alternative educational program would not adequately address the advanced courses in which he was enrolled, and would not provide instruction in Calculus, Spanish, Financial Literacy and Civil Engineering. She determined that home instruction would minimize scholastic disruption in order to keep T.R. on track academically. (Local Bd. Decision).

By letter dated August 30, 2019, Bill Allen, CCPS's Supervisor of Pupil Services, formally advised T.R.'s mother that the Superintendent had received notification that T.R. was charged with a reportable offense, that the school principal and other school system personnel had met to discuss the matter, and that the school system was placing T.R. on home instruction. (Appeal, Ex. C2).

In addition, on August 30, 2019, Mr. Allen spoke with T.R.'s mother to discuss T.R.'s placement and educational programming. (T.32, 41). During that call, T.R.'s mother expressed her dissatisfaction with the decision and concern that a sufficient educational plan was not in place. (T.41). She then called Mr. Simmons to express her displeasure from the conversation with Mr. Allen, and also her concerns with T.R.'s educational plan on home instruction. (T.32, 41). Mr. Simmons told T.R.'s mother that the school system would continue working on the plan and he would get back to her.[2] *Id*. All of this occurred prior to September 3, 2019, the first day of school.

On September 4, 2019, Mr. Simmons spoke with T.R.'s mother and discussed her concerns about the placement and the educational program. Mr. Simmons explained that placing T.R. on home instruction would provide him more hours per teacher per class than placement in the alternative school, and would provide personal teacher interaction with T.R. because of the coordination with teacher schedules. (T. 32-33). On or about September 6, 2019, Mr. Simmons met in-person with T.R., his mother, and Principal VonDenBosch to discuss further the educational plan. From that discussion, the school agreed to use robotic participation to allow T.R. to remotely attend Calculus and Financial Literacy. (T.33, 39).

Appellants appealed the decision to the local board on September 12, 2019. On September 24, 2019, the local board conducted an evidentiary hearing at which the Appellants were represented by counsel. At the hearing, T.R.'s mother testified that while she did not object to the academic plan, she believed home instruction was not in T.R.'s best interest and that he would be missing important peer interaction, senior events, and athletic competitions by remaining out of school. (T.42, 46). The Superintendent testified that she decided to remove the student from school based on the charge against him. (T.12, 26).

In a decision issued on October 2, 2019, the local board affirmed the Superintendent's decision to implement an educational plan for T.R. through home instruction. The local board stated the following:

> The Board considers the academic plan and homebound instruction reasonable and a measured reaction, given the seriousness of the Reportable Offenses and the circumstances established at the hearing. The Board further acknowledges the effort to date by [T.R.] to continue his academic progress with the objective of graduating on time, pending resolution of the pending charges.

[2] The educational plan was not fully in place until the second week of school. Appellants, however, are not challenging the adequacy of the home instruction program.

(Local Bd. Decision).

This appeal followed. In December 2019, while this appeal was pending, the juvenile court entered a disposition in the case. T.R. has returned to school at Colonel Richardson.

STANDARD OF REVIEW

Local board decisions involving a local policy or a controversy and dispute regarding the rules and regulations of the local board are considered *prima facie* correct. The State Board will not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.06A.

The State Board exercises its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations. COMAR 13A.01.05.06E.

LEGAL ANALYSIS

Preliminary Issues

In their State Board appeal, Appellants seek to introduce new evidence into the evidentiary record that was not a part of the case before the local board. The local board requests that the State Board exclude the new evidence from consideration.

The State Board may review additional evidence if it is shown that the evidence is material to the issues in the case and there were good reasons for failure to offer the evidence in the proceedings before the local board. COMAR 13A.01.05.04C. The State Board may consider the evidence or remand the appeal to allow the local board to review the additional evidence. *Id*.

Maryland Judiciary Case Search Docket

The Appellants ask the Board to take judicial notice of T.R.'s Maryland Judiciary Case Search Docket ("Docket") and admit it as evidence in the case. They maintain that they introduced the Docket simply to illustrate that the reportable offense charges against T.R. were misdemeanors; however, the fact that the charges are misdemeanors is apparent from the relevant code sections cited in the arrest report received by the Superintendent. Because the arrest report is part of the appeal record, there is no need to admit the Docket as new evidence in the appeal.[3]

Government Publication and National Public Radio Report

In their appeal, Appellants cite to a 2018 discipline disparities study by the U.S. Government Accountability Office entitled *K-12 Education: Discipline Disparities for Black Students, Boys, and Students with Disabilities* and a National Public Radio interview report entitled *The Racially Charged Meaning Behind the Word Thug.* (Appeal at 8). Appellants

[3] In the event that the State Board admitted the Docket as new evidence, the local board requested that additional portions of T.R.'s public record of the criminal case be admitted as well. Because we decline to consider the Docket as new evidence in this appeal, we likewise decline to admit the portions of T.R.'s record that the local board attached to its final reply.

maintain that these citations were included to illustrate how conscious and unconscious racial bias result in the disproportionate exclusion of African American students from school. The Appellants did not submit either of these items as evidence at the local board hearing. As both reports were available at the time of the hearing, there is no reason why they could not have done so. We decline to admit the study and report as new evidence in the appeal.

