

3. Defendants, who are responsible for the administration of PCS, routinely fail to employ fundamentally fair procedures to determine whether a student has violated the Code of Conduct prior to excluding the student from the classroom, as required by their own policy and the United States Constitution.
4. Defendants' failure to implement fair disciplinary procedures disproportionately impacts students of color, particularly Black students. Eighty percent of the students referred for disciplinary hearings in the 2019-2020 school year were Black, although Black students comprised less than fifty percent of the total student population. Since the 2016-2017 school year, 77 percent of all PCS students referred for disciplinary hearings were Black students.
5. Petitioner D.P. was suspended and excluded from Goshen High School ("GHS"), a public school in PCS, for an alleged violation of the Code of Conduct that he did not commit.
6. Defendants failed to provide D.P. with a fundamentally fair disciplinary process and ultimately excluded D.P. without sufficient evidence to substantiate the allegations against him.
7. Defendants exceeded their authority, abused their discretion, and arbitrarily deprived D.P. of his right to a public education.
8. D.P. respectfully requests that this Court find that the Board's disciplinary action improperly infringed or denied D.P.'s rights, reverse the Board's decision, and correct D.P.'s disciplinary records to reflect that he was not in violation of the Code of Conduct.

II. JURISDICTION AND VENUE

9. To initiate judicial review of a school board's disciplinary decision, a complaint or petition must be filed alleging "facts sufficient to establish the subject-matter jurisdiction and venue of the juvenile court." Ala. R. Juv. P. 12(A).
10. This Court has subject matter jurisdiction over this action, under Ala. Code § 12-15-115(b)(2), because the juvenile court "shall have original jurisdiction in proceedings . . . [w]here it is alleged that the rights of a child are improperly denied or infringed in proceedings resulting in suspension, expulsion, or exclusion from a public school."
11. Alabama law defines a "child" as "an individual under the age of 19 years." Ala. Code § 12-15-102(3).
12. "[T]he juvenile court is not limited to merely reviewing the Board's hearing for procedural flaws; it must also determine whether the *substance* of the proceedings has resulted in infringement upon rights conferred upon the child by the state . . . The juvenile court exercises original jurisdiction over these issues and thus is not limited only to a review of constitutional issues arising from the Board's action." *C.L.S. by and through S.S.C. v. Hoover Bd. of Educ.*, 594 So. 2d 138, 139 (Ala. Civ. App. 1991) (emphasis added).
13. Venue is proper, under Ala. Code § 12-15-302, because Pike County is where Plaintiff resides, Defendants operate, and the underlying factual allegations occurred.

III. PARTIES

14. Plaintiff: D.P. is a Black, eighteen-year-old youth, formerly enrolled in PCS. D.P.'s rights were infringed in proceedings resulting in his unlawful suspension and exclusion from PCS from November 22, 2019, through February 21, 2020, during his senior year of high school. D.P., a child under Ala. Code § 12-15-102(3), is represented

by and through his parent and next friend, Shatarra Pelton, a permanent resident of Pike County, Alabama, who is of the age of majority.

15. Defendants: The Board is a local educational agency in Troy, Alabama, which provides the general administration and supervision of the public schools and educational interests for all schools in PCS, including GHS. Earnest Green, Greg Price, Justin Davis, Linda Steed, Clint Foster, and Charles Wilkes are members of the Board and named in their representative capacities.

IV. FACTUAL ALLEGATIONS

Background

16. D.P. was seventeen years old when he was arbitrarily and unlawfully suspended and excluded from GHS during his senior year of high school.
17. Prior to this incident, D.P. had never received a disciplinary referral.
18. D.P. was a strong student who performed well academically and was well-liked by his teachers and peers.
19. D.P. played football and basketball at GHS. Prior to his exclusion from GHS, he was on track to receive a college basketball scholarship.

The Suspension

20. On November 22, 2019, GHS Principal Britford questioned D.P. in connection with alleged rumors that a group of students had “smoked” that same day in the parking lot at school.
21. While questioning D.P., Principal Britford implied that he had video footage of D.P. using marijuana in the parking lot but would not allow D.P. to view it.
22. D.P. told Principal Britford that he had not used marijuana. He explained that he had briefly accompanied another student to her car in the parking lot, but immediately

returned to school when the other student showed him what appeared to be drug paraphernalia.

23. After questioning D.P, Principal Britford allowed D.P. to drive himself home.

24. Principal Britford did not refer the matter to the Pike County Police Department.

25. GHS did not investigate whether D.P. possessed or used marijuana by requesting D.P. to submit to drug testing, interviewing his teachers about his behavior in class, or searching his person or his car.

