

SHANTELL D.,  
Appellant

v.

BALTIMORE CITY BOARD  
OF SCHOOL  
COMMISSIONERS,  
Appellee.

BEFORE THE  
MARYLAND  
STATE BOARD  
OF EDUCATION  
Opinion No. 19-02

## OPINION

### INTRODUCTION

Shantell D. (Appellant) appeals the decision of the Baltimore City Board of School Commissioners (local board) to suspend her son from ConneXions: A Community Based Arts School during the 2017-18 school year and deny his enrollment at Bard High School Early College Baltimore for the 2018-19 school year. The local board filed a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded and the local board replied.

### FACTUAL BACKGROUND

Appellant's son, K.R., is a 16-year-old student who attends Baltimore City Public Schools (BCPS). During the 2017-18 school year, K.R. attended the tenth grade at ConneXions: A Community Based Arts School (ConneXions).

On April 26, 2018, K.R. became disruptive in class and his teacher, Aaron Bashline, requested assistance from the school's principal, Sidney Brooks. Principal Brooks came to the classroom and told K.R. he needed to leave with him. Although initially defiant, K.R. eventually gathered his belongings and left with Principal Brooks. When they reached Principal Brooks' office, Principal Brooks asked K.R. to go inside and wait for him. Instead, K.R. walked back to Mr. Bashline's classroom. Principal Brooks ordered him to come back, but K.R. refused. K.R. knocked on the classroom door and when Mr. Bashline opened the door, K.R. struck him in the face. The hit broke Mr. Bashline's glasses, caused his nose to bleed, and left a gash. K.R. left the school building through a stairwell and Principal Brooks contacted the police. This was not K.R.'s first incident involving Mr. Bashline. On April 17, 2018, after Mr. Bashline reported K.R.'s frequent absences from class to K.R.'s mother, K.R. threatened to "slap the shit" out of Mr. Bashline if he contacted his mother again. (Motion, Ex. A; Ex. B; Ex. C, T. 27-28).

Principal Brooks attempted to contact Appellant to inform her of the attack on the same day it occurred. He was unable to reach her, but she called him back the following day, April 27, 2018, which was a Friday. According to Principal Brooks, he told Appellant that K.R. was not yet suspended and that he would be contacting the central office about the appropriate next steps.

In the meantime, Principal Brooks asked Appellant whether K.R. would be returning to school that day and explained that he needed to meet with Appellant and her son, in part to get K.R.'s version of events. (Motion, Ex. C, T. 42-43). Appellant informed Principal Brooks that she needed to work, which he interpreted to mean that K.R. would not be coming in. According to Appellant, she believed Principal Brooks had barred K.R. from attending school.

Appellant came to meet with Principal Brooks without K.R. on the following Tuesday, May 1. After Principal Brooks explained that he also needed K.R. to be present for the meeting, Appellant arranged to return to school on May 7, 2018. During that meeting, K.R. declined to give a statement. (Motion, Ex. C, T. 45-49). Principal Brooks suspended K.R. and explained that he would be recommended for extended suspension. At the end of the meeting, Principal Brooks provided K.R. with homework assignments through May 11, 2018. Two forms provided to Appellant indicated who to contact at BCPS to obtain further classroom assignments and provided a phone number. (Motion, Ex. C; D).

On May 18, 2018, Pamela Body, a BCPS Educational Specialist, conducted a suspension conference with Appellant and K.R. K.R. stated that Mr. Bashline had given him three warnings about his behavior ("three strikes") and K.R. felt that he did not deserve it. Although K.R. admitted that he should have handled things differently, Ms. Body found he did not appear remorseful. Appellant explained that K.R. has anger management issues and that he sometimes shuts down and refuses to talk to others. Although informed that K.R. had not been suspended from school until May 7, Appellant stated that she believed K.R. was not allowed to return to school. Ms. Body determined that an extended suspension was warranted because K.R.'s return to ConneXions would pose an imminent threat of harm to students or staff. Ms. Body found that K.R.'s lack of remorse during the suspension conference, his prior discipline history, the fact that he returned to Mr. Bashline's classroom after being removed, the unprovoked nature of the attack, the prior threat to Mr. Bashline, and the need for Mr. Bashline to seek medical attention as a result of the incident all indicated that K.R.'s return would pose an imminent threat of harm to Mr. Bashline. Ms. Body decided, however, to limit the extended suspension to 31 days, which she found to be the "shortest time practicable." Appellant declined a referral for K.R. to Success Academy, an alternative school. (Motion, Ex. E).