Affidavit of T.R.'s Mother

The local board asserts that the affidavit of T.R.'s mother should be excluded as evidence because it contains significant factual allegations, issues and assertions that were not raised in the proceedings below. The Appellants maintain that they submitted the affidavit with the appeal because, at the time the appeal to the State Board was due, the local board had not yet provided a transcript of the September 24 evidentiary hearing and there was no other way of establishing a record of the proceedings below. The full record of the local board proceedings has since been provided, including the transcript of the evidentiary hearing.

Appellants assert that the only significant issue on which the affidavit of T.R.'s mother goes beyond the hearing testimony concerns assertions regarding a white student who T.R.'s mother maintains was not disciplined and was permitted to remain at school at Colonel Richardson after bringing two loaded rifles onto school grounds in his vehicle. Appellants explain that this information was introduced to illustrate that the Superintendent's decision to place T.R., who is African American, on home instruction was "possibly infected by racial bias." (Reply at 6). Appellants argue that there are good reasons why the more detailed information contained in the affidavit should be admitted given that the local board "did not permit [T.R.'s mother] to continue her testimony on this subject during the hearing, opining that it was 'clearly not relevant' and 'doesn't matter.'" *Id*. citing T.50.

At the hearing, the Appellants were represented by an attorney who had the opportunity to present witnesses and cross-examine witnesses in order to build the record for Appellants' case. In response to a question from her attorney during direct examination, T.R.'s mother testified that she "was aware of other situations that had happened where students of the opposite race got different treatment and I understand, like [Dr. Saelens] told me, she said 'every situation is different.'" (T.42). The attorney could have questioned T.R.'s mother to elicit further detail about the "other situations," but chose not to do so.

Appellants maintain that testimony of T.R.'s mother regarding the incident was improperly discontinued. We disagree. When answering questions by a board member after the end of questioning by the attorneys for the Appellants and the Superintendent, T.R.'s mother began testifying about matters that were not responsive to the board member's question. (T. 49). Among other things, she stated "And, again, I've been aware of certain students who have brought loaded rifles on campus, on Colonel's property, in their pickup truck." (T.49). The local board's attorney discontinued the testimony because it was non-responsive to the question, although he also noted that the testimony was hearsay and was irrelevant. (*See* T.50). Appellants' attorney did not object or request redirect examination of her witness. For all of these reasons, we find there is no basis to admit the affidavit of T.R.'s mother as new evidence. We rely on the testimony given at the local board hearing as set forth in the hearing transcript.

Substance of Case

This case involves the school system's implementation of Maryland's reportable offense law and regulation. The Maryland General Assembly passed the reportable offense law, Education Art. §7-303, to address situations that could compromise school safety. It governs the exchange and use of arrest information regarding serious and criminal offenses committed by students off school grounds for the purpose of educational programming and for the maintenance of a safe and secure school environment. This Board adopted the corresponding regulation, COMAR 13A.08.01.17, to implement the law.

Appellants raise several challenges to the local board's decision, which we address below. We note that the Appellants do not challenge the adequacy of T.R.'s home instruction program. The school system provided an extensive educational program aimed to keep T.R. on track with his classes so that he could reenter school with minimal disruption upon disposition of his charges.

Due Process

The due process requirements for implementation of the reportable offense law are set forth in COMAR 13A.08.01.17(B)(1) – (6).[4] The regulation provides as follows:

(1) When a local superintendent receives information from law enforcement of an arrest of a student for a reportable offense, the local superintendent shall provide this information to the principal of the school in which the student is enrolled.

(2) The school principal shall meet with appropriate staff members to "immediately develop a plan that addresses appropriate educational programming and related services for the student and that maintains a safe and secure school environment for all students and school personnel." The school principal shall request that the student's parent or guardian participate in the development of the plan and submit information that is relevant to developing the plan.

(3) The school principal shall promptly schedule a conference to inform the parent or guardian of the plan if the plan results in a change to the student's educational program. The plan must be implemented no later than 5 school days after receipt of the arrest information.

