M.S.,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
PRINCE GEORGE'S COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee.	Opinion No. 18-09

OPINION

INTRODUCTION

Appellant, M.S., a 10th grade student in Prince George's County Public Schools appealed his expulsion from school. The Prince George's County Board of Education (local board) has moved to dismiss the appeal or for summary affirmance. The Appellant has responded to that motion. The local board has replied.

FACTUAL BACKGROUND

Several years ago the State Board promulgated regulations revamping school discipline policies and practices in the State. The regulations embody the belief that any decision to put a student out of school for any length of time is a serious decision and a last-resort consequence to be imposed with deliberation, thoughtfulness, attention and with all due respect for the requirements of due process. We take this opportunity to re-affirm that belief.

As the State Board wrote in 2012, "[I]f suspension or expulsion is necessary, as a last resort, the school must keep suspended or expelled students connected to the school by providing education services that will allow the student to return to school with a chance to become college and career ready. *Every student who stays in school and graduates, college and career ready, adds to the health and wealth of the State of Maryland and improves the global competitiveness of this country.* It is that simple. It is that important. It is all connected." *School Discipline and Academic Success: Related Parts of Maryland's Education Reform, Report of the Maryland State Board of Education* (July 2012).

We preface the Factual Background with a brief synopsis of the regulatory requirements that a school system must meet in order to suspend a student for more than 10 days or to expel a student.

(1) A student who is posing a continuing danger to persons or property or an ongoing threat of disruption may be suspended immediately from school for up to 10 days. COMAR 13A.08.01.11(C)(2)(c).
(2) A notice to parents must be sent and the principal must schedule a conference "as soon as possible." COMAR 13A.08.01.11(C)(2)(d).

(3) The principal may request the Superintendent to suspend the student for more than 10 days or expel the student. COMAR 13A.08.01.11(C)(3)(a).
(4) Within 10 school days of the initial suspension, the superintendent will investigate the matter *and* decide if an extended suspension or expulsion is warranted and hold a conference with the parent and student. COMAR 13A.08.01.11(C)(3)(d).
(5) If more than 10 school days is needed to complete those steps, the student must be allowed to return to school unless the superintendent finds he/she would pose an imminent threat of serious harm to students or staff and so notifies the parent and student. COMAR 13A.08.01.11(C)(3)(d)and(e).
(6) The superintendent must hold a conference with the parents. After the conference, the superintendent decides whether to impose an extended suspension or expulsion. COMAR 13A.08.01.11(C)(3)(f). If so, the superintendent must find that the student poses an imminent threat of serious harm. COMAR13A.08.01.11(B)(2)(a).
(7) A parent may appeal. The appeal must be heard by the local board and decided within 45 days of the date the appeal was filed. (Extensions are allowed under certain circumstances). COMAR 13A.08.01.11(C)(3)(g).

As you can see, attention to time limits is critical in the suspension/expulsion process.

The facts of this case are these. The Appellant, M.S., was enrolled at Charles Herbert Flowers High School as a tenth grade student during the 2016-2017 school year. On June 2, 2017, midday, the Appellant and a female student became involved in a verbal exchange described by some witnesses as a roasting. It began in a joking manner, but became increasingly hostile. The female student made several statements to the Appellant including insults about his mother who had recently died and an assertion that he had been raped in jail. The Appellant responded with a punch delivered with such force that the female student was rendered unconscious. As a result of the assault, she suffered a concussion and required medical attention. The principal, Gorman Brown, suspended M.S. on June 2, and it appears, he initiated the paperwork to request the superintendent to expel M.S.

The last day of the academic year was June 13, 2017, which was seven school days following M.S.'s removal from Flowers High School. Over those seven days, however, no one from Flowers High School or the Prince George's County Public Schools (PGCPS) contacted or communicated with M.S. or his foster parent, Deborah N. No one from Flowers High School provided M.S. with any classwork or assignments from any of his teachers. Nor did Principal Brown assign a school staff person to act as a liaison between M.S.'s teachers and him during this time period to keep him connected to the school. While M.S.'s classmates took their final examinations during this time period, M.S. was not allowed to take any exams because he had been excluded from school.

