PATRICIA KERNS AND DAVID & BRENDA SEISS,	BEFORE THE
	MARYLAND
Appellants,	
v.	STATE BOARD
FREDERICK COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee	Opinion No. 05-30

OPINION

This is an appeal filed by the parents of two of four individuals who were each ordered to pay restitution in the amount of $2,500 for vandalism to the football field at Catoctin High School.

FACTUAL BACKGROUND

On May 17, 2004, Appellants' sons and two other individuals sprayed paint and used chemicals to draw the number '04 on the Catoctin High School football field. The chemicals used included paraquat, which killed the grass in an area approximately 150' x 150'. Additionally, the same process was used to damage two other grassy areas in front of the school.

Appellants' sons, C.H. and B.S., admitted their involvement in the incident. In lieu of pressing charges for vandalism, Ms. Ann Bonitatibus, Principal of Catoctin High School, issued a no trespass letter prohibiting C.H. and B.S. from entering school property and ordered restitution in the amount of $2,500.00. C. H. is an adult who was no longer a student at Catoctin High School at the time of the incident, having graduated in 2003. B.S., a soon to be graduate of Catoctin High School at the time of the incident, was suspended from school from May 21 through June 2, 2004. His no trespass order lapsed until June 9, 2004 so that he could participate in graduation ceremonies, but became effective again following graduation. Both C.H. and B.S. were unable to participate in the Thurmont - Emmitsburg Community Show ("Show") held at Catoctin High School on September 10 -12, 2004 because they were not permitted on school grounds.[1]

Meanwhile, the school system undertook steps to repair the damage to the football field. After the initial attempts at seeding failed to yield satisfactory production of new growth, Ray Barnes, Executive Director of Facilities Services, determined that sodding the areas provided the best possibility that the field would be restored in time for the upcoming athletic season. The sod

[1]Individuals are able to show and sell their livestock at this show. Both boys requested permission from Ms. Bonitatibus to attend the show. Ms. Bonitatibus denied both requests. Another individual involved in the incident, who was still a Catoctin High School student, was able to participate in the show.

was only used in the vandalized areas but the entire field was seeded and fertilized in order to knit the sod area to the existing turf and eliminate the specific vandalized areas. In addition, an irrigation system was needed because a significant amount of water was necessary for the sod installation.[2]

Appellants filed appeals with the Superintendent disputing the final bill and calculation of restitution charges based primarily on the decision to sod the areas rather than to plant seed. By decision dated December 14, 2004, Dr. Linda Burgee, Superintendent, upheld the principal's decision ordering restitution in the amount of $2500 for each student involved. The final calculation of charges is as follows:

Labor	$ 3,764.36
Material	9,868.94
Grand Total	$ 13,633.30
Less insurance reimbursement	1,930.00
Final calculation	$ 11,703.30

Dividing the charges by four, the amount equals $2,925.83 per person involved. Dr. Burgee indicated, however, that the amount of restitution was $2,500.00 per person based on legal limits.[3]

With regard to the decision to sod the affected areas of the field, Dr. Burgee indicated that the initial seeding attempts were unsatisfactory and that sodding made it more likely that the field would be ready in time for athletics in August. Dr. Burgee also noted the desire to have the vandalism mark eliminated in its entirety so that other students would not be continually reminded of the incident or be encouraged to leave their own lasting mark on the school property upon graduation. As for the no trespassing issue, Dr. Burgee indicated that once restitution was made in full, she would lift the no trespass orders against B.S. and C.H.

On further appeal, the local board unanimously upheld the decision to order restitution in the amount of $2,500.00 per student. Regarding the decision to sod, the local board indicated that it was not unreasonable for the staff to be concerned that failing to sod, by waiting longer to determine whether seeding would be sufficient, could have jeopardized the condition of the field for athletic practice in August. The local board also indicated that the actual costs were explained in detail, with the provision of invoices, and were clearly supported by the evidence. The local board further explained that the no trespass orders were justified because C.H. and B.S.

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[2]Only the costs of the parts needed to adapt the irrigation system to the Catoctin High School water system were charged to Appellants.

[3]The initial billing from the school system of $10,244.99 was inaccurate. *See* 9/20/04 memorandum from Barnes to Bonitatibus. This error did not affect the restitution amount since restitution was limited to $10,000.00 total for four students.

were no longer students over whom the school system retained control; therefore, the only means of addressing future behavior and assuring compliance with the restitution, except for pressing criminal charges, was to ban these individuals from school property and activities thereon through a no trespass order.

