

IN THE FLORIDA FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

S.J.,

Plaintiff,

v.

Case No.: 2016 CA _____

MALCOLM THOMAS and SCHOOL
BOARD FOR ESCAMBIA COUNTY,
FLORIDA,

Defendants.

/

COMPLAINT

Plaintiff S.J., by and through his mother, (“Student”) sues Defendants MALCOLM THOMAS (“Superintendent”) and SCHOOL BOARD FOR ESCAMBIA COUNTY, FLORIDA (“School Board”) (collectively “Defendants”) and alleges as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this equitable action pursuant to § 26.012(2)(c), Fla. Stat., and Fla. Const. art. V, § 5.

2. Venue is proper in this judicial circuit and county pursuant to § 47.011, Fla. Stat., and the home-venue privilege.

PARTIES

3. Plaintiff S.J. (“Student”) is a high school student in the School District for Escambia County, Florida (“School District”). He resides in the School District. He is subject to the Defendants’ policies, practices, and procedures.

4. The Student is under the age of eighteen and sues individually and by and through his mother, pursuant to Fla.R.Civ.P. 1.210(b).

5. Defendant School Board of Escambia County, Florida (“School Board”), pursuant to the Florida K-20 Education Code, is the governing body of the School District. The School Board sets the policies for the School District. The School Board resides in Escambia County, Florida. The School Board is subject to civil lawsuits pursuant to § 1001.41(4), Fla. Stat.

6. The School Board is an “agency” as the term is used throughout Ch. 120, Fla. Stat. *See* § 120.52(1)(a), (6), Fla. Stat.

7. Defendant Malcolm Thomas (“Superintendent”) is the Superintendent of the School District. The Superintendent resides in Escambia County, Florida. The Superintendent controls and supervises all school officials in the School District. School officials in the Escambia School District are agents and employees of the Superintendent and they are subject to his control and direction.

GENERAL ALLEGATIONS

8. At the start of the 2015-2016 school year, the Student attended West Florida High School (his “regular” school).

9. West Florida High School is neither a “disciplinary program” nor an “alternative school” as these terms are used in § 1003.53, Fla. Stat., and Escambia Student Rights and Responsibilities Handbook (2015-2016) (“R&R Handbook”), Ch. 5(D), p. 29. Instead, it is a “regular” school, as this term is used in the R&R Handbook. It is a “traditional” school, as this term is used in the Florida Education Code.

Recommendation of Disciplinary Reassignment

10. Following an incident on October 1, 2015, the Student’s regular school principal suspended the Student.

11. Based on the October 1 incident, the Student’s school principal requested that the Superintendent remove the Student from his regular school.

12. On October 21, 2016, the Superintendent recommended to the School Board to remove the Student from his regular school through a process called “disciplinary reassignment.”

13. Both disciplinarily reassigned students and students expelled with

services are removed from their regular schools. Expelled students are offered the same educational services at an alternative or virtual school as offered to disciplinarily reassigned students.

14. Like the determination to expel a student, the determination to disciplinarily reassign a student affects his substantial interest.

15. Disciplinarily reassign affects a student's substantial interest in a high quality education and educational opportunities in several ways including the quantity and quality of work assignments, the curriculum design, availability of physical education, the teaching methods and learning activities used, access to highly qualified teachers, positive social interactions with traditional school students during both instructional and non-instructional periods, eligibility to participate in sports and extracurricular activities, blemish on school record, and the location of the school.

16. After the Superintendent issued his recommendation of disciplinary reassignment, the Superintendent prohibited the Student from attending his regular school. The Superintendent has prohibited the Student from attending his regular school since the Superintendent made the recommendation of disciplinary reassignment. The Superintendent continues to prohibit the Student from attending his regular school or any other traditional school in the School District.

17. For at least part of the time while the Superintendent's recommendation of disciplinary reassignment was pending, the Superintendent extended the Student's suspension. The Superintendent extended the Student's suspension pursuant to § 1006.08(1), Fla. Stat.

