

V.A.,

Appellant

v.

WORCESTER COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 23-16

OPINION

INTRODUCTION

V.A. (“Appellant”) appeals the decision of the school principal to place Student A on an Alternative Placement Plan in which Student A reported daily to school to the Behavior Resource Room for an extended number of school days. It also is an appeal of the decision, thereafter, to transfer the student to an alternative school. The Worcester County Board of Education (“local board”) filed a motion to dismiss. Appellant responded, and the local board replied.

FACTUAL BACKGROUND

Student A has a variety of behavioral health diagnoses and attends middle school in Worcester County Public Schools (“WCPS”). During fall of the 2022-2023 school year, school staff repeatedly sent Student A to the Behavior Resource Room¹ for failure to complete assigned work, arguing with teachers, phone use, leaving class without permission, and hitting classmates. (Appeal, V.A. Statement). On January 6, 2023, the school principal met with Appellant, one of the Student A’s teachers, and a school counselor. The principal advised Appellant that the school had developed an Alternative Placement Plan in response to the Student A’s behaviors in which the student would be assigned to an alternative location within the school for 30 days and would not return to his current classes until he could demonstrate that he was able to follow directions. *Id.* Appellant maintains that the Plan was presented as final and that she was given no opportunity to object. *Id.*

The stated purpose of the Plan was “to help [Student A] perform more successfully academically and behaviorally.” (Appeal, Alternative Placement Plan Document). The Plan specified as follows:

1. Placement will begin on Monday, January 9th.
2. [Student] will receive daily instruction from teachers at the beginning of the day.

¹ The Behavior Resource Room is the same room utilized by the school for in-school suspensions.

3. [Student] will follow a levels system based on behavior and performance. Once he ‘levels’ up, he will be able to go to physical education for a partial period. Once he ‘levels’ up again, additional P.E. time will be added. The same process will progress for each subject area.
4. Academic work will be a combination of hard copy and on the iPad. The iPad will be provided when academically necessary.
5. [Student] will report to the Behavior Resource room upon arrival to school. He will leave the Behavior Resource room at the end of the day.
6. Breaks will be built into [student’s] day.
7. A “successful” day will be defined as a day that [the student] has achieved the predetermined number of points based in his point system. A “successful” day will count towards the 30-day placement. Any aggressive behavior or non-compliant behavior will not be considered a successful day.
8. The levels system will be reviewed with [student] by the school Social Worker.
9. A School Counselor will meet with [student] daily. The school Social Worker will meet with [student] weekly.

Id.

Since February 2023, Ashley Cuffee, an advocate working with the family, started visiting Student A three to four times per week at the school. (Appeal, Cuffee Statement). At no time during those visits did Ms. Cuffee observe any teachers providing the student with instruction. *Id.* Rather, she observed that Student A was provided with work packets to do on his own, which she states he was usually unable to complete. *Id.* Ms. Cuffee also observed that the school had put up temporary barriers in the Behavior Resource Room to separate Student A from the students serving in-school suspensions so that he was alone in his own space. *Id.* Beginning in February the school started sending Student A home from school early on a regular basis due to staff reports of misbehavior. (Appeal, V.A. Statement). Appellant reports that, at some point, the school began sending him home early almost every other day. *Id.*

On March 2, 2023, the school principal convened a meeting about Student A’s placement, which was attended by Nicole Selby from the WCPS District Office, Appellant, and Ms. Cuffee. (Appeal, Cuffee Statement). Ms. Selby advised that Student A would be transferred to the Restart alternative school. *Id.* According to Ms. Cuffee, school staff acknowledged that they did not have sufficient personnel to send teachers to provide live instruction in the Behavior Resource Room. *Id.* Appellant objected to the transfer, but Ms. Selby advised that the decision was made. *Id.*

On March 9, 2023, Appellant reported with Student A at Restart for a formal intake meeting not realizing that it had been cancelled after her attorney had been in touch with WCPS.² (Appeal, V.A. Statement). Ms. Selby and the school principal advised Appellant that Student A could remain at his middle school, but did not discuss whether the Alternative Placement Plan would still be in effect. *Id.* Since March 13, 2023, Appellant has kept Student A at home and has the school send work packets for his completion because she is concerned that the student will be returned to the Behavior Resource Room and will continue to be sent home early each day. *Id.*

This appeal followed.