On May 24, 2018, Appellant appealed the suspension to the local board via email. Her appeal request did not contain any other contact information. On May 25, 2018 and June 1, 2018, a local board representative attempted to contact Appellant via email to schedule a hearing. On June 4, 2018, Appellant responded with her contact information. On June 12, 2018, a board representative contacted Appellant to find acceptable hearing dates. That same day, a board representative attempted to confirm the hearing date by phone; after being unable to reach Appellant, the board representative sent her an email. On June 18, 2018, Appellant responded to the local board and indicated that the scheduled date would not work. On July 3, 2018, the hearing examiner conducted the hearing. (Motion, Ex. J).

During the hearing, Appellant and K.R. were represented by legal counsel. Appellant argued that K.R. had been effectively suspended on April 27, 2018 and that BCPS violated the Code of Maryland Regulations (COMAR) by not conducting a suspension conference within 10 school days as required by COMAR 13A.08.01.11(3). She also maintained that BCPS did not find a threat of imminent harm and that BCPS failed to provide K.R. with educational services during the suspension, giving him materials for only two of his classes. Finally, she argued that

K.R. had improperly been kept from school after the end of the extended suspension. During the hearing, Mr. Bashline testified that he would not feel safe having K.R. at his school. (Appeal, Ex. B, Hearing Examiner Decision).

The hearing examiner concluded that the period of suspension began on May 7, 2018, not April 27, as alleged by Appellant. Although Appellant may have inferred that K.R. should not return to school, the hearing examiner found no evidence that Principal Brooks told Appellant that K.R. could not return. In addition, the hearing examiner found that the evidence supported the school system's decision that K.R.'s return posed an imminent threat of harm given that it involved an attack on a teacher, and K.R. had past incidents of disruption and previously made a threat to the teacher. As to the comparable educational services, the hearing examiner found that BCPS made clear that Appellant would need to contact BCPS to obtain homework. Although K.R. did not receive all of his assignments from all of his classes, the hearing examiner found it was Appellant's responsibility to contact BCPS to inquire further. Finally, the hearing examiner found no evidence that K.R. had been inappropriately barred from school at the end of the suspension period. (Appeal, Ex. B, Hearing Examiner Decision).

On August 28, 2018, the local board adopted the hearing examiner's recommendation in full and affirmed the suspension. (Appeal, Ex. A, Local Board Decision).

In the meantime, because BCPS would not permit K.R. to return to ConneXions, K.R. applied and was accepted to Bard High School Early College Baltimore (Bard). Bard is located in the same building as ConneXions and is also a part of BCPS. Without Appellant and K.R. being aware, Mr. Bashline transferred to Bard for the 2018-19 school year. (Motion, Ex. I).

On September 3, 2018, Dr. Francesca Gamber, principal at Bard, learned that K.R. had previously attacked Mr. Bashline. After consulting with the BCPS central office, Principal Gamber told Appellant that she would need to meet with BCPS about alternative placement options. Principal Gamber explained that Mr. Bashline is the only teacher for world history, a course that K.R. would need to take during the upcoming school year. (Motion, Ex. I). K.R. has since enrolled in a different BCPS high school.

This appeal followed.

### STANDARD OF REVIEW

In student suspension and expulsion cases, the decision of the local board is considered final. COMAR 13A.01.05.05(G)(1). The State Board only reviews the merits of the case if there are specific factual and legal allegations that the local board failed to follow State or local law, policies, or procedures; violated the student's due process rights; or that the local board acted in an unconstitutional manner. COMAR 13A.01.05.05(G)(2).

