

R.P.,

Appellant

v.

BALTIMORE CITY BOARD  
OF SCHOOL COMMISSIONERS

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-18

## OPINION

### INTRODUCTION

Appellant, R.P., appeals his extended suspension from Carver Vocational Technical High School. The local board filed a Motion to Dismiss, arguing that the appeal is moot because the school system rescinded the Appellant's suspension and returned him to a regular education program. Appellant opposed the Motion and the local board responded.

### FACTUAL BACKGROUND

At the start of the 2015-2016 school year, R.P. was attending the 11<sup>th</sup> grade at Carver Vocational Technical High School in Baltimore City. According to the school's report, on September 30, 2015, Appellant was involved in a physical altercation on MTA bus 51 in which he and three male students were throwing balled up paper at a female Carver student. The female student asked Appellant and the three male students to stop and then sprayed Student 1 with mace when they did not. All four of the male students attacked the female student and then fled from the bus with the mace and the female student's cell phone. (Motion, Ex. B; Female Student and Witness Statement attached to Appeal). The MTA police officer arrived at the scene and took the female student's statement. The female student's mother reported the incident to Carver. (Motion, Ex. D; Tr. 18).

When Appellant returned to school the next day, Assistant Principals Susan Wheeler and Amrish Ramsundar spoke with him about the incident and asked him to provide a statement of what had occurred. Appellant told them that he did not see anything happen. (Tr. 49-50). He wrote that he got on the bus at school and got off at his stop, and that nothing took place on the bus. (Statement attached to Appeal). The administrators advised Appellant that they were going to recommend him for an extended suspension for the physical attack on the student. (Tr. 24-25).

On October 2, 2015, Principal Shionta Somerville recommended Appellant for extended suspension for an attack on a female student on an MTA bus on the way home from school. (Motion, Ex. B). On October 5, 2015, Assistant Principal Wheeler held a parent conference with Appellant's mother to discuss the incident. Appellant did not attend. Ms. Wheeler advised that the principal was requesting an extended suspension. Appellant's mother told Ms. Wheeler that Appellant was going to stay home and do work packets rather than attend an alternative school. (Motion, Ex. C).

Barbara Cooper, Educational Specialist in the Baltimore City Public Schools' (BCPS) Office of Climate and Suspension Services, scheduled a suspension conference with Appellant's

mother on October 14, 2015. BCPS sent a letter dated October 2, 2015 to the Appellant's mother to advise her of the conference. (Motion, Ex. D). Neither the Appellant nor his mother attended the conference. (Motion, Ex. D). Appellant's mother testified that she did not receive the letter in the mail and was not aware of the conference until the day it was to take place, at which point she was unable to attend. (Tr. 105-106). Ms. Cooper proceeded with her review of the case in the mother's and Appellant's absence. (Motion, Ex. D).

By letter dated October 14, 2015, Everett X. Garnett, Director of the BCPS Office of Climate and Suspension Services, informed Appellant's mother that, due to the severity of the violation, he was recommending that the Chief Executive Officer (CEO) suspend Appellant for a physical attack on a student. Dr. Garnett advised that Appellant was to remain on suspension until the CEO made his decision. He also advised that Appellant was temporarily assigned to the Success Academy, an alternative education school. (Motion, Ex. E).

By letter dated November 2, 2015, the CEO issued his final decision to uphold the extended suspension. The decision stated that Appellant would remain in an alternative placement during the period of suspension and that the CEO would determine when he was ready to return to a regular placement. (Motion, Ex. F). Appellant's mother continued to have him stay at home and do work packets because she believed Success Academy was too far to travel. (Motion, Ex. J).

Appellant's mother appealed the extended suspension to the local board. The local board referred the matter to a hearing examiner who conducted a hearing on December 9, 2015. Appellant was represented by counsel at the hearing. He claimed that he did not throw anything at the female student or fight her. He claimed that he tried to pull his friend away to stop the fight. (Tr. 77-78).

