

In Re: TALBOT COUNTY LACROSSE  
PLAYERS SUSPENSION CASES

BEFORE THE  
MARYLAND  
STATE BOARD  
OF EDUCATION  
Opinion No. 12-12

OPINION

INTRODUCTION

These two cases are the Talbot County lacrosse player suspension cases. The Talbot County Board of Education (local board) filed a Motion for Summary Affirmance. The Appellants filed Oppositions. The local board filed a Reply.

FACTUAL BACKGROUND

On April 12, 2011, Ms. Duncan, Student Services Supervisor for Talbot County Public Schools (TCPS), received a call from the Department of Juvenile Services (DJS) advising her of the following: a parent known to the DJS worker had alleged that members of the Easton High School lacrosse team had alcohol in their water bottles; some of the boys involved also played on the ice hockey team; the boys sat mostly in the back of the bus; and the boys may be those who do not play much. (Student 2, Doc. Packet, Ex. 3, Duncan Statement, 4/13/11). Ms. Duncan discussed the information with senior staff and they decided to search the Easton High School (Easton) lacrosse team buses prior to their departure for an athletic event on April 13, 2011. (*Id.*).

On April 13, Ms. Duncan, Principal Stofa, Assistant Principals Bowen and Stockman, and the security staff readied themselves to conduct the search. Staff entered the bus after students were on board. Principal Stofa advised the students that they would be conducting a search and explained the manner in which they would carry it out. Staff provided the students with name labels to place on their bags for identification purposes. (*Id.*).

Ms. Bowen reported that while the Principal was giving the instructions, one of the students, Student 1, told her that he had a knife in his bag and asked if he should retrieve it. Ms. Bowen instructed him to do so and he handed her a blade knife about 2 ½ inches long. She then instructed Student 1 to leave his bag on the seat and exit the bus. Thereafter, Ms. Bowen helped search the bags after they were moved to the sidewalk. She found a Leatherman tool containing 3 knife blades in Student 1's athletic bag. (Student 1, Mtn. p.3 and Ex. 1, Picture of knives).

At about the same time that Student 1 gave Ms. Bowen the blade knife Student 2 told her he had a butane lighter in his bag. She told Student 2 to leave the bag on the seat and exit the bus. She then confiscated the lighter.

TCPS staff contacted the Easton Police Department and turned over the confiscated items to the police. Student 1 was arrested at the site of the search.

Principal Stofa suspended Student 1 for ten days with a recommendation that the Superintendent expel him. Appellants appealed the Principal's decision to the local Superintendent. After school system staff conducted an investigation of the matter, the Superintendent determined that a 10 day suspension, and not expulsion, was appropriate given the circumstances of the case. (Student 1, Doc. Packet, Ex. 2, Superintendent's Letter, 4/21/11).

Principal Stofa suspended Student 2 for one day. Appellants appealed the Principal's decision to the local Superintendent. After school system staff conducted an investigation of the matter, the Superintendent determined that the 1 day suspension was appropriate. (Student 2, Doc. Packet, Ex. 1, Superintendent's Letter, 5/3/11).

Appellants appealed the Superintendent's decisions to the local board. Both students argued, *inter alia*, that the knives and butane lighter were tools they used to repair their lacrosse sticks. They said they were not aware that possessing those "tools" could subject them to suspension. An Assistant Coach and the Captain of the lacrosse team confirmed those statements. Specifically, Assistant Coach Gamble submitted the following statement attached to Student 1's appeal:

[Student 1's] actions on the day of the search were commendable. Apparently he remembered he had the item and reported it. He has always been honest with me as well. I know the purpose of those items were [sic] to fix lacrosse sticks [and] not to cause harm to anyone. I know what the policy says as since this incident I have read it. Had I had instruction on this previously, I would have made known to the kids and made sure they did not possess these tools. As a coach the thought never crossed my mind as they were no different than tools that were needed to maintain the equipment that they have to purchase to play the sport. The school does not purchase this equipment for the kids, does not supply the tools to maintain the sticks and helmets nor has it ever been expected of us as coaches to maintain this equipment. I'm not making excuses but want you to know that this issue has never been raised in the past nor could anyone argue that it was something that any of us should have foreseen.

