

K.B.,

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL COMMISSIONERS

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-12

OPINION

INTRODUCTION

The student, K.B., and her mother appeal K.B.'s suspension from her regular school program and her reassignment to an alternative education center. The local board initially filed a Motion to Dismiss, arguing that the appeal was not ripe for review by the State Board because neither the CEO nor the local board had issued a decision. Appellants responded to the Motion. Thereafter, by letter dated February 24, 2016, Everett X. Garnett, Director of the Baltimore City Public Schools ("BCPS") Office of Suspension Services, advised K.B. that he had rescinded her suspension from school and had assigned her to a regular educational program. The local board filed a second Motion to Dismiss, arguing that the appeal is now moot because Dr. Garnett withdrew the disciplinary action. Appellants opposed the Motion and the local board replied.

FACTUAL BACKGROUND

K.B. is a 13-year-old student who had been attending the seventh grade at Beechfield Elementary/Middle School. On November 16, 2015, K.B. got into an altercation with another student (Student A) and school personnel attempted to separate them. The reports of the incident provide conflicting descriptions of how the fight began. In some accounts, K.B. was waiting in line when Student A attacked her. According to the police report, K.B. made disparaging comments about Student A and walked towards her with a knife, which was when Student A hit K.B. At one point, a substitute teacher grabbed Student A from behind and tried to pull her off of K.B. K.B. took the knife from her pants pocket. She stabbed both Student A and the substitute teacher in their left shoulders. The school was placed on lockdown and the police were called. The school principal was able to move K.B. to a separate location and talk with her until she let go of the knife. After the incident, K.B. was transported to the Department of Juvenile Services. (Motion, Exs. A, B).

The Assistant Principal held a phone conference with K.B.'s mother that same day during which she explained Appellants' rights and informed her the school would conduct an investigation. (Motion, Ex. P). On November 17, 2015, the principal recommended to the Office of Suspension Services that K.B. be placed on a long-term suspension. K.B. began serving that suspension on November 17, 2015. (Motion, Ex. C).

On December 1, 2015, Barbara Cooper, Educational Specialist in the BCPS Office of Suspension Services, held a suspension conference. (Motion, Ex. Q). K.B.'s mother and her legal counsel both attended. K.B. did not attend because she was being detained in a Department of Juvenile Services facility. During the conference, K.B.'s mother explained that K.B. had been

bullied repeatedly by Student A. She said that she had reported this bullying to the principal but no action had been taken. K.B.'s mother argued that K.B. brought the knife to school in order to protect herself. She also stated that K.B. had been hospitalized for multiple suicide attempts as the result of bullying. K.B.'s attorney argued that her suspension should be rescinded because the school did not: (1) address the bullying; (2) provide interventions; (3) provide a safe school environment; and (4) provide K.B. with due process. (Motion, Ex. B).

During the conference, Ms. Cooper offered an alternative educational placement for K.B. during the suspension period. K.B.'s mother declined because she believed that K.B. would suffer more intense bullying there. (Appeal, p.3; Opp. to 2nd Mtn., p.2). She requested that the school send home work packets for K.B. to complete. Appellants state that K.B. has not received all of the work packets despite repeated attempts to get them.

On December 1, 2015, following the conference, Dr. Garnett, Director of the BCPS Office of Suspension Services, informed K.B.'s mother that, based on the severity of the violation, he was proposing to the Superintendent that K.B. be suspended for possession and use of a weapon (knife). The letter stated that, "Until [the CEO] Dr. Thornton makes his decision in this matter, [K.B.] is to remain on suspension and is not allowed on the grounds of any Baltimore City public school unless assigned to an alternative education setting by the Climate and Suspension Services."

The Appellants waited for a final decision from the CEO. As of this date, no final decision has been issued.

Approximately one month after the suspension conference, on December 29, 2015, Appellants filed an appeal with the State Board. The local board filed a Motion to Dismiss the appeal maintaining that the case was not ripe for review because there was no CEO or local board decision. The Appellants opposed the Motion.

