IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Dawn Marie Richmond, in her own behalf, and by and through her parents, Glenn and Donna Richmond	:	
v.	:	
Greenville Area School District, Patricia Homer, Superintendent, and Steven Ross, Principal	:	
Appeal of: Greenville Area School District	:	No. 1184 C.D. 2007
	:	Submitted: February 11, 2008

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE MARY HANNAH LEAVITT, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY FILED: May 7, 2008

This is an appeal from the order of the Court of Common Pleas of Mercer County (common pleas court) granting a preliminary injunction that enjoined Greenville Area School District (School District) from prohibiting Dawn Marie Richmond (Student) from participating in graduation ceremonies.

On May 11, 2007, Student and three other seniors were charged with the summary offense of underage drinking. The alleged incident occurred off school grounds, outside of school hours and did not involve school activities. However, the incident did occur during the school year. When questioned by the school principal, all the students, including Student, admitted that they were charged with underage drinking. Student said the police could not prove she was

drinking because they did not administer a breathalyzer. She ultimately pleaded "not guilty" and a summary trial was scheduled for May 30, 2007, 4 days prior to graduation.

Without holding a due process hearing, the principal found the students violated Section B(5) of the School District's "Off-School [Drug/Alcohol] Violation" Policy and issued disciplinary referrals to prohibit them from participating in school activities for the remainder of the school year, including graduation.

Paragraph B(5) of the School District's "Off-School Violations" Policy provided:

> If any drug/alcohol violations occur **off school property and not at a school sanctioned event (including after school, weekends and holidays),** attendance at/participation in activities will be addressed under the appropriate category as listed below at the time when the school verifies the violation.

Greenville High School Student/Parent Handbook at 25; Exhibit "A" to Agreed Statement of Record (Emphasis added).

Prior to May 30, 2007, Student retained an attorney and requested a continuance of the summary trial until June 19, 2007. Subsequently, the principal notified Student that she was prohibited from attending graduation.

On May 30, 2007, Student filed an "Emergency Scheduling of Hearing and Grant of Preliminary Injunction" to enjoin the School District from enforcing the "Off-School [Drug/Alcohol] Violations" Policy and prohibiting Student from participating in graduation ceremonies. In an order dated May 30, 2007, the

common pleas court enjoined the School District from prohibiting Student from attending graduation.

On May 31, 2007, the School District filed a Motion to Dissolve the Preliminary Injunction and the common pleas court scheduled a hearing for 6:00 that evening. The School District indicated that it would not be attending and asked that it be canceled.

The common pleas court denied the Motion to Dissolve the Preliminary Injunction. Student attended graduation ceremonies.

On June 25, 2007, the School District appealed the order denying its Motion to Dissolve the Preliminary Injunction.

On appeal[1], the School District raises three issues. First, the School District contends that the common pleas court erred when it determined that the prohibition against the Student attending graduation ceremonies constituted irreparable harm.[2] It also contends that the common pleas court erroneously imposed procedural due process requirements by requiring the high school

[1] This Court's scope of review is limited to determining whether the trial court abused its discretion, committed an error of law, or violated constitutional rights. 2 Pa.C.S. § 754(b); Hamilton v. Unionville-Chadds Ford School District, 552 Pa. 245, 714 A.2d 1012 (1998).

[2] There are six essential prerequisites a party must establish prior to obtaining preliminary injunctive relief: (1) injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages, (2) greater injury would result from refusing an injunction than from granting it, and, issuance of injunction will not substantially harm other interested parties, (3) preliminary injunction will restore the status quo, (4) likelihood of prevailing on the merits, (5) injunction is reasonably suited to abate the offending activity, and, (6) preliminary injunction will not adversely affect the public interest. Greater Nanticoke

principal to hold an informal hearing. Last, the School District contends that the common pleas court made an error of law because when it determined the actions of the principal were arbitrary and capricious it did not apply the gross abuse of discretion standard.

This Court initially notes, and the School District concedes, this matter is technically moot because Student attended graduation.

The School District nevertheless asserts that this Court has jurisdiction under the exception to the general moot issue rule because "the conduct complained of is capable of repetition yet likely to evade review, where the case involves issues important to the public interest or where a party will suffer some detriment without the court's decision." Flynn-Scarcella v. Pocono Mountain School District, 745 A.2d 117 (Pa. Cmwlth 2000).

Specifically, the School District asserts that its "Off-School [Drug/Alcohol] Violation" Policy is "still in effect." Thus, it could potentially be faced with the same scenario year after year. It seeks a declaration that the common pleas court's order unduly limits the School District's authority to discipline students under Section 511 of the Public School Code of 1949[3], 24 P.S. §5-511 (School Code).

This Court rejects the School District's argument on this exception to mootness. The School District has no reasonable basis to consider its Off-School

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Education Association v. Greater Nanticoke Area School District, 938 A.2d 1177 (Pa. Cmwlth. 2007).

[3] Act of March 10, 1949, P.L. 30, as amended.

Violations Policy to "still be in effect." Because the law concerning the scope and reach of a school district's authority to discipline its students is well-settled there is no novel question that "is capable of repetition, yet likely to evade review." Section 510 of the School Code, 24 P.S. §5-510, by its express language, specifically limits a school board's power to regulate the conduct of students "during such time as they are under the supervision of the board of school directors and teachers."[4]

If this scenario should arise again, the School District is required by law to enact and enforce only those policies which are in compliance with the School Code. Presumably then, the School will not attempt to bar a student from attending graduation based on conduct during times a student is not under the supervision of the board of school directors or teachers, and the issue of irreparable harm from inability to attend graduation will not arise in this context.

