D.B and K.G.,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
BALTIMORE COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee.	Opinion No. 19-26

OPINION

INTRODUCTION

D.B. and his mother K.G. (Appellants) appeal his expulsion from Perry Hall High School. The Baltimore County Board of Education filed a response, arguing that its decision was not illegal and should be upheld. Appellants responded and the local board replied.

FACTUAL BACKGROUND

During the 2018-19 school year, D.B. was a senior at Perry Hall High School, part of Baltimore County Public Schools (BCPS). On January 8, 2019, D.B. became involved in a fight in a boy's bathroom with another student ("Student 1") over an electronic cigarette. According to Student 1, D.B. twice asked for the electronic cigarette. When Student 1 refused to give it to him, D.B. tried to grab it and pushed Student 1 into a wall. Student 1 hit D.B. and D.B. punched Student 1 about 10-15 times before slamming Student 1's head into a sink. D.B. continued to hit Student 1 while he was in a crouched position. Student 1 swallowed his two front teeth and soiled himself. A nurse reported that Student 1 had bleeding gums, swelling at the side of his head, scratches, and redness on his shoulders. D.B. did not deny hitting Student 1, but claimed that Student 1 started the fight by pushing his face and grabbing his hair when Student 1's friend began to hand D.B. the electronic cigarette. (Local Board Response, Supt. Ex. 4; Supt. Ex. 11).

That same day, Principal Andrew Last suspended D.B. for five days and referred the matter to the local superintendent for further action. The referral stated, "The administration is very concerned about the level of severity and violence that occurred in the bathroom. This type of behavior is not condoned at Perry Hall High School." (Local Board Response, Supt. Ex. 3; Supt. Ex. 4; Supt. Ex. 11). School officials also contacted law enforcement, leading to D.B.'s arrest and confinement in the Baltimore County Detention Center until January 28, 2019. Although initially facing criminal charges in Baltimore County Circuit Court, the Circuit Court transferred D.B.'s case to the juvenile justice system for resolution. (Local Board Response, Supt. Ex. 1; Maryland Judiciary Case Search Records).

On February 7, 2019, the superintendent's designee held a hearing with Appellants, during which D.B. had the opportunity to present his version of events. On February 12, 2019, the superintendent's designee issued a decision finding that D.B. violated five school policies

(violent behavior that creates a substantial danger; robbery; school disruption; unexcused absences or truancy; and refusing to cooperate with school rules). The designee ordered an "administrative transfer" for D.B. out of Perry Hall, which the school system later acknowledged equated to an expulsion. BCPS placed D.B. on "home teaching," effective February 7, 2019, which included access to online courses and instruction. (Local Board Response, R.E. 1).

Appellants appealed the decision to the local board, which referred the matter to a three-member panel to conduct a hearing. The hearing occurred on March 26, 2019. D.B. did not testify, but his mother did. She explained that her son sought her out immediately after the fight, but was unsure of what to do because he did not know whether the other student would report the incident to school officials. Once they learned that school officials knew about the fight and wanted to speak with D.B., she brought him back to school. He told her that the other student hit him first. K.G. expressed her belief that Perry Hall treats black students, such as D.B., differently than white students and that D.B. specifically was treated differently because of his race.[1] Principal Last denied any racial motive behind the discipline, arguing that the "severe and unnecessary violence" warranted the expulsion rather than other responses, such as restorative practices. (Local Board Response, T. 81-92; 112-114).

K.G. explained that D.B. used online instruction at home, along with some night school classes, and stated that having to do both led to potential long school days and was unrealistic for him. D.B. also had to give up being on a technical education track in carpentry because it was impossible to complete that program online. K.G. also explained that D.B. encountered frequent technical issues with the online program. (Local Board Response, T. 83-92).

On March 26, 2019, the local board upheld D.B.'s expulsion through the end of the 2018-19 school year. The board found that D.B.'s return to school would "pose an imminent threat of serious harm due to the violent nature of the act and the lack of responsibility demonstrated by the student." (Local Board Decision). This appeal followed.

