

M.A.,

Appellant

v.

QUEEN ANNE’S COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 23-18

OPINION

INTRODUCTION

Appellant appeals the decision of Queen Anne’s County Public Schools (“QACPS”) to expel him from school for the remainder of the 2022-2023 school year. The Queen Anne’s County Board of Education (“local board”) filed a motion to dismiss. Appellant responded, and the local board replied.

FACTUAL BACKGROUND

Appellant is a sixteen-year-old student enrolled in tenth grade in QACPS for the 2022-2023 school year. On August 29, 2022, Appellant’s mother electronically signed through InfoSnap/PowerSchool that she had reviewed the QACPS discipline policy, as is customary for all parents of new and returning students. This policy includes appeal procedures for suspensions and expulsion. (Local Bd. MTD, Evans Aff. ¶¶ 6-9).

On November 9, 2022, Appellant was found multiple times outside of designated areas and out of his classroom. During lunch, administrators found Appellant and another classmate out of class in the boys’ bathroom. When Appellant was asked to leave the bathroom and return to class, Appellant used profanity-laced statements indicating he would go wherever he wanted and that staff should not mess with him. In response, Appellant was suspended from school for ten days for repeated disrespect/insubordination and threat to an adult. (Local Bd. MTD, Ex. 3).

On November 10, 2022, the Assistant Principal sent Appellant’s mother a letter informing her that Appellant was suspended and recommended for expulsion. The Assistant Principal indicated that Appellant was previously involved in an incident on October 6, 2022, wherein he was given a ten-day suspension for threat to adults. The November 9, 2022, incident demonstrated a similar pattern of threats and profanity, and Appellant repeated this behavior at the end of the school day when the Assistant Principal attempted to speak with him about the consequences of his actions. (Local Bd. MTD, R. 13-14).

The QACPS Office of Student Support conducted an investigation, and QACPS Pupil Personnel Worker (“PPW”), Nicole Conner, met with the Appellant’s mother about the incident. Appellant did not participate. On November 18, 2022, Ms. Conner submitted a memo to her

supervisor, S. Matthew Evans, with her findings and a recommendation “to consider further disciplinary action and options for alternative educational settings.” The memo did not mention whether the student presented an imminent threat of serious harm to other students or staff. Ms. Conner indicated in her memo that she provided “due process rights” on November 21, 2022.^{1,2} (Local Bd. MTD, R. 16-18).

On November 21, 2022, QACP Superintendent, Dr. Patricia Saelens sent a letter to Appellant’s mother advising that she granted the expulsion request for the remainder of the 2022-2023 school year and assigned Appellant to Educere – an online educational program. Dr. Saelens cited Appellant’s repeated incidents of disrespect/insubordination, use of aggressive profanity, and threats towards school administrators as the basis for her decision. She did not make an explicit reference to whether Appellant presented an imminent threat of serious harm to other students or staff. The letter also did not contain any reference to the local board appeal process. (Local Bd. MTD, R. 19).

Appellant alleges that he has been out of school since November 10, 2022, without any educational services. (Appeal, P.A. Aff. ¶ 5). Subsequent to the expulsion, Appellant and his mother retained legal counsel.

This appeal followed.

STANDARD OF REVIEW

In cases where there is no local board decision to review, the Board must consider whether the case is ripe for review and 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 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 requests this Board overturn Dr. Saelen’s decision to expel him from school for the remainder of the 2022-2023 school year and assign him to an online educational program. Appellant argues that the expulsion was illegal because QACPS failed to determine whether the student’s behavior posed an imminent threat of serious harm, consistent with COMAR 13A.08.01.11B(2)(a), and his behavior did not rise to such a level. Furthermore, he contends he was illegally deprived of comparable educational services as required by COMAR 13A.08.01.11F. The local board filed a motion to dismiss for lack of jurisdiction and timeliness because Appellant did not seek review by the local board of education and there is no local board decision for the State Board to review. We address these issues in turn.

¹ The State Board notes that the November 21, 2022, date indicating due process was provided is later than the November 18, 2022, date of the memo. We are unclear on whether the date of the memo was an error.

² Appellant’s mother disputes receiving appeal rights from anyone at QACPS. (Appeal, P.A. Aff. ¶¶ 2-3). Ms. Conner contends she did provide the appeal notice to Appellant’s mother in a conference on November 21, 2022. (Reply, Connor Aff. ¶ 5).

Jurisdiction

Recently in *V.A. v. Worcester County Bd. of Educ.*, MSBE Op. 23-16 (2023), we explained 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) ... Additionally, the State Board retains a grant of original jurisdiction through Md. Code, Educ. § 2-205, which permits the State Board 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 rules and regulations. *See Sartucci v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-31 (2010).

We have provided through the State discipline regulations a process by which a student or their parent may file an appeal of a suspension or expulsion decision. Pursuant to COMAR 13A.08.01.11C(4)(f)-(l), a student or parent may file an appeal of the local superintendent’s decision to the local board of education. The local board decision may be appealed to the State Board. Appellant did not file an appeal with the local board prior to filing this appeal to the State Board. As such, the local board argues the case is not ripe for review and the State Board does not have jurisdiction over the case.

Typically, we decline to exercise original jurisdiction in these matters 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. *See R.L. v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 17-27 (2017). In *V.A. v. Worcester County Bd. of Educ.*, we explained that in unusual circumstances, the State Board exercises its § 2-205 original jurisdiction:

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), ... 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.

