

IN THE COURT OF COMMON PLEAS
PIKE COUNTY, OHIO

PATRICIA NICHOLS,
APPELLANT,

Case No. 448-CIV-01

Judge William F. Chinnock
(By Assignment of Ohio Supreme Court)

v.

WESTERN LOCAL BOARD OF EDUCATION,
APPELLEE.*

Decided Nov. 24, 2003

SYLLABUS BY THE COURT

1. Decisions of the United States Supreme Court show substantial deference to the decisions of school authorities.
2. The Ohio Constitution grants the legislature full power and authority to regulate the school system in the state of Ohio.
3. The Ohio legislature has vested boards of education with almost unlimited reasonable authority to manage and control schools within their districts.
4. Members of boards of education enjoy a presumption that they act in a valid manner and in good faith.
5. Unless an abuse of discretion is shown, boards of education are the sole judges of policy regarding management and control of the schools.
6. Courts do not act as "super boards of education" and second-guess the wisdom of boards of education in managing public schools.

* Reporter's Note: No appeal was taken from the judgment of the court.

7. Boards of education in Ohio may govern school activities and property without adopting formal rules on all aspects of such governance, subject to an abuse-of-discretion standard.
8. No constitutional "liberty interest" exists for a parent of a student to attend school activities or be present on school property.
9. School authorities in Ohio have the right to exclude persons other than students from school activities and property without a due process hearing.
10. The exclusion by school authorities of persons other than students from school activities and property without a due process hearing is not a "quasi-judicial" decision giving rise to an administrative appeal to the court of common pleas under R.C. 2506.01.

OPINION, FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND JUDGMENT ENTRY

WILLIAM F. CHINNOCK, Judge.

{¶1} This decision examines the issues whether parents of students in Ohio have a constitutional liberty interest to attend school activities and be present on school property, and whether a board of education in Ohio may exclude persons, including parents of students, from school activities and property without formal rules and a due process hearing.

{¶2} This is an administrative appeal under R.C. 2506.01 by the parent of a middle-school student from the decision of the local board of education made without a due process hearing, upholding a decision of the school administration. The decision banned the student's mother from school activities and (by implication) from school property for a three-month period because of a verbal altercation that occurred between her and the coach of her student-daughter in the locker room of a sister school after a volleyball game.

{¶3} Appellant Patricia Nichols (the "parent") contends that the school authorities were without authority to enforce rules the board of education had failed to adopt under R.C. 3313.20, which provides: "[T]he board of education of a school district *** *shall make any rules*

that are necessary for its government and the government of its employees, pupils of its schools, and all other persons entering upon its school grounds or premises." (Emphasis added.)

{¶4} The parent also claims that a constitutional "liberty interest" exists for parents of students to attend school activities and be present on school property, and further that school authorities do not have the right to exclude persons from school activities and property without a due process hearing.

{¶5} Appellee Western Local Board of Education (the "board of education" or the "board") contends that it has the right to control the activities of persons at school activities and on school property without the necessity of formal written rules. The board also urges that parents of students do not have a constitutional "liberty interest" to attend school activities and be present on school property, and that school authorities have the right to exclude persons other than students from school activities and property without a due process hearing.

{¶6} For the reasons that follow, the court holds that (a) boards of education in Ohio may govern school activities and property without adopting formal rules on all aspects of such governance, (b) no constitutional "liberty interest" exists for parents of students to attend school activities or be present on school property, (c) school authorities in Ohio have the right to exclude persons other than students from school activities and property without a due process hearing, and (d) the exclusion by school authorities of persons other than students from school activities and property without a due process hearing is not a "quasi-judicial" decision giving rise to an administrative appeal to the court of common pleas under R.C. 2506.01.

{¶7} On September 22, 2001, two days after a verbal altercation between the parent and her student-daughter's volleyball coach regarding coaching, the principal and athletic director of the local middle school advised the parent that she "shall be banned from any activities" involving the local school district for a three-month period. The board of education had not enacted any rules regarding the presence of persons at school activities or on school premises. The parent met a week later with the school superintendent, who told her

that he thought the ban was appropriate. In response, the parent asked that the issue of the ban be placed on the agenda for the board of education's next meeting.

{¶8} A week later, the board of education met, and the parent was present with counsel. The board permitted the parent's counsel to address it. It heard unsworn statements from school administrators, the parent, and other members of the public, without examination by counsel. No transcript or recording of the meeting was made. The board voted to "uphold the action taken by the administration," and the next day confirmed its decision in writing, advising the parent that "[f]ailure to adhere to this ban will be regarded as trespassing."

{¶9} The parent filed a timely notice of appeal under R.C. 2506.01, which provides: "Every final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state may be reviewed by the court of common pleas."