On January 11, 2016, the hearing examiner issued a decision recommending that the local board affirm the extended suspension and transfer to the alternative school. (Motion, Ex. H, Hearing Examiner Report at 13). He found that the weight of credible evidence supported the finding that Appellant was involved in the MTA bus incident, that he threw objects at the female student, and physically attacked her and stole her phone. He further found that the extended suspension was warranted based on the severity of the offense, in which the female student suffered bodily harm from the attack, as well as on R.P.'s prior disciplinary history, which included several prior offenses. (*Id.* at 11). He also held that there was no due process violation regarding the October 14, 2015 conference, finding that the school system sent the letter providing notice of the conference to the correct address. *Id.* at 12.

On February 2, 2016, the local board voted to accept that Hearing Examiner's recommendation to affirm the CEO's decision to place Appellant on extended suspension and transfer him to an alternative school. (Motion, Ex. I).

On February 8, 2016, the CEO advised Appellant's mother that the extended suspension had ended and Appellant was being assigned to Knowledge and Success Academy. (Motion, Ex. J).

Thereafter, Appellant filed this appeal to the State Board. On March 16, 2016, while the appeal was pending, Dr. Garnett advised Appellant's mother that Appellant's extended suspension had been rescinded and expunged from his record. He also stated that Appellant "is

expected to continue attending Knowledge and Success Academy, School #342.” (Motion, Ex. K).

### 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

#### *Mootness*

The local board argues that the appeal should be dismissed for mootness because Appellant’s extended suspension has been rescinded and expunged, and he has been returned to a regular education program. 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).

Appellant maintains that the appeal is not moot because the Appellant was not returned to Carver Vocational Technical High School, his educational placement prior to the suspension. Appellant argues, therefore, that there is still a controversy between the parties.

We agree that the controversy between the parties is over the school system’s decision to administratively transfer Appellant to the Knowledge and Success Academy instead of allowing him to remain at Carver Vocational Technical High School. Neither the hearing examiner’s recommendation nor the local board’s decision address this aspect of the case. We, therefore, remand this issue to the local board for it to provide a rationale for the transfer decision.

In its rationale, the local board should address the transfer decision in terms of the school system’s transfer policy, as well as how the transfer relates to COMAR 13A.08.01.11(C)(5). COMAR 13A.08.01.11(C)(5) states that a “student suspended or expelled from school shall be allowed to return to school on the same day that the terms and conditions of the suspension or expulsion are met. . . .” In addition, the local board should address the transfer in terms of BCPS Administrative Regulation JKA-RB(V)(I), which states that the CEO has the authority, upon conclusion of the extended suspension or expulsion, to order that “the students be reinstated in their original school, except that a reinstated student shall not be assigned to a school at which any victim(s), who were directly injured as a result of the offense, attend(s) or is employed at, without the written consent of the victim(s) and their parents.”

As to the extended suspension, Appellant argues various procedural violations. The

school system rescinded the extended suspension and expunged it from Appellant's record.<sup>1</sup> Thus, the procedural issues surrounding the extended suspension are moot because there is no effective remedy that the State Board can provide on that issue.

Although we find the procedural issues regarding the disciplinary process to be moot, we note that in another BCPS student discipline case decided last month in which the suspension was rescinded, we addressed the procedural violations raised by the appellant because we found it to be in the public interest to address the disciplinary procedures set forth in COMAR 13A.08.01.11 in order to give guidance to BCPS and other school systems. In *K.B. v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Opinion No. 16-12 (2016), this Board explained the process for expulsions as set forth in regulation and explained how BCPS violated that process. We have decided to address the procedural issues raised in this case with regard to an extended suspension for the same reason that we did so in *K.B.*

#### *Conference with Superintendent or Designated Representative*

COMAR 13A.08.01.11(C)(3)(c) requires the local superintendent or designated representative to promptly arrange a conference with the student and the student's parent or guardian in the event that the superintendent or representative finds that an extended suspension or expulsion is warranted. Appellant claims that Office of Climate and Suspension services denied Appellant the required conference prior to suspending him when Ms. Cooper proceeded with her review of the case on October 14, 2015 without Appellant or his mother being present.

The record discloses the following. BCPS sent notice of the conference by letter dated October 2, 2015 to the correct address for the Appellant and his mother. (Motion, Ex. D). Appellant's mother testified, however, that she did not receive the letter in the mail from BCPS informing her of the conference. She testified that she found out about the conference from her son the day it was to take place after he received a message from the school on his phone. The mother testified that she then contacted Ms. Cooper by phone to tell her she was unable to attend. (Tr. 105-106). The local board did not call Ms. Cooper as a witness, however, Ms. Cooper noted on the conference report that "[d]espite attempts to reach [the mother], by mailed conference notice and telephone, no one attended the scheduled suspension conference. Therefore, the conference was conducted in absentia."

