



Emerson Law, LLC

2113 Middle Street, Suite 311, Sullivan's Island, SC 29482
john@johnemersonlaw.com · 843.929.0606 · www.johnemersonlaw.com

October 18, 2019

Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia SC 29211

RECEIVED

OCT 21 2019

SC Court of Appeals

Re: Richland School District Two Board of Trustees, Respondent v.
Tyra F. Brown Wallace and Natalie Brown, Appellants
Appellate Case No. 2019-001679

Dear Ms. Kitchings,

Thank you for your letter of October 8 alerting me to the fact that the Order challenged on appeal was not included with the Notice of Appeal in this matter. Enclosed please find a copy of same. By copy of this letter, I am serving counsel for Respondent.

Sincerely yours,

John F. Emerson,
Attorney for Appellants
Emerson Law LLC
2113 Middle Street, Ste. 311
Sullivan's Island SC 29482
843/929-0606
john@johnemersonlaw.com
S.C. Bar ID #0065334

encls.

c: Vernie L. Williams, Esq
Jasmine Rogers Drain, Esq.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF RICHLAND)

Tyra F. Brown-Wallace and Natalie
 Brown,)

C.A. No. 2018-CP-40-01452

Petitioners,)

ORDER

vs.)

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Richland School District Two Board of
 Trustees,)

OCT 21 2019

Respondent.)

SC Court of Appeals

This matter came before the Court for hearing on Friday, July 26, 2019. The Petitioners, N.B. and T.B.W., are represented by John Emerson. Respondent Richland School District Two ("District") Board of Trustees ("Board") is represented by Jasmine Drain and Vernie Williams of Halligan Mahoney & Williams, P.A. The issue before the Court is whether the School District provided the student with appropriate due process for a suspension of 10 days or less.

I. NATURE OF THE CASE

This matter began as a recommendation for expulsion based on Petitioner T.B.W., who was then a student at Richland Northeast High School ("RNE"), allegedly touching a staff member in an inappropriate way at a school event. The expulsion hearing before the District's Hearing Officer was held on November 10, 2017. The Hearing Officer denied the expulsion recommendation and returned the student to school on strict probation. Petitioner and her family appealed the decision to the School Board. The School Board upheld the Hearing Officer's decision returning the student to school and placing her on strict probation. This appeal follows.

Based on the information presented and reviewed, the Court finds that Petitioner has been provided appropriate due process for a short term suspension. Accordingly, for the reasons set forth below, the appeal is denied.

II. FACTUAL BACKGROUND

Student, T.B.W. was suspended and recommended for expulsion based on an allegation from one of her teachers that she intentionally touched the teacher's breast. On October 22, 2017, T.B.W. attended a Trick or Truck event sponsored by the school's National Honor Society. While attending this event, T.B.W. allegedly walked up to greet a teacher/sponsor, and when doing so, intentionally "flicked" the teacher's breast in what appeared to be a joking manner. Because the teacher considered the touching, even if in jest, to be inappropriate, she submitted a discipline referral for student T.B.W, and emailed T.B.W.'s mother ("N.B.") about the incident on October 24, 2017.

Thereafter, on Friday, October 27, 2017, an assistant principal met with T.B.W. and her mother to discuss the incident. During the conference, T.B.W. indicated that she did not realize she hit the teacher's breast, but that if she did, it was not intentional. Due to the conflicting reports, the assistant principal concluded the conference and informed the family that she needed to further investigate and would be in contact once she clarified some facts or allegations with the teacher. Later that afternoon, the assistant principal met with the teacher to seek clarification regarding the allegations and incident.

The teacher informed the assistant principal that the touching could not have been unintentional or misinterpreted. In particular, she described the incident as being one in which T.B.W. came up to her and hit her breast in a motion that started on the underside of the breast and pushed upwards. The teacher explained that the flick was not with two fingers, but rather with the whole hand. The teacher also indicated that she had advised the student that she would be receiving some type of consequence for the action.

Later that same day, the assistant principal met with T.B.W. again after seeking clarification from the teacher and informed T.B.W. that based on the information shared, the touching did not seem accidental. T.B.W. was advised that she was being recommended for

expulsion and was extended an opportunity to provide a written statement. T.B.W. did not provide a statement at that time. The assistant principal also contacted T.B.W.'s parent, N.B., and relayed the information from the teacher.

By letter dated October 31, 2017, to N.B., RNE Principal, Sabrina Suber, confirmed T.B.W. had been recommended for expulsion effective October 30, 2017, for inappropriate physical contact with a teacher. According to the discipline suspension notice referenced in the letter, T.B.W. was suspended from October 30, 2017 through November 3, 2017, pending the expulsion recommendation. By letter dated October 31, 2017, N.B. was advised by Hearing Officer Lottie Chishom that a due process hearing had been scheduled for Tuesday, November 7, 2017. Through this communication, N.B., was provided a copy of the expulsion policy which outlined all the rights the family would be entitled to in connection with the discipline hearing. At N.B.'s request, the due process hearing was rescheduled to November 10, 2017.