(4) The school principal and appropriate staff shall review the plan and the student's status and make adjustments to the plan as appropriate upon notification of disposition of the reportable offense by the State's Attorney or pending notification on a quarterly basis.

[4] Appellants rely on *Goss v. Lopez*, 419 U.S. 565, 581 (1975), and argue that T.R. was denied due process because Appellants were not provided notice regarding the basis for the home instruction placement and the opportunity to respond in a meaningful way. *Goss v. Lopez* is a student discipline case that holds that, in connection with a suspension of 10 days or less, the school system must provide oral or written notice of the charges and an opportunity for the student to present the student's side of the story. *Id*. at 581. Student discipline cases follow a different process governed by a different regulation. Rather, this case involves an educational placement and school safety decision made pursuant to the reportable offense law and regulations, set forth in Education Article §7-303 and COMAR 13A.08.01.17.

(5) The parent or guardian shall be informed of any adjustments to the plan.

(6) Each local school system shall provide a review process to resolve any disagreement that arises in the implementation of this regulation.

COMAR 13A.08.01.17(B)(1) – (6).

The Maryland State Department of Education issued the Model Policy Bulletin on School Use of Reportable Offenses ("Model Policy") which, while not legally binding, provides guidance to school systems in carrying out the requirements of the reportable offense law and regulation. The Model Policy provides the following, in part:

> (1) Upon receipt of information that a student enrolled in school has been arrested on charges with a reportable offense in the community, a decision must be made to determine whether the in-school presence of the student poses a threat to the student, others, or the educational process. An emergency meeting of the school's coordinated student services team (SST) should be called to gain a complete picture of the student, his/her needs, and the best course of action for the student and the school. A team approach is the recommended model to following these cases. Throughout the process, the team should remain cognizant of the student's presumption of innocence and ongoing right to legal counsel. If the student participates in the meeting, the team should not question the student of the alleged offense.
>
> (2) If the team decides that such a threat exists, a plan will be immediately developed that addresses appropriate educational programming and related services for the student. The parents/guardians shall be notified in writing of the educational planning meeting and invited to participate. A copy of the appeal procedures shall be included in the written notice.
>
> (3) If the plan results in a change to the student's educational program, a conference will be promptly scheduled to inform the parent/guardian of the plan. . . The plan should be implemented no later than five school days after receipt of the arrest information.

(Model Policy at 3). Our analysis of the Appellants' arguments and our interpretation of the law and regulation are supported by the Model Policy guidance.

Parental Input into the Development of the Plan

Appellants argue that the school system failed to seek input from T.R.'s mother prior to devising the plan to place T.R. on home instruction, and that her input regarding only the logistics of home instruction was solicited after the removal decision was made. We disagree.

The school principal is required to request input and the submission of relevant information from the student's parent or guardian in the development of the plan that addresses appropriate educational programming and related services for the student and that maintains a safe and secure environment for all students and school personnel." COMAR 13A.08.01.17(B)(2). The regulation requires the opportunity for parental input in the development of the plan. A parent could have information relevant to whether removal from school is more appropriate or whether other interventions are more appropriate. However, a parent does not control the decision regarding whether the student is removed from school.

Development of the plan necessarily includes consideration of the types of measures and modifications that can be made to the student's educational program to address safety concerns while providing education to the student. *See* Model Policy at 2 (The student's education program may be modified "to include assignment to an alternative education program as a temporary measure to ensure school safety . . . which includes restrictions within the school building; a modified schedule; administrative transfer to an alternative school; evening high school; online courses; or direct instruction to a student.").

In this case, the Superintendent made the initial decision to place T.R. on home instruction upon receipt of the charging document against T.R. She made that decision on August 29, prior to the start of the school year. T.R.'s mother then had the opportunity to provide information about the plan to school personnel prior to the start of school and thereafter. She spoke with Mr. Allen and Mr. Simmons on August 30; she spoke with Mr. Simmons again on September 4; and she met with Mr. Simmons and Principal VonDenBosch on September 6. Although Appellants maintain that school personnel did not specifically request input from T.R.'s mother about the placement decision and that discussion revolved around instruction delivery, she had multiple opportunities to provide whatever input she wanted regarding the home instruction placement decision, even if she did not do so. Accordingly, we do not find a violation of the school system's process required by COMAR 13A.08.01.17 for parental input into the instructional plan development.

