

RICHARD OLTMAN,

Appellant

v.

WORCESTER COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-11

OPINION

In this appeal, the father of a student at Stephen Decatur High School contests the local board's upholding of a school principal's decision to prohibit his son Richard from participating in extracurricular activities for ninety days based on a violation of the school's drug policy.¹ Appellant argues that the local board's decision was arbitrary, unreasonable and illegal.

BACKGROUND

During the 1997-98 school year, Richard Oltman was in the tenth grade at Stephen Decatur High School. The student discipline policy for Worcester County Public Schools states in relevant part that "[i]n cases of drug involvement on school property . . . that student will be suspended for ten (10) days and excluded from participation in all extracurricular activities for ninety (90) consecutive school days. . . . Additionally, the principal shall assign the student to the next scheduled Saturday School Program at the Worcester County Health Department." The Code of Student Conduct for the school system, which Richard had received, also advises students of these consequences for possession of illegal drugs, look-alike substances and paraphernalia.

On June 11, 1998, the school's co-principal, Tyrone E. Mills, was conducting an investigation of the theft of \$100 from a student in the school. The co-principal, believing he had reasonable suspicion to search Richard, conducted a search of the student and his book bag. Richard had been sitting in the seat where the student had left her purse from which the money was stolen. The search of Richard's book bag revealed a clear plastic baggie containing seeds, stems, and other material which appeared to be marijuana, as well as a wallet containing seeds and stems that appeared to be marijuana. As a result of this discovery, principal Lou Taylor of Stephen Decatur High School suspended Richard for ten days, prohibited him from participating in any extracurricular activities for ninety school days, and directed him to attend the Worcester County Health Department Saturday Drug Program.

¹In accordance with school policy, Richard was also suspended from school for 10 days. Appellant does not contest the 10-day suspension.

Appellant contested the principal's decision. After reviewing the matter and meeting with Appellant, the superintendent upheld the principal's decision. On further appeal, the local board upheld the superintendent's decision on August 24, 1998.

ANALYSIS

As a threshold matter, the local board argues that this appeal should be dismissed because it was untimely filed. State law and regulation require appeals of local board decisions to be filed with the State Board within thirty days of the local board decision. *See* Md. Code Ann. Educ. § 4-205 (c) and COMAR 13A.01.01.03B (3). An appeal is deemed transmitted within the limitations period if it has been delivered to the State Board or deposited in the United States mail, as registered or certified, before the expiration of the time period. COMAR 13A.01.01.03B (3). The local board decision was issued on August 24, 1998. The appeal to the State Board should therefore have been filed with the State Board on or before September 23, 1998. Because the appeal was delivered by certified mail postmarked September 22, 1998, the appeal to the State Board was timely filed.

Another threshold matter is Appellant's request to meet with the State Board concerning this appeal. The process afforded a student who has been suspended or expelled is set forth in Md. Code Ann. Educ. § 7-305. In accordance with this provision, Appellant received a full evidentiary hearing at the local level. County board decisions in such matters are considered final and the State Board is not permitted to consider an appeal on its merits. Md. Code Ann. Educ. § 7-305 and COMAR 13A.01.01.03E. 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. *Id.* Accordingly, neither a hearing nor an in-person meeting is mandated at the State level.

Although Appellant appealed the disciplinary decision to the local board, he did not raise most of the issues he now asserts before the State Board. The transcript of the hearing before the local board is extremely brief, and Appellant did not present any witnesses or evidence other than his own statements. A review of the claims made by Appellant at the hearing before the local board discloses that, at best, Appellant maintained that the policy was not consistently applied by the school system, that the punishment was too severe and that there were no tests performed on the discovered substance to prove that it was, in fact, marijuana. The appeal to the State Board is the first time Appellant actually raises other issues concerning the disciplinary policy and the search of his son by the co-principal.²

²Md. Code Ann. Educ. § 7-308(a)(1) states "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

The State Board has consistently declined to address issues that have not been reviewed initially by the local board. See *Chase Craven v. Board of Education of Montgomery County*, MSBE Opinion No. 97-43 (October 29, 1997) (failure to challenge suspension before local board constituted waiver); *Theresa H. Fentress v. Howard County Board of Education*, MSBE Opinion No. 96-37 (September 25, 1996) (failure to challenge 5-day suspension before the local board constituted waiver); *Earl Hart v. Board of Education of St. Mary's County*, MSBE Opinion No. 97-37 (September 25, 1996) (failure to raise issue of age discrimination below constituted waiver of issue on appeal). Accordingly, except for the issues addressed below, Appellant has waived his right to now assert other issues concerning the legality of the policy and the search of the student by the co-principal.

On the issue of the extracurricular activity ban, that aspect of the local policy that prohibits students from participating in extracurricular activities is known as a “good conduct rule.” Courts of other jurisdictions have recognized such rules as reasonable and rationally related to legitimate interests. See *Bush v. Dassel-Cokato Board of Education*, 745 F. Supp. 562, 571-572 (D. Minn. 1990); *Felton v. Fayette School District*, 875 F.2d 191, 193 (8th Cir. 1989); *Braesch v. DePasquale*, 265 N.W.2d 842, 846 (1978), *cert. denied*, 439 U.S. 1068 (1979); *Bunger v. Iowa High School Athletic Association*, 197 N.W.2d 555, 563-564 (1972). Additionally, prior decisions by this Board have upheld the denial of a student’s privilege to participate in school sponsored extracurricular activities due to violations of a school’s disciplinary policy. See *Kevin Picket v. Board of Education of Montgomery County*, MSBE Opinion No. 98-45 (August 26, 1998); *Chase Craven v. Board of Education of Montgomery County*, MSBE Opinion No. 97-43 (October 29, 1997); *Michael Schneider v. Board of Education of Montgomery County*, MSBE Opinion No. 97-47 (October 29, 1997).

Based on these authorities we uphold the local policy as well as its application in this case. We also note that participation in extracurricular activities is a privilege and not a right; therefore, such participation is not grounded in any protected interest to which due process rights attach. *Daniel & Bobbie Bloch v. Board of Education of Howard County*, MSBE Opinion No. 96-27 (July 30, 1996).

While Appellant raises issues concerning the consistency of application of the policy, he did not present any evidence in support of this contention at the hearing before the local board. Additionally, Appellant did not deny that the substance discovered in Richard’s possession was marijuana and presented no evidence to refute testimony set forth by the local board on this issue.

____ Based upon our review of the record, we find no evidence that the due process rights of Richard were violated or that there were any other illegalities in the proceeding.

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, but found evidence of marijuana and drug paraphernalia.

CONCLUSION

For these reasons, we affirm the decision of the Board of Education of Worcester County.

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February 23, 1999