26. Still, D.P. was charged with violating Rule 4.5 of the Code of Conduct, which prohibits the sale, purchase, use, or possession of illegal drugs or alcoholic beverages at school. D.P. was indefinitely suspended pending a hearing before the Superintendent's Disciplinary Council ("Disciplinary Council").

27. Although D.P. received written notice that he had been suspended and charged with violating Rule 4.5 of the Code of Conduct, the notice contained no additional detail about the specific acts that resulted in the alleged violation.

28. The notice contained no information about the potential consequences that D.P. faced; however, according to the Code of Conduct, expulsion is a potential consequence for any Rule 4 violation.

29. On November 22, 2019, after receiving notice of the allegations against him, D.P. immediately and voluntarily submitted to a drug test.

30. The drug test indicated that D.P. had not used marijuana or any other tested substance for thirty days.

31. D.P. advised Principal Britford of the results of his drug test, but Principal Britford told him that they were neither relevant nor conclusive.

32. D.P. was suspended for twelve days before a disciplinary hearing was held.

Board Policy

33. The Board's policy guarantees procedural protections to any student facing disciplinary action for alleged violations of the Code of Conduct.
34. At a minimum, prior to being disciplined for an alleged violation of the Code of Conduct, students are entitled to receive notice of the charges against them, an explanation of the evidence against them, and the opportunity to present a defense.
35. Per the Board's policy, the degree of procedural protections afforded "shall be dependent upon: (1) the gravity of the offense a student is alleged to have committed; and (2) the severity of the contemplated penalty."
36. The Board's policy defines "serious disciplinary action" as student misconduct that could result in a long-term suspension or expulsion.
37. The Board's policy also guarantees the following procedural protections to students facing "serious disciplinary action":
 - (1) the right to an administrative hearing before the Board;
 - (2) the right to counsel;
 - (3) the right to present witnesses;
 - (4) the opportunity for cross-examination of witnesses; and
 - (5) a written record of the decision.

The Hearing

38. On December 10, 2019, D.P. attended an "administrative hearing" before the Disciplinary Council, appointed by the Board and comprised of PCS administrators.
39. D.P.'s hearing occurred after three other student hearings who were alleged to be involved in the same incident.
40. The same Disciplinary Council presided over all four hearings.
41. D.P.'s hearing lasted only sixteen minutes.

42. From the outset of D.P.'s hearing, the allegations against him were unclear. When he outlined the reasons for the hearing against D.P., Principal Britford did not specifically allege that D.P. sold, purchased, possessed or used marijuana on November 22, 2019. Instead, Principal Britford vaguely alleged that "several students" left class, went to the car, "smoked," and returned to class.
43. This allegation was based on hearsay reports of unidentified students.
44. Principal Britford did not indicate whether he was alleging that D.P. smoked in the car or had merely been around other students who smoked in the car.
45. GHS presented no witnesses or evidence at D.P.'s hearing to establish that D.P. used or possessed any illegal drug on November 22, 2019, in violation of Rule 4.5.
46. GHS presented no evidence to establish that D.P. was with another student who used or possessed any illegal drug on the day in question.
47. GHS presented no evidence to establish that any illegal drug had been found on D.P., on any student who had been with D.P., or in a car on the day in question.
48. GHS presented no evidence to establish that D.P. had been or appeared to be under the influence of drugs at school on the day in question.
49. The only evidence offered at D.P.'s hearing was his own testimony vehemently denying the allegations against him.
50. D.P.'s testimony at his hearing was consistent with what he had previously told Principal Britford: he had accompanied another student to her car, but he returned to school immediately when she showed him an object that appeared to be drug paraphernalia.
51. The Disciplinary Council did not find that D.P. had used or possessed illegal drugs or alcohol in violation of Rule 4.5. Still, the Disciplinary Council inexplicably found that D.P. violated the Code of Conduct.

52. The Disciplinary Council did not articulate which rule D.P. violated.
53. GHS did not present any testimony or evidence at D.P.'s hearing. Yet, members of the Disciplinary Council commented that it had already heard testimony from other involved students and "seen the video." The Disciplinary Council did not elaborate on the content of the testimony or video footage.
54. D.P. was denied the opportunity to cross-examine the unidentified persons whose testimony the Disciplinary Council apparently heard outside of D.P.'s disciplinary hearing and relied upon.
55. D.P. was denied an opportunity to review the video footage that the Disciplinary Council apparently saw outside of D.P.'s disciplinary hearing and relied upon.
56. The Disciplinary Council reached a predetermined disciplinary decision based on information obtained outside of D.P.'s hearing.
57. The Disciplinary Council excluded D.P. from GHS through the end of the 2019-2020 school year, with the option to attend PCS' alternative program.

