

K.S.,

Appellant

v.

BALTIMORE COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 25-06

OPINION

INTRODUCTION

K.S. (“Appellant”) appeals the decision of the Baltimore County Board of Education (“local board”) affirming the decision of the Student Hearing Conduct Officer to expel the student through his terminal year of high school. The local board responded.¹ Appellant responded, and the local board replied.

FACTUAL BACKGROUND

During the 2023-2024 school year, Appellant’s child (“Student X”) was a ninth grader in a Baltimore County Public Schools (“BCPS”) high school. In October 2023, Student X joined four other students in ski masks and attacked Student A while he waited for the bus at dismissal. For his participation in this incident, Student X received a 44-day suspension. (R. 4, 80, 168).

On January 24, 2024, after the conclusion of the suspension, Appellant and Student X participated in a re-entry planning meeting with the school’s Assistant Principal. In the meeting, the parties discussed steps that would be taken to address ongoing safety concerns. The safety plan included that Student X and Student A would not be placed in the same classes, and the Assistant Principal clarified that Appellant and Student X should communicate any concerns about threats from other students to her. At the time of the reentry meeting, Student X and Student A did not share any classes. However, on January 26, 2024, Student X dropped one of his classes and picked up a Health class. Student A was also enrolled in this Health class. The Assistant Principal was not alerted by staff or Appellant. (R. 4, 14, 62-63).

On February 1, 2024, there was an incident between Student X and Student A in their Health class, which was filmed by another student. The video of the incident shows Student X standing by his desk near the classroom door with his back to Student A. Student A without any warning charged Student X, knocking him to the ground. Student A began repeatedly punching Student X. Student X attempted to get up. Student A placed Student X in a headlock and

¹ The local board filed a motion for summary affirmance which we will treat as the local board’s memorandum in response to the appeal under COMAR 13A.01.05.03C. The regulation that permitted the filing of a motion for summary affirmance was eliminated when the State Board amended the regulations in 2019.

continued to punch him. At this time, Student X used a pocketknife in his possession to stab Student A twice in the leg and chest, prompting Student A to release him. Student X fled down the hall. (R. 5-6, Video).

Student X was brought into the Principal's office, where he turned over the knife. (R. 7-8). As a result of the incident law enforcement were called to the scene, and the school was placed on lockdown for 15-20 minutes. Student X was placed under arrest. According to the Principal, numerous meetings were held with faculty, staff, and families to address safety concerns resulting from the incident. A traumatic loss team was also deployed to the school. The school also entered into a contract with an outside security firm to provide a presence in the school. (R. 7-8, 73-74).

As a result of this incident, Student X was recommended for an extended suspension. BCPS and Appellant, by way of counsel, agreed to extend the timeline to hold a meeting with the Student Hearing Conduct Officer ("SHCO") to discuss the proposed extension. On March 4, 2024, the SHCO met with Appellant, Student X, and their counsel, as well as the Principal and school Pupil Personnel Worker. Student X was charged with:

- Use of a pocketknife or any object as a weapon;
- Violent behavior which creates a substantial danger to persons or property or causes serious bodily injury;
- Participating in and/or inciting a school disruption;
- Disruptive behavior that results in the interference with the normal school program, including repeated Category I or II offenses; and
- Fighting (major) or Physical attack(s) on a student.

Based on the evidence presented by the Principal, the SHCO found Student X was an imminent threat of serious harm to other students and staff. By way of letter, he informed Appellant and Student X that he believed an expulsion was warranted and removed Student X through his terminal grade of high school. While the letter outlined evidence and arguments submitted by both parties during the conference, it did not clarify the basis for finding the student was an imminent threat of serious harm necessitating an expulsion that would last at least three and a half years. (R. 265-266). Student X was placed on distance learning to receive his educational services during the period of expulsion. (R. 69).

Appellant's counsel appealed the expulsion to the local board. On April 4, 2024, a Hearing Examiner conducted an administrative hearing with the parties. At the hearing, BCPS counsel introduced exhibits and presented three witnesses – the Assistant Principal, Principal, and SHCO. Appellant's counsel did not submit any exhibits or witnesses, but did cross-examine the BCPS witnesses. (R. 3). BCPS counsel questioned the SHCO on why he determined Student X posed an imminent threat of serious harm. The SHCO responded:

I feel that his behavior escalated. When it was presented to me that he was involved with a multi-person physical attack on Student A and when they returned to school, Student A and he had an altercation, and he stabbed Student A. And I feel that anyone who uses a weapon poses an imminent threat of serious harm. (R. 92).