In addition, during that same time period no one from the PGCPS Office of Appeals – which acts as the superintendent's designee to determine whether to grant a principal's request to expel a student – contacted or communicated with M.S. or Ms. N. to schedule a conference.

The non-communication from Flowers High School and the superintendent's designee continued past June 13, through the entire month of June. At the end of June, Deborah N. and Patricia Bryant, M.S.'s Case Worker at Concern4Kids, enrolled M.S. in the Summer Online Blended Learning Credit Recovery Program. Ms. N. paid the $225.00 fee for M.S. to take the course. Flowers High School was the site for this summer program. The first day of the summer program was July 10, 2017. Shortly after dropping M.S. off at the school, Ms. N. received a call from an administrator at Flowers, directing Ms. N. to pick M.S. up because he was not allowed to be on school premises. The administrator explained to Ms. N. that M.S. could not be on school premises because his expulsion matter had not been resolved. This was the very first time she was told that there was an expulsion matter that had to be resolved.

Also, on the very same day, and more than one month after M.S.'s initial suspension, Aaron E. Price, Sr., from the PGCPS Office of Appeals, sent a letter to Ms. N. informing her that the "Expulsion Conference" for M.S. was scheduled for Wednesday, July 26, 2017. (Appeal, Ex. D).

On July 19, the Appellant requested that the conference be rescheduled in order for counsel to be present. After some back and forth, the conference was held on August 8, 2017. Mr. Price presided at the conference. At the conclusion of the conference, Mr. Price ruled that M.S. would be expelled but stated that he needed to determine the length of the expulsion. Mr. Price issued a written decision on Friday August 11, 2017 and then a revised decision Monday, August 21, 2017. (Appeal, Ex. G). Mr. Price determined that M.S. would be expelled immediately, with "readmission at the beginning of the second semester of the 17-18 SY." *Id.* at 2. He stated that "[i]n the interest of educational services and in the interim, the student will be placed at Annapolis Road Academy,…subject to an intake conference with the Principal…" *Id.*

Maryland law mandates that a student expulsion "only may occur" if the "superintendent or designated representative has determined that the student's return to school prior to completion of the expulsion period would pose an imminent threat of serious harm to other students or staff." COMAR 13A.08.01.11(B)(2)(a). Mr. Price, in his written decision expelling M.S., stated in a conclusory fashion that M.S.'s return to his school "poses an imminent threat of serious harm to the victim." (Appeal, Ex. G.). He did not explain the basis for that conclusion.

M.S. filed a Request for Appeal with the local board on August 21, 2017. While the appeal was pending, Ms. N. attempted to enroll M.S. in Annapolis Road Academy as Mr. Price's decision directed. The Principal of Annapolis Road Academy did not allow M.S. to enroll because he had to be withdrawn from Flowers High School. Flowers High School did not allow M.S. to withdraw because he had not been accepted into another school. As Mr. Price, the superintendent's designee, explained at the Board Appeal Hearing, once his office orders a student expelled, the parent or guardian is supposed to receive the decision letter and a withdrawal packet. However, as he stated, the decision letter that his office sent to Ms. N. did not include a withdrawal packet. Moreover, Principal Brown stated that as soon as M.S. was expelled in August, he should have been unenrolled from Flowers High School. However, he explained, because of an error on the school's end, M.S. had not been withdrawn from Flowers High School at the beginning of the academic year, even though he was not allowed to be on the premises because of the expulsion.

Ms. N. returned to Annapolis Road Academy, hoping to secure an interview date, and was told that if she left her phone number someone would contact her. Ms. N. believed that when she left her telephone number at Annapolis Road Academy – as she was directed to –

administrators there "would do what they said they would do" and call her to schedule an appointment. When no call came, and as the summer days were drawing to a close, she found an alternative educational placement for M.S. She enrolled him in a GED Program.

The Board Appeal Hearing was held on October 11, 2017. In its decision issued on November 7, 2017, the local board upheld Mr. Price's decision to expel M.S. for the first half of the 2017-2018 academic year, which spanned from September 6, 2017 to December 22, 2017. As a result, his actual expulsion was for seventy-three (73) school days. That does not include the time of his 7-day suspension in June and his exclusion from the summer program.

