

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
Baltimore Division

GRAHAM DENNIS,)	
)	
and)	
)	
CASEY EDSALL,)	CIVIL ACTION NO. _____
)	
Plaintiffs,)	
)	
v.)	
)	
BOARD OF EDUCATION OF TALBOT)	
COUNTY, a body politic and corporate,)	
)	
KAREN SALMON, in her individual)	
capacity,)	
)	
LYNNE DUNCAN, in her individual and)	
official capacities,)	
)	
DAVID STOFKA, in his individual and)	
official capacities,)	
)	
and)	
)	
SHERRY BOWEN, in her individual and)	
official capacities,)	
)	
Defendants.)	

COMPLAINT

COME NOW the Plaintiffs, by and through their Counsel, and hereby aver:

PARTIES, JURISDICTION AND VENUE

1. Casey Edsall, Plaintiff (“Plaintiff Edsall”) is an individual who resides within the State of Maryland. Plaintiff Edsall was a student at Easton High School (“EHS”) during the events giving rise to this Complaint. He graduated from EHS on May 31, 2012.

2. Graham Dennis, Plaintiff (“Plaintiff Dennis”) is an individual who resides within the State of Maryland. Plaintiff Dennis was a student at Easton High School during the events giving rise to this Complaint. He graduated from EHS on May 31, 2012.

3. The Board of Education of Talbot County is a body politic and corporate charged with administration and oversight of Talbot County Public Schools (“TCPS”), including EHS, and having the power to sue and be sued pursuant to Md. Code Ann., Educ. § 3-104.

4. Defendant Karen Salmon (“Defendant Salmon”) is an individual who resides in the State of New York and at all times relevant to this Complaint was the Superintendent of TCPS. Defendant Salmon is sued in her individual capacity. In all respects set forth herein, Defendant Salmon acted under color of the law of the State of Maryland.

5. Defendant Lynne Duncan (“Defendant Duncan”) is an individual who resides in the State of Maryland and is and was at all times relevant to the Complaint the Student Services Supervisor for TCPS. Defendant Duncan is sued in her individual and official capacities. In all respects set forth herein, Defendant Duncan acted under color of the law of the State of Maryland.

6. Defendant David Stofa (“Defendant Stofa”) is an individual who resides in the State of Maryland and is and was at all times relevant to this Complaint the Principal of Easton High School. Defendant Stofa is sued in his individual and official capacities. In all respects set forth herein, Defendant Stofa acted under color of the law of the State of Maryland.

7. Defendant Sherry Bowen (“Defendant Bowen”) is an individual who resides in the State of Maryland and was at all times relevant to this Complaint an Assistant Principal of Easton High School. Defendant Salmon is sued in her individual and official capacities. In all respects set forth herein, Defendant Bowen acted under color of the law of the State of Maryland.

8. This suit arises under the United States Constitution and the laws of the United States and is brought pursuant to 42 U.S.C. § 1983, together with pendent state constitutional claims.

9. The Court has jurisdiction over Plaintiffs' federal claims pursuant to 28 U.S.C. § 1331, as the action arises under the Constitution of the United States, and 28 U.S.C. § 1343(A)(3), as it seeks to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States.

10. The Court has jurisdiction over Plaintiffs' pendent state claims pursuant to 28 U.S.C. § 1367.

11. The Court has authority to grant declaratory and injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

12. Venue is properly laid pursuant to 28 U.S.C. § 1391(b) in the District of Maryland, because Defendants reside in this district and the events giving rise to the claims occurred in this district.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

13. Plaintiffs were at all times relevant hereto students at EHS.

14. Prior to April 12, 2011, neither Plaintiff had ever been subject to any disciplinary action by Defendants.

15. On April 12, 2011, Defendant Duncan received a telephone call from the Department of Juvenile Services, which reported an allegation by a parent that unspecified members of the Easton High School Lacrosse Team had, on past occasions, carried alcohol in their water bottles and consumed it in the bus on the way to and from athletic events.

16. Defendant Duncan discussed this information with senior staff and decided to

institute a search of the EHS Lacrosse Team buses on April 13, 2011, prior to their departure for an athletic event.

17. On April 13th, 2011, Defendants Duncan, Stofa and Bowen, accompanied by Assistant Principal Marnie Stockman and security staff, boarded the bus. Defendant Stofa explained to the lacrosse team that a search would be conducted.

18. Defendants gave each student several stickers containing the student's name, and Defendant Stofa instructed the students to mark their belongings with these stickers.

19. As Defendant Stofa was giving these instructions, Plaintiff Dennis turned to Defendant Bowen and stated that he had a pocketknife in his bag.

20. Defendant Bowen instructed Plaintiff Dennis to retrieve the knife from his bag.

21. Plaintiff Dennis complied with Defendant Bowen's instructions by retrieving the knife (with a blade approximately 2 ½ inches in length) and surrendering it to Defendant Bowen.

22. Defendant Bowen instructed Plaintiff Dennis to leave his bag on the seat and exit the bus. Thereafter, Defendant Bowen searched Plaintiff Dennis' bag and found a Leatherman tool containing three tiny blades. (A photograph of the blades is attached hereto as Exhibit A).

23. Plaintiff Edsall was also instructed to leave his bag on the seat and exit the bus. Upon searching Plaintiff Edsall's athletic bag, Defendant Bowen found and confiscated a butane lighter.

24. TCPS staff contacted police and, upon the arrival of police, turned over the confiscated items to them.

25. Police arrested Plaintiff Dennis on the spot for having possessed the small pocketknife on school property.

26. Plaintiff Dennis suffers from diabetes, a medical condition that is exacerbated by stress and anxiety and requires periodic testing and medication.

27. At no time during the events described herein did school officials or police provide needed medical testing and/or care for Plaintiff Dennis.

28. When Plaintiff Dennis' mother was given the opportunity to test his blood sugar level (approximately 45 minutes after Plaintiff Dennis was taken into police custody), it was over 400, which is unusually high and is potentially a health risk.

29. Immediately following the incident described herein, Plaintiff Dennis began to suffer severe depression and anxiety, which necessitated the services of physicians and counselors and the prescribing of medications.

PERTINENT FCPS POLICIES/RULES OF CONDUCT

30. The *2010-2011 Easton High School Student Handbook* defines as "Contraband" the following items: "Beepers/pagers, Cellular Phones, Pepper Mace, Laser Pointers, Squirt Guns, Projectile Shooters, [and] Dangerous Weapons."

31. Pursuant to Talbot County Public Schools Policy Code 10.22, the removal of a student from school "should represent a last resort effort." The policy specifically states that unless a student's presence poses a physical danger to other students or staff or seriously disrupts the educational process for other students, "suspensions should be used only in discipline cases of repeated rule infraction, and after all other available disciplinary means have been exhausted."

DISCIPLINARY ACTIONS AND APPEALS

32. Defendant Stofa suspended Plaintiff Dennis for ten (10) days for possession of a dangerous weapon on school property and recommended that he be expelled from TCPS. Plaintiff Dennis appealed Defendant Stofa's decision to Defendant Salmon. Upon reviewing the

case, Defendant Salmon determined that a ten-day suspension, rather than expulsion, was the appropriate punishment. A copy of the letter announcing Defendant Salmon's decision is attached hereto as **Exhibit B**.

33. Defendant Stofa suspended Plaintiff Edsall for one (1) day for possession of a dangerous weapon on school property. Plaintiff Edsall appealed this decision to Defendant Salmon. Upon reviewing the case, Defendant Salmon determined that the one-day suspension was appropriate. A copy of the letter announcing Defendant Salmon's decision is attached hereto as **Exhibit C**.

34. Both Plaintiffs appealed Defendant Salmon's decision to Defendant Board of Education of Talbot County ("Board").

35. Plaintiffs explained to the Board that the confiscated items were tools used regularly in maintaining lacrosse sticks. These statements were confirmed by an assistant coach and the captain of the lacrosse teams. A copy of a letter from Assistant Coach Joe Gamble is attached hereto as **Exhibit D**.

36. Plaintiffs argued that because the confiscated items were tools used solely for maintaining lacrosse equipment (with the knowledge and implicit approval of coaches), Plaintiffs did not know that their possession of these items could be grounds for discipline under school policies.

37. The Board affirmed both suspensions. Two members of the Board dissented from this decision, finding that the suspensions were improper under TCPS policy because it was the first "offense" for each student, and that the search of the students' bags was illegal because it was not justified at its inception. The Board's written decision is attached hereto as **Exhibit E**.

38. Plaintiffs appealed the Board's decision to the Maryland State Board of Education.

39. On April 10, 2012, the Maryland State Board of Education reversed the Board's decision and ordered the expunging of Plaintiffs' academic records on two grounds:

- a. The suspensions violated TCPS' Policy Code 10.22, which mandates that students may be suspended for a first offense only if it involves fighting, drug or alcohol misuse, or where their presence poses a danger to students or staff or their behavior seriously disrupts the educational process.
- b. The suspensions were improper under the Due Process Clause of the Fourteenth Amendment, because students were not given adequate notice that possession of the confiscated items under these circumstances could result in the calling of police and/or arrest.

A copy of the Maryland State Board of Education's decision is attached hereto as **Exhibit F**.

40. As a result of the actions of Defendants, Plaintiffs have sustained pecuniary and non-pecuniary losses, including the loss of precious rights under the Fourth and Fourteenth Amendments to the United States Constitution and parallel provisions of the Maryland Constitution, expenses incurred in appealing the disciplinary decisions of Defendants, medical and counseling expenses, mental anguish, reputational damages, inability to gain admission to many colleges, and loss of enjoyment of life.