{¶10} The Ohio Constitution grants the legislature full power and authority to regulate the school system in the state of Ohio.¹ Ohio lawmakers have provided that "[e]ach *** board of education shall have the management and control of all the public schools of whatever name or character that it operates in its respective district,"² and that "[t]he board of education of a school district *** shall make any rules that are necessary for its government and the government of its employees, pupils of its schools, and all other persons entering upon its school grounds or premises." (Emphasis added.) R.C. 3313.20.

{¶11} A fair determination of the issues of this case recognizes that (a) "the [Ohio] legislature has vested *** boards of education with almost unlimited reasonable authority to manage and control schools within their districts," (b) "members of boards of education [enjoy] a presumption that [they act] in a valid manner and in good faith," (c) "[u]nless an abuse of discretion is shown *** boards of education are the sole judges of policy regarding management and control of the schools," and (d) "[c]ourts do not act as a 'super board of education' and second-guess the wisdom of the *** boards of education in managing public

¹ Ohio Constitution, Section 3, Article VI; *State ex rel. Cincinnati School Dist. v. Cincinnati* (1850), 19 Ohio 178.

² R.C. 3313.47.

schools.”³ Decisions of the United States Supreme Court show substantial deference to the decisions of school authorities.⁴

{¶12} As noted above, R.C. 3313.20 provides that “[t]he board of education of a school district *** *shall make any rules that are necessary for its government and the government of its employees, pupils of its schools, and all other persons entering upon its school grounds or premises.*” (Emphasis added.) Although the parent argues that the board cannot enforce “rules” that it has not adopted under this mandatory (“*shall make any rules that are necessary*”) law, a fair reading of the statute demonstrates that it begs the question as to what rules “are necessary” and does not mandate that boards of education adopt formal rules on all aspects governing school activities and property. Whether a formal rule is necessary for a board of education’s action controlling school activities and property is aided by the presumption that it acts in a valid manner and in good faith, and unless an abuse of discretion is shown, it is the sole judge of policy regarding management and control of the school. For this reason, boards of education in Ohio may govern school activities and property without adopting formal rules on all aspects of such governance, subject to an abuse-of-discretion standard, which was not violated here.⁵

{¶13} The issue whether a constitutional “liberty interest” exists for a parent of a student to attend school activities and be present on school property is intertwined with the issue of whether school authorities in Ohio have the right to exclude persons, including parents of students, from school activities and property without a due process hearing.

³ *Clay v. Harrison Hills City School Dist. Bd. of Edn.* (1999), 102 Ohio Misc.2d 13, 723 N.E.2d 1149.

⁴ *Epperson v. Arkansas* (1968), 393 U.S. 97, 104 (“By and large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values.”); *New Jersey v. T.L.O.* (1985), 469 U.S. 325, 450 (“The primary duty of school officials and teachers *** is the education and training of young people. A State has a compelling interest in assuring that the schools meet this responsibility. Without first establishing discipline and maintaining order, teachers cannot begin to educate their students.”); *Wood v. Strickland* (1974), 420 U.S. 308, 326 (“The system of public education that has evolved in this Nation relies necessarily upon the discretion and judgment of school administrators and school board members.”).

⁵ See fn. 3, *supra*.

{¶14} Constitutional due process procedures are required where substantive due process rights of "life, liberty, and property" are at risk.⁶ This is not a case, however, in which a student is suspended without due process safeguards, giving rise to the issue of a *student's* constitutional liberty interest in a public education.⁷

{¶15} The parent in the case sub judice claims that she was denied her constitutional freedom to participation in her child's education by the ban of the school authorities.⁸ Although the education and upbringing of one's children is a recognized liberty interest under the Constitution, this does not create a constitutional right for a parent to attend school activities or be present on school property.⁹

⁶ *Cleveland Bd. of Edn. v. Loudermill* (1985), 470 U.S. 532.

⁷ *Goss v. Lopez* (1975), 419 U.S. 565, 576, holds that a student's right to a public education is a protected constitutional liberty interest requiring due process safeguards for suspension ("[E]ducation is perhaps the most important function of state and local governments,' *** and the total exclusion from the educational process for more than a trivial period *** is a serious event in the life of the suspended child."). (Citation omitted.) As noted in *New Jersey v. T.L.O.* (1984), 469 U.S. 325, 349, however, *Goss* mandated only minimum due process ("In *Goss v. Lopez*, 419 U.S. 565 [1975], the Court recognized a constitutional right to due process, and yet was careful to limit the exercise of this right by a student who challenged a disciplinary suspension. The only process found to be 'due' was notice and a hearing described as 'rudimentary'; it amounted to no more than 'the disciplinarian *** informally discuss[ing] the alleged misconduct with the student minutes after it has occurred.'") Compare *San Antonio Indep. School Dist. v. Rodriguez* (1973), 411 U.S. 1, at 33-37, holding that the right to attend public school is not a fundamental right for the purposes of substantive due process, followed by *Seal v. Morgan*, 229 F.3d 567 (C.A.6, 2000). In any event, the rights of students regarding school matters and the rights of their parents regarding school matters are wholly distinct and different. "The right to a free public education is a right which belongs to the student and not their parents. When a student is suspended or expelled, it is the student who is entitled to due process, because it is the student, not his parents, who has a right to a free public education." *Brian v. Stroudsburg Area School Dist.* (M.D.Pa. 2001), 141 F.Supp.2d 502.