18. The Student opposed the Superintendent's recommendation of disciplinary reassignment.

Creation of Hearing to Contest Disciplinary Reassignment

19. The Student wanted a hearing to contest the Superintendent's recommendation of disciplinary reassignment.

20. If the Superintendent would have recommended removal through expulsion, the Student would have been entitled to a hearing to contest the recommended expulsion. The hearing would be part of proceedings conducted pursuant to §§ 120.569 & 120.57, Fla. Stat. *See* § 1006.08(1), Fla. Stat.

21. However, in October 2015 the Defendants had no existing policy, practice, or procedure that afforded a student a hearing to contest the Superintendent's recommendation of disciplinary reassignment.

(a) Neither the School Board's policy nor the R&R Handbook affords a student a hearing to contest the Superintendent's recommendation of

disciplinary reassignment.

(b) On October, 9, 2015, the Superintendent sent a letter to the Student to notify him of the principal's request to remove the Student from his regular school. The letter explained that if the Superintendent later recommends expulsion, then the Student is entitled to a hearing to contest the recommendation. However, the letter did not indicate that the Student would be similarly entitled to a hearing to contest a recommendation of disciplinary reassignment.

(c) On information and belief, on or about October 21, 2015, the Superintendent sent a letter to the Student to notify him of the Superintendent's recommendation of disciplinary reassignment. The letter does not indicate that the Student is entitled to a hearing to contest the recommendation.

(d) When an inquiry was made in late October 2015 about the availability of an administrative hearing to contest the recommendation, the Superintendent's deputy stated that the School District makes no provision for a hearing to a student to contest the Superintendent's recommendation of disciplinary reassignment.

(e) Prior to January 2016, no student in the Escambia School District has ever had an administrative hearing (like those afforded to students recommended for expulsion) to contest the Superintendent's recommendation of

disciplinary reassignment.

22. The Student notified the School Board that he opposed the Superintendent's recommendation of disciplinary reassignment. In part, he objected because he was not afforded an administrative hearing to contest the recommendation.

23. The Superintendent suggested to the School Board that it construe the Student's objection as a hearing request and grant a formal hearing.

24. At its November 19, 2015, regular meeting, the Escambia School Board approved the hearing request. It approved giving the Student an opportunity to contest the recommended disciplinary reassignment at "the same kind of hearing [the school] set[s] for all students expelled or otherwise."

Administrative Hearing

25. Proceedings began to determine whether the School Board would disciplinarily reassign the Student.

26. The School Board appointed a hearing officer to conduct an administrative hearing.

27. The hearing officer conducted a hearing over two, non-consecutive days in January 2016 regarding the Superintendent's recommendation to

disciplinarily reassign the Student. The hearing involved one or more disputed issues of material fact.

28. The January 2016 hearing was part of the proceedings by which the School Board determined the Student's interest.

29. The hearing was consistent with the procedures provided in §§ 120.569 & 120.57, Fla. Stat.

30. Consistent with § 120.569(2)(f), Fla. Stat., the hearing officer issued subpoenas to compel the attendance of witnesses at the hearing. The School Board and Superintendent authorized the hearing officer to issue the subpoenas.

31. Consistent with § 120.57(1)(k), Fla. Stat., the hearing officer notified Student of his right to submit written exceptions to the Superintendent within 15 days of the recommended order. On February 11, 2016, the Student timely submitted written exceptions to the recommended order.

32. On January 28, 2016, the hearing officer issued a recommended order. The hearing officer recommended that the Student be disciplinarily reassigned for the remainder of the 2015-2016 school year.

No Final Order was Rendered

33. On the Superintendent's recommendation, by a majority vote at its regular meeting on February 16, 2016, the School Board adopted the recommended order.

34. In March 2016, the School Board created a Notice of Adoption of Recommended Order ("Notice"). The Notice explains that the School Board adopted the recommended order as the School Board's final order at its meeting.

35. On March 16, 2016, the School Board filed the Notice with the Division of Administrative Hearings (DOAH).

36. When filing the Notice with DOAH, the School Board identified its document type as a "notice," not a "final order."

37. The School Board's Notice did not include an explicit ruling on each of the Student's exceptions to the recommended order.