Conference with Parent if Plan Changes Student's Educational Program

If the plan to address appropriate educational programming and maintenance of a safe and secure school environment results in a change to the student's educational program, the principal must promptly schedule a conference and inform the parent. COMAR 13A.08.01.17(B)(3). It is at this conference that the parent receives notice of the change in the educational program and has an opportunity to respond. The local school system's review process resolves any disagreement regarding the plan. COMAR 13A.08.01.17(B)(6). In CCPS, these procedures include appealing the matter to the local board.

T.R.'s mother attended a conference with Mr. Simmons and Principal VonDenBosch on September 6, 2019. T.R.'s mother was already aware of the change to T.R.'s education program, having previously been advised orally and in writing of the home instruction placement. She had the opportunity to address the placement decision at the conference. Thereafter, Appellants appealed the decision to the local board and participated in an evidentiary hearing before the local board, during which they were represented by their attorney. Thus, we find no violation regarding the conference requirement.

Charge only Determination for School Removal

Appellants argue that the school system removed T.R. from school based solely on the charges against him without any further analysis of the impact of the charges on school safety. They maintain that the school system was required to engage in a thoughtful approach that considered the facts surrounding the reportable offense charges as well as information relevant to T.R. before the plan was fully developed.[5] We agree.

The local board responds that the seriousness of the gun violation charges alone was sufficient, without more, to determine that T.R. posed a threat to the safety of the school and that removal was necessary. Based on the local board's reasoning, notice of an arrest for illegal possession of a loaded handgun by a student off school grounds will always result in a finding that the student poses a potential threat to students and staff in school pending disposition of the reportable offense, and that the student should be removed from school as a result.

Appellants claim that T.R.'s presence is school was not a threat to the maintenance of a safe and secure school environment and that his placement on home instruction was unreasonable because the gun incident occurred during the summer in another county, not on school property; the charges were misdemeanors; and T.R. was a good student involved in many activities with no disciplinary history to suggest that he was a threat to students and teachers.

In school discipline cases, we have rejected a purely conduct-based approach to student removal from school where there is no other analysis in deciding the student's removal. For the same reasons as in discipline cases, a purely charge-based approach to school removal for a reportable offense is antithetical to discretion in the removal decision. *See Alexander and Arlene A. v. Harford County Bd. of Educ*., MSBE Op. No. 18-21 (2018). We believe that the better way to determine a safe and secure school environment is to use an individualized approach. As we stated in *Alexander and Arlene A.,* "[a]n individualized approach is a holistic assessment that takes into consideration the totality of the facts and circumstances surrounding the incident, the student, and the school." See, *e.g., M.S. v. Prince George's County Bd. of Educ*., MSBE Op. No. 18-09 (2018). Using this approach, a decision maker would, among other things, review the student's past conduct, consider the student's response to the consequence of the behavior, consider the impact the student's behavior has on the school environment, and other appropriate factors. In other school removal contexts, we have encouraged this more individualized approach.

The Model Policy supports our view. It states that "students are best served by being in school" but that a student charged with a reportable offense "**could** pose a threat to the safety and welfare of others in the school community." (*See* Model Policy at 2 (emphasis added)). In addition, the Model Policy indicates that the school team should gain a complete picture of the student, the student's needs, and the best course of action for the student and the school. (*Id*. at 3). Thus, it follows that a school system must conduct some sort of analysis before deciding to remove a student from school upon notification of a reportable offense.

In *Kelly D. v. Harford County Board of Educ*., MSBE Opinion 13-32 (2013), we

[5] Although the Appellants point out that COMAR 13A.08.01.17(c)(5) states that "[n]otice of the reportable offense charge alone may not be the basis for suspension or expulsion of the student," the school system did not impose any discipline here.

reviewed a student's removal from school under the reportable offense provisions. In that case, the student was charged with assault in the second degree. The principal of the school referred the matter to the local Superintendent to determine if a change in the student's placement was necessary to maintain a safe and secure school environment. The Superintendent's designee conducted a conference with the student and his parent. The Superintendent then recommended a change in the student's educational placement because there was sufficient evidence that the assaulted student would be negatively impacted by the student's presence in school. Based on the results of the conference, the Superintendent issued a decision to transfer the student to the alternative education online program. The student was prohibited from participating in any school activity and was prohibited from being on local school system property.

The hearing transcript in *Kelly D* demonstrated that the local board's primary concern was that the student's presence at the high school was detrimental to the assaulted student and created problems related to enforcement of the peace order. In that case, we affirmed the decision of the local board. Here, however, the record is devoid of any evidence that the Superintendent engaged in any thoughtful analysis in making the decision to place T.R. on home instruction. The local board states in its decision that the Superintendent considered "the reportable offenses, the health and safety concerns for the staff and students at Colonel Richardson High School, and the academic record and disciplinary record of the Appellant" in making her decision to place T.R. on home instruction. However, there is no evidence in the record to support this statement. In her testimony, the Superintendent does not claim to have relied on any information other than the reportable offense notice in reaching the removal decision. (T.12, 26).

