MORGAN MCCORMICK,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
ALLEGANY COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee	Opinion No. 02-35

OPINION

This is an appeal of the removal of Appellant's son, Christopher, from the Beall High School football team for the remainder of the season for drinking alcohol at a party in violation of the local board's Rules Governing Participation on Athletic Teams and Extracurricular Activities. ("Rules"). The local board has filed a Motion to Dismiss or in the Alternative, Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable or illegal. Appellant has filed a response to the Motion claiming that the local board's decision should be overturned because the discipline imposed on Christopher was too severe, the disciplinary action was not equally imposed on all students, and because information was improperly obtained from Christopher.

FACTUAL BACKGROUND

Appellant's son entered the twelfth grade at Beall High school in the fall of 2001. On August 15, 2001, Appellant and his son both signed a document entitled "Rules Governing Participation on Athletic Teams and Extracurricular Activities", acknowledging their understanding that certain listed acts would result in disciplinary action "ranging from a conference, to suspension to dismissal from the team or organization for the remainder of the season or school year." (Rules, August 15, 2001). One of those listed acts is: "Use/possession of alcohol."

On November 5, 2001, Appellant's son was called into the office of Principal Greg Smith. Also present in the office were Mr. Joseph Carter, Administrative Assistant, Mr. Toby Eirich, Vice Principal, and Mr. Roy DeVore, teacher and head coach of the Beall High School football team. Chris was asked whether he drank alcohol at a party over the weekend. Christopher answered yes. (Letter of Appeal, March 22, 2002; p.1, Tr. 7). Mr. Smith then informed Christopher that he was dismissed from the football team for the remainder of the season. Due to this dismissal, Christopher did not participate in the season's last football game and became ineligible for end of year awards and pins. (Motion for Affirmance, p. 3, Letter of Appeal, p.3).

The Superintendent's designee, Ms. Beverly Andrews, heard an appeal of the Principal's decision on November 8, 2001. After hearing from the Principal, Christopher, his parents, and his attorney, Ms. Andrews upheld the Principal's decision. In the letter upholding the discipline,

Ms. Andrews noted that "there will not be an entry in his discipline record nor will it interfere with his participating in future athletic seasons." (Letter of November 13, 2001).

After the November 8, 2001 hearing, but before Mr. McCormick had received a decision, Mr. McCormack sent a letter to Dr. William AuMiller, Superintendent, alleging discrimination in the imposition of discipline. (Letter of November 11, 2001). Dr. AuMiller replied, in part, that:

> all students determined to be involved in violating the *Rules Governing Participation on Athletic Teams and Extracurricular Activities* on November 3, 2001 were dismissed from respective teams and organizations for the remainder of the fall sports season. This action is a uniform and consistent application of the discipline policy. (Letter dated November 19, 2001).

Mr. McCormick appealed the Superintendent's decision to the local board (Letter of Appeal, November 16, 2001), who held a hearing on the discipline decision on January 8, 2002. Mr. McCormick presented his son's case to the local board and Dr. William AuMiller presented the school system's case. The local board also received eighteen documents into evidence, including the Rules signed by Mr. McCormick and his son. Mr. McCormick testified that his son had admitted drinking alcohol over the weekend of November 3-4, 2001. (Tr. 7, 8). Dr. AuMiller testified that all students involved in violating the rules on November 3, 2001 received the same discipline. (Tr. 17-18).

The local board upheld the discipline decision on March 12, 2002. This appeal followed.

ANALYSIS

Because this case involves a dispute regarding the rules and regulations of a local board, the decision of the local board shall be considered prima facie correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.01.03E(1).

1. Severity and Fairness of the Disciplinary Action

Appellant first contends that the punishment imposed was arbitrary because it was too severe. (Letter of Appeal and Appellant's Response). In *Sara Johnson v. Baltimore County Board of Education*, 7 MSBE Op. 466 (1996), the State Board explained its role in reviewing school disciplinary policies:

> We do not believe it is appropriate for the State Board to determine the specific punishment for a student's misconduct. Rather, our role is to determine whether the disciplinary code established by a local school system is rationally based, publicized to the student body, and fairly and consistently applied.

Accordingly, the decision of what discipline to impose is solely within the discretion of the Superintendent, as long as the policy is "rationally based, publicized to the student body, and fairly and consistently applied."

In the present case, the local board's policy and the range of punishments were implemented to deter alcohol use among its students, particularly those who represent the school in extracurricular activities and athletics and thereby serve as examples to others. Ms. Andrews found that removal from the team for the remainder of the season was appropriate due to Christopher's admission that he had used alcohol in violation of the Rules and State law and for the "need to send the message to young people that under-age drinking cannot be allowed." (Letter of November 13, 2001). The policy promotes student health and safety; promotes students involved in extracurricular activities as positive peer models and representatives of the schools; and provides students who participate in extracurricular activities with strong incentives and acceptable reasons not to succumb to peer pressure to use alcohol or drugs, or to attend parties where such substances are illegally served and consumed by minors. For all of these reasons, we believe the school board policy is rationally related to legitimate school interests.[1]

Moreover, there is no contention that Christopher, as well as the rest of the student body, did not know of the Rules. Both Mr. McCormick and Christopher signed a copy of the Rules in August, 2001. In the present case, the discipline chosen could have been more onerous. The Principal could have chosen suspension as a disciplinary measure. However, he chose only to remove Christopher from the football team for the remainder of the season, which was, in fact, only the last game, and to make him ineligible for an end of year pin and/or award. And, as the letter from Ms. Andrews indicated, the disciplinary action was not entered on his school record nor was Christopher deemed ineligible for other sports or activities for the remainder of the year. In light of Christopher's admission that he violated the school policy on athletics and extracurricular activities, we do not find the punishment to be too severe.