The local board affirmed the suspensions with two members dissenting. The dissenting members found that the Superintendent improperly applied the TCPS student suspension policy because it was the students' first offense and that the search of the bags was illegal because it was not justified at its inception.

### STANDARD OF REVIEW

In student suspension cases, the decision of the local board is considered final. Md. Code Ann., Educ. §7-305(c). Therefore, the State Board will not review the merits of the decision unless there are "specific factual and legal allegations" that the local board failed to follow State or local law, policies, or procedures; violated the student's due process rights; or acted in an unconstitutional manner. COMAR 13A.01.05.05G(2). The State Board may reverse or modify a student suspension if the legal assertions are correct or if the decision of the local board is found to be otherwise illegal. *Id.* A decision is illegal if it is:

- (1) Unconstitutional;
- (2) Exceeds the statutory authority or jurisdiction of the local board;
- (3) Misconstrues the law;
- (4) Results from an unlawful procedure;
- (5) Is an abuse of discretionary powers; or
- (6) Is affected by any other error of law;

COMAR 13A.01.05.05C.

### LEGAL ANALYSIS

TCPS has a discipline policy that includes discretion to consider all the facts and circumstances of each case. It is not a zero tolerance policy calling for mandatory suspensions or automatic suspensions of particular lengths of time for particular offenses. The TCPS discipline policy allows school staff to exercise discretion, even in cases like this one, and to consider all of the particular circumstances relevant to the case.

With all that in mind, and given our standard of review in school discipline cases, we reiterate our long held view that we will not question the appropriateness of the discipline imposed in a particular case unless we find that the facts and circumstances of the case indicate a violation of law. Thus, we turn to the legal issues presented in this case.

The Appellants set forth the three legal arguments in support of their appeals:

- 1) The local board failed to follow local policies and procedures when it suspended them for a first-time violation of a school rule.
- 2) The local board violated their due process rights because they did not have fair notice that possession of the butane lighter or the knives could result in suspension and the policy is ambiguous about whether intent is an element of the possession offense.

- 3) The local board violated their Fourth Amendment rights because school officials initiated a group search based on vague, generalized allegations.

*Failure to Follow Local Policies and Procedures*

Appellants claim that the local board violated its own policies when it suspended them. Failure to follow the school system's policies or procedures is one basis for legal review of the local board's decision.

With regard to suspension, TCPS Policy Code 10.22 states:

- I. Suspension is the temporary removal of a student from school or class by the principal or superintendent. This removal from school or class, or other school activities during this period, under normal conditions should represent a last resort effort. Unless the next paragraph applies, suspensions should be used only in discipline cases of repeated rule infraction, and after all other available disciplinary means have been exhausted. Suspension should be viewed under normal circumstances as a remedial action to correct extreme student misbehavior.

Thus, except for certain circumstances described below, the policy protects students from removal from school for a first offense. For both students, this was a first offense. The TCPS Policy Code 10.22 says:

- II. A student may be suspended for a first offense when fighting, or when drug or alcohol misuse occurs, when a student's presence poses a physical danger to other students or staff, or when a student's behavior is judged to seriously disrupt the educational process for other students. . . . A student whose presence in school poses a continuing danger to persons or property, or an ongoing threat of disrupting the academic process, may be removed immediately from school, provided that the notice and hearing required by this subsection is provided as soon as possible.

Given that this was the first offense for both Student 1 and Student 2, they could be suspended under the policy only if their offenses involved fighting or drug or alcohol misuse, their presence posed a physical danger to other students or staff, or their behavior seriously disrupted the educational process for other students.

There is no dispute that the offenses here did not involve fighting, drugs or alcohol use. Nor did the students' "presence" pose a physical danger to other students. Indeed, the local board does not argue such claims. Rather, the local board ruled that the suspensions were

justified because the students' conduct caused a serious disruption to the educational process for other students.

The local board's decisions address the disruption issue briefly. As to the possession of the knives, the local board made only one statement about why the student's behavior (*i.e.* possession) was seriously disruptive. The local board said, "Possession of a contraband item such as a knife, which by its very presence increases the risk of bodily injury in the educational environment, is seriously disruptive of the educational process." (Student 1, Mtn. Ex. 4).

The local board also commented on the Dissent's view that the possession was not disruptive.<sup>1</sup> The majority stated "[t]he Dissent makes light of the possibility that a knife can disrupt the educational process. Unfortunately, experience shows otherwise. First, [Student 1] had two knives, not just one. Also, there have been unfortunate cases of students bringing knives to school and using them as weapons to cut other students. No school system in Maryland permits students to bring knives to school. We consider bringing a knife to school one of the most serious offenses that a student can commit." (*Id.*).

The decision in the butane lighter case is similar in word and reasoning.

In the local board's view, any possession of these particular items is *per se* disruptive because of the potential of both types of items to cause harm. In that regard we point out, as did the Dissent, that many items that students bring to school, including lacrosse sticks, have the potential to cause harm.

The Appellants maintain that Student 2's possession of the lighter and Student 1's possession of the knives cannot reasonably be viewed as disrupting the educational process. They assert that Student 1 and Student 2 possessed the items for the purpose of performing repairs to their lacrosse equipment and nothing more. The items were stowed in their bags. Student 1 and Student 2 voluntarily told school staff that they had the knives and lighter in their duffle bags. They disclosed that information during the school's preplanned search for alcohol.

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<sup>1</sup> The Dissent stated:

The majority contends: "Possession of a contraband item such as a knife, which by its presence increases the risk of bodily injury in the educational environment, is seriously disruptive of the educational process." The Dissent does not believe that the presence of a penknife in a lacrosse bag used for the purpose of repairing stick heads that is on a bus going to a lacrosse game rises to that occasion. It is more plausible to believe that in this situation, the lacrosse stick itself would pose more of a danger than a penknife.

(*Id.*).

We point out that, based on an anonymous tip, the school had already decided to devote staff time and resources to the search and to deal with what would be found. We also note that it was the decision of school personnel to call the police who subsequently arrested Student 1 at the site of the search in front of the student lacrosse players.

Those facts raise serious doubts that it was the students' conduct here that caused a serious disruption to the educational process - - a requirement to suspend first offenders under the school discipline policy.

Without more, however, under our standard of review, we would defer to the local board's conclusion that the students' behavior seriously disrupted the educational process. Relevant to the disruption inquiry, however, we have considered whether the coaching staff tacitly approved the possession of the knives and lighter for use as tools to repair the lacrosse equipment.

Both Student 1 and Student 2 maintain that their possession of the knives and lighter could not be disruptive because it was the practice of the players to use the knives and lighters in the presence of the coaches to repair their equipment and the coaches did not warn them that possession was prohibited. Student 1 specifically asserts that the coaches repeatedly watched him perform the repairs with his knives while he was sitting on the bus without warning him or stopping him from doing so. (Student 1, Appeal, p. 6).

In support of this claim, Student 1 attached to his appeal to the local board a statement from Joe Gamble, the Assistant Coach of the lacrosse team.<sup>2</sup> The relevant portion of Mr. Gamble's letter states as follows:

[Student 1's] actions on the day of the search were commendable. Apparently he remembered he had the item and reported it. He has always been honest with me as well. I know the purpose of those items were [sic] to fix lacrosse sticks [and] not to cause harm to anyone. I know what the policy says as since this incident I have read it. Had I had instruction on this previously, I would have made known to the kids and made sure they did not possess these tools. As a coach the thought never crossed my mind as they were no different than tools that were needed to maintain the equipment that they have to purchase to play the sport. The school does not purchase this equipment for the kids, does not supply the tools to maintain the sticks and helmets nor has it ever been expected of us as coaches to maintain this equipment. I'm not making excuses but want you to know that this issue has never been raised in the past nor could anyone argue that it was something that any of us should have foreseen.