While the State Board appeal was still in the briefing stage, on February 24, 2016, Dr. Garnett, advised K.B. that he had rescinded her suspension from school and had assigned her to a regular educational program. The local board then filed a second Motion to Dismiss, arguing that the appeal was now moot because the disciplinary action was rescinded and K.B. was assigned to a regular education classroom. Appellants opposed the Motion and the local board replied.

STANDARD OF REVIEW

In student suspension and expulsion cases, the decision of the local board is considered final. COMAR 13A.01.05.05(G)(1). 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)(2).

LEGAL ANALYSIS

The local board argues that the appeal should be dismissed for mootness because K.B.'s suspension has been rescinded. It is well established that a question is moot when "there is no

longer an existing controversy between the parties, so that there is no longer any effective remedy which the courts [or agency] can provide.” *In Re Michael B.*, 345 Md. 232, 234 (1997); *See also Arnold v. Carroll County Bd. of Educ.*, MSBE Op. No. 99-41 (1999); *Farver v. Carroll County Bd. of Educ.*, MSBE Op. No. 99-42 (1999); *Chappas v. Montgomery County Bd. of Educ.*, 7 Op. MSBE 1068 (1998).

In the initial appeal filing, Appellant requested that BCPS rescind K.B.’s disciplinary action and assign her to a school where her safety concerns about bullying would be addressed. That has now happened, thus rendering the appeal of the disciplinary action technically moot.

The Appellant argues, however, that BCPS has violated the requirements of the recently amended State discipline regulations set forth in COMAR 13A.08.01.11. Although this Board would not ordinarily address matters that are moot, because this concerns a dispute about the application of State law and this is the first appeal involving the changes to the regulation, it is in the public interest for us to address Appellant’s claims concerning the requirements of the regulation. *See Dove v. Childs*, 173 Md. App. 602, 609 (2006) (deciding a moot issue because it was a matter of public importance meriting the court’s view for future guidance). *See also* Md. Code Ann., Educ. §2-205 (The State Board shall explain the true intent and meaning of the provisions of the Education Article that are within its jurisdiction and the bylaws, rules, and regulations adopted by the Board.).

The discipline regulations established a set of legal rules that govern, *inter alia*, how extended suspensions and expulsions must be handled. For the most part, the school system did not follow those rules. We explain.

Findings Needed to Impose an Expulsion

Extended 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.” Any suspension that lasts 45 days or more is considered an expulsion. *See* COMAR 13A.08.01.11B(2)-(3). A student may only be expelled if the local superintendent or designee specifically finds that the student’s return “would pose an imminent threat of serious harm to other students and staff.” COMAR 13A.08.01.11B(2).

Here, K.B.’s “suspension” turned into an expulsion lasting 57 days until it was rescinded. As best we can tell, there was no formal finding that KB’s return posed an imminent threat of serious harm to students or staff. One would argue that such a finding could be inferred from K.B.’s action in pulling a knife and stabbing a student and a teacher but, although K.B.’s actions were violent, that does not excuse the school system from specifically determining whether or not her *return* would pose an imminent threat of serious harm.

Provision of Educational Services

The school system must provide the student with “comparable educational services and appropriate behavioral support services” to promote a successful return to the student’s regular academic program. COMAR 13A.08.01.11(B)(2)(c) & (B)(3)(c). *See also* COMAR 13A.08.01.11F.

At the December 1 suspension conference, Ms. Cooper offered K.B. placement in an alternative school during the exclusion from her regular school program. K.B.'s mother refused to allow K.B. to be enrolled citing concerns about bullying. (Appeal, p. 3; Opp. to 2nd Mtn., p.2). Regardless of the reasons, K.B. was not placed in the alternative program and, therefore, was entitled to get her classwork and assignments sent home. *See* COMAR 13A.08.01.11F. The local board claims that work packets were provided to K.B. Appellants claim that not all of the work packets were provided despite attempts to get them. They have attached the affidavit of K.B.'s grandmother and legal guardian attesting to that fact. The local board has not submitted evidence to contest this fact. We find that the school system violated the regulatory requirement to provide education services.