He appeals the decision of the local board asserting that during the discipline process his due process rights were violated and that the local board did not make a proper determination of "imminent threat of harm" that would occur if he returned to his school.

STANDARD OF REVIEW

In student suspension and expulsion cases, the decision of the local board is considered final. COMAR 134.01.05.05. 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 134.01.05.05. 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. COMAR 134.01.05.05.

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.01.05.05C.

LEGAL ANALYSIS

There is an oft-quoted phrase, rooted in the principles of due process, that justice delayed is justice denied. While the phrase is usually used in the speedy trial context, where every day a person is deprived of liberty is a serious deprivation, it has application here where every day a student is excluded from school can lead to greater or more serious consequences.[1]

When we apply the requirements of the regulation and the time periods within which they are to be met to the facts of this case, we can see the outline of the delay that occurred.

[1] Consequences include increased likelihood of dropping out of school and related diminished earning capacity as well as increased likelihood of entering the school to prison pipeline, ultimately ending up in adult prison. *See School Discipline and Academic Success* at 7-8.

- Regulation: Notice to parents and conference with principal scheduled "as soon as possible" after initial suspension.

  FACT: M.S. was suspended June 2. No conference with principal scheduled. Parent was told 38 days later, on July 10, that "expulsion" needed to be resolved.

- Regulation: If expulsion is warranted, the superintendent is to investigate and hold a conference with the parent within 10 school days of the initial suspension. (Extension is possible).

  FACT: M.S. was initially suspended on June 2. The superintendent's "expulsion conference" was scheduled on July 26, fifty-four days after the initial suspension. No extension was requested.

It seems that initially no one in the school system was watching the clock or paying attention to this case. Fifty-four days passed without a parent conference or a ripple of concern. Yet, the superintendent's designee's decision states:

> A review of the procedural course reveals: (a) the principal requested an expulsion; (b) the Pupil Personnel Worker and/or security services promptly and thoroughly investigated the matter; and (c) the Office of Appeals arranged a non-adversarial administrative/educational conference with the student and the student's parent or guardian by the 10th school day of the initial suspension.

Moreover, the designee found as a fact that "the non-adversarial/educational conference was held within 10 school days of the initial suspension." (Appeal, Ex. G at 1).

In its defense, the local board asserts that the regulation governing the timing of the superintendent's expulsion conference calls for the conference to be held within 10 "school days" of the initial suspension. They go on to argue that, because the school year ended on June 13 (7 school days after initial suspension), they were under no legal obligation to meet the 10 school day time limit because there just were no more "school days" to count.

Such a technical reading of the regulation ignores the underlying purpose and intent of the changes this Board made to the disciplinary process - - to keep students in school where possible, and to limit the time a student is excluded from school by requiring timely disposition of each discipline case.

On appeal, the local board's decision explains the delay in holding the expulsion conference as an end of the year issue with too many other things going on. (Appeal, Ex. A at 6). The local board concluded that the superintendent's designee did not "willfully violate" M.S.'s due process rights. We do not require the Appellant to prove willfulness here. Violations of time constraints can and do occur thoughtlessly, negligently, and carelessly.

In this case, M.S. was not only excluded from attending the last seven school days (and maybe rightfully so), but he was excluded from summer school because no one attempted to deal

with that initial suspension in a timely way. On top of those exclusions, M.S. was formally expelled from his school for 72 additional days, from September to December 2017. And, to make matters worse, when his foster mother tried to enroll M.S. in the alternative school the superintendent directed M.S. to attend, a catch-22 of bureaucratic mistakes prevented timely enrollment causing his foster mother to find some other educational placement for M.S.

Taken together, the delays in this case constitute due process violations caused by a careless disregard for the rules applicable to the disciplinary process.

Imminent Threat of Serious Harm

At two points in the disciplinary process there is to be a finding that the student poses an imminent threat of serious harm to students or staff such that continued exclusion from his school is warranted. First, if the superintendent cannot complete his investigation and hold a conference with the parent and student within 10 school days of the initial suspension, the student can continue to be excluded *only if* the superintendent finds he would pose an imminent threat of serious harm. Suffice it to say that no such finding was made in the 54 days between the initial suspension and July 26, the scheduled expulsion conference. It could be argued that there was no "school" from which to exclude M.S. during that time period, but that would ignore the fact that M.S. was excluded from summer school on July 10.