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<sup>2</sup> We contacted counsel for the local board who verified that Mr. Gamble is the Assistant Coach of the lacrosse team.

According to that statement, Mr. Gamble was aware that players used knives and lighters to repair their equipment and did not advise them that it was a violation of school policy. He was not even aware himself that possession of these items was prohibited under school policy.

Appellants also attached to their appeal to the local board a letter from the Captain of the lacrosse team. He stated that various students have possessed similar items at various times in order to repair their sticks and that the players were unaware that it was a policy violation until this case came to light.<sup>3</sup>

The local board did not address those two written statements when it rendered its decision. Moreover, the local board did not address those statements in its Motion for Summary Affirmance. The only reference that the local board makes to the coaches' conduct in this case is an assertion in its Motion for Summary Affirmance that "when Coach Dennis Keenan was interviewed with regard to this matter he denied he had ever told students they could bring knives or lighters to maintain their lacrosse sticks, or that he was aware students were bringing knives or lighters with them to perform maintenance. Coach Keenan further stated that students were aware that coaching staff maintained a tool kit for these types of repairs". (Student 1, Mtn., p. 4).

We point out that there is no indication of who interviewed Coach Keenan, who is the Head Coach of the lacrosse team. There is no written statement from him in the record. There is no affidavit.

The local board has submitted a written statement from Lynne Duncan:

After the search I approached Mr. Stofa who was standing by the bus with Dennis Keenan. All the students were on the bus. When I asked if everything was okay he told me he had a student with knives and one with a lighter. (they were on the bus). Mr. Stofa said he'd warned them that they couldn't have these items.

Ms. Duncan's statement that Mr. Stofa warned the players that they could not have the items is a general statement lacking any specifics about what was said, when it was said, and what players were present when it was said.

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<sup>3</sup> It bears mentioning that there was a delay in getting the full case record from the local board in this matter. While the local board originally produced the majority of the record, there were several documents that we noticed were missing from the initial filing, including the statement of Joe Gamble and the Team Captain. Those important and relevant documents were ultimately produced after we contacted legal counsel for the local board. COMAR 13A.01.05.03E requires the local board to "transmit the record of local proceedings with the local board's response" to the appeal. It is our expectation that in each appeal before this Board the local board will comply fully with this requirement. Every document in the record should be produced in a single packet similar to how a case record is produced in an appeal to an appellate court.

In comparison, we have the written statements of the Assistant Coach and of the Team Captain. They are detailed and specific about the players' common use of the tools and the lack of knowledge that they were items they could not have in their duffle bags for such use. Moreover, the Assistant Coach stated that the school did not have a tool kit for the students to use. Those statements corroborate what the Appellants have asserted all along - - that they believed they were permitted to possess the knives and lighter as tools to repair the lacrosse equipment.

We have considered whether the differing accounts create a dispute of material fact which would require referral of the issue for an evidentiary hearing. To create a "dispute" there must be some kind of reliable evidence on both sides of the issue. The local board's evidence consists of the bald assertion in its Motion of what Coach Keenan said. Bald assertions are not sufficient to create a genuine dispute of fact on the issue. That leaves the general statement of Ms. Duncan that Mr. Stofa told her he "warned" the students they couldn't have "these items." We view Ms. Duncan's double hearsay statement as some evidence that one or more students were warned at some time that the items were not allowed. "The existence of a scintilla of evidence in support of [a] claim is insufficient" to create dispute of fact, however. *See Seaboard Surety Co. v. Richard F. Kline, Inc.*, 91 Md. App. 236, 244 (1992). We consider the Duncan Statement to fall into that category of evidence.

