

B.J. AND KIMBERLY W.,

Appellant

v.

ANNE ARUNDEL COUNTY BOARD  
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 15-08

## OPINION

### INTRODUCTION

In this appeal, Appellants challenge the one day out-of-school suspension and one day in-school suspension imposed upon their son for classroom disturbance. The Anne Arundel County Board of Education (local board) filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal and should be upheld. Appellant responded to the motion and the local board replied.

### FACTUAL BACKGROUND

Appellants' son, J.W., began attending the second grade at Park Elementary School at the end of November, 2012. After a short period of adjustment to the new school, J.W. began displaying some behavioral problems. (T.22-23). The school used various strategies and accommodations in an attempt to deal with J.W.'s behavior.<sup>1</sup> Some of the strategies included allowing extra breaks, utilizing a reward system, working with the Learning Lab, using yoga and stress balls, using a peer helper, and configuring his work space to limit distractions. (T.23-24). In addition, the school communicated with the Appellants about the behavior problems through phone calls, conferences, and by sending notes home, all in an attempt to work with the Appellants to address the problems. (T.261, 398-399). Although the school may not have communicated every single instance of problem behavior to the Appellants, the Appellants were aware that there were serious behavioral issues.

In dealing with J.W.'s behaviors, the school began collecting data in order to conduct a functional behavioral assessment (FBA) with the goal of establishing a behavior intervention plan (BIP). (T.220). As part of the FBA, the school compiled a behavior log detailing J.W.'s behavior from December 3, 2012 through the end of the school year. (T.85, 229, 295-297). The following is a summary of the incidents that appeared on the behavior log:<sup>2</sup>

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<sup>1</sup> The strategies were essentially the same as those that the school used for students with ADHD. (T.284). Some of the strategies were put in place very soon after J.W.'s arrival at Park based on information received from his prior school. (T.216, 283).

<sup>2</sup> We have included only incidents prior to March 1, 2013 because these are the incidents that impacted the disciplinary decision at issue in this case.

On December 3, 2012, J.W. disrupted the class for approximately 20 minutes when he repeatedly refused to do his work or go back to his seat. Ms. Fultz, the classroom teacher, sent J.W. to the Learning Lab for a break. At another point that day, Ms. Fultz attempted to send J.W. to the Learning Lab to take a break, but he refused to go. Later in the afternoon, J.W. crawled under his desk and yelled at the other students as the class was trying to play a game on the Smart Board. After the outburst, J.W. wrote "I hate Ms. Fultz" on his binder. Ms. Fultz had to have another teacher step into her classroom so that she could take J.W. to the office. The following morning, Ms. Fultz met with J.W.'s mother to discuss his behavior. (T.24-26). J.W. lost two days of school playtime as a result of his actions. (Behavior Log).

On December 4, 2012, after the meeting with J.W.'s mom, J.W. refused to complete his work. He threw his papers on the floor and talked back to the teacher. He then began rocking the furniture banging it into other desks. Ms. Fultz testified that dealing with J.W.'s conduct took time away from teaching and distracted other students from their work. (T.27-28).

During lunch on December 7, 2012, the teacher on duty in the cafeteria reported that J.W. had positioned himself under the table and was reaching across and smashing milk containers. J.W. indicated that he was trying to box like a fighter. Despite several requests by the teacher to stop, J.W. continued the behavior. Ms. Fultz spoke with J.W. about his actions. (T.31). After lunch that same day, J.W. "erupted" after being told that he could not play at recess and had to complete his homework because he had failed to complete his homework the prior night.<sup>3</sup> He went under his chair until he hit his head, and then he went under his desk. J.W. was removed from the classroom and taken to the office to calm down. The teacher from the Learning Lab, Ms. Hinshaw, spoke with J.W. about his behavior. (T.32-33). Later that same day, J.W. growled, chewed on chairs, and tried to touch another student after he was told that he could not take a break until after his spelling test. (T.33). This behavior distracted the other students who were taking a test. (T.34).

On December 10, 2012, Ms. Fultz removed J.W. from the classroom. He refused to complete his work, he yelled in the classroom, he picked up his chair as if to throw it, and then he hid under his desk. Ms. Fultz called Ms. Hinshaw to remove J.W. from the classroom to go to the Learning Lab. (T.34-36). She also contacted J.W.'s mother and shared the events that had transpired that day. (T.36-37). Later that day, J.W. received a one day suspension for punching another student in the nose because the student ignored him. (T.38).

Several incidents took place in January, 2013. On the afternoon of January 8, J.W. left the school building without permission during the instructional day. The school principal, Ms. Blondell, followed after him to make sure that he had made it home safely. (T.40-41). On January 15, J.W. refused to complete his homework. Ms. Hinshaw contacted J.W.'s mother to discuss his attitude. J.W.'s mother stated that J.W. had been sick and was having trouble sleeping. (T.41-42). On January 18, J.W. refused to complete his classwork and threw his papers on the floor. This was a behavior that was ongoing for him. (T.42).