The school system has not presented sufficient evidence, by way of affidavit or testimony, to contradict the mother's sworn testimony that she never received the notice sent to her. Thus, it appears that Appellant's mother did not have proper notice of the conference.

#### *Notice of Duration of Disciplinary Action*

Appellant argues that BCPS essentially placed the Appellant on an indefinite suspension because it failed to provide the Appellant with notice of the duration of the disciplinary action. We agree. Dr. Garnett's October 14, 2015 letter did not specify the time frame for removing Appellant from his regular school program, referring to it only as a "suspension." (Motion, Ex.

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<sup>1</sup> We note that the letter from Dr. Garnett rescinding Appellant's extended suspension and expunging it from his record provides no explanation for doing so. We know of two other cases before this Board in which a similar letter was issued in a student discipline case. We caution BCPS from continuing this practice without explanation because it could be viewed as a tactic to intentionally render a case moot to avoid appellate review of BCPS discipline cases.

E). Likewise, the CEO's November 2, 2015 letter failed to indicate the number of days of the suspension, suggesting instead that the suspension was of indefinite duration by stating that the CEO would determine when he was ready to return to a regular school placement. (Motion, Ex. F). In actuality, Appellant's "suspension" that began on or about October 1, turned into an expulsion ending on or about February 8, 2106, because the disciplinary action lasted more than 45 school days. See COMAR 13A.08.01.11(B). Given that the disciplinary procedures set forth in COMAR 13A.01.08.11 are based on the specific duration of the penalty imposed (short-term suspension, long-term suspension, extended suspension, expulsion), it is a legal requirement that school systems provide the time frame of the disciplinary action in their notifications to the students and parents so that they can understand the process to be followed in each case and their legal rights.

#### *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). As best we can tell, there was no formal finding that Appellant's return posed an imminent threat of serious harm to students or staff. One could argue that such a finding could be inferred from Appellant's action in participating in an attack on a student on the bus ride home from school, but that does not excuse the school system from specifically determining whether or not his *return* would pose an imminent threat of serious harm.

#### *Timing of Local Board Decision*

Appellant argues that the local board failed to issue its decision within 45 days from the date it received the appeal as required by COMAR 13A.08.01.11(C)(3)(g). In cases of an extended suspension or expulsion, if an individual files an appeal to the local board, "the local board or its designated committee or hearing officer shall have 45 days from the date the appeal was received to hear the appeal and issue a decision." *Id.* This 45 day timeline applies even if the local board elects to use a hearing examiner. COMAR 13A.08.01.11(C)(3)(g)(ii). If the local board determines that it is unable to hear the appeal and issue a decision within the 45 days due to extraordinary circumstances or unusual complexity of the appeal, the local board may petition the State Superintendent for an extension of the timeline. COMAR 13A.08.01.11(C)(3)(h).

In this case, the hearing examiner issued his recommendation approximately 67 days from the date the appeal was received by the local board. The local board issued its final decision approximately 89 days from the date the appeal was received. The local board did not petition the State Superintendent for an extension of the timeline. These actions failed to comply with the regulation.

#### *Request to Have BCPS Revise its Discipline Policy*

Finally, the Appellant seeks to have the State Board impose requirements on the school

system that go beyond the procedural protections afforded by COMAR 13A.08.01.11. Appellant asks that the State Board order the local board to revise its disciplinary policy and regulation to provide students, prior to the local board appeal stage, with an evidentiary hearing before a neutral hearing examiner who will issue a written decision making specific findings under the State standard for extended suspensions and expulsions, during which the student may cross-examine school administrators and inspect the school system's evidence packet prior to the hearing. (Opposition to Mtn.).