⁸ *Troxel v. Granville* (2000), 530 U.S. 57. See, also, *Meyer v. Nebraska* (1923), 262 U.S. 390, 399 (the "liberty " protected by the Due Process Clause includes the right of parents "to control the education of their own"); *Pierce v. Society of the Sisters of the Holy Names of Jesus & Mary* (1925), 268 U.S. 510, 534-535 (the "liberty of parents" includes the right "to direct the upbringing and education of children under their control"); *Santosky v. Kramer* (1982), 455 U.S. 745, 753 (discussing "the fundamental liberty interest of natural parents in the care, custody, and management of their child"); and *Seal v. Morgan* (C.A.6, 2000), 229 F.3d 567, 574-575 (holding that "fundamental rights" include the right "to direct the education and upbringing of one's children").

⁹ *Mejia v. Holt Pub. Schools* (Mar. 12, 2002), W.D.Mich. No. 5:01-CV-116, 2002 WL 1492205; *Ryans v. Gresham* (E.D.Tex. 1998), 6 F.Supp.2d 595, 601 ("An exhaustive review of the case law pertaining to the constitutional right of parents to direct the education of their children discloses no

{¶16} In *Mejia v. Holt Pub. Schools* (Mar. 12, 2002), W.D.Mich. No. 5:01-CV-116, 2002 WL 1492205, the school had not enacted or posted rules regarding behavior on school premises. School authorities banned a student's father from school grounds for life under threat of trespass because he allegedly masturbated in his car parked in the school parking lot while waiting to pick up his child at elementary school. The parent was acquitted of any criminal charges relating to indecent exposure and contended in a civil action that the ban violated his fundamental right to "participate in the care, custody and control" of his minor child as set forth by the United States Supreme Court in *Troxel v. Granville*.¹⁰ The court upheld the permanent ban, specifically holding that the school had a reasonable basis for banning the parent from school activities and property because of his alleged behavior on school grounds, and that the school's act barring him from school property had not implicated a fundamental constitutional right. A number of other cases also have ruled that "[s]chool officials have the authority to control students and school personnel on school property, and also have the authority and responsibility for assuring that parents and third parties conduct themselves appropriately while on school property."¹¹

{¶17} The court finds *Johnson v. Cincinnati* (S.D.Ohio 2000), 119 F.Supp.2d 735, relied upon by the parent, inapplicable. In *Johnson*, the court held that a municipal ordinance banning persons arrested for or convicted of drug crimes from "drug exclusion zones" violated their fundamental right of association, as applied to a grandmother caring for her grandchildren in the restricted zone, and as applied to a homeless man who regularly sought food, clothing, and shelter from relief agencies in the restricted zone. And although *State v. McGroarty* (Oct. 31, 1997), Lake App. No. 96-L-158, 1997 WL 703376, also relied upon by the parent, is much closer in point, it is distinguishable by the fact that it is a criminal case and the prohibition against the parent being present at the public meeting involved was ambiguous.

holding even remotely suggesting that this guarantee includes a right to access to the classes in which one's child participates.").

¹⁰ See fn. 8, supra.

¹¹ *Lovern v. Edwards* (C.A.4, 1999), 190 F.3d 648; *Frost v. Hawkins Cty. Bd. of Edn.* (C.A.6, 1988), 851 F.2d 822; *Ryans v. Gresham* (E.D.Tex. 1998), 6 F.Supp.2d 595; *Henley v. Octorara Area School Dist.* (E.D.Pa. 1988), 701 F.Supp. 545.

{¶18} Because there is no constitutional "liberty interest" for parents of students to attend school activities or be present on school property, school authorities have the right to exclude them from school activities and property without a due process hearing.

{¶19} Additionally, because there is no requirement for a due process hearing, the proceedings before the board were not "quasi-judicial," and administrative appeals to the court of common pleas may be taken under R.C. 2506.01 only from quasi-judicial proceedings.¹²

{¶20} Judgment is rendered for appellee Western Local Board of Education. Costs to be shared equally.

{¶21} SO ORDERED.

Judgment accordingly.

WILLIAM F. CHINNOCK, J., retired, of the Cuyahoga County Juvenile Court, sitting by assignment.

William K. Shaw, for appellant.

James K. Stucko, for appellee.

¹² *M.J. Kelley Co. v. Cleveland* (1972), 32 Ohio St.2d 150; *DeLong v. Southwest School Dist. Bd. of Edn.* (1973), 36 Ohio St.2d 62; *State ex rel. Barno v. Crestwood Bd. of Edn.* (1998), 134 Ohio App.3d 494.