

PATRICK ROSS,

Appellant

v.

BALTIMORE COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-22

OPINION

In this appeal, parents of a student at Dulaney High School contest the local board's upholding of the superintendent's decision to expel Patrick from Dulaney High School based on a violation of local board policies on alcoholic beverages and drugs. Appellants argue that (1) at the time of Patrick's alleged infractions, the school system had no jurisdiction over his activities because the event was not school-sponsored; (2) the board made an error of law in determining that Patrick was in actual or constructive possession of alcohol or drugs; and (3) Patrick's constitutional rights were violated. The local board has filed a Motion to Dismiss maintaining that the appeal is moot because the student's expulsion has been terminated by action of the school system, permitting Patrick to return to his home school as of January 4, 1999. Alternatively, the local board maintains that its decision was not arbitrary, unreasonable or illegal, and that it should be upheld.

BACKGROUND

During the 1998-99 school year, Patrick Ross was in the twelfth grade at Dulaney High School. Beginning at 9:00 am on Saturday, October 3, 1998, students participated in an annual rock painting activity on school grounds. The event was followed by a senior barbecue at Padonia Park.¹

The notice regarding the barbecue from the Dulaney High School PTSA ("Parent Teacher Student Association") president to parents was distributed to the students at school. The publication contained the following information:

On Saturday, October 3, 1998, the Senior Class of '99 will celebrate the Dulaney High School tradition of *painting the rocks*, from 9:00-11:00 a.m. on school grounds. At the request of the senior class, the Dulaney High School PTSA executive board has voted to sponsor a senior barbecue picnic at Padonia Park from

¹The barbecue was paid for out of senior class funds.

12:00-2:00 p.m., following the painting of the rocks.

Due to exclusions specified in the general liability insurance policy owned by the Dulaney High School PTSA, students will be unable to participate in sports activities at the senior barbecue picnic, as has been the case for the past four years. They will be able to enjoy great food and live entertainment provided by their peers in a location that will have parent supervision. **Even though the picnic is off school grounds, the rules of Baltimore County Public Schools Student Behavior Handbook will be in effect.**

The Senior Class officers have reported that a record number of students will be participating in Saturday's events. We look forward to an exciting day of fun for our children. (Emphasis added).

Patrick rode to the barbecue as a passenger in the middle rear seat of another student's vehicle. When the students stopped the vehicle at the entrance gate to register for the barbecue, a parent chaperone detected the odor of marijuana coming from the car. She notified Sgt. Nancy Storke, an off-duty Baltimore County Police Officer hired by the school to provide security for the event, who also detected a strong odor of marijuana emanating from the car and from the occupants' clothing. Sgt. Storke's search of the vehicle revealed a pack of rolling papers and a piece of burned paper which was found to have traces of marijuana.² A uniformed officer called to the scene discovered twenty-eight unopened cans of beer and an unopened bottle of vodka in the trunk of the car.³

Pursuant to local board Policies 5540 and 5550, Patrick was charged with two Category III offenses: possession of controlled dangerous substances and possession of alcohol, and a Category II offense: failure to assume responsibility for, or control of, his behavior. The penalty mandated for a Category III offense is expulsion. After conducting a hearing in which the student, his parents, and his attorney were present, the superintendent's designee informed Appellants, by letter dated October 15, 1998, that Patrick was expelled.⁴

Appellants appealed to the local board. After holding a full evidentiary hearing, the local board upheld the superintendent's decision to expel Patrick. Thereafter, on December 23, 1998,

²The report of the substance analysis by the Baltimore County Police Department Lab was positive for marijuana.

³All of the students in the car were issued citations and released to the custody of their parents.

⁴The three male students were expelled and the two female students received a lesser form of discipline.

the associate superintendent informed Appellants that she had reviewed Appellant's case and terminated Patrick's expulsion, permitting him to return to his home school as of January 4, 1999.

ANALYSIS

(1) Mootness

As a preliminary matter, the local board contends that this appeal should be dismissed as moot. It is well established that a question is moot when, "there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the courts [or agency] can provide." *In Re Michael B.*, 345 Md. 232, 234 (1997); *See also Walter Chappas v. Montgomery County Board of Education*, MSBE Opinion No. 98-16 (March 25, 1998). Although Patrick's expulsion has been terminated and he has been permitted to reenter his home school, Patrick's public school record does contain the reference to the expulsion which Appellants request be expunged. The appeal is therefore not moot because a real controversy with an effective remedy exists. *See Joshua Peacock v. Baltimore County Board of Education*, MSBE Opinion No. 98-43 (July 29, 1998).