During cross-examination of the SHCO, Appellant’s counsel questioned the SHCO on his understanding and application of the word “imminent”.

Counsel: Well, what do you believe the word "imminent" means?

SHCO: That it could occur.

Counsel: Just that it could occur?

SHCO: You didn't say what occurring. You're saying the word "imminent". So, if something is imminent, then something can occur. It's imminent that it could rain. So, it could rain.

(R. 92).

On July 17, 2024, the Hearing Examiner issued his findings of fact, conclusions of law, and recommendations to the local board. The Hearing Examiner found that BCPS failed to meet the imminent threat standard necessary for an expulsion. Based on the record, he found that Student X “only had conflicts with Student A. There was no evidence introduced that he had conflicts with any other students at [the school]. The mere fact that the Student had an adversarial relationship with Student A does not require the projection of that conflict to any other person at [the school].” Recognizing that Student X did bring a pocketknife to school and used it in the altercation, the Hearing Examiner recommended that the expulsion be overturned, and a suspension of forty-four days be upheld. (R. 10-14).

In response, BCPS counsel requested oral argument before the local board, which was held on September 30, 2024. Both parties were provided time to present their arguments. The same day as oral arguments, the local board issued its opinion and order. In the order, the local board adopted the Hearing Examiner’s statement of the case, the evidence submitted, the summary of testimony admitted, and the findings of fact. The local board also accepted the Hearing Examiner’s summary of the applicable law. However, the local board ultimately found that the record contained sufficient facts and evidence that Student X would pose an imminent threat of serious harm to other students and staff and that the expulsion was appropriate. Student X remains out of school since February 1, 2024.

This appeal followed.

STANDARD OF REVIEW

In student suspension and expulsion cases, the decision of the local board is considered final. Therefore, the State Board will not review the merits of the decision unless 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 the local board has acted in an unconstitutional manner. COMAR 13A.01.05.06G. Thus, the State Board’s review of the local board decision is limited to a determination of illegality only.

The State Board may reverse or modify a student suspension or expulsion if the allegations are proved true or if the decision of the local board is otherwise illegal. A decision may be considered “otherwise illegal” if it is:

- (1) Unconstitutional;
- (2) Exceeds the statutory authority or jurisdiction of the local board;
- (3) Misconstrues the law;
- (4) Results from unlawful procedure;
- (5) Is an abuse of discretionary powers; or
- (6) Is affected by any other error of law.

COMAR 13A.01.05.06C.

LEGAL ANALYSIS

The facts of the case before us are disturbing and largely undisputed. Two high school students had an on-going dispute that led to at least two physical altercations between them. The first incident involved Student X jumping Student A with a number of other students in ski masks. Student X received an extended suspension as a consequence. The second incident, which led to the appeal before us, involved Student A brutally attacking Student X without any immediate provocation. Student X in self-defense pulled a pocketknife and stabbed Student A twice. Before addressing the legal arguments before us, the State Board acknowledges the very concerning nature of the facts presented in this case. The safety of our school communities is integral to providing our students with a world-class educational system. The Board does not condone the use of violence or weapons within our school buildings to resolve conflicts. We consider the facts and arguments in this case with the gravity due in such distressing circumstances.

Appellant through counsel requests that the Board reverse Student X’s expulsion and expunge it from his records. Appellant argues that the SHCO applied the incorrect definition of “imminent” in determining whether Student X posed an imminent threat of serious harm to other students or staff. Furthermore, Appellant argues the SHCO failed to take an individualized approach in assessing the threat, instead relying on a blanket personal policy. In response, the local board argues that Appellant has failed to prove that the local board decision violated State or local laws, policies, or procedures; that Student X was denied due process; or that the local board’s decision was unconstitutional.

Imminent Threat of Serious Harm

When the State Board updated its school discipline regulation in 2014, it required local boards of education to develop school discipline policies and procedures that shall:

- (1) Reflect a discipline philosophy based on the goals of fostering, teaching, and acknowledging positive behavior;
- (2) Be designed to keep students connected to school so that they may graduate college and career ready;

- (3) Describe the conduct that may lead to in-school and out-of-school suspension or expulsion;
- (4) Allow for discretion in imposing discipline;
- (5) Address the ways the educational and counseling needs of suspended students will be met; and
- (6) Explain why and how long-term suspensions or expulsions are last-resort options.

