

IN THE MATTER OF

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BEFORE THE BOARD  
OF EDUCATION OF  
CARROLL COUNTY

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**DECISION OF THE BOARD OF EDUCATION OF CARROLL COUNTY**

This is an appeal before the Board of Education of Carroll County (the "Board") pursuant to Section 4-205(c) of the Education Article to the Annotated Code of Maryland brought by [redacted] mother of [redacted], a twelfth-grade student at [redacted] High School. At issue in this appeal is [redacted] extracurricular eligibility -- and, in particular, [redacted] ability to attend the Senior Prom -- as a result of [redacted] use and possession of alcohol at a school sponsored activity. For the reasons set forth more fully below, we shall affirm the April 30, 2008, decision rendered by Mr. Richard Simmons, the Superintendent's Designee in this matter, upholding the declaration of conduct ineligibility.<sup>1</sup>

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The facts giving rise to this appeal are not seriously disputed. [redacted] was a member of the [redacted] High School chapter of the Future Business Leaders of America ("FBLA"). The Maryland FBLA State leadership Conference was held at the Baltimore Marriott Hunt Valley Inn from Thursday, April 10 through Saturday, April 12, 2008. FBLA chapters from across the State, including the [redacted] High School chapter

<sup>1</sup> The State Board has long held that there is no need for an evidentiary hearing or oral argument when, as in this case, the appeal does not involve an alleged liberty or property interest deprivation thereby invoking the protections of the Fourteenth Amendment Due Process Clause. See Bricker v. Frederick County Board of Education, 3 Op. MSBE 99 (1982); Anderson and Blake v. Board of Education of Prince George's County, 5 Op. MSBE 415, 417 (1989). For this reason, and because we do not believe that a hearing would aid us in the decision-making process, we decline to conduct an evidentiary hearing or oral argument on this appeal but shall render a decision on [redacted] based upon the written record presented to us by parents.

participated in the conference as well as in various competitions.<sup>2</sup> There is no dispute that this was a school-sponsored event.

On the evening of Friday, April 11, 2008, at approximately 11:50 p.m., High School FBLA advisor \_\_\_\_\_ began calling the rooms occupied by her students to warn of the curfew. Upon calling one of the rooms occupied by several male students, \_\_\_\_\_ learned that \_\_\_\_\_ was visiting in the room. Accordingly, \_\_\_\_\_ instructed that \_\_\_\_\_ needed to return to \_\_\_\_\_ own room prior to midnight and that hotel security would not tolerate any students breaking curfew. At midnight, the advisors began checking the rooms. \_\_\_\_\_ was not in \_\_\_\_\_ room. When the advisors went to the room assigned to several \_\_\_\_\_ students from \_\_\_\_\_ High School, \_\_\_\_\_ was still there and had to be escorted back to \_\_\_\_\_ room. En route, \_\_\_\_\_ was again advised that \_\_\_\_\_ needed to adhere to the curfew. On the way back, they saw members of the hotel staff and hotel security checking the halls for curfew violations.

Later that evening, at approximately 12:30 p.m., the \_\_\_\_\_ High School advisors received a call from hotel security. Evidently, the door to hotel room that \_\_\_\_\_ had been sharing with another \_\_\_\_\_ student was left ajar because \_\_\_\_\_ had left the room, and the other \_\_\_\_\_ propped the door open so that another \_\_\_\_\_ student could come into the room to replace \_\_\_\_\_.<sup>3</sup> Upon seeing the door propped open, hotel security checked on the occupants, learned that \_\_\_\_\_ was a.w.o.l. and then called the High School advisors.

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<sup>2</sup> Members of the \_\_\_\_\_ High School chapter performed exceptionally well in various competitions, and \_\_\_\_\_ won 2<sup>nd</sup> Place and became a National Finalist in Business Calculations. Unfortunately, because of the events discussed later in this decision, the students representing \_\_\_\_\_ High School were ultimately disqualified from their events and their scholarship winnings were forfeited. \_\_\_\_\_ roommate evidently did not want to spend the night alone.

Hotel security and the High School advisors then went to the room assigned to the High School students. Hotel security knocked on the door and, when the students opened the door, asked "how many students are in this room"? Upon hearing the students respond that there were five students, hotel security then asked "where is [redacted]?" When no response was forthcoming, the question was asked again by hotel security, and [redacted] then appeared.

At about that point, a [redacted] member of the hotel security staff noticed the top of a bottle protruding from under a bed and then pulled out what was identified as a bottle of Captain Morgan's Spiced Rum. This bottle was approximately 3/4 full. Hotel security staff then found an empty bottle of rum and an empty bottle of tequila. The students admitted to consuming alcohol. Hotel security then gave the High School advisors the option of either calling the parents to pick up their children and take them home or have the police called. The advisors called the parents; however, [redacted] parents were in [redacted] and, thus, arranged to have a neighbor come and pick [redacted] up.

As a result of the conduct displayed by [redacted] and the other involved students, the High School FBLA chapter was disqualified from the events, their scholarship awards were forfeited. The High School FBLA treasury had spent \$300.00 for the students and advisors to attend this event in addition to other moneys paid by individual students and parents.

