

PHIL N., et al,

Appellant

v.

ANNE ARUNDEL COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 18-42

OPINION

INTRODUCTION

Phil N. and 25 other parents (Appellants) appeal the decision of the Anne Arundel County Board of Education suspending all of the members of the Severna Park High School Varsity Field Hockey team for one game following a “mischief night” in the community. The local board filed a Motion for Summary Affirmance. Appellants responded and the local board replied.

FACTUAL BACKGROUND

Appellants are parents or guardians of students who were members of the Varsity Field Hockey Team at Severna Park High School during the 2017-18 school year. Following the team’s victory in the regional championship of the state playoffs, the 24 players took part in a “mischief night” on the evening of November 1, 2017 and the early morning hours of November 2. The team members considered the “mischief night” a team and school tradition. It involved playing pranks at the homes of coaches, friends, and boyfriends of the team members. (R. 80-83, 234-35).

The team members initially met at the homes of their coaches and, with their permission, threw rolls of toilet paper over the coaches’ homes. The students then split up in five cars and traveled to separate locations, ultimately targeting more than 25 homes and cars in the Severna Park and Annapolis areas during the course of the night. The team members placed stolen signs in a yard; toilet-papered trees; “forked” lawns¹; left feminine hygiene products in driveways; and covered cars with vegetable oil, flour, paint, saran wrap, whipped cream, shaving cream, peanut butter, spray cheese, ketchup, and other substances. Although some of the targets were aware of the planned pranks, and gave permission for them, other property owners did not and called the police. In at least one instance, it appears the girls had the wrong address for a friend. Other homes belonged to students who attended Severna Park, but did not have a connection to the field hockey team. In some instances, police officers and/or property owners required the girls to clean up the vandalism. No criminal charges were filed. The students stopped their activities by 3 a.m. on November 2. (R. 80-83, 115, 205-207, 234-35).

¹ “Forking” involves placing a large number of plastic forks upright in a lawn.

On the morning of November 2, Severna Park Principal Patrick Bathras received emails and phone calls from community residents complaining about the students' actions. One resident informed him she had called the police and another stated her interest in pressing charges. Principal Bathras described two of the residents as "outraged" over the incident. That same morning, one of the field hockey players interrupted two classes without permission and began to curse and yell at one of the students whose home had been targeted. An assistant principal began investigating the incidents and learned of the previous night's activities. From there, the school administration set out to interview all 24 members of the field hockey team. Two of the team members left school without permission to clean up some of the targeted homes. (R. 80-83; 234-36).

School officials interviewed some field hockey players during the school day and obtained statements from them. They continued conducting interviews at the practice fields away from school grounds after the end of the school day. At one point, Principal Bathras, the school's athletic director, and the field hockey coaches gathered the full team onto a field where they described the alleged vandalism and told the students they would have the ability to give statements. Any of the players who had not already given statements were provided with a clipboard and a blank incident report form. Once a player completed her statement, she was free to go home. Some parents arrived at the fields soon after and discussed the incident with school officials or asked to read their children's statements, which were provided. During interviews and in their statements, the students admitted the night was "pre-planned" and described their actions as pranks that "got out of hand," were "out of line," were "irresponsible" or were taken "too far." (R. 80-83; 234-36).

On November 3, 2017, Principal Bathras, in consultation with the school's athletic director, imposed a one-game suspension on all 24 players of the team for committing vandalism and creating a public nuisance in violation of the Anne Arundel County Public Schools (AACPS) Code of Conduct. Although school officials considered additional discipline for specific players, they ultimately chose not to suspend students from school or otherwise impose individual discipline, such as detention. The school did not bar the students from any other extracurricular activities or from participating in winter or spring sports. (R. 236-7).

AACPS notified the students and parents of the one-game suspension and issued a press release to the community. Because the suspension occurred during a state tournament, the one-game suspension amounted to a *de facto* forfeit and elimination from the state championship. The press release read, in pertinent part:

South River High School's field hockey team was put back into the state championship tournament today after Severna Park High School's team was withdrawn in the wake of one-game suspensions of all 24 varsity players and all three of the program's coaches.