FIRST COUNT
(Fourth Amendment Violation – Unreasonable Search and Seizure)

41. Plaintiffs' adopt and incorporate herein the allegations of Paragraphs 1 through 40 hereof.

42. On April 13, 2011, Defendants had no reasonable suspicion to justify their search

of Plaintiffs' personal belongings.

43. Defendants' search of Plaintiffs' personal belongings was violated Plaintiffs' rights to be free from unreasonable searches and seizures, which rights are guaranteed by the Fourth Amendment to the United States Constitution and made applicable to the states through the Fourteenth Amendment.

44. Pursuant to 42 U.S.C. § 1988, Plaintiffs are entitled to an award of attorneys' fees in connection with the bringing of the claims alleged in this count.

WHEREFORE, Plaintiffs demand judgment against Defendants for:

- a. Compensatory damages in an amount to be determined;
- b. Nominal damages in the event that no compensatory damages are awarded;
- c. Punitive damages;
- d. Costs of this action;
- e. Reasonable attorneys' fees and costs; and
- f. Such other and further relief as this Court may deem appropriate and just.

SECOND COUNT
(Violation of Maryland Constitution, Declaration of Rights, Art. 26)

45. Plaintiffs' adopt and incorporate herein the allegations of Paragraphs 1 through 44 hereof.

46. On April 13, 2011, Defendants had no reasonable suspicion to justify their search of Plaintiffs' personal belongings.

47. Defendants' search of Plaintiffs' personal belongings violated Plaintiffs' rights to be free from unreasonable searches and seizures, which rights are guaranteed by Article 26 of the Declaration of Rights contained in the Maryland Constitution.

WHEREFORE, Plaintiffs demand judgment against Defendants for:

- a. Compensatory damages in an amount to be determined at trial;
- b. Nominal damages in the event that no compensatory damages are awarded;
- c. Punitive damages; and
- d. Such other and further relief as this Court may deem appropriate and just.

THIRD COUNT
(Fourteenth Amendment Violation – Due Process)

48. Plaintiffs adopt and incorporate herein the allegations of Paragraphs 1 through 47 hereof.

49. Plaintiffs were subjected to deprivations of their property interests in receiving a free, public education despite the fact that they had no intention, at any time, of possessing any “weapon” on school property.

50. While Plaintiffs knew that they possessed the pocket knives and butane lighter, respectively, they had no intent to possess these items as “weapons,” but rather as tools to be used for routine maintenance of athletic equipment. Moreover, Plaintiffs were not aware that they could not possess these tools on school property.

51. The *2010-2011 Easton High School Student Handbook* did not provide Plaintiffs with adequate notice that the possession of small knives and/or butane lighters for the sole purpose of repairing athletic equipment would constitute grounds for deprivation of their property interest in receiving a free, public education. While the *Handbook* lists “dangerous weapons” as contraband, it does not define that term.

52. In suspending Plaintiffs for first-time offenses even though Plaintiffs caused no

disruption to the academic process and presented no danger to any person or property, Defendants contravened their own duly enacted policies and thus deprived Plaintiffs of their property interests in receiving a free, public education without due process of law.

53. Pursuant to 42 U.S.C. § 1988, Plaintiffs are entitled to an award of attorneys' fees in connection with the bringing of the claims alleged in this count.

WHEREFORE, Plaintiffs demand judgment against Defendants for:

- a. Compensatory damages in an amount to be determined;
- b. Nominal damages in the event that no compensatory damages are awarded;
- c. Punitive damages;
- d. Costs of this action;
- e. Reasonable attorneys' fees and costs; and
- f. Such other and further relief as this Court may deem appropriate and just.

FOURTH COUNT
(Violation of Maryland Constitution, Declaration of Rights, Art. 24)

54. Plaintiffs adopt and incorporate herein the allegations of Paragraphs 1 through 53 hereof.

55. Plaintiffs were subjected to deprivations of their property interests in receiving a free, public education despite the fact that they had no intention, at any time, of possessing any "weapon" on school property.

56. While Plaintiffs knew that they possessed the pocket knives and butane lighter, respectively, they had no intent to possess these items as "weapons," but rather as tools to be used for routine maintenance of athletic equipment. Moreover, Plaintiffs were not aware that they could not possess these tools on school property.

57. The *2010-2011 Easton High School Student Handbook* did not provide Plaintiffs

with adequate notice that the possession of small knives and/or butane lighters for the sole purpose of repairing athletic equipment would constitute grounds for deprivation of their property interests in receiving a free, public education. While the *Handbook* lists “dangerous weapons” as contraband, it does not define that term.

58. In suspending Plaintiffs for first-time offenses even though Plaintiffs caused no disruption to the academic process and presented no danger to any person or property, Defendants contravened their own duly enacted policies and thus deprived Plaintiffs of their property interests in receiving a free, public education without due process of law.

WHEREFORE, Plaintiffs demands judgment against Defendants for:

- a. Compensatory damages in an amount to be determined;
- b. Nominal damages, in the event that no compensatory damages are awarded;
- c. Punitive damages; and
- d. Such other and further relief as this Court may deem appropriate and just.

JURY TRIAL DEMANDED

Dated: December 11, 2013

Respectfully Submitted,

/s/ John Garza

John Garza

Bar # 01921

17 W. Jefferson Street

Suite 100

Rockville, MD 20850

Affiliate Attorney with

THE RUTHERFORD INSTITUTE

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS GRAHAM DENNIS AND CASEY EDSALL	DEFENDANTS BOARD OF EDUCATION OF TALBOT COUNTY, KAREN SALMON, LYNNE DUNCAN, DAVID STOF, AND SHERRY BOWEN
(b) County of Residence of First Listed Plaintiff <u>TALBOT COUNTY</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i>	County of Residence of First Listed Defendant <u>TALBOT COUNTY</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i>
(c) Attorneys (Firm Name, Address, and Telephone Number) John R. Garza Garza, Regan & Associates, P.C. 17 W. Jefferson St Suite 100, Rockville, MD 20850	NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i>	III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i>																								
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i> <input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i>	<table style="width: 100%;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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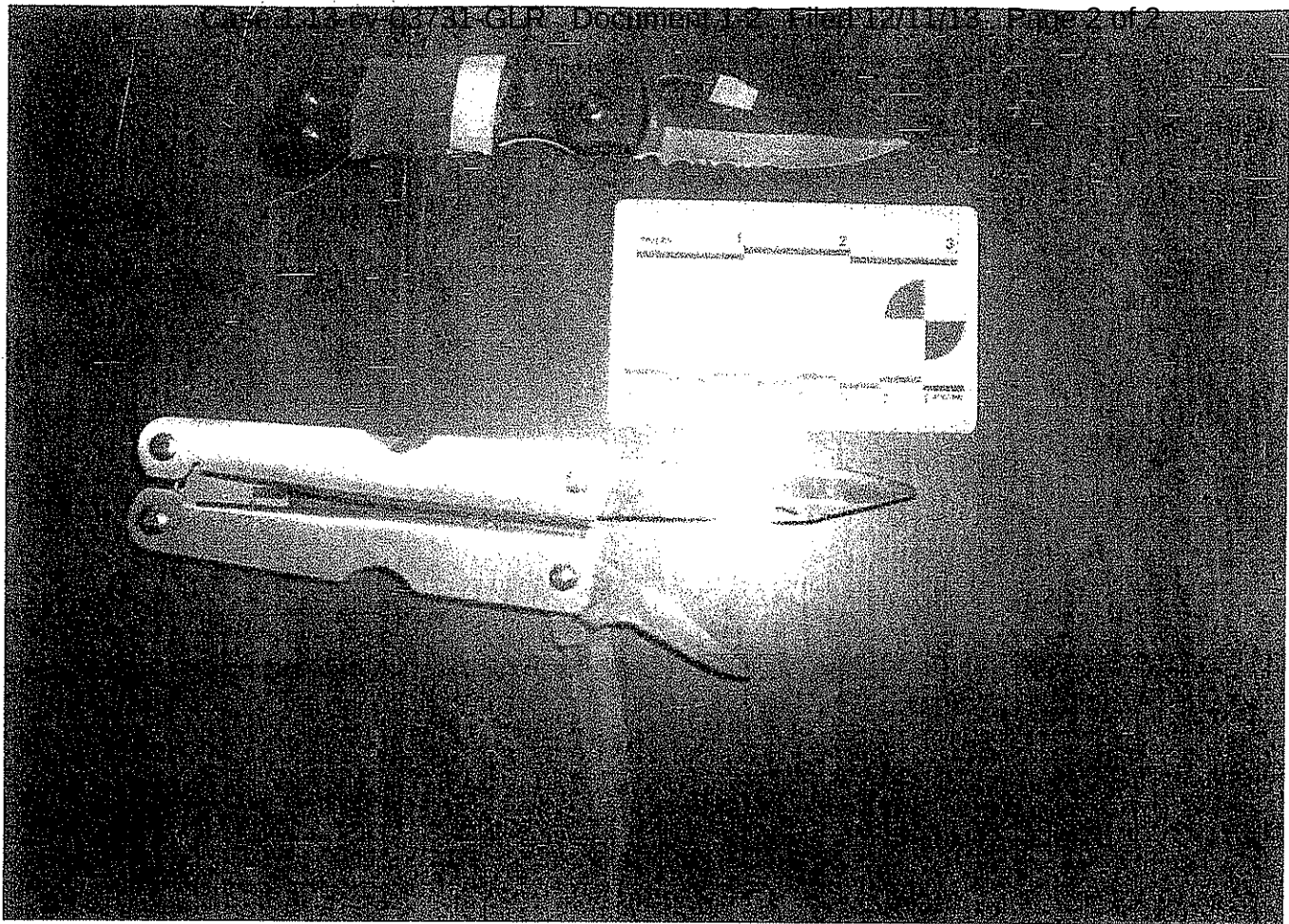
IV. NATURE OF SUIT <i>(Place an "X" in One Box Only)</i>			
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V. ORIGIN <i>(Place an "X" in One Box Only)</i> <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another District (specify) <input type="checkbox"/> 6 Multidistrict Litigation	VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>42 U.S.C. §1983 United States Constitution</u> Brief description of cause:
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY <i>(See instructions):</i>	JUDGE _____	DOCKET NUMBER _____
DATE <u>12/11/2013</u> <u>SIGNATURE OF ATTORNEY OF RECORD</u>		
FOR OFFICE USE ONLY RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____		

EXHIBIT A



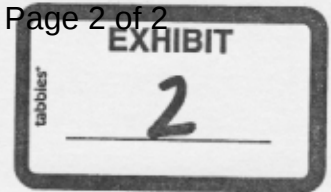
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EASTON RYCE DEPT.