An imminent threat of serious harm finding is also required to be made if expulsion is the decision of the superintendent at the conference. The superintendent's designee states in his expulsion decision on August 11 - - 71 days after the event that lead to the expulsion - - that M.S. posed an imminent threat of serious harm to the victim. He does not explain the basis for that conclusion, but in his decision he refers to the Appellant's lack of remorse and his refusal to offer any factual input as well as to the fact that the victim had a concussion.

The local board explained in its decision the facts it believed the superintendent's designee relied on to come to that conclusion – the seriousness of the assault and the injury to the victim and M.S.'s lack of remorse. (Appeal, Ex. A at 4 n. 8). The board, however, commented that the superintendent's designee could have made more of an effort to elaborate why Appellant's return to his school would pose an imminent threat of serious harm. *Id.* at 7. It then went on to justify the finding this way:

> Nonetheless, we find that striking another student, in what appears to be an unprovoked and vicious manner, causing that student to lose consciousness and to suffer a concussion, is more likely than not to pose an imminent threat of serious harm to the same victim, if upon the Appellant's return, the same victim made further inappropriate comments about M.S. Equally troubling is the strong likelihood that the Appellant could face some form of retaliation from other students for the incident that occurred on June 2, 2017, placing himself in imminent threat of serious harm.

(*Id.* at 8).

The local board also refers to M.S.'s propensity to commit "violent acts." (*Id.* at 10). They cite to seven "altercations/incidents" during his high school years and "multiple criminal-related detentions with police authorities" based on those incidents. (*Id.* at 3 and n. 3).

We agree with the local board that the incident here was a violent one and caused serious harm to the victim. Added to that is M.S.'s disciplinary record in high school. We will refrain from second guessing the conclusion that M.S. posed an imminent threat of serious harm to other students and staff. We point out, however, that by the time Appellant's expulsion was over, he had been out of his school for seven months (June-December). Whether an "imminent threat" can possibly last that long is something that local school systems need to consider and explain when they contemplate imposing such long-term exclusions from school.

Remedy

In this case, we will affirm the local board's decision on the point of imminent threat of serious harm, but procedurally we find delays early in the suspension process - - delays that went unaddressed for many days and weeks. We conclude that those delays rise to the level of due process violations given the critical importance of timely disciplinary decisions.

M.S. has completed the term of the expulsion, however. We cannot undo that fact. He seeks the following relief:[2]

1. Reverse the PGCPS Board decision.

2. Order the PGCPS to rescind M.S.'s expulsion and allow him to attend a regular, non-alternative, school placement outside of Charles H. Flowers High School where he can recover his credits and have his educational and emotional needs met.

3. Order the PGCPS to provide educational support services to M.S. to allow him to make up for his lost educational time.

4. Order that PGCPS train school administration and staff in the revised standard for extended suspension and expulsion under the Code of Maryland Regulations.

CONCLUSION

For all the reasons set forth herein, we affirm the local board's decision to expel M.S. on the grounds of imminent threat of harm, but we reverse that part of the decision that found no due process violation. As a remedy for that violation we direct PGCPS:

(1) To meet with M.S. and his foster mother to establish an agreed upon plan for compensatory services, placement alternatives, credit recovery, etc. if appropriate.

(2) To share this decision with administrators at Flowers High School as well as the PGCPS office of appeals and all school principals with a cover memo on timelines for deciding long-

[2] The Appellant argues that this Board should consider his claim under IDEA. Because this Board is not the appropriate forum for that claim, we decline to do so.

term suspension or expulsion decisions at the end of a school year.

(3) To report to this Board on or before April 24, 2018 on the accomplishment of each of the above described actions.

Signatures on File:

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Andrew R. Smarick
President

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Chester E. Finn, Jr.
Vice-President

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Michele Jenkins Guyton

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Justin M. Hartings

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Stephanie R. Iszard

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Rose Maria Li

____
Michael Phillips

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David Steiner

March 20, 2018