

DEBRA SALING,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 03-33

OPINION

This is an appeal of the application of Montgomery County Board of Education's zero tolerance policy to Brandon Scott Saling, under which Scott was precluded from participating in his high school graduation ceremony because he was found with drug paraphernalia on school property. Appellant asserts that the local board's application of the policy to Scott was arbitrary, unreasonable, and contrary to sound educational policy, and is appealing to change the policy on behalf of future seniors. The local board has submitted a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal and that the State Board has already ruled that its zero tolerance policy is valid. Appellant has submitted an opposition to the local board's Motion.

FACTUAL BACKGROUND

Brandon Scott Saling was a twelfth grader at Walt Whitman High School in the Montgomery County Public Schools ("MCPS") in the 2002-2003 school year. MCPS has a zero tolerance policy that provides, among other things, that any student who brings drugs, alcohol, controlled substances, or weapons onto school grounds or to school-sponsored activities shall be suspended for 10 days with a recommendation for expulsion. In addition, the policy provides that if a student is not expelled from MCPS, the student nevertheless shall be denied the privilege of participating in school-sponsored activities for a period of one year. The policy specifically includes participation in the graduation ceremony in its prohibition.

On November 7, 2002, Scott was found to have a bong, or drug pipe, in his car on school grounds.¹ A meeting was held on November 11, 2002 to determine whether this incident was a manifestation of Scott's disability. At the meeting, Scott admitted that he was aware of MCPS' zero tolerance policy and that he and his mother signed a notice of zero tolerance ineligibility. A second meeting was held on November 22, 2002. At that time, based on a technical violation of his IEP, Scott's behavior was found to be a manifestation of his disability. Accordingly, the disciplinary procedures that could have led to his suspension and/or expulsion were terminated and he was permitted to return to Walt Whitman. However, Dr. Marco, the principal, determined

¹Scott admitted that he had been involved with the use of marijuana for sometime. See letter from principal dated 11/22/02.

that pursuant to the zero tolerance policy, Scott would not be permitted to participate in school-sponsored activities, either as a spectator or a member, for a period of one year.

By letter dated November 18, 2002, Scott's mother requested that Dr. Marco make an exception to the zero tolerance policy for Scott. However, Dr. Marco upheld the application of the Policy (Letter of November 22, 2002). Scott's mother then appealed the decision to the superintendent. (Letter of January 13, 2003). Acting on behalf of the superintendent, Mr. Larry Bowers, Chief Operating Officer, assigned the matter for investigation and recommendation to a hearing officer, Mrs. Elaine Lessenco. Mrs. Lessenco reviewed the facts of the case and recommended to Mr. Bowers that no exception be made to the zero tolerance policy on behalf of Scott. (Memorandum of February 25, 2003). Mr. Bowers then affirmed the application of the zero tolerance policy to Scott. (Letter of February 26, 2003).

Scott's mother appealed Mr. Bowers' decision only as it related to the high school graduation ceremony to the local board. Scott's mother argued that graduation was not an extracurricular activity, rather it was part of her son's formal education.² The local board found that the zero tolerance policy was appropriate but could not agree on whether the policy may be applied to preclude participation in graduation exercises. Four members of the local board believed that graduation exercises are extracurricular activities and that the application of the policy to graduating seniors is an important disciplinary tool. Four other members believed that graduation exercises are the final conclusion to the education process and that Scott should be permitted to participate in them. Because the local board could not affirm or reverse by a majority vote, the decision of the superintendent remained in effect. This appeal followed.

ANALYSIS

This case involves the application of the rules and regulations of a local board. Thus, 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). *See, e.g., Breads v. Board of Education of Montgomery County*, 7 Op. MSBE 507 (1997). Because the local board was unable to reach a majority decision, the decision of the superintendent was affirmed. Accordingly, the State Board reviews whether the action of the superintendent was arbitrary, unreasonable, or illegal.

