

IN THE MATTER OF
CALVERT COUNTY PUBLIC
SCHOOLS DRIVER'S EDUCATION
PROGRAM

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 03-29

OPINION

Drive-Safe, Inc., a private driver education program operating in Calvert County, contends that Calvert County Public Schools ("CCPS") unlawfully operates its driver education program by: (1) conducting a portion of the behind-the-wheel instruction during the school day while charging a fee in violation of COMAR 13A.04.03.06; and (2) allowing students to miss classroom instruction in order to take the driving portion of the program in violation of section 7-414(b) of the Education Article, Annotated Code of Maryland. Drive-Safe requests that CCPS be required either to operate all portions of the program after the regular school day or cease charging a fee for participation in the program. Drive-Safe also requests that CCPS be required to refund the \$250.00 fee to participants in the program.

The local board maintains that CCPS is not unlawfully operating its driver education program because that portion of the behind-the-wheel instruction that occurs during the school day does not interfere with other schoolwork. Drive-Safe has submitted in reply an opposing memorandum with two affidavits from students describing the hours of driver instruction.

FACTUAL BACKGROUND

CCPS operates a driver education program and charges a \$250 fee for students to participate in the program. Students are provided information regarding the course offering and given the option of signing up for it. The classroom portion of the program meets after school from 2:30-5:45 p.m. for a total of 30 hours. The local board has explained that the six hours of driving instruction is also conducted after school. However, students are given the opportunity for behind-the-wheel instruction during the school day provided it does not interfere with other schoolwork as determined by school administrators. Students are given this option to accommodate their extra-curricular schedules.

ANALYSIS

Section 7-414 of the Education Article provides in relevant part:

- (a) (1) Each county board may offer instruction in the safe operation of a motor vehicle to high school students who are 15

years old or older.

(2) The instruction shall be given as provided by Title 16, Subtitle 5 of the Transportation Article.

(3) Each county board shall determine whether the course is an elective or a required course.

(4) The State Board shall determine what credit, if any, is allowed to successful students of the course.

(b) The principal of each school that offers the driver education course shall arrange the time set aside for actual driving instruction so that it does not interfere with other school work.

COMAR 13A.04.03.06 - Charging a Fee and Conducting Program During School Day

Regulations concerning driver education programs are contained in COMAR 13A.04.03. However, the regulations are applicable only to public school and nonpublic school driver education programs that are funded through the State Department of Education.¹ At the time of adoption of the regulations, there was a specific State budget appropriation for driver education courses. *See* Md. Code Ann., Educ. § 7-412.1 (Supp. 1988) This statutory funding provision was repealed in 1995 and there has not been a State budget appropriation for driver education programs since that time. Thus, we do not believe the requirements set forth in the driver education program regulations at COMAR 13A.04.03 are relevant to this dispute.

Nonetheless, Article VIII, Section I of the Maryland Constitution requires the General Assembly to establish and maintain “a thorough and efficient system of Free Public Schools.” In interpreting this provision, the Court of Appeals has said that it “means that schools must be open to all without expense.” *State of Maryland ex rel. Clark v. The Maryland Institute for the Promotion of the Mechanic Arts*, 87 Md. 643, 661 (1898). The Attorney General has opined that at the very least “anything directly related to a school’s curriculum must be free.” *72 Opinions of the Attorney General* 262, 267 (1987). The Opinion noted, however, that “fees for instruction outside the school’s courses would not necessarily be forbidden.” *Id.* at 267 n. 5.

The Calvert County Superintendent’s Office has verified that students receive no credit for taking driver’s education. Therefore, consistent with the legal principles described above, we

¹COMAR 13A.04.03.01B provides: “All public school driver education programs and any nonpublic school driver education program funded through the State Department of Education shall comply with these regulations.” Further, Regulation .09 states that “[o]n May 1st of each year, the State Department of Education shall notify eligible local school systems and nonpublic schools of the State reimbursement rate and procedures for the ensuing fiscal year.”

do not believe that CCPS has acted illegally by charging a fee for driver's education instruction.

Section 7-414(b), Education Article - Interference With School Work

To support its contention that CCPS has violated § 7-414(b) by permitting students to miss academic classroom instruction, Drive-Safe has submitted two affidavits. The first affidavit is from a student who graduated from CCPS in June, 2000. She states that she was required to be absent from and miss classroom instruction in order to participate in the driving portion of the program. *See* Affidavit of Crystal Bracey.

The second affidavit is from a current CCPS student who states that she has witnessed students leave school grounds for the driving portion of the driver education program during various times throughout the school day. She also describes another student's driving schedule that allegedly required the student to miss a different class period over a two-day cycle. *See* Affidavit of Katelyn Rozenbroek.

While it may be acceptable for students to choose to participate in the driving portion of the program during a free period, we do not think it is good policy for students to be excused from academic classes in order to do so. We are therefore pleased to advise that by letter dated June 27, 2003, the attorney for CCPS has indicated that "the Calvert County Board of Education has reviewed their Driver Education Program and, beginning in the Fall of 2003, will conduct their Driver Education Program entirely after school hours."

CONCLUSION

For these reasons, we find that the Calvert County Public School System has not acted unlawfully in this matter. Accordingly, we deny the request to order CCPS to refund the \$250 fee to students who took driver's education instruction.

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