EXHIBIT B



... each student will learn, grow and succeed.



Karen B. Salmon, Ph.D.
Superintendent of Schools

P.O. Box 1029
Easton, Maryland 21601-1029
Phone: (410) 822-0330
Fax: (410) 820-4260
www.talbotschools.org

Monica D. Heinsohn
President, Board of Education
Juanita S. Hopkins, Esq.
Vice President, Board of Education

April 21, 2011

Mr. and Mrs. Greg Dennis
134 S. Washington St.
Easton, MD 21601

Re: Graham Dennis

Dear Mr. and Mrs. Dennis:

On April 13, 2011, Graham was suspended for ten days with a request for expulsion and charged with possession of two knives on school property. State law section 4-102 states, "a person may not carry or possess a firearm, knife, or deadly weapon of any kind on public school property." This is a criminal offense punishable by a misdemeanor and/or conviction subject to imprisonment not exceeding three years or a fine not exceeding \$1,000 or both.

Given the severity of this violation expulsion is warranted. However, after an investigation and in consideration of the extenuating circumstances, I have decided to offer an alternative to expulsion. Graham will complete his 10 days of out of school suspension and may return to school on May 4, 2011. During the course of this suspension Graham is not permitted on any Talbot County Public School property.

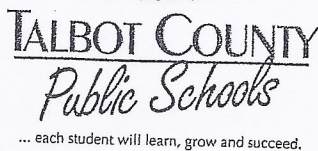
Graham is encouraged to continue completion of all assignments. Please contact Mrs. Judy Berrang on April 27, 2011 when school resumes after Spring break to arrange for his schoolwork.

Sincerely,

Karen B. Salmon, Ph.D.
Superintendent

cc: Dave Stofa, Principal
Student File

EXHIBIT C



Karen B. Salmon, Ph.D.
Superintendent of Schools

P.O. Box 1029
Easton, Maryland 21601-1029
Phone: (410) 822-0330
Fax: (410) 820-4260
www.talbotschools.org

Monica D. Heinsohn
President, Board of Education
Juanita S. Hopkins, Esq.
Vice President, Board of Education

May 3, 2011

Mr. and Mrs. Douglas Edsall
12519 Wetland View Court
Cordova, MD 21625

Dear Mr. and Mrs. Edsall:

I received your letter requesting that the one-day suspension your son Casey received for possession of a lighter be removed from his school record.

It is my understanding that both Casey and you have mentioned that he had the lighter in case he needed to repair his lacrosse stick. While that may be the case, no Talbot County Public School student is permitted to be in possession of a lighter at any time for any reason. Therefore, the suspension will not be waived.

Casey has served his one-day suspension and was able to resume both his academic and athletic privileges immediately upon his return to school. As both Mrs. Duncan and Mrs. Griffith explained, you have the right to have your objection to the suspension attached to the file, which I will facilitate along with my response.

Be assured that this suspension will not be a part of any transcript sent to colleges during the application process nor will it be released without your permission.

I was very pleased to learn that Casey was inducted into the National Honor Society last week and wish him the very best both this school year and his senior year.

Sincerely,

Karen B. Salmon, Ph.D.

EXHIBIT D

I am writing on behalf of one of my lacrosse players, Graham Dennis. I have coached Graham Dennis in lacrosse since he was a young child. He has played lacrosse for me year round for many years on summer travel teams, Talbot Recreation Leagues, fall ball teams and winter indoor teams. In all my experiences with Graham he has been a pleasant and courteous young man and an absolute pleasure to coach. Graham plays lacrosse and soccer with passion like many of the other young men at Easton High.

Thirty years ago my brother and I also played sports with passion in high school and had a great coach who helped me get through some of those tough teenage growing and learning years. My brother and I were in a similar situation where the Board of Education in our county could have applied the policy and probably had us thrown out of school/ given us alternative school and thus not allowing us to participate as a normal student. My coach and a vice principal "went to bat" for us and we were given a second chance. Over that next year that coach and vice principal helped us to realize how important it was to make the most of this second chance. We took advantage of that and both went onto college and graduated. My brother went on to become a Colonel in the 82nd Airborne and is supposed to be promoted to General by the end of 2011. He commands over 4,000 men and women most of whom (including him) are in harm's way in Afghanistan. I went on to command one of the most successful homicide investigation units in the country. I write all this not to pound my chest but because I believe that my brother and I could have gone either way back in 1981. Had we not been given the second chance neither of us would have been able to achieve the success that we later earned. My old coach and vice principal provided us with the chance we needed to succeed.

Graham's actions on the day of the search were commendable. Apparently he remembered he had the item and reported it. He has always been honest with me as well. I know the purpose for those items were to fix lacrosse sticks not to cause harm to anyone. I know what the policy says as since this incident I have read it. Had I had instruction on this previously, I would have made that known to the kids and made sure they did not possess these tools. As a coach the thought never crossed my mind as these were no different than tools that were needed to maintain the equipment that they have to purchase to play the sport. The school does not purchase this equipment for the kids, does not supply the tools to maintain the sticks and helmets nor has it ever been expected of us as coaches to maintain this equipment. I'm not making excuses but want you to know that this issue has never been raised in the past nor could anyone argue that it was something that any of us should have foreseen.

I believe Graham Dennis can achieve great things in life. I know from my experience that he is at the biggest crossroad of his young life. I know that he feels helpless and scared. I hope that we all can learn from this and correct our shortcomings in the future. I can only imagine how difficult your job is in making the right decision. It is my hope and prayer that Graham be given the second chance that he needs.

Respectfully,


Joe Gamble

29298 Woodridge Drive, Easton MD 21601

443-496-1662

EXHIBIT E

IN THE MATTER OF

CASEY EDSALL

*

*

*

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BEFORE THE

BOARD OF EDUCATION OF

TALBOT COUNTY

* * * * *

DECISION OF THE BOARD OF EDUCATION OF TALBOT COUNTY

This is an appeal before the Board of Education of Talbot County (the “Board”) pursuant to Sections 4-205(c)(3) of the Education Article of the Annotated Code of Maryland, brought by Renee and Douglas Edsall (the “Parents”), the parents of Casey Edsall (“Casey”). The Parents appeal the May 3, 2011, decision of the Superintendent of Talbot County Public Schools, Dr. Karen B. Salmon, to uphold Casey’s suspension for one day. Casey was suspended for one day on April 13, 2011, due to his possession of a butane lighter on the Easton High School Lacrosse Team bus.

In their appeal to the Board, the Parents contend the suspension and decision of the Superintendent to uphold the suspension were in error because (1) butane lighters are not specifically listed in the Easton High School Student Handbook as contraband items, (2) a butane lighter is not defined an explosive device under various other Federal and State statutory provisions, (3) Casey lacked the intent to utilize the lighter as a weapon or explosive and instead possessed it with the intent to use the lighter as a tool, (4) Board policy states that suspension should only be imposed for repeated rule infractions, and (5) the manner in which school staff conducted the search of Casey’s athletic bag violated applicable law and Board policies. For the reasons set forth more fully below, we shall affirm the decision of the Superintendent.

The Board has reviewed all of the written materials submitted by the Parents as well as documentation submitted by counsel for the Superintendent in response to the appeal. Pursuant to its review of this documentation, the Board has determined that this appeal may be decided under its Rules of Procedure without an evidentiary hearing or oral argument.¹

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Background

On April 12, 2011, Lynne Duncan, Student Services Supervisor for the Talbot County Public Schools ("TCPS"), received a telephone call from the Department of Juvenile Services ("DJS") which reported an allegation by a parent that the members of the Easton High School Lacrosse Team had alcohol in their water bottles and were consuming it in the back of the bus on the way to and from athletic events.² Ms. Duncan discussed the information she had received from DJS with senior staff and the decision was made to search the Easton High School Lacrosse Team buses on April 13, 2011, prior to their departure for an athletic event.

On April 13, 2011, Ms. Duncan, Principal David Stofa, Assistant Principal Sherry Bowen, and Assistant Principal Marnie Stockman assembled along with security staff in preparation for the search. Once the students boarded the bus, staff entered the bus and Principal Stofa began to explain to the students that a search would be conducted and the procedure that would be employed. Each student was to be given stickers with their names on them and instructed to

¹ The Maryland State Board of Education has held that a full evidentiary hearing or oral argument is not required in cases involving a suspension of 10 days or less. *Dorothy F. v. Carroll County Bd. of Educ.*, MSDE Op. No. 03-18 (April 29, 2003)(citing *Goss v. Lopez*, 419 U.S. 565 at 581 (1975)(holding that for suspensions of 10 days or less, due process only requires oral or written notice of the charges and opportunity for the accused to present his side of the story)).