This appeal also concerns the denial of enrollment at a particular school based on safety concerns, which involves a decision of the local board involving a local policy. In such cases, the local board's decision is considered *prima facie* correct. The State Board will not substitute its judgment for that of the local board unless the decision was arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

## LEGAL ANALYSIS

Appellant raises several issues on appeal, which we shall address in turn.

### *Mootness*

Before the local board and again on appeal, Appellant focuses much of her argument on whether the local board violated COMAR 13A.08.01.11C(5) by denying K.R. the ability to return to ConneXions after his extended suspension ended. Appellant explains, however, that K.R. does not actually want to return to ConneXions because he does not feel welcome there. Given that that remedy is not available, this issue is moot. *See State v. Neiswanger Mgmt. Servs., LLC*, 457 Md. 441, 455 (2018) (explaining a case is moot if “there is no longer an existing controversy between the parties, so that there is no longer any effective remedy” to be provided). Because there are other arguments raised that are not moot, we shall not dismiss the appeal and instead turn to those issues.

### *Failure to issue decision within 45 days*

COMAR 13A.08.01.11C(4)(g) requires that a local board issue a decision within “45 days from the date the appeal was received.” The regulation permits the time to be extended if the parent/guardian, or his/her representative requests additional time or if “due to extraordinary circumstances or unusual complexity,” the local board requests and receives an extension from the State Superintendent. *Id.* Because the appeal was received on May 24, 2018, the local board should have issued its decision by Monday July 9. The hearing occurred on July 3, 2018, but the local board did not issue its decision until August 28, 2018 (96 days after the request for appeal). The board explains that it did not hold a board meeting between July 17 and August 28, 2018.

Although some of the delay can be attributed to Appellant, approximately 57 days passed between the conclusion of the hearing and the local board’s decision. The local board did not petition the State Superintendent for an extension of the timeline. These actions failed to comply with the regulation. In this instance, however, the local board’s delay did not prevent K.R. from attending school, as the period of delay occurred during the summer. Under these circumstances, we decline to overturn the suspension based solely on the delay in issuing the decision. We caution local boards, however, to avoid such future delays and to seek approval from the State Superintendent, as permitted by regulation, should they be unable to comply with the timelines.

### *Educational services during suspension*

Appellant argues that K.R. did not receive all of his schoolwork during the extended suspension. During the hearing, she testified that K.R. told her he received work from only two out of his four academic classes. The record includes evidence that Appellant signed a receipt for schoolwork on May 7, 2018 (although she does not recall receiving assignments on this date) and Appellant apparently picked up assignments on two other occasions after receiving calls from BCPS that assignments were ready. The record also shows that Appellant had a contact and phone number for the person coordinating assignments while K.R. was on extended suspension. The record is somewhat unclear as to what extent Appellant raised her concerns about missed assignments with school officials. The local board maintains the burden falls on Appellant to show that she did not receive the required services.

COMAR 13A.08.01.11F states that “each local board shall institute education services that at a minimum provide that:

(1) Each student suspended or expelled out-of-school who is not placed in an alternative education program shall receive daily classwork and assignments from each teacher, which shall be reviewed and corrected by teachers on a weekly basis and returned to the student; and

(2) Each principal shall assign a school staff person to be the liaison between the teachers and the various students on out-of-school suspension or expulsion and to communicate weekly about classwork assignments and school-related issues by phone or email with those out-of-school suspended/expelled students and their parents.”

In our view, the regulation places the burden on the school system to ensure that students receive “daily classwork and assignments from each teacher,” which is to be reviewed and corrected on a weekly basis. During the hearing, Appellant was vague when describing what concerns she raised, to whom, and how they were addressed. Once the issue was raised before the local board, though, it had an obligation to investigate whether K.R. did indeed receive his required assignments. In our view, failing to do so violated the discipline regulation. It does not, however, warrant overturning the suspension decision as a whole. Instead, we remand this aspect of the suspension for the local board to determine whether K.R. received all assignments from his classes during the suspension period as required by regulation, and, if not, whether there are compensatory services available to allow K.R. to make up that work now or whether another remedy is appropriate. As part of any remedy, the local board should review whether missed assignments not provided by BCPS had any impact on K.R.’s final grades for the year.

