

K.W.

Appellant,

v.

BALTIMORE COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 20-14

OPINION

INTRODUCTION

Appellant, K.W., challenges the decision of the Baltimore County Board of Education (“local board”) upholding his extended suspension. The local board filed a response to the appeal maintaining that its decision should be upheld. Appellant responded and the local board replied.

FACTUAL BACKGROUND

Appellant is an eleventh grade student in the Visual Arts Magnet Program at Milford Mill Academy (“MMA”). On September 25, 2019, Appellant told a teacher that he thought about harming himself and others at MMS. The teacher contacted Kyria Joseph, Principal of MMA, who in turn contacted the Department of School Safety so that a mobile crisis unit could be dispatched to the Appellant’s home for an evaluation and a weapons check. The mobile crisis unit was unable to make contact with anyone at Appellant’s address of enrollment because the family had moved. (Record Extract (“R.E.”) 4, T. 22 and Sup’t. Exs. 8 and 9).

When the Appellant arrived at school the next day, Joseph Reiter, School Resource Officer (“SRO”), found a knife in the front pocket of Appellant’s backpack. (R.E. 4, T. 24). SRO Reiter described it as a “folding knife with a serrated blade” with a “wire cutter in the back” that was “a little larger than a dollar bill in size.” (*Id.* T. 48). The school psychologist conducted the threat assessment and determined that there was a high threat level. (*Id.* T. 25).

On September 26, 2019, Principal Joseph issued a “Notice of Suspension to the Board,” suspending the Appellant for five days and referring the matter to the Superintendent with a recommendation for review and appropriate action. (R.E. 4, Sup’t. Ex. 7). The suspension charges were: (1) possession or use of a real weapon of any kind which shall include/but not be limited to switchblade knife/hunting knife/star knife/razors (including straight or retractable razor)/taser/nunchaku/spiked wristband/any mace derivative/tear gas device/or pepper spray product; and (2) possession of a pocket knife. *Id.*

On October 4, 2019, Adrienne Sesay, the Superintendent’s designee, conducted a conference to determine if the matter warranted an extended suspension or expulsion. Appellant, his mother, his legal counsel, Principal Joseph, Assistant Principal Thomas, and Dr. Kevin Roberts, Coordinator of Pupil Personnel Services, were all present. (R.E. 4, Sup’t. Ex. 10). After considering the information presented by the parties, by letter dated October 10, 2019, Ms.

Sesay advised Appellant's mother that the Appellant had violated "Board of Education Policy 5550, Student Behavior Code." She stated that Appellant's return to school would "pose an imminent threat of serious harm to other students and staff" and that she was imposing an extended suspension. *Id.* Ms. Sesay assigned Appellant to the Rosedale Alternative Center ("Rosedale") with transportation provided until his reinstatement at MMA on November 11, 2019. *Id.* On October 16, 2019, Appellant appealed Ms. Sesay's decision to the local board. (R.E. 2).

Immediately upon receiving Ms. Sesay's decision, Appellant's attorney expressed opposition to the placement at Rosedale and requested e-Learning. (Appeal, Ex. 11). By letter dated October 31, 2019, Dr. Roberts advised that Appellant was assigned to e-Learning. (R.E. 4, Sup't. Ex. 11). However, when Appellant attempted to enroll, he was unable to do so. The e-Learning representative told Appellant's attorney that Appellant's placement remained at Rosedale and had not been changed to e-Learning in the system. On November 8, 2019, the last day of the extended suspension, Appellant received notice that he was able to enroll in e-learning. (Appeal, Ex. 11). The local board concedes that there was a delay in enrolling the Appellant in e-Learning after he refused to attend the alternative education program. (Reply to Appellant's Resp. at 2).

On November 19, 2019, a panel of three members of the local board held a disciplinary appeal hearing. (R.E. 3). The same day, the local board issued a decision upholding Ms. Sesay's decision to impose an extended suspension. (R.E. 5). The entirety of the local board's decision is as follows:

Upon recommendation of a designated committee of members of the Board of Education of Baltimore County, which has considered all of the testimony and exhibits in the above-referenced matter as well as the arguments of counsel and designated representatives, the Board of Education of Baltimore County, this 19th day of November, 2019, hereby UPHOLDS the decision of the Superintendent's designee regarding the extended suspension of [Appellant] from Milford Mill Academy.

Id.

This appeal followed.

STANDARD OF REVIEW

This is an appeal pursuant to Section 4-205(c)(3) of the Education Article and COMAR 13A.01.05 concerning the suspension of a student. For student suspensions, COMAR 13A.01.05.06G provides that the decision of the local board is considered final and therefore the State Board will not review the merits of the suspension unless there are "specific factual and legal allegations" proven by an appellant that the local board failed to follow State or local law, policies, or procedures; or the local board violated the student's due process rights or the local board has acted in an unconstitutional manner; or the decision was otherwise illegal. Under COMAR 13A.01.05.06C, a decision may be considered illegal if it is: (1) unconstitutional; (2) exceeds the statutory authority or jurisdiction of the local board; (3) misconstrues the law; (4) results from unlawful procedure; (5) is an abuse of discretionary powers; or (6) is affected by any other error of law.

LEGAL ANALYSIS

This is an appeal of the extended suspension of the Appellant from Thursday, September 26, 2019 through Friday, November 8, 2019. Appellant argues that (1) the local board's decision to uphold his extended suspension of Appellant does not comply with the intent and spirit of Maryland law; (2) that neither Ms. Sesay, the superintendent's designee, or the local board articulated a basis for the determination that Appellant posed an imminent threat of serious harm to other students and staff; and (3) that BCPS failed to provide Appellant with minimum education services during the extended suspension as required by COMAR 13A.08.01.11(F).

In this case, neither the superintendent's designee nor the local board clarified the ultimate basis for the imposition of the suspension, leaving it unclear if Appellant was suspended for possession of a pocket knife or possession of a real weapon, which are a Category II offense and a Category III offense under local board Policy 5550 (Student Behavior Code), respectively. In addition, neither decision provided any explanation why Appellant's return to school posed an imminent threat of serious harm under COMAR 13A.08.01.11(B)(3)(a)(i). Indeed, the local board's decision is silent regarding the required imminent threat finding, and fails to set forth the arguments or evidence that it relied upon in upholding the extended suspension. Although the local board conducted an evidentiary hearing which can cure certain procedural violations, the hearing cannot cure the local board's failure to explain the basis for its decision.

We have long held that a local board must convey a basis for its decision in order for the State Board to conduct a meaningful review on appeal. *See Young v. Prince George's County Bd. of Educ.*, MSBE Op. No. 17-12 (2017) (citing cases). Given this longstanding holding, it continues to surprise this Board when we review appeals in which the local board has not provided that basis. When a decision of a local board fails to identify the charge that serves as the basis for the decision and the reason for the board's action, the State Board can only infer that the decision was arbitrary. The appropriate remedy for an arbitrary decision of a local board is reversal.

With regard to the Appellant's claim that BCPS failed to provide him with minimum education services during the extended suspension as required by COMAR 13A.08.01.11(F), we remand that issue to the local board to determine whether Appellant received comparable education services during the suspension period. If the local board determines that Appellant did not receive comparable education services, it shall devise an appropriate remedy.

CONCLUSION

For the reasons stated above, we reverse the local board's decision affirming Appellant's suspension. We remand the issue of comparable education services to the local board to devise an appropriate remedy if it finds Appellant did not receive comparable education services during the suspension period. The local board shall update the State Board regarding the comparable education services within 30 days of the date of this Opinion.

Signatures on File:

Warner I. Sumpter
President

Jean C. Halle
Vice-President

Gail H. Bates

Clarence C. Crawford

Charles R. Dashiell, Jr.

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Justin M. Hartings

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Michael Phillips

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April 28, 2020