Behavioral problems continued into February, 2013. On February 7, J.W. threatened to punch another student and then refused to go to the office when told to do so. After

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<sup>3</sup> The school's policy requires students to complete unfinished homework before playtime. (T.32).

approximately ten minutes of refusal, J.W. ceded and went to the office. (T.43-44). He later returned to the classroom only to leave once again after refusing to join in the classwork. After returning again, J.W. began banging his head on his desk during instructional time. The teacher sent him to the nurse to make sure that he had not injured himself. (T.44-45).

On February 8, J.W. refused to move his clip on the behavior chart for failure to follow directions. He began crawling around on the floor by the locker area during instructional time and refused to join the class after repeated requests. J.W. eventually came back into the classroom. (T.46-49). Later in the day, J.W. repeatedly pretended to punch another student in the face, stopping short of contact with the student. Ms. Fultz directed him to move his clip on the behavior chart and he refused. He threw his chair towards the student and ran out of the classroom. (T.49-52). Ms. Fultz contacted the office for assistance because she had a classroom full of students. (T.49).

On February 11, J.W. continuously banged his head with his book bag in the classroom during instructional time. He eventually stopped the behavior after repeated requests. (T.53-54). On February 12, J.W. chased students around the classroom trying to steal their breakfast. He pretended to punch students and then punched his own head multiple times. (T.54). On February 20, 2013, J.W. refused to do work and then hid under his desk. He started banging his head on the desk and making disruptive noises in the classroom. (T.56). On the morning of February 22, J.W. yelled and argued with others during language arts instruction. (T.56). On February 25, 2013, J.W. pretended to shoot other students during the after-school homework club.<sup>4</sup> The teacher in charge there spoke privately with J.W. about the incident. (T.57).

On February 26, Ms. Fultz sent home J.W.'s interim report which indicated that he was not completing his assignments, that he was consistently arguing with other students, and that it was difficult to calm him. Ms. Fultz also recorded the incident of J.W. boxing in the classroom throughout the day. (T.60).

On February 27, J.W. crawled around under a table at the after-school homework club "to get a female student" who reported that J.W. was "creeping her out." J.W. responded that "he was just getting his revenge." (T.58). Ms. Blondell, and the assistant principal, Ms. Phillips, met with J.W. about the behavior and issued a minor incident report. (T.60).

On February 28, while students were eating breakfast in the classroom prior to the start of instructional time, J.W. chewed his breakfast pastry into the shape of a gun and held it over his head stating, "Look, I made a gun." The teacher held a conference with the student and explained that his behavior was inappropriate in school. (T.61-62).

On March 1, 2013, J.W. again chewed his breakfast pastry into the shape of a gun. It was the start of the day and the students were finishing up breakfast while they worked on a writing assignment in their journals. After announcements, J.W. stood up and pretended to shoot students in the class while making gun shooting sounds. He then went into the hallway and did the same thing directed at another class. Ms. Fultz requested several times that J.W. stop what

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<sup>4</sup> Students go to the after-school homework club for extra assistance with their homework provided by teachers who have volunteered to help. *Id.*

he was doing. It took several minutes for Ms. Fultz to get J.W. to return to the classroom. She called the office and had J.W. removed from the classroom. (T.63-69).

Ms. Fultz completed a Discipline Referral Form, which initiates an investigation by the administration. (T.71). She described the problem as follows on the form:

[J.W.] chewed his cereal bar into the shape of a gun. He aimed the “gun shape” at the students in the adjoining hallway and at students at their desks. I called to [J.W.] to stop and come into the office. He said he didn’t know why he was in trouble. I asked him “What did we talk about on Monday?” He had chewed the bar into a gun shape and yelled, “Look I made a gun!”

(Discipline Referral Form). Ms. Fultz stated that she completed the form after this particular incident because she had reached a point where she was spending a tremendous amount of time disciplining and redirecting J.W.’s behavior and it was interfering too much with instruction and the other students. (75-76, 78).

Assistant Principal Phillips spoke with Ms. Fultz about the incident. She then contacted Principal Blondell, who was not in the school building at the time. They spoke about the incident at issue, J.W.’s history of behavioral problems, and the various strategies implemented by the school to deal with the behaviors. (T.238). Principal Blondell made the decision to suspend J.W. for a total of two days; a one day out-of-school suspension and a one day in-school suspension in the Learning Lab where J.W. could complete his work and discuss appropriate behaviors and ways to respond when upset. Assistant Principal Phillips recorded the decision on the Disciplinary Referral Form noting that the incident “created a school/classroom disruption” and that there were “several previous incidents of disruptive behaviors in the classroom” which had been documented by Thinking Sheets, anecdotal records, and minor and major referrals. (*Id.*). By letter dated March 1, 2013, Principal Blondell advised the Appellants that J.W. was receiving the suspension as a result of “ongoing classroom disruptions.”