Following the due process hearing before the District's Hearing Officer, the Hearing Officer issued a decision not to uphold the school administration's expulsion recommendation. Rather, the Hearing Officer decided to allow T.B.W. to return to RNE on strict probation for the remainder of the school year. Although, as consistent with State law, the District's policy does not permit appeals of suspensions or strict probation beyond the Board's designee, N.B. and T.B.W. were ultimately granted the opportunity to appeal the Hearing Officer's decision of strict probation and the suspension to the Richland School District Two Board of Trustees ("Board").

Following review of and deliberations on the appeal, on February 13, 2018, the Board voted to uphold the Hearing Officer's decision. N.B. and T.B.W. sought, pursuant to S.C. Code Ann. § 59-19-510 et seq., review by this Court of the Board's decision of February 13, 2018, to uphold the Hearing Officer's decision of returning T.B.W. to school on strict probation and the suspension that would have proceeded the strict probation.

The District initially contended that the circuit court lacked jurisdiction pursuant to S.C.

Code Ann. § 59-19-510 et seq. to hear this matter because it involved a short term suspension. By Order dated December 12, 2018, the Court denied Respondent's Motion to Dismiss finding that based on the facts alleged it would be appropriate, under *Floyd v. Horry County Sch. Dist.*, 351 S.C. 233, 569 S.E.2d 343 (2002), to exercise limited judicial review of Petitioners' suspension to determine whether the school district provided her due process.

III. CONCLUSIONS OF LAW

A. T.B.W. Was Afforded Due Process By The Administration Under *Goss v. Lopez*.

In this case, T.B.W. was recommended for expulsion, and, as consistent with the District's policy, assigned a suspension related to the expulsion recommendation. Specifically, District Policy JKE "Expulsion of Students" provides, in relevant part:

...If an administrator or his or her designee investigates a report of student behavior and decides to recommend expulsion, the administrator should suspend the student and notify the student's parent/ legal guardian of his/ her right to meet with the administrator within three (3) school days of the date of the suspension. If after meeting with the parent/ legal guardian (or if the parent/ legal guardian has not come in for a meeting by the third school day,) the administrator still intends to recommend expulsion, the matter will be referred directly to the district hearing officer.

Based on the record, a meeting occurred between the school administration and Petitioners on October 27, 2017, and during that time, the incident was discussed, and the student shared her side of the story. Prior to this meeting, Petitioners were already aware of the teacher's account and allegations of the incident, and when the assistant principal met with T.B.W. for the second time later that day, the administration made it clear that the teacher was emphatic that the touching was not accidental. The student was extended an opportunity to respond again by emailing a written statement given the time of day. The record does not reflect the student provided a written statement at that time.

As consistent with the District's policy, after making a decision to recommend T.B.W. for expulsion, the administration contacted the parent, N.B. Although the record does not reflect any subsequent meeting occurred between N.B. and the administration after she received the notification on October 27, 2017, as a practical matter, they had already held a conference to discuss the allegations, and Petitioners cannot establish they were denied an opportunity to meet again. In any event, when the student met with the administration on October 27, 2017, she was provided the information and allegations against her and she was given an opportunity to explain her side of the story. In fact, the teacher had emailed the parent regarding her allegation. Accordingly, appropriate due process under *Goss* was provided at the school level.

B. T.B.W. Was Afforded Due Process At The Hearing Officer Level.

Even if due process was not provided to the student at the school level, the record reflects Petitioners were afforded an evidentiary hearing before the Hearing Officer, at which time Petitioners were afforded the opportunity to understand the nature of the allegations against T.B.W., notice of the evidence, which was the teacher's statement and testimony, and allowed an opportunity to respond with T.B.W.'s side of the story.

S. C. Code § 59-63-240 outlines the procedures for student expulsion and provides, in relevant part, as follows:

The Board may expel for the remainder of the school year a pupil for any of the reasons listed in Section 59-63-210. If procedures for expulsion are initiated, the parents or legal guardian of the pupil shall be notified in writing of the time and the place of a hearing either before the board or a person or committee designated by the board. At the hearing the parents or legal guardian shall have the right to legal counsel and to all other regular legal rights including the right to question all witnesses. If the hearing is held by any authority other than the board of trustees, the right to appeal the decision to the board is reserved to either party. The hearing shall take place within fifteen days of the written notification at a time

and place designated by the board and a decision shall be rendered within ten days of the hearing. The pupil may be suspended from school and all school activities during the time of the expulsion procedures. The action of the board may be appealed to the proper court.