² The Dissent contends the information provided was as to a matter that occurred two or three years ago. The credible information in the record is that the DJS made the report to Ms. Duncan the day before the lighter was found.

mark the bags with the stickers so that staff knew which bags belonged to each student. As Principal Stofa was giving the students these instructions and before any search took place, Casey opened his bag and stated he had a lighter in his bag.³ Assistant Principal Bowen instructed Casey to leave the bag on the seat and to exit the bus. Assistant Principal Bowen confiscated a butane lighter from Casey's athletic bag. On April 13, 2011, Casey was suspended for one day for possession of the butane lighter in violation of Board policy. Casey was the only student with a lighter in his possession.

II. Standard of Review

The appeal of student suspensions for ten (10) days or less is taken pursuant the general appeal provision set forth at Section 4-205(c)(3) of the Education Article of the Annotated Code of Maryland. (An appeal of a student suspension of more than ten (10) days is taken pursuant to Section 7-305(d) of the Education Article of the Annotated Code of Maryland.) An appellant in an appeal under Section 4-205(c)(3) bears the burden of demonstrating by a preponderance of the evidence that the decision of the Superintendent was either arbitrary, unreasonable, or illegal. A decision may be arbitrary or unreasonable if it is contrary to sound educational policy or a reasoning mind could not have reasonably reached the same conclusion.⁴ Further a decision may be illegal if it is (1) unconstitutional, (2) exceeds statutory authority or jurisdiction, (3) misconstrues the law, (4) results from an unlawful procedure, (5) constitutes an abuse of discretionary powers, (6) or is otherwise affected by an error of law.⁵

³ Casey's parents note in their letter of June 23, 2011, that Casey denies admitting to Assistant Principal Bowen that he had the lighter in his bag. Based upon a review of all the documentation relevant to this issue, the Board finds credible that Assistant Principal Bowen's statement that Casey volunteered that he had the lighter in his bag.

⁴ COMAR 13A.01.05.05B. The standard of review applicable to appeals before the Maryland State Board of Education.

⁵ COMAR 13A.01.05.05C.

III. TCPS Policy Relating to Student Suspensions and Possession of Lighters

In order to comply with applicable State and Federal Law the Board has adopted Policy 10.22 and Administrative Regulation 10.22 AR, both of which apply to the suspension of a student for a period of ten (10) days or less. In pertinent part, Policy 10.22 provides for the removal of a student as a last resort for disciplinary violations. Policy 10.22 further states that generally suspensions should only be employed in cases of repeated rule violations. However, Policy 10.22 specifically states that a student may be suspended for a first offense if the offense involves (1) fighting, (2) drugs or alcohol, (3) a situation where student's behavior poses physical danger to other students or staff, and (4) when a student's behavior is found to seriously disrupt the educational process for other students. Finally, Policy 10.22 provides that the length of the suspension should be determined after careful consideration of the individual student and particular details of the infraction.

In pertinent part, 10.22 AR directs that a student receive the following due process protections prior to a suspension for ten (10) days or less:

- The student or the student's parent shall be given a prompt conference with the principal or their designee.
- At or before the conference the student shall receive oral or written notice of the charges against him or her. Further, should the student deny the charges, the student has the right to an explanation of the evidence supporting the charges and the opportunity for the student to present his side of the story.⁶

While cautioning administrators to consider the age and developmental level of a student before imposing a disciplinary penalty, Administrative Regulation 10.22 provides a listing of disciplinary offenses along with a correlated listing of suggested penalties. The suggested penalty for

⁶ See also COMAR 13A.08.01.11(c)

possession of an item classified as an explosive is out-of-school suspension for between one (1) and ten (10) days. The Maryland State Department of Education promulgates a listing of suspension codes for use in maintaining student records. The listing contains a specific code, 53A, for Explosives. Within the definition of Explosives under coding 53A is Butane Lighters.

IV. TCPS Policy Relating to Student Searches

Student searches conducted in Talbot County Public schools are governed by Board Policy 10.18 and implemented by Administrative Regulation 10.18 AR. Pursuant to Board Policy a principal, assistant principal, or school security guard may conduct a reasonable search of a student or his or her possessions based upon reasonable belief that the student is in possession of an item, the possession of which is a criminal offense or a violation of a rule or regulation of the Board. Pursuant to Administrative Regulation 10.18 AR., reasonable belief must exist prior to the search. Reasonable belief may result from the receipt of information from a reliable source that a student is in possession of a contraband item. Administrative Regulation 10.18 AR also expressly indicates that probable cause constitutes a higher standard of articulable suspicion which applies to law enforcement officers and that reasonable belief is a lesser standard which applies to school administrators. Furthermore, law enforcement officers may not search students or their possessions without probable cause and a search warrant absent an exigent circumstance such as eminent danger to the welfare or safety of a student. Policy 10.18II(A-B).

V. Analysis

The Parents advance several arguments regarding the decision to search Casey's athletic bag on April 13, 2011, the manner in which the search was conducted, and the one (1) day suspension Casey received for his possession of the lighter that was found during the search of

his athletic bag. First, the Parents take issue with the fact that butane lighters are not specifically listed as contraband items in the Student Conduct section of the *2010-2011 Easton High School Student Handbook*. Second, the Parents assert that the categorization of the lighter as an explosive is an error given the definition of the term “explosive” under various collateral Federal and State statutory and regulatory provisions. Third, the Parents assert that the decision to suspend Casey for possession of the lighter constitutes error because Casey did not possess the intent to employ the lighter as a weapon or explosive and instead possessed the lighter for the purpose of performing maintenance on his lacrosse stick. Fourth, the Parents assert that Casey’s suspension violates Board Policy 10.22 in that suspensions are to only to used to address repeated student infractions and the possession of the lighter by Casey was his first disciplinary offense. Finally, the Parents allege the search of Casey’s athletic bag was conducted in violation of Board Policy 10.18, Administrative Regulation 10.18 AR and applicable law. Each allegation of error will be addressed in detail below.

A. Notice that Possession of Lighters by Students is Contraband

Casey’s parents claim the suspension of Casey for possession of a lighter is improper because Casey was unaware that the item was contraband and the item was not specifically listed as contraband in the *2010-2011 Easton High School Student Handbook*. The Parents are correct in that the *Student Handbook* at page 15 only lists under “Possession of Contraband” the following items in parentheses:

- Beeper/pagers
- Cellular Phones
- Pepper Mace
- Laser Pointers
- Squirt Guns
- Projectile Shooters
- Dangerous Weapons

However, Casey's parents fail to note that the last sentence of the paragraph above this listing states "[c]opies of specific rules and regulations are available in the school office." Furthermore, butane lighters are specifically listed as contraband explosives on the Talbot County Public High School Student Parking Permit Application St. Michaels/Easton, a form containing the regulations and obligations for students applying for a student parking permit, and one which Casey and his parents executed on July 10, 2010. Finally, further indication that Casey had actual notice that possession of butane lighters was contraband can be derived from his actions on April 13, 2011. Without any specific inquiry directed to Casey, or any reference to butane lighters whatsoever, Casey volunteered to Assistant Principal Bowen that he possessed a lighter in his athletic bag.

The Board finds based upon Casey's execution of the application for a student parking permit, which included an express prohibition on possessing butane lighters and Casey's actions on April 13, 2011, in volunteering to administrators that he possessed a lighter, that Casey had actual notice that possession of a lighter is a violation of school policy.

B. Categorization of a Butane Lighter as an Explosive

The Parents claim the categorization of a butane lighter as an explosive is erroneous. Specifically, Casey's parents cite the definition of Explosive contained in the Offenses Codes published by the Maryland State Department of Education in the *Maryland Student Records System Manual 2008*. The definition cited by Casey's parents is as follows:

Possession, sale, distribution, detonation, or threat of detonation of an incendiary or explosive material or device including firecrackers, smoke bombs, flares or any combustible or explosive substance or combination of substances or articles, other than a firearm. *Id.* at E-8.

The *Maryland Student Records Manual 2008* in turn cites 18 U.S.C. § 921 as supporting authority for the definition. *Id.*

However butane lighters fall squarely within the scope of the foregoing definition of Explosives. A butane lighter is clearly an incendiary device, clearly contains a combustible substance, and does not fall within the definition of a firearm as defined in 18 U.S.C. § 921(a)(3).⁷

Furthermore, the Parents' argument that a butane lighter is not categorized as an explosive under various provisions of criminal law is without moment. The interests involved in the orderly and efficient administration of a public school system are clearly diverse from those involved in the administration of the criminal justice system. The Board is charged with maintaining a safe environment where students can access their instruction. Given the group environment in which public education is conducted, coupled with the, as yet, less than fully developed judgment of minor students, it is not surprising that the scope of permissible conduct in public schools is significantly narrower than one finds being exercised by adult citizens in general society. Is categorizing a butane lighter as a contraband explosive significantly stricter than the standards applied under criminal statutes? Of course it is. However, Casey has not been accused of a criminal act nor has a criminal sanction been imposed on Casey for his transgression of TCPS policy. Simply put, the distinguishing factor between the criminal law provisions to which the Parents seek to analogize and the TCPS prohibition on the possession of butane lighters is the diverse liberty interests involved in the two processes. For the foregoing reasons the Board's categorization of butane lighters as contraband explosives does not constitute an arbitrary, unreasonable, or illegal act.