The Appeal

58. D.P. timely appealed the decision of the Disciplinary Council to the Board.
59. On January 12, 2020, at the advice of counsel and in preparation for his appeal, D.P. voluntarily submitted to a second drug test at his doctor's office. The test confirmed that D.P. had not used marijuana or any other tested substance for ninety days.
60. The Board heard D.P.'s appeal on January 13, 2020.
61. D.P. was the only witness to testify at the appeal hearing before the Board. D.P. apologized for his decision to skip class and testified again that he had not possessed or used marijuana on the day in question.

62. D.P. also presented his negative drug test results to the Board. He was told by the Superintendent that presenting this evidence was a “waste of time” because the Board hearing was not a “court of law.”
63. After adjourning to deliberate, the Board consulted with the Disciplinary Council outside the presence of D.P. and his parent. The Board refused D.P.’s request to be present while the Board consulted with the Disciplinary Council.
64. Although GHS presented no evidence or witnesses at the hearing before the Board, the Board upheld the decision of the Disciplinary Council. The Board did not articulate what the initial finding of the Disciplinary Council had been or why it decided to affirm that finding.
65. The Board agreed to reconsider D.P.’s appeal on the condition that D.P. agree to submit to additional urine and hair follicle drug testing and to complete drug education courses.
66. Upon completing these requirements, D.P. attended the Board’s regularly scheduled meeting on February 17, 2020, to request his readmission to GHS.
67. The Board refused to consider D.P.’s request and had him escorted off the premises.
68. Four days later, on February 21, 2020, D.P. was finally permitted to return to GHS. He had been excluded from GHS for almost three months.

Harm Caused by D.P.’s Unlawful Suspension and Exclusion from School

69. D.P. was suspended for twelve days and excluded from GHS for almost three months, at a critical point in his senior year of high school.
70. While he was excluded from GHS, D.P. could only access his education via PCS’ alternative program.
71. At the alternative program, D.P. received an inferior education in an isolated setting.

72. PCS' alternative program is located in a windowless, concrete building surrounded by barbed-wire fencing. Students must enter the building through a metal detector.
73. PCS' alternative program is entirely computer-based. D.P. received no live instruction while enrolled at PCS' alternative program.
74. D.P.'s academic performance suffered at PCS' alternative program because he was unable to ask teachers questions, engage in discussions about the academic material, or maintain focus without any live instruction or support.
75. D.P. was not offered the opportunity to participate in extracurricular activities or PCS functions while enrolled at PCS' alternative program.
76. Prior to his suspension and exclusion from GHS, multiple colleges and universities had expressed interest in recruiting D.P. to play college basketball on a scholarship.
77. As a result of his suspension and exclusion from GHS, D.P. was denied his opportunity to play basketball during his senior season and lost his opportunities to attend college on a scholarship.
78. D.P. currently works at Walmart.
79. D.P. still intends to pursue higher education in the future.
80. A suspension and exclusion on D.P.'s student records will continue to prohibit, or severely limit, subsequent opportunities for higher education and employment.
81. D.P. was devastated, embarrassed, and extremely distressed by his suspension and exclusion from GHS.
82. D.P. began attending counseling and therapy as a result of this incident.
83. D.P. still suffers the emotional consequences of this incident, including depression, loss of confidence, and low self-esteem.

V. Legal Claims

84. Defendants improperly infringed and denied D.P.'s rights in a proceeding resulting in his suspension and exclusion from GHS, a public school.

85. Defendants improperly infringed and denied D.P.'s rights by (1) issuing an arbitrary and capricious decision that was unsupported by evidence, (2) failing to comply with its own adopted policy, and (3) disciplining D.P. in violation of the requisites of constitutional due process.

Count 1: Arbitrary and Capricious Decision

86. Students have a right to avoid "unfair or mistaken exclusion from the educational process, with all its unfortunate consequences." *Goss v. Lopez*, 419 U.S. 565, 574 (1975).

87. A local board of education denies or improperly infringes on a student's right to education when it unreasonably or arbitrarily disciplines a student. *C.L.S. by and through S.S.C. v. Hoover Bd. of Educ.*, 594 So. 2d 138, 139 (Ala. Civ. App. 1991).

88. An unreasonable or arbitrary disciplinary action occurs when a school board fails to satisfy its burden of proof and consequently excludes a student based on insufficient evidence to prove that the student violated a board rule or policy.

89. Defendants subjected D.P. to an unreasonable or arbitrary and capricious disciplinary action by suspending and excluding D.P. despite insufficient evidence to conclude that D.P. violated the Code of Conduct as alleged.