Appellant maintains the appeal is appropriately before this Board under our § 2-205 grant of original jurisdiction. First, Appellant argues that he “has the choice of either appealing first to the local superintendent and local board and then the State Board, or going directly to the State Board.” In support of this argument, Appellant relies upon language in *Garrett Cnty. v. Lendo*, 295 Md. 55, 59 (1982), wherein the State Board asserted it had a “mandatory duty to decide – ‘shall decide’ – only those controversies and disputes concerning a public school law in the Education Article or a State Board [regulation].” We disagree with Appellant’s interpretation of the State Board’s position in *Lendo*. The State Board agrees that it must hear cases involving disputes of State Education law; however, this does not preclude the State Board from setting up a process requiring an intermediary appeal to the local board, as we have chosen to do in COMAR 13A.08.01.11C(4)(f)-(l). Under this scheme, the State Board is not abdicating its responsibility to “explain the true intent and meaning of” State Education law under § 2-205. It is creating an opportunity for the local board to resolve more expeditiously arbitrary, unreasonable, or illegal actions by local administrators, with an opportunity for subsequent State Board review.

Appellant also argues that this case both presents a question of Statewide applicability and a novel issue of law, such that the State Board should exercise its § 2-205 grant of original jurisdiction. Specifically, “does COMAR 13A.08.01.11 authorize a district to expel a student for seven months for verbally disruptive behavior, and provide him with no education services during the period of expulsion?” (Response, p. 2). We do not find this question a compelling reason to allow Appellant to circumvent the local board appeal process. First, Appellant’s request to consider whether his behavior met the standard required for an expulsion involves a fact intensive analysis of the specific circumstances of this case, which by its very nature is not a Statewide issue. Furthermore, the State Board in *K.B. v. Baltimore City Bd. of Sch. Comm’rs* already explained that:

[e]xtended suspensions and expulsions from a student's regular school program are meant to be "last-resort" options. The length of an extended suspension or expulsion must be limited "to the shortest period practicable.

In this same case, we also made clear that local board must provide “comparable educational services and appropriate behavioral support services” to promote a successful return to the student's regular academic. *See* COMAR 13A.08.01.11F. Thus, it is unnecessary for the State Board to grant jurisdiction to answer the question as posed by Appellant. We have made our position on the local board’s use of expulsion and the need for educational services clear.

Finally, Appellant argues that QACPS failed to provide him with notice of his appeal rights, such that he was deprived of due process. There is some dispute as to whether Appellant was provided with his appeal rights. Appellant’s mother claims she was never told about appeal rights by QACPS staff. Ms. Connor, the QACPS PPW, claims she provided the appeal rights in the November 21, 2022, conference with the mother. QACPS also claims Appellant’s mother electronically signed acknowledgment of the QACPS discipline policy at the beginning of the school year. There is also reference in the QACPS 2022-2023 Parent-Student Handbook, which is available online to the public, to the appeal process. Appellant argues that this is insufficient to put him on notice of his rights and deprives him of due process. We disagree. While it may be best practice for the appeal rights to be included in the local superintendent’s expulsion letter, (and the State Board encourages local school systems to adopt this practice), there is no such

requirement in the statute or regulation. The information to appeal a discipline decision to the local board was available if the Appellant or his mother wished to appeal the expulsion at the time of the decision.

For the foregoing reasons, we find that the appeal before us is distinguishable from the line of cases in which we have exercised our § 2-205 grant of original jurisdiction. As such, we decline to extend such jurisdiction in this case and grant the motion to dismiss.

Timeliness

The local board also requests we dismiss this case for timeliness. Maryland law requires a local superintendent's student discipline decision to be appealed to the local board within ten days. Md. Code Ann., Educ. § 7-305(c)(5)(i) and COMAR 13A.08.01.11C(4)(f). Furthermore, appeals to the State Board must be filed within thirty days of the decision of the local board or other individual which issued the decision. COMAR 13A.01.05.02B(1)(a). In extraordinary circumstances, the State Board has granted an exception to the timelines. As we have already found a lack of jurisdiction, we decline to opine on whether the circumstances of this appeal require a waiver of the appeal timelines.

School Discipline Procedures

While the State Board declines to exercise its original jurisdiction in this case, we remain concerned about allegations made in the appeal, specifically that the student received no educational services during the expulsion. There is some uncertainty created by the record as to Appellant's enrollment status in QACPS.³ However, the State Board is clear that so long as Appellant is a student of QACPS, he is entitled to comparable educational services and appropriate behavioral support services to promote a successful return to the student's regular academic. COMAR 13A.08.01.11F. Any failure to provide comparable educational services is an egregious violation of the school system's responsibility to educate Appellant, and the consequences can be profound for this young person.

Accordingly, we recommend the local board revisit the State discipline regulations and its local board discipline policies with the QACPS Superintendent, central office staff, and school administrators concerning the comparable educational services a student receives during the expulsion period. Furthermore, we recommend the local board review its expulsion policies and practices related to the imminent threat of serious harm standard, and notification to students and parents about available due process to appeal the superintendent's decision to the local board.

CONCLUSION

For the foregoing reasons, we decline to exercise our original jurisdiction in the appeal and grant the motion to dismiss. We ask that the local board report to us on or before July 20, 2023, to provide an update on the student's educational placement and the status of the student's educational services during the period of expulsion.

³ The local board submitted documentation from Norfolk Juvenile Detention Center indicating the student was enrolled in their education program as of February 27, 2023. (Local Bd. MTD, R. 21-22).

Signatures on File:

Clarence C. Crawford
President

Susan J. Getty
Vice-President

Gail H. Bates

Chuen-Chin Bianca Chang

Charles R. Dashiell, Jr.

Rachel McCusker

Joan Mele-McCarthy

Joshua Michael

Lori Morrow

Warner I. Sumpter

Holly Wilcox

Absent:
Shawn D. Bartley
Jean Halle

June 27, 2023