(2) Due Process Violations and Other Illegalities

On the substance of the appeal, it is well established that the decision of a local board with respect to a student suspension or expulsion is considered final. Md. Educ. Code Ann. § 7-305. Therefore, the State Board's review is limited to determining whether the local board violated State or local law, policies, or procedures; whether the local board violated the due process rights of the student; or whether the local board acted in an otherwise unconstitutional manner. COMAR 13A.01.01.03(E)(4)(b).

Based upon our review of the record, we find that the local board's decision was reasonable and not otherwise illegal. Policy 5540 states that "[t]he possession, use, and distribution, or conspiracy to distribute alcoholic beverages or illegal drugs in any quantity is prohibited on property owned by the Board of Education, on school buses, or at off-site school-sponsored activities." It further states that "[t]he possession, use, or distribution of controlled paraphernalia as outlined in Article 27 of the Annotated Code of Maryland is prohibited on property owned by the Board of Education, on school buses, or at off-site school-sponsored activities.⁵ Policy 5550 states that "[s]tudents are expected to exhibit proper behavior on school property, on school buses, and at off-site school-sponsored activities." The provisions of Policy 5540 and 5550 apply in all situations in which students are involved, including "off-site school sponsored activities" and "off-site school related problems which are the result or cause of

⁵While the policy lists the Maryland Annotated Code and the United States Code provisions as references for possession, use, and distribution of alcohol and drugs, the mere reference to these provisions does not make criminal standards applicable to an administrative case.

disruptive behavior on school grounds.” The policies do not define the term school-sponsored.

(a) Application of Student Discipline Policy

Based on the facts in the record, we find the local board reasonably concluded that the school system had jurisdiction over the incident in this case because the event was school-sponsored. Here, the event was identified as the “Senior Barbecue” and was a tradition at Dulaney High School for many years. Tr. at 36. The Dulaney High School PTSA did not contribute any money to the event; rather, the event was paid for out of senior class funds. Tr. at 36. The principal of Dulaney High paid for the security guards at the barbecue with funds from her discretionary account with the understanding that the amount would be reimbursed from senior class funds. Tr. at 42. Additionally, the activity was publicized through a notification distributed to the students at school and by an announcement over the public address system. In both instances, the students were advised that local board discipline rules would be in effect, despite the fact that the barbecue was taking place off school grounds. Tr. at 36.

Appellants argue that the event was sponsored solely by the Dulaney High School PTSA, noting that the PTSA helped plan and organize the event, that the PTSA provided liability insurance for the event, and that members of the PTSA served as chaperones for the event. However, we note that although the PTSA is a distinct and separate entity, the organization is related to the school; the Dulaney High School PTSA would not exist but for the fact that Dulaney High School exists. While not all events involving the Dulaney High School PTSA will have an indicia of school-sponsorship, we find the record in this matter demonstrates that the senior barbecue was done in collaboration with the school on behalf of the students and was therefore school-sponsored.

Appellants also argue that the funds which were used to pay for the event were raised by the students as private citizens.⁶ Again, we note that although the funds were raised by students, they were raised for the benefit of the Dulaney High School senior class. Such funds pass directly through the school. Once raised by the students and submitted to their class treasurer, the funds are given to the class bookkeeper who is employed by Baltimore County Public Schools. Tr. at 38. The bookkeeper then deposits the class funds into a bank account in the name of Dulaney High School. Tr. at 38, 44.

Furthermore, in addition to prohibiting certain behaviors at school-sponsored events, Policies 5540 and 5550 cover instances when a student’s behavior outside of school is related to the school such that the school may take appropriate action. Here, students entered the “Senior Barbecue,” where most of the Dulaney High School Senior Class would be in attendance, in a

⁶Students were charged one price to participate in both the morning rock painting activity and the afternoon barbecue. Tr. at 36.

vehicle that smelled of marijuana. Rolling papers, burnt paper with marijuana residue, and a substantial quantity of alcohol were found in the car. The police issued citations to the students, including Patrick. Based on these facts, the principal could have reasonably believed that Patrick's actions were school related and could potentially cause disruption on school grounds. *See Howard v. Colonial School District*, 1992 WL 68916 (Del. Super.) (school district had authority to expel student for off campus, non-school activity drug sales); *Kevin Pickett v. Montgomery County Board of Education*, MSBE Opinion No. 98-45 (August 26, 1998) (upholding school district's authority to discipline student for non-school-sponsored activity off of school grounds); *John Schlamp v. Howard County Board of Education*, MSBE Opinion No. 95-11 (May 31, 1995) (upholding assignment of student to alternative educational placement for assaulting another student off school grounds during non-school hours).