90. The Board failed to carry its burden to prove or establish the essential elements of D.P.'s alleged infraction.

91. Defendants lacked evidence to find that D.P. violated Rule 4.5 of the Code of Conduct as alleged.

92. Defendants' decision to discipline D.P. despite a lack of evidence to support the allegations against him was arbitrary, capricious, and an abuse of discretion.

Count 2: Noncompliance with Board Policy

93. A local board of education must comply with the policies it adopts. *Belcher v. Jefferson Cnty. Bd. of Educ.*, 474 So. 2d 1063, 1068 (Ala. 1985).

94. The Board cannot arbitrarily refuse to provide procedural protections to a student facing serious disciplinary action, like R.M., when those protections are guaranteed by the Board's policy.

95. D.P. was facing serious disciplinary action as a result of allegedly violating Rule 4.5 of the Code of Conduct and was therefore entitled to all procedural protections outlined by the Board's policy.

96. Defendants failed to provide D.P. with notice of the charges against him and an opportunity to be heard prior to suspending him for twelve days, as guaranteed by the Board's policy.

97. Defendants failed to provide D.P. with an explanation of the evidence against him, as guaranteed by the Board's policy.

98. Defendants failed to provide D.P. with the opportunity to cross-examine witnesses as guaranteed by the Board's policy.

99. Defendants acted arbitrarily and beyond their authority by disciplining D.P. in violation of the Board's policy.

100. Defendants' repeated failures to comply with the Board's policy amounted to legal error and an unlawful abuse of discretion.

101. This arbitrary and unlawful disciplinary action infringed on R.M.'s rights under Ala. Code § 12-15-115(b)(2).

Count 3: Violation of D.P.'s Right to Procedural Due Process

102. Public school students facing suspension or exclusion from school for disciplinary reasons have both a property and reputational liberty interest that qualify for protection under the Due Process Clause of the Fourteenth Amendment of the United States Constitution. *Goss v. Lopez*, 419 U.S. 565, 574 (1975).
103. A local board of education may not infringe on a student's right to a public education on grounds of misconduct absent "fundamentally fair procedures to determine whether some kind of misconduct has occurred." *Id.*
104. "[W]hen the basic constitutional rights of students are at issue, [courts] cannot avoid considering these constitutional rights when they are infringed by board action. The authority vested in school boards and officials to maintain order and discipline in schools must be exercised within constitutional bounds." *Dothan City Bd. of Educ. v. V.M.H.*, 660 So. 2d 1328, 1330 (Ala. Civ. App. 1995).
105. While courts may give broad discretion to discipline decisions made by a local board of education, the deferential standard is trumped when school boards violate due process. *Monroe Cnty. Bd. of Educ. v. K.B.*, 62 So. 3d 513, 516 (Ala. Civ. App. 2010).
106. Defendants failed to implement fundamentally fair procedures to determine whether D.P. committed any alleged misconduct prior to infringing on his right to an education.
107. Defendants failed to provide D.P. with notice of the charges against him.
108. Defendants failed to provide D.P. with an explanation of the evidence against him.
109. Defendants failed to provide D.P. with an opportunity to be heard.
110. Defendants suspended D.P. for twelve days before providing him with a disciplinary hearing.
111. Defendants refused to consider evidence presented by D.P. in his defense.

112. Defendants reached a predetermined conclusion based on information obtained outside of D.P.'s hearing and not subject to review by D.P.
113. Defendants failed to independently consider the merits of D.P.'s case to determine whether he had violated the Code of Conduct as alleged.
114. Defendants deprived D.P. of the opportunity to confront and cross-examine adverse witnesses.
115. Defendants arbitrarily denied D.P. the protections guaranteed by Board policy.
116. Defendants failed to establish that D.P. violated the Code of Conduct prior to excluding him from GHS.
117. Defendants disciplined D.P. despite a lack of evidence substantiating the specific allegations against him.
118. Defendants' failure to adhere to the minimum procedures required by the Due Process Clause resulted in an abuse of discretion and an arbitrary deprivation of D.P.'s right to a public education.

VI. PRAYER FOR RELIEF

D.P. respectfully requests that this Court:

- i. Find that Defendants' disciplinary decision improperly denied or infringed D.P.'s rights;
- ii. Reverse Defendants' disciplinary decision against D.P.;
- iii. Correct D.P.'s academic records to reflect that D.P. did not violate the Code of Conduct;
- iv. Order Defendants' to reform their disciplinary policies and practices and train PCS staff on the implementation of the reformed policies; and;
- v. Award any other relief deemed just and proper.

Respectfully submitted this 21st day of October, 2020.

[Signatures on following page.]

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