

SOLOMON JAMES,

Appellant

v.

TALBOT COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 02-40

### OPINION

In this appeal, Appellants challenge the local board's decision prohibiting Solomon from participating on the baseball team at Easton High School for the second semester of the 2001-02 school year following his expulsion for violating the local board's drug and alcohol policy. The local board has submitted a Motion to Dismiss based on mootness. Alternatively, the local board has submitted a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellant has filed a reply opposing the local board's motions.

### FACTUAL BACKGROUND

During the 2001-02 school year, Solomon James was in his senior year at Easton High School. On September 7, 2001, an off-duty police officer found Solomon in possession of a case of alcohol on school grounds. The assistant principal of Easton High School suspended Solomon and recommended that he be expelled for possession of alcohol on school property consistent with local board Policy JFCHI - Alcohol and/or Drug Use by Students.<sup>1</sup> See letter from Lorenzo L. Hughes, dated September 10, 2001. Consistent with local board policy, the athletic director advised Appellants that Solomon was also suspended from the football team. See letter from Ward, dated September 13, 2001.

The Office of Pupil Personnel conducted an investigation. On September 14, 2001, the

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<sup>1</sup>Policy JFCHI provides, in pertinent part:

D.2 Persons who violate the Alcohol Drug Abuse Policy of the Talbot County Board of Education are subject to suspension, expulsion and/or criminal prosecution . . .

E.1 The use, actual possession, constructive possession, manufacture or distribution of controlled dangerous substances, controlled paraphernalia, look-alike drugs, unauthorized legal drugs, prescription drugs, over-the-counter drugs/medications or alcohol by Talbot County Public School students is strictly prohibited . . .

superintendent's designee issued a decision finding that the recommendation for expulsion was warranted. However, in a good faith effort to avoid expulsion and provide Solomon the opportunity to complete his senior year, Solomon was permitted the alternative of enrolling as a full-time student at St. Michaels High School in Talbot County. *See* letter from D. Lynne Duncan, dated September 14, 2001. Appellants appealed the decision of the superintendent's designee to the local board. Following a hearing on September 25, 2001, the local board upheld the decision that the expulsion was warranted but permitted Solomon to attend St. Michaels High School.<sup>2</sup>

On October 25, 2001, Appellants met with the local superintendent, Dr. Meek, to seek Solomon's transfer back to Easton High School. Dr. Meek indicated that he would consider requesting that the local board allow Solomon to return to Easton if Solomon attended St. Michaels for the rest of the first semester without incident and if he wrote a letter detailing his request to the local board. Thereafter, Solomon wrote a letter to the local board apologizing for his actions and requesting that he be returned to Easton for the second semester of the school year. The letter made no mention of Solomon's intent to participate in sports activities at Easton High School.

The local board granted Solomon's request. Dr. Meek advised Appellants of the local board's decision by letter of January 17, 2001 which states in part:

With the consent of the Talbot County Board of Education, you are authorized to enroll at Easton High School on the first day of the second semester. I suggest that you contact the Easton High School guidance department as soon as possible to assure that all of the requirements for graduation in June 2002 are met.

The Board has taken extraordinary action to set aside its original decision. Please be advised that any violation of Board Policy will result in your immediate reassignment.

On or around February 27, 2002, Dr. Meek indicated that he became aware of Solomon's intent to play baseball at Easton after another student, who had been prohibited from participating in sports activities following a violation of the local board's drug and alcohol policy, appealed the disciplinary decision because he believed he was being treated differently from Solomon. *See* affidavit of Dr. Meek; Tr. 143-44 (3/25/02); letter from Duncan, dated January 2, 2002. Dr. Meek advised Appellants that Solomon was prohibited from playing on a

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<sup>2</sup>Appellants did not appeal the local board's September 25, 2001 decision to the State Board.

sports team at Easton pursuant to the school system's consistent practice.<sup>3</sup> Dr. Meek indicated that he would be willing to transfer Solomon back to St. Michaels where he could play on a sports team. However, Appellants learned from the Bayside Conference that based on Bayside rules, Solomon would not be eligible to play baseball at St. Michaels.<sup>4</sup> Solomon remained at Easton for the second semester of the 2001-02 school year and did not participate in athletics.