⁷ Webster's Dictionary defines Butane as either of two isomeric flammable gaseous alkanes C_4H_{10} obtained usually from petroleum or natural gas and used as fuels. *Webster's Dictionary*, <http://www.merriam-webster.com/dictionary/butane>. Webster's Dictionary defines incendiary, in pertinent part, as a substance or weapon (as a bomb) used to start fires. *Webster's Dictionary*, <http://www.merriam-webster.com/dictionary/incendiary>.

C. Casey's Lack of Intent to Employ the Lighter as an Explosive or Weapon

The Parents also assert it was an error to suspend Casey for his possession of the lighter because Casey did not have the intent to use the lighter as a weapon or an explosive. In further support of this argument Casey's parents state that lighters are commonly used to burn strings on lacrosse sticks and prevent fraying. Casey's parents seek to buttress this argument drawing a distinction between the possession of an item with the intent to employ it as a tool and possessing an item with the intent to employ it as a weapon.

While the circumstances impelling Casey's possession of the lighter are certainly relevant to the determination of the penalty Casey should receive for his infraction, his specific intent, or lack thereof, is not a defense to liability for the violation of Board policy. Possession of contraband, including a butane lighter, under TCPS policy is a strict liability offense and requires no specific intent.⁸

The holding that possession of contraband is an issue of strict liability is in accord with the Maryland State Board of Education's holding in *Fitzsimmons v. New Baltimore City Bd. of Sch. Commissioners*, MSDE Op. No. 02-26 (2002). The factual situation in the *Fitzsimmons* case, in pertinent part, is virtually identical to the instant matter. *Fitzsimmons* involved a student who was advised by one of his teachers to bring with him to school a tool capable of cutting cardboard for a school project. The student in an attempt to follow the teacher's instructions brought a switchblade knife to school and was expelled when the knife was discovered on his person. While Casey was not instructed by his coaches to bring a lighter to school, the

⁸ Strict liability offenses and zero tolerance policies are two different concepts. Strict liability offenses refer to those offenses which compel a disciplinary consequence. Zero tolerance refers to harsh predefined mandatory consequences to a violation of school rules, without regard to the seriousness of the behavior, mitigating circumstances or the situation.

Fitzsimmons case and the instant matter are virtually indistinguishable on the issue of possession of a dangerous contraband item with the intent to use it as a tool rather than as a weapon. Notably, the State Board in *Fitzsimmons* upheld the student's expulsion regardless of his lack of intent to use the knife as a weapon.

That specific intent to use a contraband item as a weapon or explosive is not required by Board policy reflects the fact the Board seeks not only to prohibit the possession of these items by persons bearing malicious intent but also to ensure that these items are not present in the school environment at all. While Casey's parents may consider the danger created by their son's possession of the butane lighter, without the intent to utilize it as a weapon, remote, the lighter still presents a significant risk of producing a fire and endangering the welfare of other students and staff simply by virtue of the lighter's presence on school property. Likewise, the Board rejects the opinion of the Dissent that a lighter is incapable of disrupting the educational process. Unfortunately, experience shows otherwise. While not an everyday occurrence, it happens that students set fire to lavatory trash bins using lighters or matches. The danger is obvious. The Board considers bringing a lighter to school to be a serious offense.

The Board rejects Casey's parents attempt to import the requirement of specific intent into Board policy prohibiting the possession of contraband items. Possession of contraband items under Board policy is, and remains, a strict liability offense. The Board, however, notes that Casey's lack of intent to use the lighter as a weapon operated as a mitigating factor in the assignment of his punishment. Specifically, Casey received the minimum punishment recommended, under Administrative Regulation 10.22 AR, of a one (1) day of out-of-school suspension.

D. Suspension Inappropriate for First Offense

Casey's parents assert the one day suspension received by Casey on April 13, 2011, was improper because Board Policy 10.22 directs that suspensions should only be used as a "last resort" and "should only be used in discipline cases of repeated rule infraction." They ignore paragraph II of Policy 10.22 which articulates several situations in which a student may be suspended for a first offense. Specifically, a student may be suspended for a first offense for (1) fighting, (2) drug or alcohol misuse, (3) in a situation where a student's presence poses a physical danger to other student or staff, and (4) when a student's behavior is determined to seriously disrupt the educational process for other students. Possession of a contraband item such as a lighter, which by its very presence increases the danger of fire in the educational environment, is seriously disruptive of the educational process. As such, Casey's suspension for the first offense of possessing a contraband item does not violate Policy 10.22.

E. The Search of Casey's Bag

Casey's parents allege that the search of Casey's athletic bag on the bus on April 13, 2011, violated Board policy relating to student searches. Student searches in TCPS are governed by Policy 10.18 and Administrative Regulation 10.18 AR. Casey's parents specifically take issue with the fact that information received by TCPS administrators from the local Department of Juvenile Services was not particularized toward an individual student and instead related broadly to the entire Easton High School Lacrosse Team. Casey's parents are correct in their observation that Administrative Regulation 10.18 AR repeatedly refers to reasonable belief in reference to a singular student. However, particularized reasonable belief existed for the search of Casey's athletic bag. Indeed there can be no doubt that Casey's actions in communicating to Assistant

Principal Bowen that he had the lighter in his athletic bag provided reasonable belief for the search.

The Dissent contends there was no justification for the search. They ignore Casey's proffer, prior to the search of his bag, that he had a lighter. Even if there was no individualized suspicion prior to Casey admitting he had a lighter, there most definitely was individualized suspicion once Casey announced to the Assistant Principal that he had a lighter.

Additionally, and most importantly, the exclusionary rule does not apply to school searches by school personnel.

One need not consider the reliability of the information provided to the Department of Juvenile Services, whether said information was sufficiently particularized as to an individual student, or if, indeed, TCPS administrators should have investigated the informant further prior to taking action, in order to resolve whether the search of Casey's athletic bag was conducted in accordance with Board policy. Casey's statements to Assistant Principal Bowen prior to the search provided ample basis for the reasonable belief that Casey possessed contraband. For the foregoing reasons we find that the search of Casey's athletic bag on April 13, 2011, was in accordance with Policy 10.18, Administrative Regulation 10.18 AR, and applicable law.

F. The College Application Process

The Dissent argues that a reason for overturning the Superintendent's decision is that a college may inquire as to the student's disciplinary record. This cannot be a reason for overturning a decision in any case. Otherwise, it would always be cause for overturning a decision.

DECISION

For the reasons discussed above, this Board affirms the decision of the Superintendent upholding the decision to suspend Casey for one day as result of his possession of a contraband butane lighter in his athletic bag on April 13, 2011. The Parents have not met their burden of proof that Casey's suspension was arbitrary, unreasonable, or illegal. Should they choose to do so Casey and his parents may appeal this decision to the Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, in writing, within thirty (30) days of the date of this decision.

8/29/2011

Date

Monica D. Heinsohn
Monica Heinsohn, President

Robert Burris
Robert Burris

Gloria Farrare
Gloria Farrare

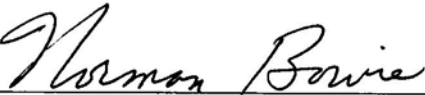
Sandy Kleppinger
Sandy Kleppinger

Donna Matthews
Donna Matthews

Dissenting:



Juanita Hopkins, Vice President



Norman Bowie

DISSENT

We believe the original search was in violation of both Talbot County Public School Policy and other Maryland school law policies and practices. Talbot County Public School (TCPS) Policy Code 10.18 (II) (I) does permit the following: "Desks lockers and storage spaces which are provided to students are the property of the school. They along with a student's purse, backpack, other personal possessions and vehicles can be searched if there is reasonable belief any of them contain drugs, weapons, contraband, or other items not permitted on school property."

However, policies must be read in conjunction with their accompanying Administrative Regulations. All references in TCPS Policy Code 10.18-AR are directed to a student or a particular student rather than a collection of students.

Section 1.A states: "The principal, assistant principal, or school security guard must have a belief that **the** student has in **his or her** possession an item, the possession of which is a criminal offense under the laws of this State or a violation of any other State law or rule or regulation of the local board (also known as an item). The belief, the fact, or reasonable belief may be established, for example, by hearing a statement from a reliable source that **the** student may have such an item in **his/her** possession. A reliable source is someone who, from prior experience, can be believed."

The regulation further states: "Searches of groups or classes to find one person in possession of contraband would not acceptable."

In a letter dated April 13, 2011 from Lynn Duncan director of Student Services is quoted as follows:

"Received call from the Department of Juvenile Services (DJS) on April 12, 2011 concerning an allegation by a parent that the boys on the lacrosse team had alcohol in their water bottles on the bus. Some were the same students who had played on the ice hockey team. Boys were mostly in the back of the bus and may be those who didn't play much."

In the present case this search was not directed at a specific student. In other words the caller did not say they believed that student X or student Y had contraband.

We also turn to the Maryland School Law Deskbook¹ as a source of guidance.

¹ In the foreword, former State Superintendent Dr. Nancy Grasmick states, "The Maryland School Law Deskbook is the first and only guide that is designed to help educators at the school and district level as they consider legal matters and their consequences. The information contained in the book is intended to keep educators out of the courtroom and in the schoolhouse where they can best help the students achieve great things."

This Deskbook was authored by five attorneys who specialize in school law, and put together by the Maryland Association of Boards of Education (MABE). Specifically, Chapter 11 concerns Student Discipline/Search and Seizure.