STANDARD OF REVIEW

In cases where there is no local board decision to review, the Board must consider whether it has jurisdiction to review the case. In such cases, we exercise our independent judgment to decide the extent of our power under State education law. *See T.G. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 18-10 (2018); *R.L. v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 17-27 (2017). The State Board shall exercise 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

Appellant brings this appeal objecting to two decisions of WCPS: use of the Alternative Placement Plan and the transfer to the alternative school. The Appellant argues through counsel that the principal's decision to remove Student A to the Behavior Resource Room and transfer Student A to the alternative school excluded the student from the his regular school program for more than 45 school days and constitutes an illegal expulsion because the action was taken without compliance with the disciplinary procedures and due process requirements set forth in COMAR 13A.08.01.11. Appellant maintains that the decisions were presented as final and she was not provided an opportunity to object. In response, the local board filed a motion to dismiss on the basis that the State Board does not have jurisdiction over the case.

Two parts of the Maryland Code, Education Article establish the State Board's quasi-judicial jurisdiction. Under Md. Code, Educ. §4-205(c)(2), the local superintendent decides all controversies and disputes that involve the rules and regulations of the local board, and the proper administration of the local school system. Decisions of the local superintendent may be appealed to the local board of education, and decisions of the local board may be appealed to the State Board. *See* Md. Code, Educ. §4-205(c)(3). Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board shall be considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A.

Additionally, the State Board retains a grant of original jurisdiction through Md. Code, Educ. §2-205 that permits us to determine the true intent and meaning of State education law and to decide all cases and controversies that arise under the State Education statute and State Board

² At some point following the development of the Alternative Placement Plan, Appellant retained legal counsel.

rules and regulations. *See Sartucci v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-31 (2010). This category of cases applies to State education law, regulations, or a policy that implicates State education law or regulations on a statewide basis. *Id.*; *see also In Re: Board of Education of Howard County v. Renee Foose*, MSBE Op. No. 17-08 (2017) (discussing the State Board’s jurisdiction). This is especially true where there is no useful purpose to be served by requiring a lower level administrator or agency to decide a question of statewide applicability. *See Bd. of Educ. for Dorchester Cnty. v. Hubbard*, 305 Md. 774, 789 (1986) (quoting *Board of Education of Garrett County v. Lendo*, 295 Md. 55, 65–66 (1982)).

The local board provides a number of arguments in support of their contention that the State Board lacks jurisdiction over this case under either §4-205 or §2-205. These arguments include maintaining that the Appellant failed to exhaust administrative remedies by appealing to the local superintendent and then the local board for review; that there is a useful purpose for review by the local board prior to review by the State Board because significant factual disputes exist regarding the nature and circumstances of the student’s placement; that the issues concerning the student’s placement directly relate to the procedures, practices, and administration of WCPS; and that no unusual circumstances necessitate the State Board’s exercise of original jurisdiction. The Appellant in response argues that the appeal raises questions of statewide applicability with regard to in-school removals under COMAR 13A.01.05.11, and that WCPS afforded Appellant no mechanism to appeal its decision locally.

Cases involving school discipline matters typically reach the State Board following a decision from a local board of education. As we stated in *R.L. v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 17-27 (2017), in the usual school discipline case we would decline to exercise original jurisdiction because the merits of a school discipline decision should be appealed to the local board for a decision before any review is sought at the State Board level.