The suspensions came about after a school investigation into community incidents on Wednesday night and early Thursday morning in which more than two dozen residences were littered with toilet paper, business signs, and an assortment of food and other products. School officials have conducted interviews with players and coaches over the last two days.

After learning of the incidents and the sanctions imposed by the school, Superintendent George Arlotto made the decision to withdraw Severna Park from the Class 4A state tournament.

“While I realize that this is a very disappointing end to what has been a great season for Severna Park, the actions of players and coaches in this matter do not reflect the values we must have for our school system and our athletic programs,” Dr. Arlotto said. “Our student-athletes should be ambassadors for themselves and their schools in our communities.”

The school’s investigation to date has not shown that the team’s coaches were involved in the incidents, but that they were aware of a tradition of a team sleepover after a region championship win that had previously included throwing toilet paper at the homes of coaches.

(R. 176-177).

The team suspension garnered extensive newspaper, TV, and online media coverage and became a subject of much discussion on social media, where numerous people shared or commented on the story. The press release could be accessed through the AACPS Facebook and Twitter pages. (R. 7-38).

Many of the parents of field hockey team members challenged the team suspension, including all of the Appellants in the current appeal. Others filed complaints of bullying and harassment against school officials. On various dates through November 2017, the superintendent’s designees upheld the team suspension as to each of the students who appealed.

On December 4, 2017, the parents appealed to the local board and the board consolidated all appeals into one action. On June 29, 2018, the local board issued a 38-page decision upholding the superintendent’s decision.² The appeals raised four primary issues: (1) due process violations; (2) illegal bias; (3) bullying and cyberbullying; and (4) Family Educational Rights and Privacy Act (FERPA) violations. The board concluded there was no legal requirement to notify students’ parents prior to questioning them or prior to issuing the team discipline. In addition, given that the discipline involved only the students’ participation in an extracurricular athletic event, the amount of due process required was far less than that of a student facing a suspension or expulsion from school. The students knew about the allegations and had an opportunity to present their side of the story. The board found no evidence that the students’ statements were improperly coerced or that the statements, which tended to corroborate one another, were untruthful. The board decided that the team suspension did not violate school system rules and was reasonable under the circumstances.

Although it affirmed the school system’s decision, the board expressed concern over the consistency of the discipline process for student athletes, including the use of different forms and policies at different schools. The board also found that a due process checklist used by Severna Park officials was confusing because it suggested that the team’s head coach would ordinarily be

² The record indicates that there were delays in the case caused by the local board consolidating the various appeals and the parents’ failure to provide the superintendent with a copy of their appeal. The local board did not receive the final filings in this case until late March 2018. (R. 64).

investigating any incidents.

As to illegal bias, the local board found no evidence that the team members were punished differently because they were girls rather than boys. The board observed that any discipline of athletes depends on a variety of factors and, without specific information, there was no proof of bias against the field hockey team in particular. The board found nothing improper or biased in having male administrators interview female students and stated that there is no legal requirement that students only be interviewed by members of the same gender.

The board also dismissed claims of bullying, determining that school administrators were required to investigate the incident and did not bully, threaten or act hostile to students merely by questioning them. The board did, however, find it was improper for some AACPS employees to comment on social media about the team suspension. The board commended Mr. Bathras for taking action and addressing the posts and recommended additional training for AACPS educators on proper social media behavior. Even so, the board found these comments did not merit overturning the team suspension.

Finally, the board concluded that the AACPS press release did not violate FERPA primarily because the team's withdrawal from the tournament and the community vandalism were both matters of public record. The board did, however, criticize the school system for including "gratuitous" information in the press release that could have been construed as a disclosure in violation of FERPA. (R. 233-270).

This timely appeal followed.

STANDARD OF REVIEW

In cases involving the denial of participation in an extracurricular activity, we apply a standard of review that considers the local board's decision prima facie correct. The State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A; *see Kelly D. v. Harford County Bd. of Educ.*, MSBE Op. No. 13-32 (2013).

LEGAL ANALYSIS

As with many student discipline appeals, we must consider at the outset whether this case is moot. The 2017 field hockey season is long over and we have no ability to return the team to last year's championship tournament. Recognizing this, Appellants request an expungement of the team suspension from the school's files and additional training for school staff on what Appellants believe were procedural and legal failures in this case. 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). Because there may still be some relief available to Appellants, we shall address the merits of their claims.³

³ Appellants request a hearing as part of their appeal. COMAR 13A.01.05.06B permits the State Board to decide an appeal on the record made by the local board without a hearing or oral argument. Given that the record is thorough and Appellants had an opportunity to present their arguments to the local board, we decline the request for a hearing.