COMAR 13A.08.01.11A.

The State Board also adopted new procedures and standards for extended disciplinary removals. Relevant to this case, students may only be expelled (i.e., excluded from their regular school program for 45 school days or longer), under the following circumstances:

- (a) The superintendent or designated representative has determined that the student's return to school prior to the completion of the expulsion period would pose an imminent threat of serious harm to other students or staff;
- (b) The superintendent or designated representative limits the duration of the exclusion to the shortest period practicable; and
- (c) The school system provides the excluded student with comparable educational services and appropriate behavioral support services to promote successful return to the student's regular academic program.

COMAR 13A.08.01.11B(2).

At issue in this appeal is whether the local board applied the correct interpretation of the imminent threat of serious harm standard in deciding to uphold the expulsion. Appellant argues that the testimony of the SHCO at the hearing demonstrates that his interpretation of the word “imminent” was incorrect. The SHCO’s testimony indicates that his understanding of “imminent” is that it means something “could occur”. This interpretation is clearly incorrect.

The *Merriam-Webster Dictionary* (2024) defines “imminent” as “ready to take place; happening soon”. Thus, an imminent threat is more than just a mere possibility that a safety issue may occur – it is likely to occur. This is consistent with our decision in *Alexander and Arlene A. v. Harford Cnty. Bd. of Educ.* (“*Arlene A.*”). As we explained in that decision, our regulations:

[W]ere 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. See *The Maryland Guidelines for a State Code of Discipline* (7/22/14). 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. (Emphasis added).

Alexander and Arlene A. v. Harford Cnty. Bd. of Educ., MSBE Op. 18-21 (2018).

This concept of “imminent” as “continuing” and “pending” is reinforced in guidance developed by the Maryland State Department of Education (“MSDE”). In its 2018 memo to local school systems titled *Prohibition of Suspension or Expulsion for Students in Grades PreK to 2*, MSDE defines imminent threat of serious harm as “likely and immediate danger of significant physical injury.”²

While it is clear that the SHCO’s explanation of “imminent” is flawed, we look not only at his testimony; we review the entire record and decision of the local board to determine whether the local board’s actions failed to follow State or local law, policies, or procedures. This analysis requires us to ask, “how should a local board of education determine whether a student poses an imminent threat of serious harm?”

Individualized Approach to Determining Imminent Threat

In *Arlene A.*, the Board answered that question:

We believe that the better way to determine imminent threat is to use an individualized approach. An individualized approach is a holistic assessment that takes into consideration the totality of the facts and circumstances surrounding the incident, the student, and the school. Using this approach, a decision maker would, among other things, review the student’s past conduct, consider the student’s response to the consequence of the behavior, the response to the victim, consider the impact the student’s behavior has on the school environment, and whether changes can be made in the student’s and victim’s schedules to prevent additional conflict. Those types of facts, and there may be many others, can form the basis for an individualized imminent threat decision.

Appellant argues that the SHCO failed to make an individualized determination about the circumstances surrounding the incident, instead relying on his belief that any student who uses a weapon poses an imminent threat of serious harm. While the testimony of the SHCO gives us pause, it is clear that he also considered the student’s past history of altercations in making his determination. More importantly, the record reflects that the local board, whose decision is before us, also employed an individualized approach.

This case is unique and troubling in its facts. We acknowledge that Student X was operating in self-defense when he stabbed Student A. We acknowledge that the failure of school staff to follow their own safety plan requiring the students remain in separate classes likely contributed to this escalation in violence. However, we also note that Student X had a previous history with Student A, wherein he was the perpetrator of an assault. Appellant and Student X failed to report to school staff when Student X was transferred into a class with Student A., and Student X apparently felt that carrying a knife to school was an appropriate response to perceived safety threats. Reasonable minds could differ on whether Student X poses an imminent threat of serious harm. Indeed, BCPS staff and the local board found he was a threat, while the Hearing Examiner concluded that he was not.