Section 11:50 states: **Is individualized suspicion required to search a student?**

“Yes, in order to search a student in school an administrator must have some degree of individualized suspicion before searching any particular student for contraband.”

The dissent believes there was no individualized suspicion in this search, and therefore the search was illegal.

In addition to individualized suspicion, TCPS Policy Code 10.18-AR also requires that there be reasonable belief, and the reasonable belief must be supportable before the search. In the present case, we feel the Edsall parents had a more plausible explanation of who the source was and the source was referring to an incident that occurred over two years ago. While there is great latitude within the regulation as to what constitutes a reliable source, the dissent believes in the present case almost three year old information that pertained to different players than who are on this current lacrosse team negates the reliability and further makes the search illegal.

The majority contends that since Casey voluntarily offered the lighter to the administrators during the search this constituted an ample basis for the reasonable belief that Casey possessed contraband. However, according to TCPS Policy 10.18-AR I.A., “the belief must be supportable BEFORE the search; at the inception of the problem, not after the fact.”

The Maryland School Law Deskbook Chapter 11 states,

Section 11:47: **When is a search justified at its inception?**

“It is important to note the discovery of contraband is largely irrelevant to the determination of whether a search was justified at its inception. A search that was based upon reasonable grounds will be upheld even if no contraband is found, and conversely, the finding of contraband will not validate a search that lacked reasonable grounds at its inception.”

The dissent believes this particular search lacked reasonable grounds and the voluntary production of the lighter did not validate the search at its inception.

For the above reasons we believe this search and seizure was illegal and therefore Casey’s suspension should never have occurred.

However, there is yet another issue that needs to be addressed. We feel that TCPS Policy Code 10.22 “Student Suspension” was improperly applied. The majority opinion states the four situations that justify a student’s suspension for a first offense. We believe that none of these

four conditions apply in the present case. The majority contends: "Possession of a contraband item such as a lighter, which by its presence increases the risk of bodily injury in the educational environment, is seriously disruptive of the educational process." The dissent does not believe that the presence of a lighter in a lacrosse bag used for the purpose of repairing stick heads that is on a bus going to a lacrosse game rises to that occasion. It is more plausible to believe that in this situation, the lacrosse stick itself would pose more of a danger than a penknife.

The relief the Edsall parents sought in this case was the overturning of the suspension and the expungement of the incident from school records. The majority upheld the suspension and refused to expunge Casey's record. Although the suspension has already been served, the dissent feels that in light of the mitigating circumstances and the clear lack of intent to do bodily harm, at the very least Casey's record should be expunged.

Legitimate concerns have been raised about questions now being asked on college applications pertaining to high school suspensions. While hearing this paper appeal, the Board was advised by our Board attorney that once a student graduates that all their records with the exception of grades are destroyed. We were also advised by our Board attorney that under FERPA² a student who has reached the age of 18 is endowed with certain privacy rights amongst which they do not have to divulge any information pertaining to education records unless they grant a waiver.

What is problematic with the present case is that seniors are typically 17 in age when they start the college application process. Their FERPA rights would not kick in until they are 18 and in the second half of the school year. By then college applications would already have been filled out. Also the school records other than grades would not be destroyed until graduation which is well after the college application process has been completed. The dissent believes there is a major difference between an actual expungement, which is the legal striking of records, and a suspension that goes away by destruction of school records. A student would be engaging in a deceptive practice if he or she fails to report an unexpunged suspension on his or her college admission application. This does not send a good message to the students, the parents or the college. The dissent believes that Casey does not deserve to be put in such a situation.

In conclusion, we contend the search violated TCPS policy, and various state school law policies. Even if the search is deemed legal we believe for the above stated reasons the suspension was unreasonable. In light of the fact that college applications are now including questions concerning suspensions, for the above stated reasons, we believe it was also unreasonable not to expunge Casey's records.

² FERPA stands for Family Educational Rights and Privacy Act.

In light of the circumstances in the present case, perhaps it is time to re-evaluate zero tolerance/strict liability/automatic suspension policies on both the state and local level. Such policies have taken away judgment and discretion on the part of those administering it, and are causing unintended consequences that permanently and unjustly affect a student's life.

Juanita S. Hopkins, Esq.
Thermon E. Bowie PhD

EXHIBIT F

In Re: TALBOT COUNTY LACROSSE
PLAYERS SUSPENSION CASES

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Opinion No. 12-12

OPINION

INTRODUCTION

These two cases are the Talbot County lacrosse player suspension cases. The Talbot County Board of Education (local board) filed a Motion for Summary Affirmance. The Appellants filed Oppositions. The local board filed a Reply.

FACTUAL BACKGROUND

On April 12, 2011, Ms. Duncan, Student Services Supervisor for Talbot County Public Schools (TCPS), received a call from the Department of Juvenile Services (DJS) advising her of the following: a parent known to the DJS worker had alleged that members of the Easton High School lacrosse team had alcohol in their water bottles; some of the boys involved also played on the ice hockey team; the boys sat mostly in the back of the bus; and the boys may be those who do not play much. (Student 2, Doc. Packet, Ex. 3, Duncan Statement, 4/13/11). Ms. Duncan discussed the information with senior staff and they decided to search the Easton High School (Easton) lacrosse team buses prior to their departure for an athletic event on April 13, 2011. (*Id.*).

On April 13, Ms. Duncan, Principal Stofa, Assistant Principals Bowen and Stockman, and the security staff readied themselves to conduct the search. Staff entered the bus after students were on board. Principal Stofa advised the students that they would be conducting a search and explained the manner in which they would carry it out. Staff provided the students with name labels to place on their bags for identification purposes. (*Id.*).

Ms. Bowen reported that while the Principal was giving the instructions, one of the students, Student 1, told her that he had a knife in his bag and asked if he should retrieve it. Ms. Bowen instructed him to do so and he handed her a blade knife about 2 ½ inches long. She then instructed Student 1 to leave his bag on the seat and exit the bus. Thereafter, Ms. Bowen helped search the bags after they were moved to the sidewalk. She found a Leatherman tool containing 3 knife blades in Student 1's athletic bag. (Student 1, Mtn. p.3 and Ex. 1, Picture of knives).

At about the same time that Student 1 gave Ms. Bowen the blade knife Student 2 told her he had a butane lighter in his bag. She told Student 2 to leave the bag on the seat and exit the bus. She then confiscated the lighter.

TCPS staff contacted the Easton Police Department and turned over the confiscated items to the police. Student 1 was arrested at the site of the search.

Principal Stofa suspended Student 1 for ten days with a recommendation that the Superintendent expel him. Appellants appealed the Principal's decision to the local Superintendent. After school system staff conducted an investigation of the matter, the Superintendent determined that a 10 day suspension, and not expulsion, was appropriate given the circumstances of the case. (Student 1, Doc. Packet, Ex. 2, Superintendent's Letter, 4/21/11).

Principal Stofa suspended Student 2 for one day. Appellants appealed the Principal's decision to the local Superintendent. After school system staff conducted an investigation of the matter, the Superintendent determined that the 1 day suspension was appropriate. (Student 2, Doc. Packet, Ex. 1, Superintendent's Letter, 5/3/11).

Appellants appealed the Superintendent's decisions to the local board. Both students argued, *inter alia*, that the knives and butane lighter were tools they used to repair their lacrosse sticks. They said they were not aware that possessing those "tools" could subject them to suspension. An Assistant Coach and the Captain of the lacrosse team confirmed those statements. Specifically, Assistant Coach Gamble submitted the following statement attached to Student 1's appeal:

[Student 1's] actions on the day of the search were commendable. Apparently he remembered he had the item and reported it. He has always been honest with me as well. I know the purpose of those items were [sic] to fix lacrosse sticks [and] not to cause harm to anyone. I know what the policy says as since this incident I have read it. Had I had instruction on this previously, I would have made known to the kids and made sure they did not possess these tools. As a coach the thought never crossed my mind as they were no different than tools that were needed to maintain the equipment that they have to purchase to play the sport. The school does not purchase this equipment for the kids, does not supply the tools to maintain the sticks and helmets nor has it ever been expected of us as coaches to maintain this equipment. I'm not making excuses but want you to know that this issue has never been raised in the past nor could anyone argue that it was something that any of us should have foreseen.

The local board affirmed the suspensions with two members dissenting. The dissenting members found that the Superintendent improperly applied the TCPS student suspension policy because it was the students' first offense and that the search of the bags was illegal because it was not justified at its inception.

STANDARD OF REVIEW

In student suspension cases, the decision of the local board is considered final. Md. Code Ann., Educ. §7-305(c). Therefore, the State Board will not review the merits of the decision unless there are "specific factual and legal allegations" that the local board failed to follow State or local law, policies, or procedures; violated the student's due process rights; or acted in an unconstitutional manner. COMAR 13A.01.05.05G(2). The State Board may reverse or modify a student suspension if the legal assertions are correct or if the decision of the local board is found to be otherwise illegal. *Id.* A decision is illegal if it is:

- (1) Unconstitutional;
- (2) Exceeds the statutory authority or jurisdiction of the local board;
- (3) Misconstrues the law;
- (4) Results from an unlawful procedure;
- (5) Is an abuse of discretionary powers; or
- (6) Is affected by any other error of law;

COMAR 13A.01.05.05C.

LEGAL ANALYSIS

TCPS has a discipline policy that includes discretion to consider all the facts and circumstances of each case. It is not a zero tolerance policy calling for mandatory suspensions or automatic suspensions of particular lengths of time for particular offenses. The TCPS discipline policy allows school staff to exercise discretion, even in cases like this one, and to consider all of the particular circumstances relevant to the case.