When the State Board amended COMAR 13A.08.01.11, it established procedural protections that comply with due process requirements. Individual school systems are free to establish additional procedures, so long as they comply with COMAR. The local board should review its disciplinary policy and administrative regulation to ensure that they comply with COMAR, and also carefully review the manner in which its school system personnel are carrying out those policies. To the extent that the Appellant is trying to force a change in local board policy or regulation, however, the appeals process is not the correct mechanism. As the State Board has previously stated, "this Board will dismiss an appeal that attempts to use a quasi-judicial process to force a change in local policy – which is a quasi-legislative decision." *Regan v. Montgomery County Bd. of Educ.*, MSBE Opinion No. 02-29 (2002).

#### *Merits of Disciplinary Decision*

Appellant maintains that there is insufficient evidence to conclude that Appellant was involved in the attack of the female student, claiming that the hearing examiner gave no weight to Appellant's version of the events.

We disagree. The record contains the statement of the female student who was attacked. She states that "they," meaning Appellant and the other students, started throwing things and "then they all banked me pulled my hair and stomped me." Another student witness specifically named the Appellant as one of the individuals "throwing paper balls" at the female student and stated that Appellant and the other friends "assisted [Student 1] with fighting." As stated by the ALJ:

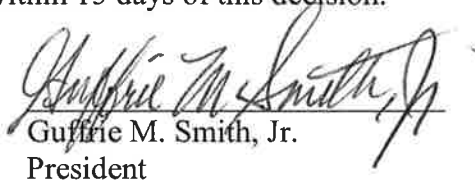
The case is resolved on determinations of credibility of the witnesses and reliability of the evidence submitted by the Appellant and by the CEO. The weight of the credible evidence supports the finding that Appellant was involved in an incident on an MTA bus on September 30, 2015, involving other Carver students. The credible and reliable evidence also supports the finding that Appellant threw objects at a female student on the bus that day and that after the female student sprayed mace on his friend, Appellant and the friend physically assaulted the female student and took her cell phone.

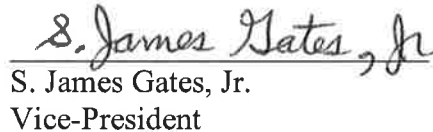
It is clear, therefore, that the ALJ did not find Appellant to be a credible witness regarding the events that transpired the day of the incident. As to witness credibility, it is well established that determinations concerning witness credibility are within the province of the trier of fact. *See, e.g., Bd. of Trustees v. Novik*, 87 Md. App. 308, 312 (1991) *aff'd*, 326 Md. 450 (1992) ("It is within the Examiner's province to resolve conflicting evidence. Where conflicting inferences can be drawn from the same evidence, it is for the Examiner to draw the inferences."); *see also*

*Board of Education v. Paynter*, 303 Md. 22, 36 (1985) (Not only is it the province of the trier of fact to resolve conflicting evidence, but where inconsistent inferences from the same evidence can be drawn, it is for the trier of fact to draw the inferences.). Given the record in the case, we do not find the hearing examiner's conclusions to be unreasonable. We decline to substitute our judgment on the merits of the decision.

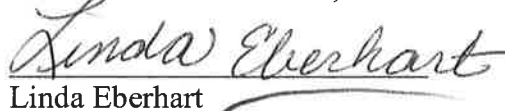
CONCLUSION

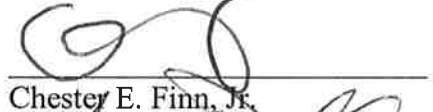
For the reasons stated above, we find that BCPS violated the disciplinary regulation set forth in COMAR 13A.08.01.11. Because BCPS has rescinded and expunged the extended suspension from Appellant's record, there is no further remedy for Appellant that we can order. We remand the issue of the administrative transfer to Knowledge and Success Academy to the local board to provide a rationale for the transfer within 15 days of this decision.

  
Guffie M. Smith, Jr.  
President

  
S. James Gates, Jr.  
Vice-President

  
Absent  
James H. DeGraffenreidt, Jr.

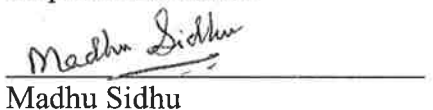
  
Linda Eberhart

  
Chester E. Finn, Jr.

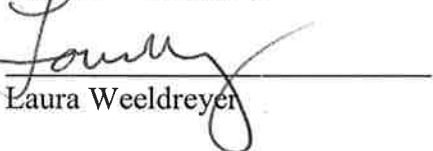
  
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