STANDARD OF REVIEW

In student suspension and expulsion cases, the decision of the local board is final. COMAR 13A.01.05.06(G)(1). The State Board may not review the merits of a suspension or expulsion, but may review whether there are specific factual and legal allegations that the local board has not followed State or local law, policies, or procedures; has violated the due process rights of the student; or otherwise acted in an unconstitutional manner. COMAR 13A.01.05.06(G)(2).

LEGAL ANALYSIS

Appellants raise two main challenges to the local board's decision: (1) the superintendent's designee and local board failed to consider whether there was an imminent threat of serious harm in having D.B. return to school; and (2) D.B. did not receive comparable educational services during his period of expulsion. We shall consider each issue in turn.

[1] Appellants are not raising any individual claim of discrimination on appeal.

Imminent threat of serious harm

COMAR 13A.08.01.11(B)(3) provides that an extended suspension or expulsion may not be imposed unless:

> (a) The superintendent or designated representative has determined that:
>
> (i) The student's return to school prior to the completion of the suspension period would pose an imminent threat of serious harm to other students and staff; or
>
> (ii) The student has engaged in chronic and extreme disruption of the educational process that has created a substantial barrier to learning for other students across the school day, and other available and appropriate behavioral and disciplinary interventions have been exhausted.

There are two points in the disciplinary process in which a decision maker must decide whether the student would pose an imminent threat of serious harm to others if the student returned to the school. The first decision point comes if the superintendent needs more time to make a decision to suspend the student for more than 10 days. A second decision point comes when the superintendent imposes extended suspension (11-45 days) or expulsion (more than 45 days). In either of those circumstances, the decision maker must determine that the student's return to school, prior to the completion of the extended suspension or expulsion period, would pose an imminent threat of serious harm to other students or staff. COMAR 13A.08.01.11(B)(2)&(3).

Appellant argues that the superintendent's designee did not make this determination as part of the expulsion decision. The February 12, 2019 letter from the superintendent's designee found D.B. was "guilty of all charges," including "violent behavior that creates a substantial danger to persons or property or causes serious bodily injury." The letter does not address whether D.B. posed an imminent threat of serious harm in the future. It also does not mention the word "expulsion," but instead explains that D.B.'s suspension from Perry Hall "has ended" and he is being administratively transferred to "home teaching."

The designee's letter did not comply with the discipline regulations in two ways. First, the letter does not address whether D.B.'s return to school would pose an imminent threat of serious harm to students and staff. Although the designee found that D.B.'s behavior during the fight created "a substantial danger," the letter does not explain whether that danger existed only in the moment or continued to pose an "imminent threat of serious harm to other students and staff," as our regulations require in order to keep a student out of school on an extended suspension or expulsion. In *R.P. v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 16-18 (2016), we explained that the "imminent threat" finding must be made explicit and cannot simply be inferred based on the seriousness of the conduct. Similarly, here D.B.'s actions were extremely serious, but finding that he created a substantial danger in a fight does not automatically equate to D.B. posing an ongoing, imminent threat of serious harm to students or staff.

Second, requiring a student to complete his studies at home is an expulsion, not an "administrative transfer." While school systems may use administrative transfers following a period of suspension or expulsion, the transfer cannot be used as a disciplinary act. Requiring a student to remain at home, rather than being placed in another school setting, makes this transfer an expulsion, a fact that the local board acknowledged in its own decision.

The local board maintains that any defect in the superintendent designee's letter was cured by the later evidentiary hearing in front of the local board. This hearing included an opportunity for D.B. to present witnesses and evidence, and allowed board members to hear from school officials about the specifics of the incident and the decision-making process that led to the expulsion. Having explained that it reviewed all of the evidence presented to it, the local board concluded in its decision that D.B.'s return to school would "pose an imminent threat of serious harm due to the violent nature of the act and the lack of responsibility demonstrated by the student." We have previously upheld disciplinary decisions based on the violent actions of a student during a fight, even absent any past disciplinary history. *See Pastor Almena C. v. Cecil County Bd. of Educ.*, MSBE Op. No. 17-28 (2017) (student ignored directions from school officials and repeatedly joined a large fight following a basketball game). In our view, the record supported the decision and the board therefore complied with the requirements of the discipline regulations. We have long held that a full evidentiary hearing before a local board cures any procedural errors that occurred previously in a case. *See Mobley v. Baltimore City Board of Sch. Comm'rs*, MSBE Op. No. 15-09 (2015) (citing cases).