On March 15, 2013, Appellants appealed the suspension to the local Superintendent. By letter dated June 10, 2013, the Superintendent’s Designee upheld the suspension. (Liverman Letter, 6/10/13). The Superintendent’s Designee explained that despite the Appellants’ characterization of the situation as a suspension for a singular event, the disciplinary action was a result of an “ongoing series of substantial incidents over a three-month period that disrupted class and school activities, and resulted in students being moved from the classroom on several occasions.” He found the suspension was warranted when viewed in totality with the numerous other incidents that had occurred and the fact that the school had implemented significant interventions that failed to result in a favorable change to J.W.’s behavior. *Id.*

On June 21, 2013, Appellants appealed to the local board. The local board referred the matter to a Hearing Examiner for review and recommendation. After conducting an evidentiary hearing, the Hearing Examiner issued a 30 page report recommending that the suspension be upheld. The Hearing Examiner discussed the March 1, 2013 breakfast pastry gun incident and also considered J.W.’s prior behavioral incidents as relevant for the purpose of determining whether the March 1, 2013 classroom disruption warranted a suspension or some lesser action.

He found that the appeal involved “a relatively straight forward suspension for classroom disruption of a student with a long history of behavioral problems, who had been the subject of a series of progressive intervention by the school.” (Hearing Examiner Report at p.26). He concluded that the one day out-of-school suspension followed by a one day in-school suspension in the Learning Lab was appropriate and proper given that J.W.’s behavior on March 1, 2013 was extremely disruptive to his class and the adjoining class, and given J.W.’s behavioral history. (*Id.* at p.27).

The local board heard oral argument from the parties.<sup>5</sup> On October 9, 2014, the local board issued its Opinion and Order in which it adopted the Hearing Examiner’s Report and Recommendation and affirmed the decision of the Superintendent. The local board noted that the action was a reasonable and proper response to address the disruption caused by the student on March 1, 2013, given the student’s history of disruptive behavior at the school.

This appeal followed.

### STANDARD OF REVIEW

In student suspension cases, the decision of the local board is considered final. Md. Code Ann., Educ. Section 7-305(d)(8). The State Board only reviews the merits of the case if there are “specific factual and legal allegations” that the local board failed to follow State or local law, policies, or procedures; violated the student’s due process rights; or that the local board acted in an unconstitutional manner. COMAR 13A.01.05.05(G).

### LEGAL ANALYSIS

#### *Classroom Disruption*

Appellants maintain that the local board misapplied the disciplinary policy because no classroom disruption occurred as a result of the incident on March 1, 2013. The 2012-2013 Student Handbook defines “classroom disruption” as:

Behavior (including possession of toys at the elementary level) that interferes with instruction, learning, and a safe and orderly environment, which includes, but is not limited to, chronic talking, throwing objects, horseplay, teasing, refusal to remain in seat, rude noises, selling items on campus, etc.

Ms. Fultz testified that the instructional day had begun and the students were working on a writing assignment in their journals while she let them finish breakfast. As the Hearing Examiner stated,

The incident which prompted the suspension at issue here occurred on Friday, March 1, 2013, and it involved the Student’s disrupting the classroom during instructional time, by his using his breakfast

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<sup>5</sup> The hearing was open to the public at the request of the parents.

cereal bar as a prop for a gun, running around the room, aiming it at students and making gun sounds. He then went into the hallway and aimed the play gun at students in another class. All the while, the teacher was requesting that the Student stop and return to his seat, which he would not do.

(Hearing Examiner Report, p.26). Ms. Fultz testified that J.W.'s behavior disrupted the classroom activities because students were distracted from doing their work by J.W.'s conduct. (T.62-69).

Although the Appellants would like more weight to be given to Ms. Fultz' comments on the Disciplinary Referral Form, which did not specifically mention classroom disruption, there is no basis for this argument. Ms. Fultz and Principal Blondell both testified that the form is simply a snapshot of the incident in order to initiate the investigation into the matter and does not contain every single bit of relevant information. Ms. Fultz' testimony explains what is written on the form and provides relevant information for the case.

It is our view that J.W.'s conduct on March 1, 2013 (and before) constitutes classroom disruption in that it interfered with instruction, learning and an orderly school environment.