The abstract proposition of whether a student will be irreparably harmed if she is prevented, *for whatever reason*, from attending graduation ceremonies will not be addressed because the mootness doctrine precludes this Court from addressing the issue. As this Court stated in Mistich v. Pa. Bd. of Probation and Parole, 863 A.2d 116, 121 (Pa. Cmwlth. 2004), "we are not in the business of pronouncing that past actions which have no demonstrable continuing

[4] Section 510 of the School Code, 24 P.S. §5-510, provides in pertinent part:

> The board of school directors in any school district may adopt and enforce such reasonable rules and regulations as it may deem necessary and proper…regarding the conduct and deportment of all pupils attending the public schools in the district, during such time as they are under the supervision of the board of school directors and teachers, including the time necessarily spent in coming to and returning from school.

effect were right or wrong." Mistich, 863 A.2d at 121. Thus, even if the trial court's finding of irreparable harm was in contravention of Mifflin County v. Stewart, 503 A.2d 1012 (Pa. Cmwlth. 1986), Student attended graduation. There is nothing for this Court to remedy.

Accordingly, the appeal is dismissed as moot.

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BERNARD L. McGINLEY, Judge

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O R D E R

AND NOW, this 7th day of May, 2008, the appeal of the Greenville Area School District in the above-captioned case is hereby dismissed as moot.

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BERNARD L. McGINLEY, Judge

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BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE MARY HANNAH LEAVITT, Judge

OPINION NOT REPORTED

DISSENTING OPINION
BY JUDGE LEAVITT FILED: May 7, 2008

Respectfully, I dissent.

I disagree with my colleagues' determination that the present appeal is moot because the issue presented is not capable of repetition. While the issue before the Court may be moot with regard to Student, who is now an alumna, I believe that it is capable of repetition with respect to other students in the School District, or to students enrolled in other districts that have policies similar to the "Off-School Violations Policy" at issue here. Therefore, I would reach the merits.

In that regard, I would affirm the trial court's grant of preliminary injunctive relief. The Principal barred Student from attending her graduation,

invoking the School District's "Off-School Violations Policy." I agree with the trial court that the School District exceeded its statutory authority under the Public School Code of 1949[1] when it adopted this policy.

Section 510 of the Public School Code of 1949, 24 P.S. §5-510, by its express language, specifically limits a school board's power to regulate the conduct of students "*during such time as they are under the supervision of the board of school directors and teachers*." (emphasis added).[2] A school board, therefore, may not adopt and enforce rules and regulations for conduct during times a student is not under the supervision of the board of school directors or teachers. Here, it is undisputed that Student was not under the supervision of the School District or its teachers when the alleged marijuana incident took place after school hours, off school property and at a non-school sponsored event.

As the trial court pointed out, the present situation is similar to *D.O.F. v. Lewisburg Area School District*, 868 A.2d 28 (Pa. Cmwlth. 2004), where D.O.F.'s expulsion from school for drug-related conduct that occurred after school hours and absent any connection with a school-related activity was found to be in violation of Section 510 of the Public School Code of 1949, 24 P.S. §5-510. There, D.O.F. was arrested and charged with smoking marijuana. The Lewisburg Area School District, upon learning of D.O.F.'s arrest, expelled him pursuant to its

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[1] Act of March 10, 1949, P.L. 30, *as amended*, 24 P.S. §§1-101 – 27-2702.

[2] Section 510 of the Public School Code of 1949, provides in pertinent part as follows:

> The board of school directors in any school district may adopt and enforce such reasonable rules and regulations as it may deem necessary and proper…regarding the conduct and deportment of all pupils attending the public schools in the district, during such time as they are under the supervision of the board of school directors and teachers, including the time necessarily spent in coming to and returning from school.

24 P.S. §5-510.

drug-free school policy. The trial court sustained D.O.F.'s appeal from the school district's action because D.O.F. was not "under the district's supervision at the time of the incident;" therefore, the school district's drug policy could not be lawfully enforced against D.O.F. *D.O.F.*, 868 A.2d at 35. This Court affirmed the trial court's conclusion that the school district, in that situation, acted outside the legal authority granted by the Legislature.

In the present controversy, the School District's "Off-School Violations Policy," as its name suggests, purported to regulate the conduct of students *beyond* the school's authorized supervision while they were "off school property" and "not at a school-sanctioned event" including "after school, weekends, and holidays." Because the School District lacked the statutory authority to implement its Off-School Violations Policy, I would conclude that the trial court properly enjoined the School District from preventing Student from attending her graduation.

I would likewise reject the School District's primary argument that because attendance at a high school graduation ceremony is not a property right, Student could not establish the requisite "immediate and irreparable harm" for injunctive relief. It is true that in *Mifflin County School District v. Stewart*, 503 A.2d 1012 (Pa. Cmwlth. 1986), this Court held that a graduation ceremony is not within the scope of any of a student's protected property rights. However, interference with an accepted property right was not necessary in order for Student to prevail.[3]

It is well-settled that "[w]hen the Legislature declares certain conduct to be unlawful it is tantamount in law to calling it injurious to the public. For one

[3] Student had a statutory right, or privilege, to be disciplined in accordance with the provisions of the Public School Code of 1949. She was aggrieved by the School District's unauthorized discipline.

to continue such unlawful conduct constitutes irreparable injury." *Public Utility Commission v. Israel*, 356 Pa. 400, 406, 52 A.2d 317, 321 (1947). In the Public School Code of 1949, the Legislature has expressly limited a school district's authority to discipline students to times when they are "under the supervision of the board of school directors and teachers." Section 510 of the Public School Code of 1949, 24 P.S. §5-510. Therefore, because the School District's Off-School Violations Policy was unlawful, Student was immediately and irreparably harmed by the District's enforcement of the policy. I would affirm the trial court's injunctive relief on that basis.

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MARY HANNAH LEAVITT, Judge