Appellants appealed Dr. Meek's decision to the local board which conducted an evidentiary hearing. Dr. Meek testified that at no time during the decision-making process did Appellants provide him with any information that Solomon intended to participate in athletics at Easton. Tr. 140-145 (3/25/02). Appellants maintained that Dr. Meek was aware of Solomon's intent to participate.

In a unanimous decision, the local board upheld Dr. Meek's decision prohibiting Solomon from participating in baseball. The decision states, in part:

It was Dr. Meek's position that prohibiting Solomon from playing baseball would serve as the necessary consequence for his violation of the drug and alcohol policy. If Dr. Meek were simply to permit Solomon to return to Easton and participate fully in team sports, there would be no [sic] insufficient negative consequences for his misconduct. As it turned out, although Solomon suffered some negative consequences by having to attend St. Michaels, those consequences certainly did not equal the severity of his misconduct. By prohibiting Solomon from participating in sports after he returned to Easton, Dr. Meek simply ensured that the negative consequences of Solomon's misconduct would continue.

Local Board Decision at 7.

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<sup>3</sup>In his affidavit, Dr. Meek explained that since the adoption of the board policy on drugs and alcohol on December 20, 2000, it has been the consistent practice of the Talbot County Public Schools (TCPS) that a student found in violation of the local board's drug and alcohol policy may, in lieu of expulsion, attend a school other than the student's home school. It has also been the consistent practice since that time that if a student wishes to return to the student's home school, the student may be permitted to return to the home school but is not permitted to participate in sports activities. The rationale for this practice is recognition that the student's education is of primary concern and expulsion places the student in the community without adult supervision or education. Therefore, if a student is not going to attend a school different from the student's home school, the student will be prohibited from participating in sports activities at the home school as an alternative consequence. *See also* letter to student x from Duncan dated January 2, 2002.

<sup>4</sup>After discovering this information, Appellants sought a temporary restraining order (TRO) in the Circuit Court. The Circuit Court denied the request.

## ANALYSIS

The local board has filed a Motion to Dismiss based on mootness. 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).

Appellant has already served the disciplinary action in this case. He did not participate in baseball at Easton during the second semester of the 2001-02 school year. The baseball season is now over and the 2001-02 school year has ended. Appellants themselves acknowledge that the appeal is moot in their response to the local board’s motion. Thus, there is no effective remedy that the State Board can provide. Accordingly, the State Board will dismiss the appeal based on mootness.

We note that Appellants also allege a violation by the local board of the Maryland Public Information Act (PIA), Md. Code Ann., State Gov’t 10-611 *et seq.* The PIA sets forth the procedures to be followed by those aggrieved by a public body’s failure to comply with the provisions of the Act. Section 10-623 provides that an individual who is adversely affected by a public body’s failure to comply with the PIA may file a petition in the circuit court. Thus, the State Board of Education is not the appropriate forum for redress of Appellants’ PIA claims or claims of false testimony in court.

For the future, we strongly recommend that the local board place in writing its practice on modifications to disciplinary decisions under the local board’s drug and alcohol policy with regard to participation in interscholastic sports upon readmission to a home school. At a minimum we recommend that language regarding this practice be incorporated into local board policy. Additionally, in order to avoid confusion, standard language prohibiting participation in athletics should be included in the letter confirming readmission to the home school, regardless of whether school officials are aware of a student’s intent to participate on a sport’s team.

## CONCLUSION

For these reasons, we dismiss this appeal on the basis of mootness. *See* COMAR 13A.01.01.03J(2)(b).

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August 27, 2002