(b) Possession/Constructive Possession of Drugs and Alcohol

Appellants contend that Patrick was not in possession or constructive possession of drugs, alcohol or drug paraphernalia. Local Board Policy 5540 states that "'Possession' means the exercise of actual or constructive control over a thing by one or more persons." At the hearing before the local board, Sgt. Storke testified that she found a pack of rolling papers on the rear floor board of the vehicle and a burned piece of paper that smelled of marijuana stuck toward the rear part of the area between the two front bucket seats. Tr. at 22, 25. She further stated:

And the gentleman in the left rear seat, the gentleman in the center seat were both very fidgety and they were moving their hands around a lot. The gentleman in the left seat had put his hands down by his feet in between where the console of the vehicle was. The gentleman in the center [Patrick] was sort of doing the same thing, hiding his hands, bringing his hands up and at that point I asked the, I suspected that there may have been something besides smelling marijuana there may have been something still in the car. At that point I had them exit the vehicle. Tr. at 22.

Both the rolling papers and the burnt paper with marijuana residue were in close proximity to Patrick who was located in the middle of the back seat of the car. The record is sufficient to support a rational inference that Patrick did, in fact, exercise some dominion or control over the prohibited items. *See generally In Re Nahif A.*, 123 Md. App. 193, 209-211 (1998), describing and applying factors for constructive possession of drugs.

With regard to the alcohol that was found in the trunk of the car, Patrick admitted that he intended to drink the beer later on the day of the barbecue. *See Dulaney High School Referral Form*. The report of the investigation from the Assistant Principal states:

Patrick and the other two boys made arrangements to purchase and secure the alcohol on Friday, October 2, 1998, intending to go to

someone's house after the barbecue to consume the alcohol. All five students came to the rock painting at the school on the morning of Saturday, October 3, 1998. Patrick and the other four students then went to Sarah Dillon's house to change and clean up. They transferred the alcohol into Sarah's car at this time, and then proceeded to the barbecue at Padonia Park.

Additionally, Officer Weigle, who reported to the scene of the incident, questioned the students and determined that the alcohol belonged to Patrick and the two other boys. Tr. at 16, 20. The local board reasonably concluded that Patrick possessed alcohol in violation of board policy.

(c) Equal Protection and Due Process

Finally, Appellants argue that Patrick was denied equal protection of the laws, that he was denied due process, and that his expulsion resulted from an unlawful detention and arrest in violation of the constitution. With regard to the equal protection argument, Appellants failed to present any evidence before the local board supporting such a claim.⁷ Appellants also failed to present evidence at the hearing concerning the alleged discrepancy between the verbal findings of the superintendent's designee and his written findings. In any event, the full evidentiary hearing before the local board cured any alleged deficiency that occurred at the superintendent's administrative review. *See Cory Williamson v. Board of Education of Anne Arundel County*, MSBE Opinion No. 97-20 (April 30, 1997) (failure to give prompt notice would be cured by local board's full evidentiary hearing on appeal); *West & Bethel v. Board of Commissioners of Baltimore City*, MSBE Opinion No. 96-47 (December 10, 1996) (failure to hold conference within ten days was cured by the de novo administrative hearing on merits before the local board); *Harrison v. Somerset County Board of Education*, MSBE Opinion No. 96-28 (July 30, 1996) (failure to grant conference with superintendent or his representative in timely fashion was cured by local board's full evidentiary hearing on appeal).

With regard to other alleged constitutional violations, criminal standards do not apply to civil administrative matters such as a student discipline case.⁸

⁷We note in this regard that the basis for imposing discipline is appropriately individualized depending on the existence of mitigating factors. Furthermore, all of the students involved in this incident were disciplined.

⁸For example, *see* Md. Code Ann. Educ. § 7-308(a)(1) which states that “[a] principal, assistant principal, or school security guard of a public school may make a reasonable search of a student on the school premises or on a school-sponsored trip if he has a reasonable belief that the student has in his possession an item, the possession of which is a criminal offense under the laws of this State or a violation of any other State law or a rule or regulation of the county board.” This statutory language tracks the holding of the U.S. Supreme Court in *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), in which the Supreme Court upheld a principal's search of a student's purse for cigarettes, which also disclosed evidence of marijuana.

CONCLUSION

Finding no due process violations or other illegalities in the proceedings, we affirm the decision of the Board of Education of Baltimore County.

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April 28, 1999

Furthermore, even if the search of the vehicle were deemed illegal in a criminal proceeding, the exclusionary rule does not apply to items seized pursuant to the search in this administrative proceeding. The items may therefore be used against Patrick. *See Gordon J., Jr. v. Santa Ana Unified School District*, 162 Cal. App. 3d 530 (1985) (holding the exclusionary rule inapplicable in high school disciplinary proceedings, even where they are directed in part toward punishment of the offending student). *See also Sheetz v. Mayor and City Council of Baltimore*, 315 Md. 208 (1989) (holding the Fourth Amendment exclusionary rule generally inapplicable to administrative discharge proceedings).