With all that in mind, and given our standard of review in school discipline cases, we reiterate our long held view that we will not question the appropriateness of the discipline imposed in a particular case unless we find that the facts and circumstances of the case indicate a violation of law. Thus, we turn to the legal issues presented in this case.

The Appellants set forth the three legal arguments in support of their appeals:

- 1) The local board failed to follow local policies and procedures when it suspended them for a first-time violation of a school rule.
- 2) The local board violated their due process rights because they did not have fair notice that possession of the butane lighter or the knives could result in suspension and the policy is ambiguous about whether intent is an element of the possession offense.

- 3) The local board violated their Fourth Amendment rights because school officials initiated a group search based on vague, generalized allegations.

Failure to Follow Local Policies and Procedures

Appellants claim that the local board violated its own policies when it suspended them. Failure to follow the school system's policies or procedures is one basis for legal review of the local board's decision.

With regard to suspension, TCPS Policy Code 10.22 states:

- I. Suspension is the temporary removal of a student from school or class by the principal or superintendent. This removal from school or class, or other school activities during this period, under normal conditions should represent a last resort effort. Unless the next paragraph applies, suspensions should be used only in discipline cases of repeated rule infraction, and after all other available disciplinary means have been exhausted. Suspension should be viewed under normal circumstances as a remedial action to correct extreme student misbehavior.

Thus, except for certain circumstances described below, the policy protects students from removal from school for a first offense. For both students, this was a first offense. The TCPS Policy Code 10.22 says:

- II. A student may be suspended for a first offense when fighting, or when drug or alcohol misuse occurs, when a student's presence poses a physical danger to other students or staff, or when a student's behavior is judged to seriously disrupt the educational process for other students. . . . A student whose presence in school poses a continuing danger to persons or property, or an ongoing threat of disrupting the academic process, may be removed immediately from school, provided that the notice and hearing required by this subsection is provided as soon as possible.

Given that this was the first offense for both Student 1 and Student 2, they could be suspended under the policy only if their offenses involved fighting or drug or alcohol misuse, their presence posed a physical danger to other students or staff, or their behavior seriously disrupted the educational process for other students.

There is no dispute that the offenses here did not involve fighting, drugs or alcohol use. Nor did the students' "presence" pose a physical danger to other students. Indeed, the local board does not argue such claims. Rather, the local board ruled that the suspensions were

justified because the students' conduct caused a serious disruption to the educational process for other students.

The local board's decisions address the disruption issue briefly. As to the possession of the knives, the local board made only one statement about why the student's behavior (*i.e.* possession) was seriously disruptive. The local board said, "Possession of a contraband item such as a knife, which by its very presence increases the risk of bodily injury in the educational environment, is seriously disruptive of the educational process." (Student 1, Mtn. Ex. 4).

The local board also commented on the Dissent's view that the possession was not disruptive.¹ The majority stated "[t]he Dissent makes light of the possibility that a knife can disrupt the educational process. Unfortunately, experience shows otherwise. First, [Student 1] had two knives, not just one. Also, there have been unfortunate cases of students bringing knives to school and using them as weapons to cut other students. No school system in Maryland permits students to bring knives to school. We consider bringing a knife to school one of the most serious offenses that a student can commit." (*Id.*).

The decision in the butane lighter case is similar in word and reasoning.

In the local board's view, any possession of these particular items is *per se* disruptive because of the potential of both types of items to cause harm. In that regard we point out, as did the Dissent, that many items that students bring to school, including lacrosse sticks, have the potential to cause harm.

The Appellants maintain that Student 2's possession of the lighter and Student 1's possession of the knives cannot reasonably be viewed as disrupting the educational process. They assert that Student 1 and Student 2 possessed the items for the purpose of performing repairs to their lacrosse equipment and nothing more. The items were stowed in their bags. Student 1 and Student 2 voluntarily told school staff that they had the knives and lighter in their duffle bags. They disclosed that information during the school's preplanned search for alcohol.

¹ The Dissent stated:

The majority contends: "Possession of a contraband item such as a knife, which by its presence increases the risk of bodily injury in the educational environment, is seriously disruptive of the educational process." The Dissent does not believe that the presence of a penknife in a lacrosse bag used for the purpose of repairing stick heads that is on a bus going to a lacrosse game rises to that occasion. It is more plausible to believe that in this situation, the lacrosse stick itself would pose more of a danger than a penknife.

(*Id.*).

We point out that, based on an anonymous tip, the school had already decided to devote staff time and resources to the search and to deal with what would be found. We also note that it was the decision of school personnel to call the police who subsequently arrested Student 1 at the site of the search in front of the student lacrosse players.

Those facts raise serious doubts that it was the students' conduct here that caused a serious disruption to the educational process - a requirement to suspend first offenders under the school discipline policy.

Without more, however, under our standard of review, we would defer to the local board's conclusion that the students' behavior seriously disrupted the educational process. Relevant to the disruption inquiry, however, we have considered whether the coaching staff tacitly approved the possession of the knives and lighter for use as tools to repair the lacrosse equipment.

Both Student 1 and Student 2 maintain that their possession of the knives and lighter could not be disruptive because it was the practice of the players to use the knives and lighters in the presence of the coaches to repair their equipment and the coaches did not warn them that possession was prohibited. Student 1 specifically asserts that the coaches repeatedly watched him perform the repairs with his knives while he was sitting on the bus without warning him or stopping him from doing so. (Student 1, Appeal, p. 6).

In support of this claim, Student 1 attached to his appeal to the local board a statement from Joe Gamble, the Assistant Coach of the lacrosse team.² The relevant portion of Mr. Gamble's letter states as follows:

[Student 1's] actions on the day of the search were commendable. Apparently he remembered he had the item and reported it. He has always been honest with me as well. I know the purpose of those items were [sic] to fix lacrosse sticks [and] not to cause harm to anyone. I know what the policy says as since this incident I have read it. Had I had instruction on this previously, I would have made known to the kids and made sure they did not possess these tools. As a coach the thought never crossed my mind as they were no different than tools that were needed to maintain the equipment that they have to purchase to play the sport. The school does not purchase this equipment for the kids, does not supply the tools to maintain the sticks and helmets nor has it ever been expected of us as coaches to maintain this equipment. I'm not making excuses but want you to know that this issue has never been raised in the past nor could anyone argue that it was something that any of us should have foreseen.

² We contacted counsel for the local board who verified that Mr. Gamble is the Assistant Coach of the lacrosse team.

According to that statement, Mr. Gamble was aware that players used knives and lighters to repair their equipment and did not advise them that it was a violation of school policy. He was not even aware himself that possession of these items was prohibited under school policy.

Appellants also attached to their appeal to the local board a letter from the Captain of the lacrosse team. He stated that various students have possessed similar items at various times in order to repair their sticks and that the players were unaware that it was a policy violation until this case came to light.³

The local board did not address those two written statements when it rendered its decision. Moreover, the local board did not address those statements in its Motion for Summary Affirmance. The only reference that the local board makes to the coaches' conduct in this case is an assertion in its Motion for Summary Affirmance that "when Coach Dennis Keenan was interviewed with regard to this matter he denied he had ever told students they could bring knives or lighters to maintain their lacrosse sticks, or that he was aware students were bringing knives or lighters with them to perform maintenance. Coach Keenan further stated that students were aware that coaching staff maintained a tool kit for these types of repairs". (Student 1, Mtn., p. 4).

We point out that there is no indication of who interviewed Coach Keenan, who is the Head Coach of the lacrosse team. There is no written statement from him in the record. There is no affidavit.

The local board has submitted a written statement from Lynne Duncan:

After the search I approached Mr. Stofa who was standing by the bus with Dennis Keenan. All the students were on the bus. When I asked if everything was okay he told me he had a student with knives and one with a lighter. (they were on the bus). Mr. Stofa said he'd warned them that they couldn't have these items.

Ms. Duncan's statement that Mr. Stofa warned the players that they could not have the items is a general statement lacking any specifics about what was said, when it was said, and what players were present when it was said.

³ It bears mentioning that there was a delay in getting the full case record from the local board in this matter. While the local board originally produced the majority of the record, there were several documents that we noticed were missing from the initial filing, including the statement of Joe Gamble and the Team Captain. Those important and relevant documents were ultimately produced after we contacted legal counsel for the local board. COMAR 13A.01.05.03E requires the local board to "transmit the record of local proceedings with the local board's response" to the appeal. It is our expectation that in each appeal before this Board the local board will comply fully with this requirement. Every document in the record should be produced in a single packet similar to how a case record is produced in an appeal to an appellate court.

In comparison, we have the written statements of the Assistant Coach and of the Team Captain. They are detailed and specific about the players' common use of the tools and the lack of knowledge that they were items they could not have in their duffle bags for such use. Moreover, the Assistant Coach stated that the school did not have a tool kit for the students to use. Those statements corroborate what the Appellants have asserted all along - - that they believed they were permitted to possess the knives and lighter as tools to repair the lacrosse equipment.

We have considered whether the differing accounts create a dispute of material fact which would require referral of the issue for an evidentiary hearing. To create a "dispute" there must be some kind of reliable evidence on both sides of the issue. The local board's evidence consists of the bald assertion in its Motion of what Coach Keenan said. Bald assertions are not sufficient to create a genuine dispute of fact on the issue. That leaves the general statement of Ms. Duncan that Mr. Stofa told her he "warned" the students they couldn't have "these items." We view Ms. Duncan's double hearsay statement as some evidence that one or more students were warned at some time that the items were not allowed. "The existence of a scintilla of evidence in support of [a] claim is insufficient" to create dispute of fact, however. *See Seaboard Surety Co. v. Richard F. Kline, Inc.*, 91 Md. App. 236, 244 (1992). We consider the Duncan Statement to fall into that category of evidence.