#### *Denial of enrollment at Bard*

Finally, Appellant challenges the decision not to allow K.R. to enroll at Bard for the 2018-19 school year based on safety concerns. This issue was not presented to the local board because the parties apparently were not aware of it at the time the local board issued its decision in late August. Ordinarily, we would decline to review an issue not presented first to the local board for review. Given that half of the 2018-19 school year is already complete, however, and the issues raised by the appeal are of important public interest, we shall exercise our original jurisdiction to consider and address the issue. *See R.L. v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 17-27 (2017) (discussing the State Board’s original jurisdiction to determine the true intent and meaning of the State’s education laws).

Appellant argues that the decision to deny K.R. enrollment at Bard is an extension of his prior discipline. Because that suspension was limited to only 31 days, Appellant maintains that the local board acted illegally and violated due process by denying K.R. enrollment. The local board argues that it had legitimate safety concerns in placing K.R. back in the same classroom as the teacher he attacked earlier in the year, observing that the teacher remains afraid of the potential for future violence. Following BCPS’s decision to deny enrollment, K.R. sent a message to Mr. Bashline through social media in which he apologized, but also told the teacher that his “misguided fear” was preventing him from achieving his goals. Both sides argue that

this additional communication supports their case: Appellant argues that it shows remorse while the local board contends that it indicates that K.R. still harbors animosity towards his teacher. (Motion, Ex. H).

We have previously opined that a school system cannot use an involuntary transfer as a substitute for discipline. See *R.L. v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 17-27 (2017). In this case, the denial of enrollment was not a “substitute for discipline” because discipline did occur in the form of an extended suspension. Appellant maintains that denying enrollment at the school where K.R.’s victim teaches amounts to a continuation of the suspension. We do not agree. As we have recognized, “The State Board’s school discipline regulations were built on the premise that students belong in school unless they pose a serious risk to safety and security in their home school because putting students out of school for any period of time, especially long periods of time, would likely be detrimental to the student in any number of ways.” *Alexander and Arlene A. v. Harford County Bd. of Educ.*, MSBE Op. No. 18-21 (2018). “Thus, a student who is not a continuing, pending threat to his fellow students or staff belongs back in his or her school because it is likely the best environment for the student.” *Id.*

Additionally, factoring in potential safety concerns is allowed under our discipline regulations. COMAR 13A.08.01.11C(7) states that if a student has been suspended or expelled, “the principal may not return the student to the classroom without conferring with the teacher who referred the student to the principal, if the student was referred by a teacher, other teachers as appropriate, other appropriate school personnel, the student, and the student’s parent or guardian.” Such a requirement would not exist if a school system was forbidden from considering safety as part of its placement decisions.

Here, BCPS found K.R. posed a threat to a staff member whom he had assaulted only months earlier. The teacher continued to be in fear of future harm. BCPS did not bar K.R. from attending school; instead, the school system found that attending this particular school at this particular time posed a safety threat. The record supports BCPS’s decision, given K.R.’s previous threat to Mr. Bashline, his apparent continued animosity, and his history of anger management issues. In our view, there was nothing arbitrary, unreasonable, or illegal about such a decision.

## CONCLUSION

We remand the local board’s decision to consider whether K.R. missed any educational services during his period of extended suspension and, if so, to devise an appropriate remedy. We otherwise affirm the decision of the local board.

Signatures on File:

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Justin M. Hartings  
President

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Stephanie R. Iszard  
Vice-President

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Absent  
Chester E. Finn, Jr.

\_\_\_\_\_  
Vermelle D. Greene

\_\_\_\_\_  
Jean C. Halle

\_\_\_\_\_  
Rose Maria Li

\_\_\_\_\_  
Joan Mele-McCarthy

\_\_\_\_\_  
Michael Phillips

\_\_\_\_\_  
David Steiner

\_\_\_\_\_  
Warner I. Sumpter

January 22, 2019