1. Mootness

The graduation exercises at Scott's high school have already taken place. It is well established that a question is moot when "there is no longer an existing controversy between the

²The zero tolerance policy in the Parent & Student Handbook refers to exclusion from "school-sponsored activities"; the notice of zero tolerance ineligibility refers to "extracurricular activities sponsored by the school."

parties, so that there is no longer any effective remedy which the courts (or agency) can provide.” *In Re Michael B*, 345 Md. 232, 23 (1997); *see also Bonita Mallardi v. Carroll County Board of Education*, MSBE Opinion No. 00-07, (February 3, 2000); *Walter Chappas v. Montgomery County Board of Education*, MSBE Opinion No. 98-16 (March 25, 1998), *Jonathon Heriot-Fitzsimmons v. New Board of School Commissioners for Baltimore City*, MSBE Opinion No. 02-26 (June 26, 2002).

In this case, the State Board cannot provide any relief to Scott. Although he was not permitted to participate in the graduation ceremony, he has graduated and received a Maryland High School Diploma. Accordingly, we find that Mrs. Saling does not have standing to bring this appeal on behalf of future seniors. We therefore dismiss the case as moot. *See* COMAR 13A.01.01.03J.

2. Merits of the Claim

Alternatively, if we were to review the appeal on its merits, we would affirm the decision of the local superintendent for the following reasons. Ms. Saling claims that application of the zero tolerance policy to graduation ceremonies is contrary to sound educational policy because graduation ceremonies are not extracurricular activities. (Letter of appeal, June 22, 2003). The zero tolerance policy provides:

The student shall be denied the privilege to participate in any school-sponsored activity, either as a spectator or member of a school-sponsored activity, on or off school property, for the period of one calendar year from the date of infraction. This includes: sports teams, prom, banquets, graduation, class/club officer, dramatic roles or attendance at activities sponsored by the school and other such activities, on or off school grounds.

(Emphasis added.) The notice of zero tolerance ineligibility provides:

If the student is not expelled from MCPS and returns to Walt Whitman High School, the student shall be denied the privilege of participating as an active member, or as a spectator, in any extracurricular activity sponsored by the school for a period of **ONE CALENDAR YEAR.****

****If the student is a senior, he/she will not be permitted to attend the Senior Banquet, Prom or Graduation Ceremonies.**

(Emphasis in the original)

We find that the State Board does not need to address whether graduation ceremonies are extracurricular or educational in nature. The graduation ceremony is specifically listed in the

both the policy and in the notice of zero tolerance ineligibility as one of the activities from which a student will be barred if he/she violates the policy. Scott was aware of the policy and its consequences, and signed the zero tolerance ineligibility notice. (Memorandum of February 24, 2003). The ceremony's characterization as educational versus extracurricular is therefore irrelevant.

Ms. Saling alleges that application of the policy to Scott was arbitrary and unreasonable because she claims that MCPS has granted exceptions to the policy before. However, she offers no evidence to support this allegation. On behalf of the local board, Mrs. Lessenco noted that there are frequent rumors about student misconduct and its consequences and reported that one student had been found abusing alcohol, but not on school premises or at a school-sponsored activity. She also found that no exceptions have been granted to the zero tolerance policy.

As to the validity of the policy, a similarly worded earlier version of MCPS' zero tolerance policy has previously been held valid by the State Board as rationally related to the school's goal of providing a safe environment. *See Craven v. Board of Education of Montgomery County*, 7 MSBE 870 (1997) and *Schneider v. Board of Education of Montgomery County*, 7 MSBE 907 (1997). In *Craven* the State Board specifically found as follows:

Appellant maintains that this zero tolerance policy is contrary to sound educational policy; violates the equal protection clause of the Constitution; and is unduly punitive.

* * *

In the present case, we find that Walt Whitman's zero tolerance policy and the mandated punishment are rationally related to the school's goal of providing a safe environment. Additionally, the policy is outlined in the Student and Parent Handbook that is distributed in September of each school year. *Craven*, supra at 875.

In addition, other jurisdictions have concluded that "students do not have a property right in attending a graduation ceremony." *City of Boston v. Bureau of Special Education Appeals*, 2002 WL 32074960 (Mass. Super, Sept. 27, 2002) and the cases cited therein.

CONCLUSION

For all of these reasons, we dismiss this appeal as moot. Alternatively, on the merits we would affirm the decision of the superintendent because the zero tolerance policy barring participation in, among other activities, the senior banquet, prom, and graduation ceremony is not

arbitrary, unreasonable, or illegal.

Edward L. Root
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CONCURRENCE

I concur that the appeal be dismissed as moot. I would not address the merits of the appeal.

Walter S. Levin, Esquire

September 23, 2003