Process for Imposing an Expulsion

COMAR sets forth a detailed process for expelling a student. If a school principal finds that an extended suspension or expulsion is warranted in a particular case, the principal shall report the matter to the local superintendent or designee and request that the student be suspended for more than 10 school days. COMAR 13A.08.01.11C(2)(e) and (3)(a). Upon receipt of such a request, the local superintendent or designee must investigate. If the superintendent or designee concludes that an extended suspension or expulsion is warranted, the superintendent or designee must arrange a conference with the student and the student's parent or guardian. The investigation and conference must be completed by the 10th school day of the initial suspension. *See* COMAR 13A.08.01.11C(3)(a)-(d). COMAR required the CEO or his designee to make a decision shortly after the December 1, 2015 conference whether or not an extended suspension or expulsion was warranted. *See* COMAR 13A.08.01.11(C)(3)(f).

K.B. was suspended beginning on November 17, 2015. Ms. Cooper held a conference with K.B.'s mother and her attorney on December 1, 2015. The timing of the conference complied with COMAR because it took place within 10 school days of the initial suspension. However, after that conference, things went wrong. After the conference took place, K.B. remained out of school without a final decision on the disciplinary action by the CEO or designee. Although Dr. Garnett sent a letter to K.B.'s mother informing her of the "proposed extended suspension," it is clear that he was not making a final decision on the disciplinary action as the CEO's designee because he used the phrase "Until Dr. Thornton makes his decision in this matter, [K.B.] is to remain on suspension . . ." Moreover, BCPS has never maintained that Dr. Garnett's decision was a final decision; rather, BCPS initially asserted that the appeal was not ripe for review because the CEO had not issued a final decision. Although no specific time frame for the superintendent's or designee's decision is specified in the regulation, because the disciplinary regulations are built on the premise that students should be returned to school as quickly as possible, the implication is that such a decision will be rendered within a short time period after the conference. We find that the school system violated the regulations governing the process to impose an expulsion.

Delays in the Process

COMAR takes into consideration that there might be delays in the process due to either the unavailability of the parent or guardian or due to the complexity of the investigation. If there is delay for any one of these reasons, the student is allowed to return to school unless the superintendent or designee finds that the student's return would pose an imminent threat of

serious harm to other students or staff. COMAR 13A.08.01.11(C)(3)(d). In such cases, if the student is not allowed to return to school after the 10th day, the superintendent or designee “shall notify the student and the parent or guardian within 24 hours and provide the reasons for the delay in the process and the denial of reentry and send a copy of the notice to the State Superintendent of Schools.” COMAR 13A.08.01.11(C)(3)(e).

As of February 24, 2016, the date of the rescission, K.B. had been out of her regular school setting for 57 school days without BCPS following the delay process and procedures contained in COMAR. No notice was sent, the State Superintendent was not notified, no finding of imminent harm was made, and no CEO decision was ever issued.

Appeal of the Expulsion

If the superintendent or designee finds that an extended suspension or expulsion is warranted after the conference takes place, COMAR allows a student, parent or guardian to appeal the decision to the local board within 10 days. COMAR 13A.09.01.11(C)(3)(f). If the student files an appeal to the local board, the local board then has 45 days from the date the appeal was received to hear the appeal and issue a decision. The hearing time frame may be extended after a petition to the State Superintendent for an extension of time. COMAR 13A.08.01.11(C)(3)(f)-(h).

The hearing before the local board is a full evidentiary hearing. The appellant may be represented by counsel and call witnesses. In advance of the hearing, the school system must provide the appellant with the school system’s witness list and a copy of the documents that the school system will present at the hearing. COMAR 13A.08.01.11(C)(3)(i).

Without a CEO decision, K.B. had no finality to the disciplinary decision. She was unable to challenge the merits of her expulsion in a timely manner. Had the CEO issued a decision, Appellants could have appealed to the local board. The local board then would have had 45 days to hold an evidentiary hearing on the appeal and issue a decision. There was no such hearing in this case. Based on all of these facts, we find that the school system violated the regulation in numerous ways.¹

Appellants have raised various due process issues related to the procedures followed by BCPS asking that the State Board address them because they are in the public interest or are capable of repetition yet evading review. In this particular case, BCPS failed to follow the disciplinary process that is set forth in COMAR. Those failures were not merely procedural and of no consequence. They were significant violations of the regulation and, in our view, violations of K.B.’s due process rights to an evidentiary hearing and to a timely decision. We find no need to address in detail the due process issues given our explanation of the regulatory process set forth in COMAR, and our application of those procedures to what happened in this case.

¹ The appeal makes reference to a statement allegedly made by a school official during the December 1, 2015 conference that K.B. “should have been evaluated for an Individualized Education Program” and that she should try to initiate the process at her alternative school. K.B.’s mother chose not to enroll her in the alternative school and Appellants have not raised the issue of special education in the appeal. Now that K.B. is enrolled in and attending school, the school and the parent should communicate with each other to determine if a special education evaluation is needed.

Compensatory educational services

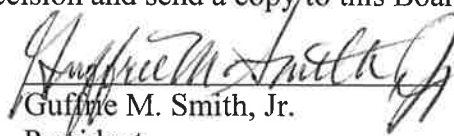
Appellants seek compensatory educational services in the form of private tutoring to bring K.B. up to date with assignments and lessons missed during her period of exclusion. They also seek access to summer enrichment programs to ensure that K.B. remains on grade level. K.B.'s needs will be specific to her performance in school. Because this issue has not been addressed by the local board, we will remand this matter to the local board to determine whether K.B. needs compensatory services and, if so, what compensatory educational services K.B. needs to successfully return to the regular educational program. We point out again that the discipline regulation requires that minimum educational services be provided during the time of suspension or expulsion. COMAR 13A.08.01.11F. Failure to do so may trigger the need for compensatory services.

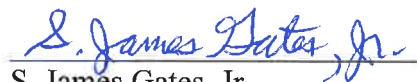
Other issues


We note that Appellants also claim the local board delayed K.B.'s attendance at the new school based on a need for transportation as a result of K.B.'s diagnosis of post-traumatic stress disorder which prevents her from riding public transportation. The local board has represented that this matter has been resolved. It explains that there was some delay on Appellant's part because the school system requested substantiating documentation of the condition from K.B.'s mother on March 3, 2016 in order to provide the requested transportation. The school system did not receive the substantiating affidavit from the doctor until March 30, 2016. Once received, BCPS immediately forwarded it to staff for processing. Thus, it appears that a portion of the delay in K.B.'s return to school stems from the delay of the mother in getting appropriate notice to the school system concerning K.B.'s need for transportation due to a medical condition.

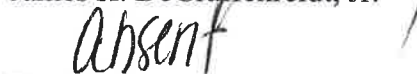
CONCLUSION

For the reasons stated above, we find that the school system violated the disciplinary regulation set forth in COMAR 13A.08.01.11 and, in doing so, violated K.B.'s due process rights. We find that K.B. may be entitled to compensatory education services to be determined by the local board. The local board shall issue its decision and rationale on the compensatory educational services issue within 15 days of this decision and send a copy to this Board.


Guffie M. Smith, Jr.
President


S. James Gates, Jr.
Vice-President


James H. DeGraffenreidt, Jr.


Linda Eberhart

Chester E. Finn, Jr. Imp

Chester E. Finn, Jr.

Absent

Larry Giammo

Michele Jenkins Guyton

Stephanie R. Iszard

Madhu Sidhu

Madhu Sidhu

Andrew R. Smarick

Laura Weeldreyer

April 26, 2016