On the other hand, the statements of the Assistant Coach and Team Captain are detailed, specific, written and signed. They carry greater evidentiary weight and reliability than the Duncan statement. They represent sufficient evidence that Student 1 and Student 2 reasonably believed that the coaches had tacitly approved the possession of knives and lighters by the players for equipment maintenance and that they reasonably relied on that approval.

Because this tacit approval affects the legal analysis of whether the local board violated its own policy governing suspension for a first offense, we return to that question.

Thus, we must ask whether there was any evidence to support the conclusion that the conduct of Student 1 and Student 2 seriously disrupted the educational process for other students. If there was not, the local board's decision would be illegal.

We review the facts. First, the students themselves disclosed the presence of the items in their bags. Second, the possession and use of those items was tacitly approved by the coaching staff. Third, it was common knowledge that the items are the tools used to repair lacrosse sticks. Fourth, the students used the items openly on the bus to repair their equipment. Fifth, the school staff initiated their search based on an anonymous tip, not because of anything Student 1 or Student 2 did. Sixth, the items were found in a search for alcohol in all the lacrosse players' bags, not in search to root out these types of items. Seventh, school staff called the police who arrested Student 1 on the spot - - a disruptive event in and of itself.

In our view, based on those facts, there is no support for a conclusion that it was the conduct of these students that seriously disrupted the educational process. Such a ruling, under



the Court of Appeals abuse of discretion standards, “is clearly against the logic and effect of particular facts and inferences.”

A determination that an abuse of discretion occurred “depends on the particular facts of the case [and] the context in which the discretion was exercised.” *Myer v. State*, 403 Md. 463, 486 (2008). An abuse of discretion occurs:

“where no reasonable person would take the view adopted by the [trial] court,” or when the court acts “without reference to any guiding rules or principles.” It has also been said to exist when the ruling under consideration “appears to have been made on untenable grounds,” when the ruling is “clearly against the logic and effect of facts and inferences before the court,” when the ruling is “clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result,” when the ruling is “violative of fact and logic,” or when it constitutes an “untenable judicial act that defies reason and works an injustice.”

There is a certain commonality in all these definitions, to the extent that they express the notion that a ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling. The decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable. That kind of distance can arise in a number of ways, among which are that the ruling either does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective. That, we think, is included within the notion of “untenable grounds,” “violative of fact and logic,” and “against the logic and effect of facts and inferences before the court.

*See King v. State*, 407 Md. 682, 697 (2009), citing *North v. North*, 102 Md. App. 1 (1994).

When a decision of the local board reflects an abuse of discretion, it will be reversed as illegal. We must do so here, fully recognizing that possession of knives and lighters in school is not appropriate. Discipline is appropriate for such offenses, but the discipline meted out here was not appropriate because it violated TCPS’s own first offense policy. We do not suggest here that the possession of those items without more can never be viewed as seriously disrupting the educational process. We will not list all the scenarios that might rise to that level. This is not one of them, however.

Nor, should our opinion be interpreted to mean that it is appropriate for any student, including lacrosse players, to bring knives and butane lighters to school. TCPS should have a toolkit for lacrosse players to use and coaches should make it clear that failure to use the toolkit by bringing “tools” to school for repair of lacrosse equipment could lead to suspension.

Due Process Issue: Notice

Both Appellants maintain that the local board's decision violated their due process rights because the school system's discipline policy failed to provide them with fair notice that possession of a butane lighter, a blade knife, and the tool knife blades of the type at issue here was prohibited.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires that school rules provide sufficient notice of what conduct is prohibited and not be impermissibly vague. *Chicago v. Morales*, 527 U.S. 41, 46 (1991). A provision may be declared void if it fails to give a person adequate warning that the conduct is prohibited or if it fails to set out adequate standards to prevent arbitrary and discriminatory enforcement. *Id.* at 56. Generally, a provision is unconstitutionally vague where it "either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." *Kolaendar v. Lawson*, 461 U.S. 352, 357 (1983).