Additionally, the penalty imposed in this case was not unduly severe in comparison to other cases where the State Board has upheld the denial of a student's privilege to participate in school sponsored extracurricular activities due to violations of the school's disciplinary policy. *See Richard Oltman v. Worcester County Board of Education*, MSBE Opinion No. 99-11 (February 23, 1999); *Ryan Rantz v. Worcester County Board of Education*, 7 MSBE 1314 (1998); *Chase Craven v. Board of Education of Montgomery County*, 7 MSBE 870 (1997); *Michael Schneider v. Board of Education of Montgomery County*, 7 MSBE 907 (1997).

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[1]Furthermore, the school board is authorized to prescribe such rules. Section 4-108 of the Education Article, Annotated Code of Maryland, mandates that local boards of education "[a]dopt, codify, and make available to the public bylaws, rules, and regulations not inconsistent with State law, for the conduct and management of the county public schools." (1997 Repl. Vol.). As explained above, the policy at issue is reasonably related to and has a direct effect on the welfare of the school.

Although Appellant argues that there was discrimination in the imposition of the punishment, he acknowledges that each student athlete who was involved in the drinking incident was removed from his respective team for the remainder of the season and did not receive the pin or award for participation on the team. (Letter of Appeal, p. 2.). Further, both Mr. McCormick and Superintendent AuMiller testified that all student athletes who were found to have consumed alcohol were treated equally. (Tr. 8, 18).

Appellant contends that a member of the Beall High School drill team who provided alcohol at the party received a lesser punishment. However, the record reveals that she too was suspended for one game. (Tr. 9). Mr. McCormick alleges that according to the participation agreement for drill team members, this girl should have been removed from the team for the rest of the school year, not just the season. However, the drill team agreement is not in evidence. Moreover, Superintendent AuMiller in his decision dated November 19, 2001, provided a lengthy explanation of the difference between participation on athletic teams which are extracurricular only and participation on band, drill team, and cheerleading that are both extracurricular and curricular. Students participating in band and drill team earn graduation credit as a result of electing the respective class for the entire school year. As Dr. AuMiller noted, it would be inappropriate to remove a student from an organization for the entire school year while a student in a different organization receives a lesser punishment for the same offense. The superintendent also noted that all students involved in the Beall High School incident were dismissed from their respective teams and organizations for the remainder of the fall sports season.[2]

As noted above, in reviewing the severity of a student disciplinary decision, the State Board's role is to determine whether the discipline was consistently and fairly applied. As the record reflects, Christopher admitted consuming alcohol at a party in November 2001, in violation of the Rules and State law. The record also confirms that all student athletes who consumed alcohol during this incident were excluded from their respective teams for the remainder of their seasons and were not eligible for year end awards and pins. Moreover, students from other organizations who were involved in the incident were dismissed from their respective organizations for the remainder of the fall sports season. Therefore, we find that the discipline imposed by the local board was fairly and consistently applied and is therefore not arbitrary, unreasonable or illegal.

2. Due Process claims

Appellant next contends that Christopher's due process rights were violated because information was obtained without Christopher knowing that he did not have to answer questions and without Christopher being able to present witnesses. First, as previously noted and as Appellant acknowledges, participation in extracurricular activities is a privilege, not a right.

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[2]As to Mr. McCormick's allegations concerning the Athletic Director, other athletes in other years, and those not in athletics or extracurricular activities, these questions are irrelevant to this appeal.

Therefore, Fourteenth Amendment due process requirements do not necessarily apply and the board's application of its extracurricular policy is subject to review under the arbitrary, unreasonable or illegal standard as set out at COMAR 13A.01.01.03E(1). *See*, *e.g.*, *Bloch v. Bd. of Educ. of Howard County*, 7 Op. MSBE 388, 390 (1996).

Appellant cites *Goss v. Lopez*, 419 U.S. 565 (1975) as authority requiring that Christopher be allowed to present witnesses and refrain from providing information. We note that *Goss v. Lopez* involved a student's suspension from school, not from extracurricular activities. Nonetheless, when presented with this same argument in *Goss*, the Supreme Court stated:

> In the great majority of cases the disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred. We hold only that, in being given an opportunity to explain his version of the facts at this discussion, the student first be told what he is accused of doing and what the basis of the accusation is.

419 U.S. at 582. As another court has noted:

> The plaintiffs seem to suggest that school officials may not question a student in order to obtain an admission of misconduct and immediately suspend the student on the basis of the admission. *Goss* does not support this proposition and no other authority has been cited by plaintiffs or discovered by the Court.

Boynton v. Case, 543 F. Supp. 995, 998 (D. Me. 1982). The *Boynton* court also addressed the question of whether a student in a disciplinary proceeding must be given his right to remain silent and the right to the assistance of counsel before being questioned:

> No authority is cited by the plaintiffs, and the Court can find none, supporting an extension of the Miranda rule, see *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 694 (1966), to interrogations conducted by school officials in furtherance of their disciplinary duties.

543 F. Supp. at 997.

Although this case does not involve a suspension from school, Christopher was nonetheless permitted to give his side of the story at his conference with school officials. He was also represented by counsel at the designee's appeal conference. Further, Christopher's father represented him before the local board and although his father was informed of his right to present witnesses at the hearing, he did not do so. Accordingly, we find that there have been no violations of Christopher's due process rights and that Christopher was given a full and fair opportunity to present his case at his appeal conference and before the local board.

CONCLUSION

Because we find that the local board's decision was not arbitrary and because there were no due process violations or other illegalities in the proceedings, we affirm the decision of the Board of Education of Allegany County.

Marilyn D. Maultsby
President

JoAnn T. Bell

Philip S. Benzil

Dunbar Brooks

Reginald L. Dunn

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

July 23, 2002