Moreover, the United States Supreme Court first addressed what process is due in the school discipline context in *Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729 (1975). Although *Goss* specifically limited its holding “to the short suspension, not exceeding 10 days,” courts have stated that it “nevertheless establish[ed] the minimum requirements for long-term expulsions as well.” *Goss*, 419 U.S. at 584, 95 S.Ct. 729; *Newsome v. Batavia Local Sch. Dist.*, 842 F.2d 920, 927 (6th Cir.1988); *Remer v. Burlington Area School Dist.*, 286 F.3d 1007, 1010-11 (7th Cir. 2002). Specifically, *Goss* requires only that a student be given (1) notice of the charges against him, (2) an explanation of the evidence, and (3) an opportunity to present his side of the story. 419 U.S. at 581, 95 S.Ct. 729.

Although the South Carolina Supreme Court has not articulated a standard for minimal due process in a student expulsion case, in *Stinney v. Sumter School District 17*, the Court noted an expulsion is a more serious disciplinary action than is suspension, and therefore, the procedures and protections given to the accused student should be greater than the informal, immediate hearing that was authorized in *Goss*. 391 S.C. 547, 551-552 (2011). Nonetheless, without deciding the constitutional minimum that must be given in these circumstances, the South Carolina Supreme Court has found those procedures and protections outlined in S.C. Code Ann § 59-63-240 to be constitutionally sufficient.

T.B.W. was afforded due process as consistent with applicable law and District policy for expulsion proceedings which would have encompassed the minimal due process requirements of *Goss* applicable to a short term suspension.

i. T.B.W. Was Afforded A Fair And Impartial Hearing, And All Other Procedural Rights.

Just as in *Goss* and *Stinney*, T.B.W. was afforded all of the necessary procedural due process rights. Specifically, the undisputed evidence supports that following T.B.W.'s expulsion recommendation by the school administration, by letter dated October 31, 2017, Petitioners were advised of the scheduling of an evidentiary hearing before the District's Hearing Officer. By this communication, they were notified of procedural rights, which would have included, among others, the opportunity to inspect any statements and review any evidence and the right to have legal counsel present. The record does not reflect a request was made for that information prior to the hearing, and Petitioners did not secure legal counsel at that time.

On November 10, 2017, the due process hearing for T.B.W. was held. The hearing began with a brief opening statement by the Hearing Officer, after which the administration presented the information in support of its recommendation that T.B.W. be expelled from the District. During the hearing, the administration introduced written documents, including reports/statements regarding the investigation and incident and information regarding T.B.W.'s grades and attendance. The teacher testified at the hearing via telephone and was available to be questioned. The record does not reflect Petitioners requested to ask questions of the witnesses, the teacher and the administration, or were prohibited from doing so. In addition, Petitioners were afforded the opportunity to present their side of the story and present any evidence to support their position. Petitioners allege they were not allowed to question the teacher. Assuming *arguendo* this is true, the evidentiary hearing clearly exceeded the due process necessary under *Goss* and *Floyd* for a short term suspension. Also, Petitioners were given the opportunity to offer testimony and evidence and could have reviewed the evidence submitted to the Hearing Officer by the administration upon request.

Petitioners contend that the Hearing Officer failed to conduct the hearing in a fair and impartial manner. The record, however, is void of partiality, and Petitioners' appeal fails to identify any alleged conduct supporting this sweeping claim. Significantly, the Hearing Officer

did not uphold the administration's recommendation that T.B.W. be expelled despite the teacher's testimony that T.B.W. intentionally touched her breast, which is inconsistent with Petitioners' allegation that the Hearing Officer was biased. Further, absent from the Record is a showing of prejudice or bias by the Hearing Officer stemming from a source other than her own knowledge and participation in the case. *See United States v. Grinnell Corp.*, 384 U.S. 563 (1966). Accordingly, T.B.W. was afforded due process under *Goss*, and the decision should be upheld.

C. T.B.W. Was Afforded Due Process On Appeal To The Board.

Moreover, to the extent T.B.W. alleges the proceedings before the Hearing Officer were unfair or partial, such alleged violation or deficiency would have been cured on appeal at the Board level. *See Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 70, 492 S.E.2d 62, 72-73 (1997) (finding administrative boards' independent consideration of grievance cured the constitutional due process violation.); *Schaper v. City of Huntsville*, 813 F.2d 709 (5th Cir.1987) (alleged conspiracy at pretermination procedure did not violate due process rights where employee had right to appeal termination); *Davis v. Mann*, 721 F.Supp. 796 (S.D.Miss.1988) (where there is an adequate appeal process, bias on part of initial decision maker is not denial of procedural due process).