Comparable educational services

COMAR 13A.08.01.11(F) requires that each local board provide education services for suspended or expelled students. For an expulsion, a school system must provide "comparable educational services and appropriate behavior support services" to promote a student's successful return to a regular academic program. COMAR 13A.08.01.11B(2)(c). The comparable educational services may be in the form of an alternative education program or through daily classwork and assignments from each teacher, reviewed and corrected on a weekly basis and returned to the student. In addition, 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." BCPS used the "alternative education" route by placing D.B. on a home instruction program, supplemented by some night school courses.

Appellant argues that BCPS failed to provide D.B. with comparable educational services because the home instruction program was not a good fit for him; he did not learn well through a computer; he experienced technical difficulties and was unsure of who to contact for assistance; he would be unable to graduate in time through the alternative education program; and he did not receive any behavioral counseling, anger management, or similar services in addition to his education program. According to the party's filings, D.B. was not able to graduate during the 2018-19 school year and is scheduled to return to school for the 2019-20 school year.

In our view, a home instruction program may satisfy the requirements of the discipline regulation depending on the needs of the individual student. The concern raised by Appellants focuses, however, more on the implementation of the alternative education program than the program itself. In that way, the situation is similar to the case of *Shantell D. v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 19-02 (2019). Although we found that the Appellant in

Shantell D. provided "vague" concerns about the educational services received, we concluded that once the issue was raised before the local board, "it had an obligation to investigate whether [the student] did indeed receive his required assignments." *Id.*

The local board's decision did not address Appellants' concerns about D.B.'s home instruction program and the potential issues regarding evening school. In fact, the record is not particularly clear on why the school system chose home instruction for D.B. There is also no indication of any behavioral supports being provided. The situation is certainly complicated here by the academic struggles that D.B. experienced even prior to his expulsion[2], but that does not relieve BCPS of the responsibility to make every effort it can to ensure D.B.'s smooth transition back to a regular academic setting. Accordingly, like in *Shantell D.*, the appropriate remedy is not to overturn the expulsion, but rather to remand the case in order for the local board to provide additional information about D.B.'s assignment to home instruction, determine whether D.B. has received all required services during his period of expulsion and, if not, to devise an appropriate remedy.

Other relief sought

In addition to the issues already addressed, Appellants seek additional relief in the form of: (1) additional training for BCPS staff; (2) an order to cease using an administrative transfer to home teaching or alternative programs in lieu of formal expulsion; and (3) an order to require the local board to produce a report of all administrative transfers between 2017-19, including the race of the student, along with information about whether the student has an IEP or 504 plan, the underlying offense, the number of days the student was removed, and whether a date of return was specified.

In our view, none of this relief is required in this particular case. BCPS has indicated it has revised its discipline policies and we expect the school system to train all administrators on these revised policies, as well as all applicable regulatory requirements. It also appears that the second issue has been addressed by virtue of the local board, and its counsel, acknowledging that the administrative transfer in this case was, indeed, an expulsion. Finally, the third form of relief is more appropriate for a public information act request filed with the local school system and is not germane to the resolution of this case.

CONCLUSION

We remand the local board's decision to explain the assignment to home instruction, consider whether D.B. received comparable education services and appropriate behavioral supports during his period of expulsion and, if not, to devise an appropriate remedy. We otherwise affirm the decision of the local board.

[2] During the first half of the school year, D.B. failed multiple courses and was in danger of not graduating by the end of the school year. His student record showed dozens of tardy and unexcused absences between September 2018 and January 2019. (Local Board Response, Supt. Ex. 4; Supt. Ex. 11).

Signatures on File:

_____
Warner I. Sumpter
President

_____
Jean C. Halle
Vice-President

_____
Gail H. Bates

_____
Clarence C. Crawford

_____
Vermelle D. Greene

_____
Justin M. Hartings

_____
Rose Maria Li

_____
Joan Mele-McCarthy

_____
Michael Phillips

_____
David Steiner

August 27, 2019