

LINDA B. SMOOT,

Appellant

v.

CHARLES COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 03-27

### OPINION

This is an appeal of an expulsion of Appellant's son, Thomas, from the Charles County Public School System for possession of marijuana on school property. The local board has filed a Motion to Dismiss or for Summary Affirmance on the ground of mootness and that the local board's decision was not arbitrary, unreasonable or illegal. Appellant filed a reply opposing the local board's motion on the ground that her son suffered discrimination based upon age.

### FACTUAL BACKGROUND

For the 2001-2002 school year, Appellant's son, Thomas, was a repeating 9<sup>th</sup> grader at McDonough High School. On May 21, 2002, Thomas was observed by Vice Principal Chrystal Benson of McDonough High School in the hallway exchanging a backpack with another student. After the students were in class, Ms. Benson was informed by school personnel that the backpack had drugs in it. The Appellant was confronted by the school administrators and admitted that he possessed the backpack with marijuana in it. On that same day, Thomas was suspended for possession of a controlled dangerous substance on school property. A recommendation for a suspension longer than ten (10) days or an expulsion for the remainder of the school year was made to the Superintendent.

On May 30, 2002, a conference was held with a hearing officer who concurred with the recommendation to expel the Appellant for the remainder of the 2001-2002 school year. The hearing officer would allow Thomas to attend summer school if verification of substance abuse counseling was received by the hearing officer. Appellant appealed the hearing officer's decision. An Expulsion Review Conference was held on June 7, 2002, where the Associate Superintendent of Schools upheld the hearing officer's decision. The Appellant appealed the decision of the Associate Superintendent to the local board. At the hearing, Appellant argued that although there was no dispute as to her son's possession of the controlled dangerous substance on school property or his expulsion for that reason, there was an issue of whether the punishment received by Appellant was more harsh than the punishment received by the other student, a senior, who was involved in the drug exchange. Among the findings of fact made by the local board hearing officer were the following:

- Appellant was a repeating 9<sup>th</sup> grader during the 2001-2002 school year and a below average student;
- Appellant had nine (9) disciplinary incidents for the 2001-2002 school year prior to this incident, with one (1) prior out of school suspension for one (1) day for disrespect;
- Charles County Public School System and McDonough High School follow a zero tolerance policy prohibiting the possession, use, and distribution of controlled dangerous substances;
- Appellant was aware of the policy because he received the Code of Student Conduct which states that students will be suspended with a recommendation for expulsion if found to be in possession or control of a CDS;
- Appellant admitted to having the marijuana in the backpack and a search produced the marijuana from the backpack;
- Appellant was expelled for the remainder of the 2001-2002 school year and was afforded the right to attend summer school as long as verification of enrollment in substance abuse counseling was received by the Superintendent; and
- A schedule was provided to Appellant showing how upon re-entry, Appellant could still graduate with his current class.

The hearing officer recommended upholding the expulsion. At oral argument before the local board, Appellant reiterated her position that although Thomas deserved the expulsion, he was treated more harshly than the other student because he lost credits while the other student was allowed to graduate. Thus, Appellant argued that Thomas was discriminated against based upon age.

On December 20, 2002, the local board unanimously upheld the Superintendent's decision to expel Thomas, noting as follows:

Having thoroughly reviewed the entire record in this matter and having heard the arguments of the parties, this Board is of the opinion that the Hearing Officer's Recommendations were fully supported by the record in this matter, and we agree with her conclusion that the expulsion decision was neither arbitrary, unreasonable, nor illegal. There is absolutely no question that Thomas had possession of marijuana, and our policies clearly call for an expulsion with a loss of unearned credits for the year. The possibility that another student with earned credits may have been

allowed to graduate during the summer does not mean that Thomas was given a harsher punishment. Moreover, this Board is prohibited under the *Family Educational Rights and Privacy Act* from sharing information concerning the discipline and consequences affecting other students.

## ANALYSIS

The local board has filed a Motion to Dismiss based on mootness. It is a well established principle 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. Moreover, Appellant was given the opportunity to earn credits during summer school and a schedule was developed whereby he could graduate with his class. The other student involved in this action has since graduated. Thus, there is no effective remedy that the State Board can provide. Accordingly, we find the appeal moot.

On the merits, it is well established that the decision of a local board with respect to a student suspension or expulsion is considered final. Md. Code Ann., Educ. § 7-305. Therefore, the State Board’s review is limited to determining whether the local board violated State or local law, policies, or procedure; whether the local board violated the due process rights of the student; or whether the local board acted in an otherwise unconstitutional manner. COMAR 13A.01.01.03(E)(4)(b).

The Charles County Public Schools’ Code of Conduct reflects that the possession, use, or distribution of a controlled dangerous substance can carry with it a consequence of expulsion for which no credits would be awarded for the year in which the expulsion occurred.<sup>1</sup> A review of the record shows that there is no dispute as to Thomas being in possession of the marijuana or that he was not deserving of the punishment.

Appellant does not dispute any of the facts outlined in this case. Appellant does, however, take issue with the alleged decision allowing the 12<sup>th</sup> grade student involved to graduate over the summer while her son lost his credits for the 2001-2002 school year due to expulsion. The record is devoid, however, of any evidence which tends to show that Appellant was treated more harshly than the other student. (*See Ross v. Baltimore County Board of Education*, MSBE Op. No. 99-22 (1999)). As noted, the record does show that Thomas was

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<sup>1</sup>See Code of Student Conduct 2001-2002, §H.

given the opportunity to go to summer school to make up credits. A schedule was also devised by which Thomas could graduate with his class.

Furthermore, the *Family Educational Rights and Privacy Act* (FERPA), 20 U.S.C. §1232(g), *et seq.*, prohibits the disclosure of the discipline imposed upon another student. The Maryland student records regulations, COMAR 13A.08.02, essentially mirror FERPA in the provision of confidentiality of student records and the restriction of access to such confidential records. Further, the record indicates that the local board took into consideration each student's participation and prior school record and made its decisions based upon those findings.

In light of the record in this case, we do not find that the local board acted arbitrarily, unreasonably or illegally in this matter. *See Malik Brown v. Baltimore County Board of Education*, 7 Op. MSBE 510 (1997) (Affirmance of expulsion for student aggressor in fight).

### CONCLUSION

For these reasons and finding no due process violations or other illegalities in the proceedings, we affirm the expulsion decision made by the Charles County Board of Education.

JoAnn T. Bell

Philip S. Benzil

Dunbar Brooks

Clarence A. Hawkins

Walter S. Levin, Esquire

Marilyn D. Maultsby

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Edward L. Root

John L. Wisthoff

Calvin Disney and Maria C. Torres-Queral are newly appointed members of the State Board of Education and did not participate in the deliberations of this appeal.

July 23, 2003