The Supreme Court has stated, however, that "maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures . . ." and that "given the school's need to be able to impose disciplinary sanctions for a wide range of unanticipated conduct disruptive to the educational process, the school disciplinary rules need not be as detailed as a criminal code which imposes criminal sanctions." *Bethel v. Fraser*, 478 U.S. 675, 686 (1986).

We have reviewed the policies that the local board asserts provide sufficiently clear notice that possession of a knife or butane lighter may be grounds for suspension or expulsion.<sup>4</sup>

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<sup>4</sup> *Notice Re: Knives*

The 2010-2011 Easton High School Warrior Student Handbook (Handbook) states that students may be assigned detention, given suspension, or recommended for expulsion for possession of contraband. It sets forth a list of contraband which includes "dangerous weapons." (Student 1, Mtn. Ex. 5, p. 15). It also advises that all students are required to follow school rules and regulations, and indicates that copies of the rules and regulations are available in the school office.

Among those rules and regulations is the TCPS student suspension policy. (Student 1, Mtn. Exs. 6 and 7). Policy Code 10.14 prohibits students from possessing weapons on school grounds. Policy Code 10.22-AR lists the specific offenses that are prohibited and their penalties. The policy provides for a 1-10 day out-of-school suspension for possession of weapons other than guns or firearms, but does not provide any definition or examples of these items. (*Id.*)

*Notice Re: Butane Lighter*

The TCPS disciplinary policy recommends 1-10 days suspension for possession of "explosives." Policy Code 10.22-AR (Mt. Ex. 5). Neither the Student Handbook nor the TCPS disciplinary policy lists butane lighters as explosives.

We need not limit our review of the notice issue to the Handbook and the TCPS policy, however, because Student 2 had additional information concerning the school system's view of possession of butane lighter. Specifically, on September 10, 2010, he signed a Talbot County Public High School Student Parking Permit Application which contains a section entitled "Weapons on School Property" which explicitly states that students "shall not possess, handle, or transmit any object that can reasonable [sic] be considered a weapon" and that students are subject to a penalty ranging from suspension to expulsion if they do so. (Student 2, Mtn. Ex. 6). It then lists butane lighters, among a host of other items, as items that are considered explosives under the more general heading of weapons. (*Id.*) Thus, although the Handbook and policy did not address whether possession of a butane lighter was prohibited, Parking Permit Application did so.

The local board may be correct that the discipline policy is not unconstitutionally vague about the possible disciplinary consequences of possession of those items.

We are more concerned, however, about notice of possibility of arrest for certain conduct.

The policy states that the police *may* be called for any of the following infractions:

- Gambling;
- Harrassment of Other Students/Bullying;
- Leaving Class/School Grounds without Permission;
- Possession of Contraband (Beepers/pagers, cellular phones, pepper mace, laser pointers, squirt guns, projectile shooters, dangerous weapons);
- Possession of Obscene Material;
- Racist or Sexist Comments;
- Theft;
- Trespassing;
- Vandalism;
- Verbal Assault.

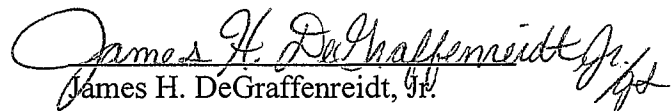
Warriors Student Handbook at 15-16.

Student 1 was arrested - - a consequence far more severe than a 10 day suspension. It is arguable that the knives he possessed could fall into the contraband category. Calling the police, however, is a discretionary decision under the disciplinary policy. This case should give rise to a review of the appropriate use of that discretion and the appropriate use of the authority to call the police.

### CONCLUSION

This case is about context and about the appropriate exercise of discretion, in full consideration of all the facts involved in the case, including whether to suspend and whether to call the police.

For all the reasons stated herein, we reverse the local board's decisions to suspend Student 1 and Student 2 and direct that the students' records be fully and completely expunged.<sup>5</sup>

  
James H. DeGraffenreidt, Jr.  
President

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<sup>5</sup> Because we have reversed the local board's decisions on the two grounds stated above, we need not address the Appellants' remaining legal arguments.

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April 10, 2012