

September 26, 2022

Board of Education
Cobb County School District
514 Glover Street
Marietta, Georgia 30060

**Re: N.G.; Campbell High School
Motion for Reconsideration**

Dear CCSD Board Members:

N.G. submits this Motion for Reconsideration, requesting that the Board reconsider its decision to remand N.G.'s appeal of the disciplinary action taken against him on August 3, 2022, and immediately issue a decision resolving N.G.'s appeal in its entirety. In support of his request, N.G. shows the following:

I. Background

On August 3, 2022, a disciplinary hearing officer (“DHO”) found that N.G. violated the Cobb County School District (“CCSD” or “the District”) Student Code of Conduct based on an alleged incident that occurred more than a year ago. N.G. appealed that decision to this Board on August 19, 2022. N.G. appealed on the following grounds: (1) there was no evidence to support the decision of the DHO; (2) the District violated N.G.'s right to due process in the disciplinary proceedings; and (3) the District lacked jurisdiction to conduct this most recent disciplinary hearing because N.G. was no longer enrolled in the district and had already obtained his GED.

Through its counsel, the Board requested to extend its statutory deadline to decide N.G.'s appeal until September 15, 2022. N.G. consented to this request. On September 15, 2022, the Board voted to remand N.G.'s appeal for a third hearing before a DHO. In a letter provided to N.G. on September 20, 2022, the Board stated that the rehearing would be “limited to the sole question of whether the District currently has jurisdiction over this matter.” The Board gave two reasons for its decision to remand N.G.'s appeal: (1) “the record contains deficient/insufficient evidence from the student to permit the Board to evaluate his claim [that he obtained his GED and is no longer enrolled in CCSD],” and (2) the student failed to provide advanced written notice of a procedural objection to the DHO as required by District policy. The Board did not expressly decide the other contested issues. To date, neither the District nor its counsel have communicated any information about the scheduling of this third hearing with N.G.'s counsel.

II. Legal Argument

The Board's decision to remand N.G.'s appeal for another hearing was improper and will cause further, unnecessary delay to resolve N.G.'s case. The justifications identified by the Board do

not constitute a legal basis for remand. And the Board's failure to resolve all contested issues on appeal violates Georgia law and N.G.'s right to appeal.

A. The Board cannot remand a discipline case due to purported insufficient evidence.

The Board's decision contends that N.G. failed to present evidence sufficient to establish that he obtained his GED or that he is no longer enrolled in the district. However, insufficient record evidence does not provide legal grounds for the Board to re-open the hearing record, as it attempts to do here, even on a limited issue. And regardless, the record contains sufficient evidence to allow this Board to consider N.G.'s claim that the District lacks jurisdiction to take disciplinary action against him.

1. The Board must limit its review of school discipline appeals to the evidentiary record.

Georgia law is clear that a local board's review of a student discipline decision "shall be based solely on the record." O.C.G.A. § 20-2-754(d); *see also A.T. v. Fayette Cnty. Bd. of Educ.*, Case No. 2016-01 (Ga. SBE, Sep. 25, 2019) ("the decision of the local board is limited to the record."). A local board cannot consider additional evidence on appeal – including reopening the record. Remand cannot be used to redefine the local board's scope of review – which is limited to the hearing record. The Board's attempt to solicit additional evidence at a new hearing to decide N.G.'s appeal conflicts with its statutorily established standard of review.

Further, reopening the record for more evidence on appeal directly conflicts with statutory and constitutional requirements for a fundamentally fair and efficient discipline process. *See* O.C.G.A. § 20-2-754; *Goss v. Lopez*, 419 U.S. 565 (1975). It allows for student disciplinary proceedings to be unnecessarily drawn out, and for the Board to conjure evidence to match predetermined outcomes – which are all too common in CCSD and in districts across Georgia. And unless the Board is prepared to remand *every* appeal in which any party has failed to present sufficient evidence on a claim or defense, it would be impossible to administer this practice consistently and equitably.