Violation of FERPA

FERPA protects the privacy of a student's education records. *See generally* 20 U.S.C. §1232g; 34 C.F.R. Part 99. It provides parents with certain rights regarding their children's education records and generally bars the release of information from those records. There are, however, numerous exceptions to the law that permit disclosure of that information under particular circumstances.⁴ Appellants argue that the local board violated FERPA by issuing a press release that stated that all 24 field hockey players had been suspended for one game based on the "mischief night" activities. They further claim that school officials' statements to the media also violated FERPA. The local board, while not concluding that school officials violated FERPA, did suggest that the school provided more information than it should have in the press release. The record is unclear on whether the suspensions were a part of the students' education records; although AACPS maintains that they are not, the local board's decision suggests that the suspensions were a part of the records.

We have previously declined to consider FERPA violations because federal law provides for a separate forum to address those grievances — the Family Policy Compliance Office of the United States Department of Education. *See* 34 C.F.R. 99.63; *Philip P. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 14-39 (2014). In our view, the issues raised by Appellants are squarely within the authority of the U.S. Department of Education. Accordingly, we decline to consider these claims.

Violations of due process

The rest of Appellants' arguments fall loosely into claims that the school system violated their due process rights. Due process in the student discipline context requires that there be notice of the charges and a meaningful opportunity to be heard. *Goss v. Lopez*, 419 U.S. 565, 581 (1975); *Parent H. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 13-27 (2013). We have grouped the due process arguments into separate categories.

(1) Lack of notice

Appellants claim that school officials did not inform the students of the allegations against them prior to taking their statements. This claim is not supported by the record. School officials state that they informed the students about the allegations and the students' statements show that they clearly were aware of what they had been accused of doing. All of the statements address the events of "mischief night" and show an awareness that some in the community were upset by their conduct. This satisfied the notice requirement of due process.

Separately, Appellants argue that the school's code of conduct did not provide specific notice that participating in "mischief night" could lead to discipline. Relatedly, Appellants argue that prior coaches permitted the "mischief night" activities and, therefore, students should not be penalized for their conduct. The coaches maintain that they were not aware of the students' plans in the community and there is no indication in the record (beyond Appellants' speculation)

⁴ A brief summary of the law, with frequently asked questions and guidance, can be found on the U.S. Department of Education's website. *See* Family Educational Rights and Privacy Act, U.S. Department of Education, www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html (last visited Nov. 27, 2018).

that the school system itself approved or condoned the “mischief night” activities.⁵

We have previously observed that the AACPS Code of Conduct “provides administrators with flexibility in responding to disciplinary matters” and “encourages progressive discipline while recognizing that higher level consequences may be appropriate in cases involving serious offenses.” See *Teresa P. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No., 18-12 (2018). Here, the athletics handbook requires that students “seriously accept the responsibility and privilege of representing your school and community” and “display positive public action at all times.” Any “conduct deemed detrimental to the student-athlete, team and/or overall good of the school system, anytime, on and off campus, can result in penalties.” AACPS Guide for Student Athletes and Parents; Severna Park Athletics Code of Conduct 2017-18 (R. 169-74). In our view, a handbook does not need to list all potential prohibited activities so long as a reasonable person would understand what is required. Vandalizing the homes and vehicles of people in the community, without their consent, clearly is detrimental to the students and the team. The fact that the coaches permitted their own homes to be toilet-papered did not provide students with blanket permission to vandalize other homes and vehicles without the consent of their owners. A reasonable student would understand that such behavior is prohibited and could lead to disciplinary consequences. Indeed, many of the students acknowledged in their statements that their actions had crossed a line or gone too far.

(2) Lack of opportunity to respond

Appellants argue that students did not have the opportunity to respond after school officials presented them with the “due process checklist” created by the school which informed them that they had been suspended for one game. This argument fails to recognize that the opportunity to respond came prior to the school system issuing its punishment; the record indicates that the school system contacted each of the students and provided them with the opportunity to make a statement prior to issuing the team-wide suspension.