² We take notice of this MSDE document that is publicly available on the MSDE website. See <https://marylandpublicschools.org/about/Documents/DSFSS/SSSP/TA/GuidanceProhibitionSuspensionExpulsionStudentsGradesPreK2.pdf>

As troubled as we are with the facts of the case, our role is not to question the merits of the local board's decision. Our standard of review requires us to determine whether the local board, as argued by Appellant, violated State or local law, policies, or procedures by failing to make an individualized determination about the circumstances of this incident. Our review finds Appellant has not met her burden. The local board opinion clearly indicates that it considered all of the facts in front of it when it adopted the detailed report from the Hearing Examiner, sans recommendation, as its own. After reviewing the record and hearing oral argument from the parties, the local board concluded there was sufficient evidence to demonstrate that Student X posed an imminent threat of serious harm. Although some individuals may disagree with this decision, there is no evidence that the local board acted illegally in making this determination. Thus, we decline to overturn the expulsion.

Length of Removal

Although we decline to overturn the expulsion, we are still left with the fact that the local board upheld an expulsion through Student X's terminal year of high school. As a freshman student in the early part of his second semester, this essentially results in a three-and-a-half-year expulsion. We find this decision shocking. Under State regulation, the superintendent or designated representative must limit the duration of the exclusion to the shortest period practicable. COMAR 13A.08.01.11B(2)(b). The student should only be excluded so long as the student poses an imminent threat of serious harm. Neither the decision of the SHCO nor that of the local board addresses why such a long removal is necessary to mitigate the threat. There is nothing in the record that suggests that Student X will never be safe enough to attend a regular school program again with his peers. As such, we find the local board violated the regulation when it upheld the expulsion through Student X's terminal year of high school without articulating its basis for deciding this was the shortest duration practicable.

CONCLUSION

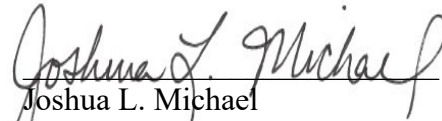
For the foregoing reasons, we decline to overturn the local board's decision that Student X poses an imminent threat of serious harm resulting in expulsion. We are, however, overturning the length of the expulsion. As the local board failed to provide any rationale to support the length of the removal, we order the local board to rescind the expulsion and re-issue the expulsion with an end date of January 28, 2025.

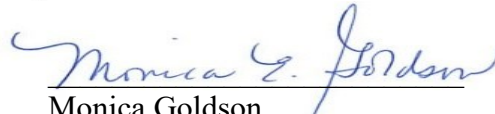
Within two weeks of this decision, the local board must provide documentation to the State Board of the following:

- (1) there is a plan to re-enroll the student in high school within 30 calendar days of this decision;
- (2) that a plan has been developed with input from Appellant and Student X to address the student's academic, social-emotional, and safety needs; and
- (3) that Student X's educational records have been updated to reflect an expulsion with an end date of January 28, 2025.

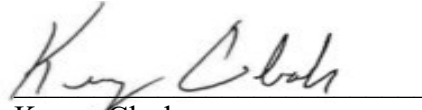
The local board must also submit documentation demonstrating that the local Superintendent and any SHCO acting as the local Superintendent's designee in a school

discipline hearing has read this decision and is properly trained in the imminent threat standard and analysis, as well as the need to limit the duration of removal to the shortest period practicable.

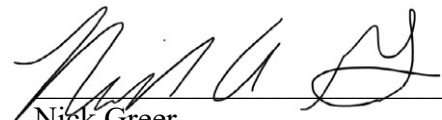

Joshua L. Michael
President

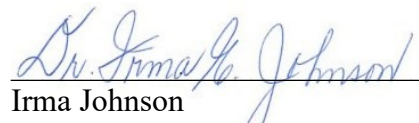

Monica Goldson
Vice-President



Chet Chesterfield

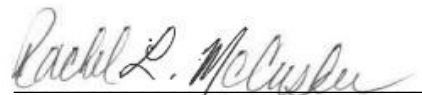

Kenny Clash



Clarence C. Crawford

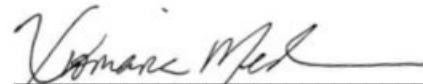

Nick Greer

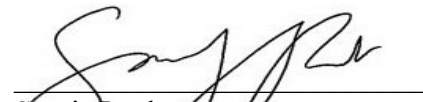

Irma Johnson


Kim Lewis


Rachel McCusker


Joan Mele-McCarthy


Xiomara Medina


Samir Paul

Absent:
Chuen-Chin Bianca Chang

January 28, 2025