2. The record contains sufficient evidence to establish that N.G. obtained his GED and is no longer enrolled in CCSD.

The Board's conclusion that insufficient evidence exists to establish that the District lacks jurisdiction is wrong. There is sufficient evidence on the record to evaluate N.G.'s jurisdictional defense. Uncontested testimony from a witness with personal knowledge of the matter at hand is sufficient evidence to establish a point of fact. *See Ramirez v. State*, 265 Ga. App. 808, 809 (2004) ("the testimony of a single witness is generally enough to establish a fact.").

Here there exists uncontradicted and uncontested testimony that N.G. obtained his GED and is no longer enrolled in the District. At N.G.'s discipline hearing, his parent testified that N.G. is no longer enrolled in the District and currently attends a trade program at the Georgia Youth Academy ("GYA") in Hinesville, Georgia. She further testified that N.G. initially participated in the Youth Challenge Program at GYA, where he "got his GED." CHS presented no evidence, objection, or argument to counter this testimony.

Further, the DHO found that N.G. *had* obtained his GED – meaning that he could no longer be enrolled in the District as a matter of law and fact. *See* Comp. R & Reg. 160-5-1-.28(2)(a)(1)(i) (students who obtain a high school diploma or its equivalency are ineligible to enroll in public school). During the hearing, the DHO asked N.G.'s parent for

“anything that actually shows that N.G. has his GED.” N.G.’s parent presented N.G.’s GED transcript to the DHO in response. After considering this evidence, the DHO found that it was “certainly enough” to prove that N.G. had obtained his GED. CHS did not object to the DHO considering the GED transcript or argue against the DHO’s finding.

N.G. is not enrolled in the District and he has obtained his GED. These are undisputed facts. The contested issue is whether the District has jurisdiction to proceed with disciplinary action in light of these facts. This is a legal question that can and should be decided by the Board based on the existing evidence.

B. N.G.’s alleged failure to follow Administrative Rule JCEB-R, Section C.8 does not provide adequate legal grounds for remand.

The Board’s reliance on Administrative Rule JCEB-R, Section C.8 (“Rule C.8”) as grounds for remand of N.G.’s appeal is also misplaced. Rule C.8 states:

Objections to the sufficiency of the notice or other procedural objections shall be waived unless written notice thereof is filed with the [DHO] no less than 24 hours prior to the time the hearing is scheduled to begin. The hearing may be postponed until such defects have been removed or remedied.

This policy has no bearing on whether the District lacks jurisdiction over this case. CHS did not raise this issue at the hearing and waived any objection. Further, this policy is unconstitutional, conflicts with Georgia law, and is void and unenforceable.

1. Enforcement of Rule C.8 violates N.G.’s right to due process.

As applied here, Rule C.8 violates N.G.’s right to due process by requiring him to notify the District of a substantive defense. The intended purpose of Rule C.8 is to require parties to provide notice of *procedural objections* to allow the District to cure procedural deficiencies prior to a hearing. However, the District’s lack of jurisdiction is not a procedural objection, but rather a substantive defense. And the District’s lack of jurisdiction is not a procedural deficiency that can be cured with notice. Therefore, Rule C.8 does not apply to N.G.’s jurisdictional claim and cannot serve as the basis for remand on that issue.

If the District enforces Rule C.8 to require students to provide advance, written notice of their substantive defenses, then such a requirement is contrary to Georgia law and violates due process. The District bears the burden to prove that the student has engaged in the alleged misconduct. *G.H. v. McDuffie Cnty. Bd. of Educ.*, Case No. 2018-33 (Ga. SBE, 2018). To require a student to provide advanced, written notice of a defense impermissibly shifts this burden to the student. And the Supreme Court of Georgia has confirmed that students need not provide advanced notice of their defenses:

The accused in a student disciplinary proceeding is not required to raise an affirmative defense in written response prior to the hearing. Practically speaking, the only avenue available for a student to raise [his defense] to a disciplinary charge is to present evidence at the disciplinary hearing.

Henry Cnty. Bd. of Educ. v. S.G., 301 Ga. 794,797 (2017). This Board cannot remand N.G.’s case to enforce an irrelevant and unlawful rule.