This Board has occasionally, in unusual circumstances, exercised its original jurisdiction pursuant to §2-205 to address appeals concerning student discipline. For example, in *K.B. v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 16-12 (2016), we exercised original jurisdiction in a case involving new disciplinary regulations finding it to be “in the public interest” to address the claims when the Board had not previously opined on the issues. Similarly, in *F.W. v. Baltimore County Bd. of Educ.*, MSBE Op. No. 23-12 (2023), issued on the same date as this decision, we exercised original jurisdiction in a case implicating the interpretation of a new State education law concerning reportable offense procedures, which we have not yet considered. In *R.L.*, we exercised original jurisdiction because a series of appeals had identified systemic problems in the Baltimore City Public Schools’ disciplinary process, including the use of convoluted procedures for transfers or expungements to obfuscate avenues of review in disciplinary decisions. MSBE Op. No. 17-27 (2017). In *A.M. v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 17-05 (2017), this Board remanded an appeal to the local board after concluding that the school system failed to docket the appeal and then created a “confusing scenario” for the Appellant to navigate. Unlike the cases cited herein, we do not find this case to be one involving unusual circumstances and decline to exercise our original jurisdiction pursuant to §2-205.³

³ Appellant’s reference to the removal and transfer in this case, as well as a prior WCPS discipline case that was withdrawn and never ruled on by the State Board, do not demonstrate a systemic practice in WCPS.

There are good reasons why such a case should proceed through the §4-205(c) process. As the local board stated in its motion:

In the instant appeal it is clear that a “useful purpose” does exist for requiring this matter to be reviewed by the Superintendent and the Local Board prior to quasi-judicial review by the State Board. For instance, significant factual disputes exist regarding the nature of the Student’s current placement, his proposed placement, and whether his placement is disciplinary in nature. Investigation by the Superintendent and subsequent review by the Local Board will aide in the development of the evidentiary record regarding these factual disputes and at least has the potential of resolving the issues raised in the instant appeal prior to the matter reaching the State Board. For these reasons, including the fact that this appeal directly imputes the Superintendent’s administration of the county school system, the State Board should decline to exercise original jurisdiction over this matter and instead require the Student to exhaust available administrative remedies under 4-205(c) prior to bringing this matter before the State Board for review.

Motion at 3. We agree.

We note that one of the issues in this case involves the determination of whether the student’s Alternative Placement Plan constitutes an in-school removal or another disciplinary removal under the regulations. COMAR 13A.08.01.11C(2)(a) provides that an in-school removal is not considered a day of suspension if the student is afforded the opportunity to (1) appropriately progress in the general curriculum; (2) receive the special education and related services specified on the student’s IEP, if the student is a student with a disability in accordance with COMAR 13A.05.01; (3) receive instruction commensurate with the program afforded to the student in the regular classroom; and (4) participate with peers as they would in their current education program to the extent appropriate. This Board has previously recognized in-school removals as a permissible option. *See Vincent and Parul M. v. Charles County Bd. of Educ.* MSBE Op. No. 20-17 (2020) (finding that a five day in-school removal did not constitute an in-school suspension); *Almena Q.C. v. Cecil County Bd. of Educ.*, MSBE Op. No. 17-29 (2017) (recognizing the permissibility of a 30 day in-school removal following a period of suspension in lieu of an extended suspension). However, if the requirements of an in-school removal are not satisfied, WCPS must comply with the procedural requirements for an in-school suspension, or other applicable disciplinary removal, as outlined in the regulations.

While the Board declines to exercise its original jurisdiction in this case, we are extremely concerned about the educational status of Student A. The status of Student A’s educational placement with WCPS is unclear based on the existing filings. We remand the case to the local board so that the Appellant can exhaust the available administrative remedies, as appropriate, and we encourage the local board, in any decision issued through the §4-205 process, to explain how the removal satisfies the requirements of COMAR 13A.08.01.11.

CONCLUSION

For the foregoing reasons, we decline to exercise our original jurisdiction in the appeal and remand to the local board for the Appellant to exhaust the available administrative remedies, as appropriate. We ask that the local board report to this Board on or before June 22, 2023, to provide an update regarding the procedural posture of the case and the student’s educational placement.

Signatures on File:

Clarence C. Crawford
President

Susan J. Getty
Vice-President

Shawn D. Bartley

Chuen-Chin Bianca Chang

Charles R. Dashiell, Jr.

Jean Halle

Rachel McCusker

Joshua Michael

Lori Morrow

Warner I. Sumpter

Holly Wilcox

Absent:
Gail H. Bates
Joan Mele-McCarthy

May 23, 2023