(3) Process of interviewing students

Appellants argue that it was improper to interview students without first notifying their parents, in violation of COMAR 13A.08.01.15B. That regulation, governing the reporting of “delinquent acts,” states that “all conduct of a serious nature should be promptly reported to the parent or guardians concerned.” The record is silent on when all of the students’ parents became aware of the incident, though many clearly knew about the allegations on the same day as school administrators because they arrived at the practice fields. Regardless, the regulation does not require that school officials notify parents prior to investigating and conducting interviews about student misconduct, only that schools notify parents “promptly.” We find no violation of COMAR 13A.08.01.15B.

(4) Violation of *Accardi* doctrine

Appellants argue that the local board violated the students’ rights by not following the

⁵ Appellants do not challenge the ability of the school system to discipline them for their off-campus conduct. In our view, the local board correctly applied our decision in *Schlamp v. Board of Education of Howard County*, MSBE Op. No. 95-11 (1995) to conclude that the conduct had a direct effect on the order and general welfare of the school. (R. 248-49).

“due process check list” when a school administrator, rather than the head coach, conducted the investigation. This essentially is a claim that the school system violated the *Accardi* doctrine. *Accardi* requires that a government agency “scrupulously observe rules, regulations, or procedures which it has established.” *Glover v. Baltimore City Bd. Of Sch. Comm’rs*, MSBE Op. No. 15-25 (2015) (citing *Accardi v. Shaughnessy*, 347 U.S. 260 (1954)). In order to strike down an agency’s decision under *Accardi*, a complainant must show that he or she was prejudiced by the agency’s failure to follow its rules, regulations, or procedures. *Id.* (citing *Pollack v. Patuxent*, 374 Md. 463, 504 (2003)).

The board acknowledges that the school system did not strictly follow the “due process check list,” which assigns several of the investigative duties to the head coach. (R. 175). The board found, however, that there were sound reasons for departing from this policy — some of the conduct being investigated occurred at school (the classroom disruptions) and the coaches were witnesses to the students’ behavior and also targets of the “mischief night” activities. Appellants fail to articulate any prejudice they suffered as a result of school officials investigating the incident rather than the head coach. Accordingly, we find no *Accardi* violation.

(5) Remaining arguments

Appellants raise a host of other arguments that cannot be easily categorized. They object to a reference in the record to the coaches as “victims” of the “mischief night.” The record is clear that the coaches approved and had no objection to the students’ actions at their homes. This small point is overshadowed, however, by the evidence in the record that students later vandalized homes and cars belonging to people who did not consent to their actions. It is this behavior that formed the basis for the school system’s discipline. The board’s use of the word “victim” to describe the coaches, while incorrect, did not impact the overall rationale of its decision.

Appellants also argue that the students traveled in separate vehicles and their activities were not coordinated. This argument goes to the weight that the local board should have placed on certain evidence. The board had the ability to make inferences and draw conclusions based on the evidence presented. *See Goines v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 17-16 (2017) (observing that “failure to agree with an Appellant’s view of the evidence does not mean” that a decision is arbitrary, unreasonable, or illegal). Reviewing the statements as a whole, we do not find it unreasonable for the local board to conclude that the students acted collectively, even if some individual students committed more destructive acts than others, and that the most appropriate consequence was a one-game suspension for the entire team.

Appellants argue that the school system violated the students’ rights against unreasonable searches and seizures. From our review of the record, we do not find any evidence that the students were seized and/or searched as part of the school system’s investigation.

Finally, Appellants object to the school system posting a press release about the suspension prior to some students receiving formal notice of the action. The record indicates that the press release went live approximately 19 minutes before a meeting at which some of the students received formal notice of the suspension. Appellants have not articulated what prejudice they suffered as a result and we do not discern any from the record.

CONCLUSION

We affirm the decision of the local board because it was not arbitrary, unreasonable, or illegal.

Signatures on File:

Justin M. Hartings
President

Stephanie R. Iszard
Vice-President

Chester E. Finn, Jr.

Vermelle D. Greene

Michele Jenkins Guyton

Jean C. Halle

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

David Steiner

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December 4, 2018