In our view, COMAR 13A.08.01.17 requires school systems to perform some type of analysis with parental input in creating a plan that balances the educational needs of the student and maintenance of a safe and secure school environment. Reportable offenses by their very nature are all very serious crimes, including crimes of violence and crimes involving weapons. The reportable offense law and regulation do not automatically require a student's removal from school upon notification of an arrest, despite the seriousness of these crimes. However, there is no support in the record for us to conclude that the Superintendent's initial decision to remove T.R. from school was based on maintaining a safe and secure school environment. The record shows that her decision was only based on the charges against T.R. Because the record before us does not contain sufficient evidence to support the removal from school decision, we find the action to remove T.R. from school solely on a charge-only basis is an abuse of discretion and unreasonable in light of the record.

In so finding, we do not minimize the seriousness of an arrest for gun charges (or any reportable offense) and the threat that guns (and other weapons) pose to our State's and nation's schools. Rather, we are simply stating that before a school system removes a student from school for a reportable offense, the school system must engage in some analysis that considers information relevant to the educational programming needs of the student and the maintenance of a safe and secure school environment, rather than simply relying on the reportable offense charges alone.

Review Process

The Appellants maintain that the school system deprived them of a meaningful review process to address T.R.'s placement on home instruction because the school system did not

advise T.R.s mother of the appeal process, either orally or in writing. Additionally, they claim that there is nothing set forth in school system policy regarding an appeal process for reportable offense determinations. Appellants explain that T.R.'s mother learned of the appeal process after contacting the Maryland State Department of Education.

COMAR 13A.08.01.17(B)(6) requires that local school systems "provide a review process to resolve any disagreement that arises in the implementation of [the reportable offense regulation." The Model Policy recommends that school systems provide a copy of the appeal procedures to the parent. (Model Policy at 3).

Although it does not appear that the school system provided the Appellants with the appeal procedures, such procedures clearly do exist and the Appellants utilized them. They appealed the Superintendent's decision to the local board. The local board conducted an evidentiary hearing, at which the Appellants were represented by an attorney. The Appellants appealed the local board's decision to this Board. While we believe that the best practice is for school systems to provide parties with the appeal procedures, the regulation only requires that a school system provide a process to resolve disputes. The school system did so here, thus Appellants were not denied a meaningful review.

Racial Motivation

Appellants maintain that the Superintendent's decision to place T.R. on home instruction may have been based on racial bias. They rely on the testimony of T.R.'s mother that a white student possessed two loaded hunting rifles in his vehicle on the grounds of Colonel Richardson High School and did not suffer any disciplinary consequences, while T.R., who is African American, was removed from school for reportable offenses involving possession of a loaded handgun.

There is no doubt that the disproportionate impact of school discipline on African American students is of substantial concern to this Board. The State has worked hard and continues to work hard to reduce racial disparities with regard to the use of exclusionary school discipline practices. This Board does not take allegations of racial bias lightly. Nevertheless, in this case, the testimony of the Appellant regarding the matter involving the white student is anecdotal and lacks any of the specificity needed to find it conclusive as evidence of racial bias against T.R. In addition, it does not involve a reportable offense for which law enforcement has already arrested the individual for a criminal violation. Although Appellants maintain that the local board's attorney prohibited T.R.'s mother from testifying further on the matter at the hearing, we have already explained above why that action was appropriate. Furthermore, the Superintendent testified that she did not consider T.R.'s race in making the determination to place him on home instruction. (T.31). Based on the record in this case, we do not find sufficient evidence of racial bias.

CONCLUSION

For the reasons stated above, we find that the local board removed T.R. from school solely based on the charges against him and did not engage in a thoughtful analysis in determining an appropriate educational plan for T.R. that also maintained a safe and secure school environment. We direct the local board to expunge from T.R.'s education record all references to the removal based on the reportable offense.

Signatures on File:

_____
Jean C. Halle
Vice-President

_____
Gail H. Bates

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Clarence C. Crawford

_____
Charles R. Dashiell, Jr.

_____
Vermelle D. Greene

_____
Justin M. Hartings

_____
Rose Maria Li

_____
Joan Mele-McCarthy

_____
Michael Phillips

_____
David Steiner

Absent:
Warner I. Sumpter
President

January 28, 2020