As a result of [redacted] conduct that evening, [redacted] High School Principal suspended [redacted] for five (5) school days, required [redacted] to attend an in-take meeting at Junction, Inc., and declared [redacted] conduct ineligible from extracurricular events for forty-five (45) days with the exception of graduation exercises. From that decision, [redacted] and [redacted] mother filed a timely appeal to the Superintendent on April 16,

2007, and Mr. Simmons, acting as the Superintendent's designee, met with [redacted] and [redacted] mother the next day, April 17, 2008. At this meeting, [redacted] admitted to breaking curfew, [redacted] admitted to consuming three to five drinks containing alcohol, admitted that [redacted] had made a very bad decision, and was remorseful. Although [redacted] and [redacted] mother did not contest the suspension or the resulting loss of eligibility, they appealed for the limited purpose of gaining permission to attend the Senior Prom scheduled for Saturday, May 31, 2008. Mr. Simmons denied that request and affirmed [redacted] decision in a letter issued on April 30, 2008.

On May 5, 2008, [redacted] and [redacted] mother appealed that decision to this Board and requested that the appeal be expedited. On May 14, 2008, the Board received the completed Appeal Information Form from [redacted] mother. The Board met that evening to consider the appeal and determined that it could render a decision based upon the record on an expedited basis and further determined to affirm Mr. Simmons' decision. That decision was communicated to [redacted] mother the next day, May 15, 2008.

In their appeal, [redacted] and [redacted] mother do not contest the fact that [redacted] consumed alcohol at an off-campus school-sponsored activity, nor do they deny that [redacted] admitted to Mr. Simmons that [redacted] had consumed the alcoholic beverages. Rather, their appeal is based solely upon alleged illegalities with respect to the search of the hotel room by hotel security and the subsequent questioning of the students. According to [redacted] and [redacted] mother, the search of the room conducted by hotel security violated [redacted] rights under the Fourth Amendment to the Constitution of the United States, and the subsequent questioning of [redacted] violated [redacted] rights under the Fifth Amendment to the Constitution of the United States. We disagree.

As to the search, the Fourth Amendment protects citizens against unreasonable searches by law enforcement officials and other state actors. It does not protect against searches by private entities, such as hotel chains, or individuals employed by them, such as private hotel security staff. Moreover, it should be noted that the hotel security staff did not search [redacted] personally but, rather, the room assigned to the male students. It was not [redacted] room, and [redacted] had no reasonable expectation of privacy with respect to the alcohol bottles that were partially hidden and partially in plain view. See Rhodes v. Guarricino, 54 F.Supp. 2d 186 (S.D. N.Y. 1999) (reasoning that it was constitutionally reasonable for a school principal acting as a chaperone on a school-sponsored trip to ask private hotel security staff to open a student's room for a search). Accord Farver v. Board of Education of Carroll County, 40 F. Supp. 2d 323, 325 (D. Md. 1999)(Judge Smalkin reasoning that "there is simply no support for the proposition that children have a First Amendment right to be present at a party where alcohol is being consumed by minors").

As for the argument concerning [redacted] Fifth Amendment right to refrain from incriminating [redacted], we note that the Fifth Amendment, by its very language, applies to criminal proceedings only – not to school disciplinary actions: "No person shall be compelled in any *criminal case* to be a witness against himself . . .". Here, [redacted] freely admitted to Mr. Simmons that she violated curfew, went to the boys' room, and consumed alcoholic beverages while there. There was no Fifth Amendment violation. Accord Boynton v. Casey, 543 F. Supp. 2d 995 (D. Me. 1982) (no need to advise student of Miranda rights prior to questioning).

Moreover, even if we were to assume for the sake of argument only that the search by the hotel security staff and subsequent questioning in this case did violate the

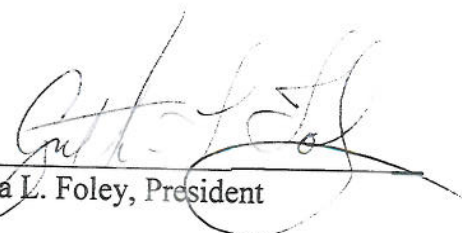
Fourth and/or Fifth Amendments, that would not prevent the use of the information gathered in this investigation. Unlike in criminal proceedings, the “exclusionary rule” simply does not apply to exclude from student disciplinary proceedings information that is obtained in violation of the Fourth and Fifth Amendments. See James v. Unified Sch. Dist. No. 512, 899 F. Supp. 530, 533 (D. Kan. 1995) (“[a]ssuming the plaintiff’s Fourth and Fifth Amendment rights were violated, case law does not prohibit using the fruits of that violation in school disciplinary hearings”).

Accordingly, for these reasons, we reject the legal arguments raised by \_\_\_\_\_ and \_\_\_\_\_ mother. That being the case, the decision rendered by Mr. Simmons was not arbitrary, unreasonable, or illegal and was consistent with this Board’s long-standing policies prohibiting both the use and possession of alcohol at school-sponsored activities. For this reason, we shall affirm.

### DECISION

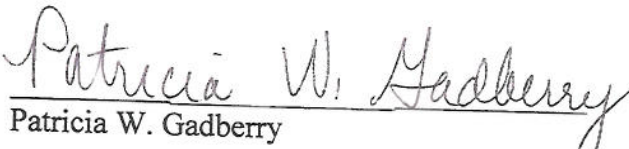
For the reasons discussed above, this Board affirms the decision of Mr. Richard Simmons, acting as the Superintendent’s Designee in this matter, upholding the decision of \_\_\_\_\_ High School Principal \_\_\_\_\_ declaring \_\_\_\_\_ ineligible for forty-five school days with the exception of graduation activities. Should they choose to do so, \_\_\_\_\_ a and/or \_\_\_\_\_ mother may appeal this decision to the Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, in writing, within thirty days of the date of this decision.


May 14, 2008  
Date

  
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Cynthia L. Foley, President

  
Barbara Shreeve, Vice President

  
Gary W. Bauer

  
Patricia W. Gadberry

  
Virginia R. Harrison