#### *Due Process*

The Appellants argue that they were denied due process because the local board merely "rubber stamped" the report of the Hearing Examiner without conducting its own review of the case and without calling additional witnesses to testify. The local board referred the case to a Hearing Examiner to conduct the evidentiary hearing in this matter. During that hearing, the Appellants and the Superintendent presented their cases and had the opportunity to call and cross-examine witnesses and introduce documentary evidence. The Hearing Examiner issued a 30 page Report and Recommendation. Thereafter, the local board heard oral argument from the parties. In its Opinion and Order, the local board stated that it conducted an independent review of the record in the case and had heard oral argument. The fact that the local board agreed with the Hearing Examiner and adopted his Report and Recommendation does not equate to a lack of independent review. Moreover, there is no legal provision requiring the local board to call additional witnesses or conduct additional evidentiary proceedings in a case such as this.

Appellants also maintain that they were denied due process because they were unable to call Assistant Principal Phillips as a witness despite their request that she be present at the hearing for that purpose. Appellants claim that her testimony was relevant to the case because she was the administrator on duty at the school on March 1 who investigated the incident and filled out the administrator portion of the Disciplinary Referral Form setting out the disciplinary charge and consequence.

The proceedings before the Hearing Examiner are part of an administrative case for which there are no subpoena powers. Thus, there is no mechanism in place to compel a witness to testify and no requirement that Ms. Phillips be present to do so. The Appellants had the opportunity, however, to cross-examine the witnesses called by the Superintendent. One of the witnesses was Principal Blondell who stated that she was the initial decision-maker in the case,

not Assistant Principal Phillips.<sup>6</sup> (T.242-244, 267). With regard to Ms. Phillips' comments on the Discipline Referral Form, the statement is based on the observations of Ms. Fultz who reported the incident.<sup>7</sup> Ms. Fultz was a witness at the hearing and the Appellants had the opportunity to cross-examine her.

Appellants also maintain that they were denied due process when the Hearing Examiner admitted into evidence the behavioral log of J.W.'s conduct which had never been seen by the Appellants, and which the Appellants claim could not be verified because Ms. Fultz was unable to produce her original notes used to compile the log at the hearing. The behavior log is a document that the school keeps as part of its regular operations for conducting a functional behavioral assessment of a student. (T.84-85, 295-297). Ms. Fultz testified that the log was a compilation of her and Ms. Hinshaw's notes. (T.84-85). She also testified about the various incidents contained in the log. The document was available to the Appellants at the hearing during which time they had the opportunity to review it and question the witnesses about it. The Hearing Examiner appropriately admitted the log into evidence.

Appellants also maintain that they were denied due process because "the Hearing Examiner and local board dismissed out of hand the testimony of [J.W.'s father] who had been personally involved immediately after the incident of March 1 and who heard the spontaneous utterances of Assistant Principal Phillips who issued the suspension." The Appellants' position is that the Assistant Principal had a personal bias against guns which formed the basis of the suspension decision rather than the suspension being based on classroom disruption. This is not a due process argument. It is an argument about the weight to be accorded to the testimony of a particular witness which is not a basis for review of a suspension case.

Appellants argue that the disciplinary decision is contrary to good educational policy because J.W. was simply being a mischievous and playful seven year old and nobody was put in fear or injured on the morning of March 1. As stated above, the State Board only reviews the merits of a student suspension case if there are "specific factual and legal allegations" that the local board failed to follow State or local law, policies, or procedures; violated the student's due process rights; or that the local board acted in an unconstitutional manner. COMAR 13A.01.05.05(G). Appellants' argument regarding educational policy does not satisfy any one of these bases.

## CONCLUSION

The student in this case had a long history of behavioral problems that were the subject of progressive intervention by the school. He created a classroom disruption on March 1, 2013, which resulted in a suspension that was justified based on the incident in question and the student's history. For all of the reasons stated above, we affirm the decision of the local board.

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<sup>6</sup> Principal Blondell is not the only decision-maker in the case. The Superintendent ultimately made the suspension decision which was later upheld by the local board.

<sup>7</sup> Although the Appellants also object to the statements written by Ms. Phillips on the form, there is no law or policy that prohibits a school administrator from making entries in the record that are based upon witness statements.

*Charlene M. Dukes*

Charlene M. Dukes  
President

*Mary Kay Finan*

Mary Kay Finan  
Vice President

*James H. DeGraffenreid, Jr.*

James H. DeGraffenreid, Jr.

*Linda Eberhart*

Linda Eberhart

*S. James Gates, Jr.*

S. James Gates, Jr.

*Absent*

Larry Giammo

*Luisa Montero-Diaz*

Luisa Montero-Diaz

*Absent*

Sayed M. Naved

*Madhu Sidhu*

Madhu Sidhu

*Donna Hill Staton*

Donna Hill Staton

*Guffie M. Smith, Jr.*

Guffie M. Smith, Jr.

February 24, 2015