LEGAL BACKGROUND

Section 7-305 (g) of the Education Article provides authority for the imposition of restitution. It states as follows:

> (g) Restitution for damage to school property.--(1) This subsection does not apply if the student is referred to the Department of Juvenile Services.
>
> (2) If a student violates a State or local law or regulation and during or as a result of the commission of that violation damaged, destroyed, or substantially decreased the value of school property or property of another that was on school property at the time of the violation, as part of a conference on the matter with the student, the student's parent or guardian and any other appropriate person, the principal shall require the student or the student's parent to make restitution.
>
> (3) The restitution may be in the form of monetary restitution not to exceed the lesser of the fair market value of the property or $2,500, or the student's assignment to a school work project, or both.

Consistent with §7-305 of the Education Article, Frederick County Public School regulation 400-75 – Restitution for Damage to School Property, limits restitution to "the lesser of the fair market value of the property or $2,500.00." Although these provisions address the monetary amount of restitution for students, the school system used the same restitution standard for the individuals involved in the incident who were not students.

Standard of Review

A restitution decision by a local board is appealable to the State Board of Education. *See* Md. Code Ann., Educ. § 4-205 (c); *see also Little v. Harford County Board of Education*, MSBE Opinion No. 99-18 (March 30, 1999). The local board's decision 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 13.A.01.01.03E.

ANALYSIS

Appellants do not dispute that C.H. and B.S. were involved in the incident and bear responsibility for providing restitution to the local board. Appellants, however, maintain that the amount of restitution exceeds a reasonable repair cost. Specifically, Appellants argue that the school system did not give the grass sufficient time to grow after seeding before making the decision to sod the field, resulting in a higher repair cost. They also argue that excess amounts of grass seed and sod were used. Appellants also maintain that C.H. and B.S. were treated unfairly when they were not permitted to attend the Thurmont - Emmitsburg Community Show based on the no trespass orders, while the individual who was still a student at the school was permitted to attend the show.

With regard to the restitution amount, Ms. Bonitatibus advised Appellants that there might be replacement costs involved rather then just repair costs. After conferring with a grass restoration specialist and the local extension office, the Executive Director of Facilities Services determined that sodding the field gave the highest probability that the field would be restored and ready for school athletics in August. Mr. Barnes indicated to the superintendent that the decision to sod was made because the initial attempts to seed the area yielded very little production.

While the Appellants disagree with the school system's decision regarding the restoration of the football field and the cost incurred in doing so, they have submitted no evidence that the mode of repair selected by the local board was unreasonable. C.H. and B.S., along with their accomplices, damaged the field through their vandalism. It was within the discretion of the school system to determine how to deal with the repair and replacement of the field to try to make it ready in time for August athletics. As the school system explained, sod was used only in the vandalized areas. The entire field was seeded and fertilized in order to knit the sod to the existing turf to try to eliminate the specific vandalized areas. Based on the record in this case, it is our opinion that the school system acted reasonably in repairing the field in this way. *See Callahan v. Howard County Board of Education*, MSBE Opinion No. 03-15 (March 25, 2003) ("While there was a difference of opinion in this case between the Traffic Engineering Office and the Police Department, reliance on one opinion over another when there is a basis for doing so does not render the local board's decision arbitrary, unreasonable, or illegal.").

Appellants also argue that their sons were inappropriately denied access to Catoctin High School premises making them unable to attend the Thurmont - Emmitsburg Community Show, and that this penalty is inconsistent with the discipline imposed on another student involved in the vandalism. With regard to C.H. and B.S. being prohibited from attending the Show, it is our opinion that this issue is 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 Arnold v. Carroll County Board of Education*, MSBE Opinion No. 99-41 (September 22, 1999); *Farver v. Carroll County Board of Education*; MSBE Opinion No. 99-42 (September 22, 1999); *Chappas v. Montgomery County Board of Education*, 7 Op. MSBE 1068 (1998). Because the

show took place on September 10 -12, 2004, there is no effective remedy that this Board could provide, even if we chose to do so, which we do not.

Alternatively even if this issue were not moot, Ms. Bonitatibus' decision not to issue a no trespass letter to the other individual because he was still a student at Catoctin High School was reasonable because the school retained a measure of control over him. The local board explained in its decision that the school system had no control over C.H. and B.S. because they were no longer students, therefore the only means of addressing future behavior and assuring compliance with the restitution, except for pressing criminal charges, was to ban them from school property which would include any activities taking place on school property. In addition, the superintendent indicated that once restitution was made, she was willing to revoke the no trespass letters in order for the individuals to legally come onto the school premises. From every perspective, there was a reasonable basis for the local board's decision.

CONCLUSION

For all of the above reasons, it is our opinion that the local board's decision was neither arbitrary, unreasonable, or illegal. Accordingly, we uphold the local board's decision regarding restitution in the amount of $2,500.00 per person and the principal's decision to prohibit C.H. and B.S. from entering school property pending payment of the restitution.

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September 27, 2005