

BONITA MALLARDI,

Appellant

v.

CARROLL COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-07

OPINION

In this appeal, the mother of a student at Francis Scott Key High School (“FSK”) challenges the decision dismissing her son from participating on the FSK varsity football team for the remainder of the 1998-99 season based on “conduct unbecoming an athlete.” Appellant argues that the local board’s decision is arbitrary, unreasonable and illegal. The local board has filed a motion maintaining that the appeal is moot and should be dismissed because the 1998-99 football season has ended. Alternatively the board argues that its decision should be summarily affirmed. Appellant has filed an opposition to the motion.

BACKGROUND

After a football game on the evening of September 11, 1998, Bryan attended an un-chaperoned party at the home of another student where minors were illegally consuming alcohol. Numerous other students attended the party, including other members of the FSK varsity football program. Police were called to the party where they cited several students for underage alcohol consumption. Bryan was not among those students who received citations. Under Carroll County Board policy, a student who attends a party where alcohol is consumed by minors, even though the party is off school premises, is ineligible for participation in extracurricular activities.

The FSK varsity football coach, Michael Coons, was advised by his assistant coaches that several of his players had attended the party on September 11. On Monday, September 14, the principal of FSK, A. George Phillips, addressed the football team and other sports teams to express his displeasure with the events of Friday night. Coach Coons also addressed the football team, and asked each player whether he had attended the party. As set forth in the local board’s findings:

Some players admitted being in attendance. Bryan did not admit being present at the party. Later, Mr. Coons learned that several players had not been forthcoming about their presence at the party. On Wednesday, September 16, 1998, Mr. Coons again met with the squad and asked them to come forward if they had been at the party. One player came forward. Bryan did not come forward. On

Thursday, Mr. Coons was advised that additional players were involved and that their involvement could be corroborated. On Friday, he dismissed three additional players from the team, including Bryan. When he met with Bryan, Bryan stated that he 'lied to him on Monday' and also said that '(he) wasn't drinking that night.' (Reference omitted.) It was Mr. Coons' decision that Bryan's conduct in not admitting his presence at the party was 'conduct unbecoming an athlete' which warranted dismissal from the football squad for the 1998-99 school year.

Although the behaviors identified relate to Bryan's attendance at a party where underage drinking occurred, the school system's disciplinary regulations regarding alcohol were not invoked. Bryan was not disciplined by Coach Coons for actual or constructive possession of alcohol, but for conduct unbecoming an athlete based on Bryan's failure to respond truthfully to the coach's questions.

Appellant appealed Coach Coons' football suspension decision to the school principal who conducted his own investigation. Mr. Phillips found that Coach Coons had followed appropriate procedures in reaching his decision to suspend Bryan from the team, and upheld the decision.

Appellant appealed the ineligibility determination to the local superintendent. By letter dated October 27, 1998, the superintendent's designee, Dorothy D. Mangle, clarified that the issue in dispute was whether Bryan denied breaking the athletic code when questioned by Coach Coons on September 14. Ms. Mangle explained Coach Coons' position that Bryan initially denied breaking the Athletic Code, but later admitted the violation. After conducting her own investigation into the matter, Ms. Mangle advised Appellant that the disciplinary decision was being upheld. In a letter dated October 30, 1998, Ms. Mangle states the following:

In investigating this case, the most important element in this dispute is whether or not Bryan violated the Athletic Code during his attendance at a September 11, 1998 party. Mr. Coons contends that Bryan did and did not initially tell him the truth about the violation. Mr. Coons labeled that as "conduct unbecoming an athlete." He suspended Bryan from the football team. Mr. Phillips supported that decision as the Carroll County Interscholastic Handbook assigns coaches "full control of the team and team membership in matters pertaining to coaching and athletic discipline."

....

Absent any evidence to resolve the dispute as to whether Bryan broke the Athletic Code by drinking at the September 11, 1998 party and there being no denial of Bryan's attendance at a party where alcohol was in "constructive possession," I am invoking the

Francis Scott Key High School team rules and regulations which both Bryan and Mrs. Mallardi signed and agreed to abide. The regulations state that when there is a determination of “conduct unbecoming an athlete . . . the administration will make the final decision as to what the punishment shall be for that particular offense.” Your petition to have Bryan restored to the football team is denied. We will uphold the decision of those assigned the authority to make decisions regarding disciplining athletes.

Appellant appealed the superintendent’s decision to the local board. In a memorandum dated February 15, 1999, Ms. Mangle explained to the local board that:

[A]lthough the behaviors identified as warranting invoking a consequence for ‘conduct unbecoming an athlete’ relate to Bryan’s attendance at a party where underage drinking occurred, disciplinary regulations regarding alcohol were not invoked. Bryan was not disciplined for actual or constructive possession of alcohol. Bryan was disciplined for ‘conduct unbecoming an athlete’ as determined by his coach and upheld by his principal through an investigation which included collaboration (sic) by an assistant coach.

In a decision issued on April 11, 1999, the local board upheld the ineligibility determination stating that “this case stems from the local board’s long-standing drug and alcohol policies and the rules on conduct eligibility for extracurricular activities. A student who attends a party where alcohol is consumed by minors, even though the party is off school premises, is ineligible for participation in extracurricular activities.”

