

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

D.O.F., a minor, and D.J.F. :
and M. F., his parents and natural :
guardians :
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v. : No. 330 C.D. 2004
 : Argued: September 7, 2004
Lewisburg Area School District :
Board of School Directors, :
Appellant :

BEFORE: HONORABLE JAMES GARDNER COLINS, President Judge
HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION
BY SENIOR JUDGE McCLOSKEY

FILED: November 12, 2004

The Lewisburg Area School District Board of School Directors (the Board) appeals from an order of the Court of Common Pleas of the Seventeenth Judicial District, Union County Branch (trial court), sustaining the appeal of D.O.F. and directing that any record of his expulsion from the Lewisburg Area High School be expunged.

D.O.F. was an honor student in the gifted program in the ninth grade at the Lewisburg Area High School. While in school, D.O.F. participated in the marching band, the concert band, the percussion ensemble and the jazz rock ensemble. D.O.F. had no history of prior disciplinary or attendance problems and no prior criminal record. The matter is before the court as the result of an incident that occurred in May of 2003 as well as discussions that occurred prior to that time. In late April 2003, D.O.F., then age 15, and three female classmates discussed

buying a small amount of marijuana for their personal use. The extent and place of these discussions is disputed by the parties. Nonetheless, D.O.F. and his classmates each voluntarily agreed to contribute \$10.00 to \$12.00 to the venture.

After the money was collected, D.O.F. gave the pooled money to another juvenile who obtained the marijuana. This transaction took place after school hours and off school property. Following a school concert in the evening of Friday, May 9, 2003, D.O.F., his three female classmates and several other friends retreated to D.O.F.'s house to socialize. At approximately 10:30 p.m., D.O.F. and his three female classmates went for a walk to the Linntown Intermediate School playground. At this time, D.O.F. and his three female classmates decided to use the marijuana. D.O.F. pulled out a pipe which he had obtained from another friend and he and his classmates smoked or attempted to smoke the marijuana.

However, a local police officer observed the students at the playground and proceeded to investigate. The students were arrested and charged with misdemeanor offenses of possession and use of a small amount of marijuana for personal use, conspiracy to possess and use and possession and use of drug paraphernalia. D.O.F. was cooperative with the criminal investigation and he received a consent decree as to the charged offenses. Immediately after the incident, in the morning of May 12, 2003, the police officer contacted the principal at the Lewisburg Area High School and informed him of the incident. That same day, the principal interviewed D.O.F. and his classmates individually in his office. Again, D.O.F. was cooperative with the investigation. In fact, D.O.F. prepared a handwritten statement accepting responsibility and expressing remorse for his actions.

D.O.F. was initially suspended for three days. This suspension was noted in a letter from the principal to D.O.F.'s parents dated May 12, 2003. This

letter further advised that D.O.F. would be provided with an informal hearing on May 14, 2003. Following this informal hearing, D.O.F. received a ten-day suspension. The girls, however, appear to have received a five-day suspension and were subject to no further disciplinary measures. The same cannot be said for D.O.F. The Principal later issued a notice of charges to D.O.F. advising him that he was in violation of several Board policies relating to student discipline, drugs and alcohol and student rights and responsibilities, as well as various school rules and regulations set forth in the 2002-2003 Lewisburg Area High School Student/Parent handbook. This notice also advised D.O.F. that a formal hearing would be held on May 22, 2003, to determine why he should not be expelled.

A formal hearing was indeed held on this date at which the superintendent, the principal, D.O.F. and his parents all presented testimony. At the conclusion of the hearing, the Board announced its findings that D.O.F. had willfully and deliberately possessed, used and dispensed marijuana on school property, in violation of School Policy No. 227 (drugs and alcohol). The Board adopted the recommendation, with slight revisions, as set forth by the principal at the hearing that D.O.F. be expelled. By resolution adopted June 12, 2003, the Board did in fact expel D.O.F., subject to review and possible reinstatement no earlier than November 1, 2003. The resolution further provided that D.O.F. participate in drug and alcohol assessment and random drug testing until graduation.

D.O.F. thereafter appealed the Board's decision to the trial court. In his appeal, D.O.F. alleged that (1) the Board lacked jurisdiction to discipline and/or sanction him as the incident in question occurred after school hours and absent any connection with a school-related event or activity, (2) given this lack of nexus School Policy No. 227 was irrelevant, and (3) his expulsion was constitutionally

defective to the extent that other students involved in the incident did not receive the same sanctions. In the meantime, as his appeal was pending, D.O.F. was reinstated in school and he sought to expunge the expulsion from his record.

Following hearing and oral argument, the trial court issued an opinion and order in February of 2004 reversing the adjudication of the Board, sustaining D.O.F.'s appeal and directing the Board to expunge D.O.F.'s record. In sustaining the appeal, the trial court found that the Board could not apply School Policy No. 227 to D.O.F. as he was not under the Board's supervision at the time of the incident. In applying the policy, the trial court held that the Board had exceeded its statutory authority under Section 510 of the Public School Code of 1949 (the Code).¹ The trial court noted that the school concert in the evening of May 9, 2003, was over approximately an hour and a half before the incident at the playground. Additionally, the trial court held that D.O.F.'s in-school conduct did not establish a sufficient nexus between the incident and the Board's supervisory authority.² The Board thereafter filed a notice of appeal with the trial court.

On appeal,³ the Board argues that the trial court erred as a matter of law in concluding that it lacked jurisdiction to discipline/expel a student for drug-related conduct that occurred on school property after school hours. Additionally,

¹ Act of March 10, 1949, P.L. 30, as amended, 24 P.S. §5-510.

² Based upon these findings above, the trial court did not address D.O.F.'s third argument on appeal concerning the lack of similar sanctions for all parties involved in the incident.

³ Our scope of review of an appeal brought pursuant to the Local Agency Law, 2 Pa. C.S. §§751-754, when, as here, the trial court conducted de novo review, is to affirm the order of the trial court unless we find that it is in violation of the constitutional rights of the appellant, or that the court manifestly abused its discretion or committed an error of law. Giles v. Brookville Area School District, 669 A.2d 1079 (Pa. Cmwlth. 1995), petition for allowance of appeal denied, 544 Pa. 686, 679 A.2d 231 (1996).

the Board argues that the trial court erred as a matter of law in concluding that there was a lack of a sufficient nexus between the drug-related activity and the educational process to support its jurisdiction.

As this Court agrees with the trial court's decision and further concludes that President Judge Harold F. Woelfel's opinion thoroughly discusses and properly disposes of the arguments raised on appeal to this Court, we adopt the analysis in President Judge Woelfel's opinion for purposes of appellate review.

Accordingly, we affirm the trial court's order on the basis of the opinion in D.O.F., a minor, and D.J.F. and M.F., His parents and natural guardians v. Lewisburg Area School District Board of School Directors (Court of Common Pleas of the Seventeenth Judicial District, Union County Branch, No. 03-405, dated February 2, 2004).

JOSEPH F. McCLOSKEY, Senior Judge

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ORDER

AND NOW, this 12th day of November, 2004, the order of the Court of Common Pleas of the Seventeenth Judicial District, Union County Branch is affirmed on the basis of the opinion issued by President Judge Harold F. Woelfel in D.O.F., a minor, and D.J.F. and M.F., His parents and natural guardians v. Lewisburg Area School District Board of School Directors, ___ Pa. D. & C. 4th ___ (2004) Court of Common Pleas of the Seventeenth Judicial District, Union County Branch, No. 03-405, dated February 2, 2004.

JOSEPH F. McCLOSKEY, Senior Judge