2. *The District waived any objection to N.G.'s defense.*

Even if enforcement of Rule C.8 were lawful, the District waived any objection to N.G.'s failure to follow it. Procedural errors not raised on the record are considered waived on appeal. *See, e.g., D.D. v. Columbia Cnty. Bd. of Educ.*, 2016-37 (Ga. SBE, Jul. 14, 2016) (student waived due process and hearing objections by not raising them on the record); *R.G. v. Tattnell Cnty. Bd. of Educ.*, Case No. 2012-19 (Ga. SBE, May 10, 2012 (unsigned)) (since student did not object to principal's improper conduct on the record, any objection was waived); *B.C. v. Gwinnett Cnty. Bd. of Educ.*, Case No. 2012-48 (Ga. SBE, June 14, 2012) (where student did not object to the DHO limiting her questions of a witness on the record, she waived any argument that the procedure violated due process); *S.S. v. Clarke Cnty. Bd. of Educ.*, Case No. 2010-61 (Ga. SBE, June 2010 (unsigned)) (where the student did not object to the charges against him at the hearing, he waived any objection to the relevant policy).

CHS did not object to N.G.'s alleged failure to comply with Rule C.8. And if the District had objected at the hearing, the procedural cure, per the Code of Conduct, would have been to postpone the hearing. Nor did CHS raise the issue on appeal before this Board. Therefore, the District waived that argument and this Board cannot attempt to cure a defect on the District's behalf.

C. The Board's decision failed to resolve all contested issues or resolve N.G.'s appeal, in violation of Georgia law and N.G.'s right to procedural due process.

Georgia law grants students the right to appeal discipline decisions against them and obligates local boards of education to decide these appeals, in writing, within ten days of receipt. O.C.G.A. § 20-2-754(d). The local board's written decision must include a notification of the party's right to appeal the decision to the Georgia State Board of Education ("SBE"). O.C.G.A. § 20-2-1160(a). The Board's decision in this case violates these statutory obligations.

N.G. submitted his appeal to this Board on August 19, 2022. Although he consented for the Board to consider his appeal at its meeting on September 15, 2022, he did not consent to extend the Board's deadline beyond that date. However, the Board still has not decided any of the contested issues raised in N.G.'s appeal. And its decision failed to expressly address two of those issues: (1) whether the record evidence was sufficient to support a finding that he possessed or was under the influence of THC, and (2) whether the District violated N.G.'s right to due process. The Board's decision also failed to adequately notify N.G. of his right to appeal the decision to the SBE. To address its failure to comply with Georgia law, this Board should immediately issue a new, lawful decision resolving N.G.'s appeal in full.

III. Conclusion and Requested Relief

This ongoing disciplinary action has dragged on for over one year. The most recent decision is simply the latest delay attempt. And Cobb County taxpayers continue to carry this unnecessary expense. Immediate action is necessary. N.G. therefore submits this Motion for Reconsideration to address the foregoing errors and requests that this Board:

1. Reconsider its September 15, 2022, decision, and immediately issue a new decision in this matter resolving the issues presented on appeal based on the record evidence presented at the August 3, 2022, disciplinary hearing.
2. Decide whether the District had jurisdiction to proceeding with disciplinary proceedings against N.G. on August 3, 2022, based on the undisputed evidentiary

record showing that he was not enrolled in the District and completed his GED;
and

- a. If this Board finds that the District did not have jurisdiction, then this Board must vacate the August 3, 2022, discipline decision and expunge and correct N.G.'s records to reflect this vacatur.
- b. If this Board finds that the District did have jurisdiction, then this Board must immediately consider and decide the remaining issues raised in N.G.'s appeal: (i) that the record evidence was insufficient to support a finding that N.G. possessed or was under the influence of THC, and (ii) that the District violated N.G.'s right to due process.

N.G. requests that this Board decide on his Motion for Reconsideration as soon as possible and no later than October 7, 2022.

Sincerely,

/s:/ Claire Sherburne
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