38. The School Board did not notify the Student of the Notice.

39. The Notice was not rendered.

40. The School Board has neither issued an immediate final order pursuant to § 120.569(2)(n), Fla. Stat., nor a final order pursuant to § 120.569, Fla.

Stat., to disciplinarily reassign the Student from his regular school.

41. The Student wants to appeal the School Board's decision to a state appellate court.

42. The Florida District Court of Appeal has no jurisdiction to hear an appeal of the School Board's determination of a substantial interest without a final order, notwithstanding School Board's vote to adopt a recommended order. *See Mitchell v. Leon County Sch. Bd.*, 591 So. 2d 1032, 1033 (Fla. 1st DCA 1991).

43. The Student cannot appeal the School Board's decision to disciplinarily reassign him without a final order.

44. The Student has suffered and will continue to suffer an irreparable injury. He cannot attend a regular school. He cannot appeal the disciplinary reassignment to a state appellate court. Unless restrained by this Court, the Student will continue to suffer these injuries as a result of the Defendants' actions.

COUNT 1: WRIT OF MANDAMUS
(AGAINST SCHOOL BOARD)

45. Plaintiff realleges and incorporates by reference all of the preceding paragraphs in this complaint.

46. The School Board determined the Student's substantial interest when it removed the Student from his regular school and disciplinarily reassigned him to

an alternative or virtual school.

47. The School Board has an indisputable legal duty to issue a written final order following proceedings that affects substantial interests. *See* § 120.569(2)(l), Fla. Stat.; § 120.57(1)(m), Fla. Stat.

48. The School Board has an indisputable legal duty to send the final order to the Division of Administrative Hearings (DOAH). *See* § 120.53, Fla. Stat.; § 120.57(1)(m), Fla. Stat.

49. The Student has a clear legal right to receive a final order of disciplinary reassignment.

50. The Student, as a member of the public, has a clear legal right to access final records required to be submitted to DOAH.

51. The Student has no other adequate remedy available.

COUNT 2: UNLAWFUL DEPRIVATION OF EDUCATION
(AGAINST SUPERINTENDENT)

52. Plaintiff realleges and incorporates by reference all of the preceding paragraphs in this complaint.

53. The Student has a statutory and state constitutional right to a public school education. *See* Fla. Const. art. IX § 1.

54. A school official may only remove a student from his regular school and place the student in an alternative or virtual school when permitted by law.

55. The Superintendent and school officials under his control and direction prohibited the Student from attending his regular school from November 17, 2015, through the present. They will continue to prohibit the Student from attending his regular school.

56. The Superintendent had and has no lawful basis to prohibit the Student from attending his regular school during this time without an immediate final order or a final order. *Mitchell v. Leon County Sch. Bd.*, 591 So. 2d 1032, 1033 (Fla. 1st DCA 1991) (“In the absence of rendition of a proper order there is ... [no] true legal obstacle to [a student’s] return to classes.”).

57. The Superintendent deprived the Student of an education at his regular school during this period in violation of state law.

JURY DEMAND

Student requests a trial by jury.

RELIEF REQUESTED

WHEREFORE, Plaintiff Student respectfully requests the following relief:

A. A declaration that the provisions of §§ 120.569 & 120.57, Fla. Stat., apply to the proceedings to decide to disciplinarily reassign the Student because this decision affects the “substantial interests” of the Student.

B. A writ of mandamus compelling School Board to issue a final order pursuant to the §§ 120.569 & 120.57, Fla. Stat., and transmit that order to the Florida Division of Administrative Hearings.

C. An award of nominal damages to the Student and against the School Board for its refusal to issue a final order.

D. An injunction requiring the Superintendent to admit the Student to a regular high school until and unless the School Board issues a final order directing the Student’s disciplinary reassignment from a regular school.

E. A declaration that until the School Board issues a final order, the Superintendent has no authority to keep the Student out of a regular school.

F. An award of compensatory damages to the Student and against the Superintendent for his unlawful removal of the Student from his regular school.

G. An order retaining the Court's jurisdiction of this matter to enforce the terms of the Court's orders; and

H. Such further and different relief as is just and proper or that is necessary to make the Plaintiff whole.

Respectfully Submitted,

s/Benjamin James Stevenson

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