ANALYSIS

Appellant’s Motion for Summary Affirmance

As a preliminary matter, Appellant filed a motion for summary affirmance with her request for appeal. Subsequently, Appellant filed a motion for default against the local board for not answering Appellant’s motion for summary affirmance. The filing of these motions by Appellant in this case is not appropriate. In an appeal to the State Board, a motion for summary affirmance is filed by the party seeking to affirm the local board decision. Appellant is seeking to reverse the local board decision through an appeal to the State Board.¹ Accordingly, we will consider

¹It is likely that Appellant is confusing a motion for summary affirmance in a State Board appeal with a motion for summary judgment in a court case. A motion for summary judgment may generally be filed by either party in a case pending before a trial level court. However, regulations governing appeals to the State Board do not authorize an appellant to file a Motion

Appellant's motion for summary affirmance, memorandum of law in support of motion for summary affirmance, and all attached exhibits as documents supporting her request for appeal.

Mootness

Another preliminary matter is the local board's contention that this appeal should be dismissed as 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 Walter Chappas v. Montgomery County Board of Education*, MSBE Opinion No. 98-16 (March 25, 1998). On September 17, 1998, Bryan was dismissed from the team for the remainder of the season. That season is now over, and it is impossible for Bryan to be reinstated on the team for the portion of the season that he missed. Furthermore, as explained by Principal Phillips' affidavit, the high school does not place documentation involving a loss of extracurricular eligibility in a student's educational records. Since there is no effective remedy to be applied in this matter, we find the appeal is moot.²

Due Process

Although we find the appeal moot, we will alternatively address the substantive issues raised. Appellant alleges that her due process rights were violated by the local board's failure to grant her an oral evidentiary hearing in this case. It is well established however 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. *See Richard Oltman v. Worcester County Board of Education*, MSBE Opinion No. 99-11 (February 23, 1999); *Daniel & Bobbie Bloch v. Board of Education of Howard County*, MSBE Opinion No. 96-27 (July 30, 1996). Here, because the local board concluded that it was unnecessary to grant Appellant an oral evidentiary hearing given the circumstances of the case, the board decided the matter on the record. This decision was entirely within the local board's discretion. Thus, there is no

for Summary Affirmance. Rather, COMAR 13A.01.01.03B describes the required contents of a request for an appeal: the parties taking the appeal, the local board decision being challenged, a brief statement of facts, the issues in dispute, and a copy of the local board opinion if available.

²Appellant has not requested the State Board to grant the above-referenced remedies. As stated in Appellant's opposition, "[t]he remedy of restoring Bryan Mallardi to the FSK football team was not contained in the Appellant's appeal to the Board of Education for Carroll County, nor is it contained within this appeal to the Maryland Board of Education presently." Rather, in the appeal to the State Board, Appellant has requested "an apology and a retraction in the local newspaper for the egregious behavior of those involved." However, as described further in our opinion, we do not believe the local board acted arbitrarily, unreasonably, or illegally. The requested remedies are therefore not appropriate.

Fourteenth Amendment due process violation.

Substance of the Appeal

On the substance of the appeal, it is well established that the standard of review for a controversy over a decision of a local board involving a local policy is that 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). Appellant confines her substantive appeal to the local board's allegedly inappropriate application of the drug and alcohol policy to her son, maintaining that he was suspended from the team based on "conduct unbecoming an athlete" for allegedly lying to his coach, and not for his attendance at the party where alcohol was used.

The FSK Athletic Regulations and Permission Form provides a list of offenses and their punishments.³ For "conduct unbecoming an athlete" the regulations state that "[s]ince this covers a wide range of unacceptable behavior, the administration will make the final decision as to what the punishment shall be for that particular offense." Additionally, the Carroll County Interscholastic Handbook assigns coaches full control of matters pertaining to athletic discipline of team members. Here, the coach investigated the matter, making certain credibility determinations, and found that Bryan had been untruthful with him regarding the events on the night of the party. His decision to dismiss Bryan from the team for the remainder of the season was upheld by the school principal who had also reviewed the matter.

The appeal documents focus on determining the precise issue Coach Coons believed Bryan to be untruthful about. Appellant claims that the issue was whether Bryan lied about drinking at the party, while the local board found in its opinion that the conduct unbecoming an athlete was Bryan's lying about being in attendance at the party. The matter is essentially a credibility dispute. The local board supported the credibility decisions made by the coach and the principal, and found no evidence to support reversal of these conclusions. Based upon our review of the record, we cannot find that the local board acted arbitrarily, unreasonably, or illegally in this matter.

CONCLUSION

For these reasons, we dismiss the appeal as moot. Alternatively, because we find that the local board did not act arbitrarily, unreasonably, or illegally in this matter, we would affirm the decision of the Board of Education of Carroll County.

Edward Andrews
President

Philip S. Benzil

³Both Bryan and his mother signed the permission form which indicates that they read and understood the team rules in the FSK Student/Parent Handbook, and would abide by them.

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February 23, 2000