Further, the obligations of *Goss* would have been met. Petitioners, individually, and through legal counsel, appealed the Hearing Officer's decision (i.e. strict probation) to the Board. Prior to the appeal, Petitioners, through their legal counsel, were provided the complete record, which included all evidence, and were afforded the chance to argue their position and explain their side of the story once again. It cannot be disputed that through the appeal to the Board, Petitioners clearly were afforded (1) oral or written notice of the charges; (2) an explanation of the evidence; and (3) an opportunity to present their side of the story prior to the Board making a decision.

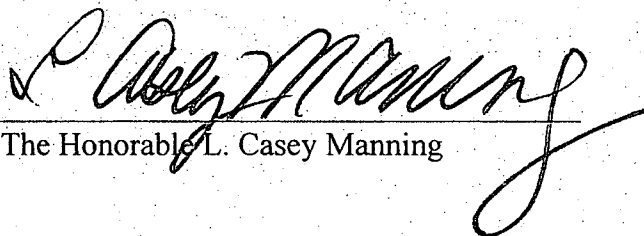
Further, the school board members are clothed with a presumption of honesty and integrity in the discharge of their decision-making responsibilities. *See Kizer v. Dorchester County Vocational Education Board of Trustees*, 340 S.E.2d 144, 148 (1986). In order to disqualify a hearing tribunal, actual bias rather than a mere potential for bias must be shown. *Id.* Individual decision makers must not have exhibited bias as to the factual questions to be decided at hearing, and evidence of actual bias which offends due process consists of statements on the merits by those who must make factual determinations on contested fact issues where fact finding is critical. *Kizer*, 240 S.E.2d at 148 (citing *Staton v. Mayes*, 552 F.2d 908, 914 (1977); *Bogart v. School Unified School District No. 298 of Lincoln City*, 432 F.Supp. 895 (1977)).

It is not actual bias to have made statements as to policy issues related to a dispute, nor to have stated charges in instigating an investigation of such. *Kizer*, 340 S.E.2d at 148, (citing *Staton v. Mayes*, 552 F.2d 908, 914 (1977)). Unless there is evidence that preformed opinions of board members are fixed and unchangeable, or that in the deliberations after hearing all the evidence, the result was dictated by such a preformed opinion, the appellant cannot successfully maintain that he was deprived of a fair and impartial hearing. *Id.* (citing *Crane v. Mitchell County Unified School District No. 273*, 232 Kan. 51, 652 P.2d 205 (1982)).

To nullify a ruling of a quasi-adjudicatory body on the basis of bias or prejudgment requires a substantial showing of a "predetermined purpose to reach a determined end." *Kizer v. Dorchester Cty. Vocational Educ. Bd. of Trustees*, 287 S.C. 545, 552-53, 340 S.E.2d 144, 148-49 (1986). Based on the record, there is no evidence to suggest that the opinions of the Board members were predetermined, fixed, or unchanged. Accordingly, the record clearly shows that T.B.W. was provided with the process established under S.C. Code Ann. § 59-63-240, which the *Stinney* Court recognizes as sufficient to meet minimum due process and those under *Goss*. Petitioners have not demonstrated prejudice, and due process has been provided at the Hearing Officer level, and if not there, upon appeal to the Board. Therefore, I am denying the appeal.

IV. CONCLUSION

Based on all the facts and circumstances involved in this case, the decisions of the Hearing Officer and Board of Trustees are upheld and Petitioners' appeal is denied.


The Honorable L. Casey Manning

August 16, 2019
Columbia, South Carolina

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Tyra F. Brown-Wallace and Natalie Brown,

Petitioners

v.

Richland School District Two Board of Trustees

Respondent

CERTIFICATE OF SERVICE

Appellate Case No. 2019-001679

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SC Court of Appeals

I certify that on this date, I served a copy of Order of Hon. L. Casey Manning in this action, dated August 16 and filed August 19, 2019, on Vernie L. Williams, Esq. and Jasmine Rogers Drain, Esq., Counsel for Richland School District Two Board of Trustees, by:

___ Delivering it to him/her personally;

XX Mailing it to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

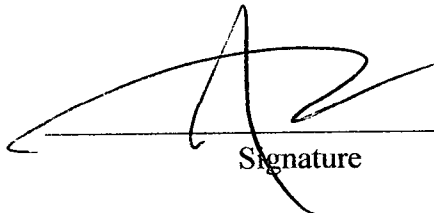
Vernie L. Williams, Esq.
Halligan, Mahoney and Williams, P.A.
P.O. Box 11367
Columbia SC 29211

Jasmine Rogers Drain, Esq.
Halligan, Mahoney and Williams, P.A.
P.O. Box 11367
Columbia SC 29211

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