On the other hand, the statements of the Assistant Coach and Team Captain are detailed, specific, written and signed. They carry greater evidentiary weight and reliability than the Duncan statement. They represent sufficient evidence that Student 1 and Student 2 reasonably believed that the coaches had tacitly approved the possession of knives and lighters by the players for equipment maintenance and that they reasonably relied on that approval.

Because this tacit approval affects the legal analysis of whether the local board violated its own policy governing suspension for a first offense, we return to that question.

Thus, we must ask whether there was any evidence to support the conclusion that the conduct of Student 1 and Student 2 seriously disrupted the educational process for other students. If there was not, the local board's decision would be illegal.

We review the facts. First, the students themselves disclosed the presence of the items in their bags. Second, the possession and use of those items was tacitly approved by the coaching staff. Third, it was common knowledge that the items are the tools used to repair lacrosse sticks. Fourth, the students used the items openly on the bus to repair their equipment. Fifth, the school staff initiated their search based on an anonymous tip, not because of anything Student 1 or Student 2 did. Sixth, the items were found in a search for alcohol in all the lacrosse players' bags, not in search to root out these types of items. Seventh, school staff called the police who arrested Student 1 on the spot - - a disruptive event in and of itself.

In our view, based on those facts, there is no support for a conclusion that it was the conduct of these students that seriously disrupted the educational process. Such a ruling, under

the Court of Appeals abuse of discretion standards, “is clearly against the logic and effect of particular facts and inferences.”

A determination that an abuse of discretion occurred “depends on the particular facts of the case [and] the context in which the discretion was exercised.” *Myer v. State*, 403 Md. 463, 486 (2008). An abuse of discretion occurs:

“where no reasonable person would take the view adopted by the [trial] court,” or when the court acts “without reference to any guiding rules or principles.” It has also been said to exist when the ruling under consideration “appears to have been made on untenable grounds,” when the ruling is “clearly against the logic and effect of facts and inferences before the court,” when the ruling is “clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result,” when the ruling is “violative of fact and logic,” or when it constitutes an “untenable judicial act that defies reason and works an injustice.”

There is a certain commonality in all these definitions, to the extent that they express the notion that a ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling. The decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable. That kind of distance can arise in a number of ways, among which are that the ruling either does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective. That, we think, is included within the notion of “untenable grounds,” “violative of fact and logic,” and “against the logic and effect of facts and inferences before the court.”

See King v. State, 407 Md. 682, 697 (2009), citing *North v. North*, 102 Md. App. 1 (1994).

When a decision of the local board reflects an abuse of discretion, it will be reversed as illegal. We must do so here, fully recognizing that possession of knives and lighters in school is not appropriate. Discipline is appropriate for such offenses, but the discipline meted out here was not appropriate because it violated TCPS’s own first offense policy. We do not suggest here that the possession of those items without more can never be viewed as seriously disrupting the educational process. We will not list all the scenarios that might rise to that level. This is not one of them, however.

Nor, should our opinion be interpreted to mean that it is appropriate for any student, including lacrosse players, to bring knives and butane lighters to school. TCPS should have a toolkit for lacrosse players to use and coaches should make it clear that failure to use the toolkit by bringing “tools” to school for repair of lacrosse equipment could lead to suspension.

Due Process Issue: Notice

Both Appellants maintain that the local board's decision violated their due process rights because the school system's discipline policy failed to provide them with fair notice that possession of a butane lighter, a blade knife, and the tool knife blades of the type at issue here was prohibited.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires that school rules provide sufficient notice of what conduct is prohibited and not be impermissibly vague. *Chicago v. Morales*, 527 U.S. 41, 46 (1991). A provision may be declared void if it fails to give a person adequate warning that the conduct is prohibited or if it fails to set out adequate standards to prevent arbitrary and discriminatory enforcement. *Id.* at 56. Generally, a provision is unconstitutionally vague where it "either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." *Kolaendar v. Lawson*, 461 U.S. 352, 357 (1983).

The Supreme Court has stated, however, that "maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures . . ." and that "given the school's need to be able to impose disciplinary sanctions for a wide range of unanticipated conduct disruptive to the educational process, the school disciplinary rules need not be as detailed as a criminal code which imposes criminal sanctions." *Bethel v. Fraser*, 478 U.S. 675, 686 (1986).

We have reviewed the policies that the local board asserts provide sufficiently clear notice that possession of a knife or butane lighter may be grounds for suspension or expulsion.⁴

⁴ Notice Re: Knives

The 2010-2011 Easton High School Warrior Student Handbook (Handbook) states that students may be assigned detention, given suspension, or recommended for expulsion for possession of contraband. It sets forth a list of contraband which includes "dangerous weapons." (Student 1, Mtn. Ex. 5, p. 15). It also advises that all students are required to follow school rules and regulations, and indicates that copies of the rules and regulations are available in the school office.

Among those rules and regulations is the TCPS student suspension policy. (Student 1, Mtn. Exs. 6 and 7). Policy Code 10.14 prohibits students from possessing weapons on school grounds. Policy Code 10.22-AR lists the specific offenses that are prohibited and their penalties. The policy provides for a 1-10 day out-of-school suspension for possession of weapons other than guns or firearms, but does not provide any definition or examples of these items. (*Id.*).

Notice Re: Butane Lighter

The TCPS disciplinary policy recommends 1-10 days suspension for possession of "explosives." Policy Code 10.22-AR (Mt. Ex. 5). Neither the Student Handbook nor the TCPS disciplinary policy lists butane lighters as explosives.

We need not limit our review of the notice issue to the Handbook and the TCPS policy, however, because Student 2 had additional information concerning the school system's view of possession of butane lighter. Specifically, on September 10, 2010, he signed a Talbot County Public High School Student Parking Permit Application which contains a section entitled "Weapons on School Property" which explicitly states that students "shall not possess, handle, or transmit any object that can reasonable [sic] be considered a weapon" and that students are subject to a penalty ranging from suspension to expulsion if they do so. (Student 2, Mtn. Ex. 6). It then lists butane lighters, among a host of other items, as items that are considered explosives under the more general heading of weapons. (*Id.*). Thus, although the Handbook and policy did not address whether possession of a butane lighter was prohibited, Parking Permit Application did so.

The local board may be correct that the discipline policy is not unconstitutionally vague about the possible disciplinary consequences of possession of those items.

We are more concerned, however, about notice of possibility of arrest for certain conduct.

The policy states that the police *may* be called for any of the following infractions:

- Gambling;
- Harrassment of Other Students/Bullying;
- Leaving Class/School Grounds without Permission;
- Possession of Contraband (Beepers/pagers, cellular phones, pepper mace, laser pointers, squirt guns, projectile shooters, dangerous weapons);
- Possession of Obscene Material;
- Racist or Sexist Comments;
- Theft;
- Trespassing;
- Vandalism;
- Verbal Assault.

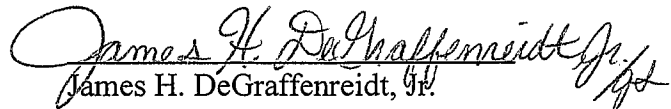
Warriors Student Handbook at 15-16.

Student 1 was arrested - - a consequence far more severe than a 10 day suspension. It is arguable that the knives he possessed could fall into the contraband category. Calling the police, however, is a discretionary decision under the disciplinary policy. This case should give rise to a review of the appropriate use of that discretion and the appropriate use of the authority to call the police.

CONCLUSION

This case is about context and about the appropriate exercise of discretion, in full consideration of all the facts involved in the case, including whether to suspend and whether to call the police.

For all the reasons stated herein, we reverse the local board's decisions to suspend Student 1 and Student 2 and direct that the students' records be fully and completely expunged.⁵


James H. DeGraffenreidt, Jr.
President

⁵ Because we have reversed the local board's decisions on the two grounds stated above, we need not address the Appellants' remaining legal arguments.

Charlene M. Dukes, JPS
Charlene M. Dukes
Vice President

Mary Kay Finan, JPS
Mary Kay Finan

S. James Gates, Jr., JPS
S. James Gates, Jr.

Luisa Montero-Diaz, JPS
Luisa Montero-Diaz

Sayed M. Naved, JPS
Sayed M. Naved

Madhu Sidhu, JPS
Madhu Sidhu

Guffie M. Smith, Jr., JPS
Guffie M. Smith, Jr.

Donna Hill Staton, JPS
Donna Hill Staton

Ivan C.A. Walks, JPS
Ivan C.A. Walks

Kate Walsh, JPS
Kate Walsh

April 10, 2012

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff

v.

Defendant

)
)
)
)
)
)
)

Civil Action No. _____

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff

v.

Defendant

)
)
)
)
)
)
)

Civil Action No. _____

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If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

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 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

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Server's signature

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Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff

v.

Defendant

)
)
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)
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)
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Civil Action No. _____

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

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If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

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Signature of Clerk or Deputy Clerk

Civil Action No. _____

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 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

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I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff

v.

Defendant

)
)
)
)
)
)
)

Civil Action No. _____

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff

v.

Defendant

)
)
)
)
)
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Civil Action No. _____

SUMMONS IN A CIVIL ACTION

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If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

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 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

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I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: