

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CHRISTOPHER BAILEY KEETON, A MINOR
BY AND THROUGH HIS NATURAL GUARDIAN
AND NEXT FRIEND, ALISON GRAY

APPELLANT

VERSUS

CAUSE NO: 2017-CA-01166

OCEAN SPRINGS SCHOOL DISTRICT

APPELLEE

APPEAL FROM CIRCUIT COURT
OF JACKSON COUNTY, MISSISSIPPI

BRIEF OF APPELLANT

ORAL ARGUMENT IS NOT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the judge of this Court may evaluate possible disqualifications or recusal.

1. Christopher Bailey Keeton, a minor by and through his natural guardian and next friend, ALISON GRAY Appellant
2. Ocean Springs School District Appellee
3. G. Charles Bordis, IV, Esq. Attorney for Appellant
4. Alwyn Luckey, Esq. Attorney for Appellee
5. Honorable Robert Krebs Circuit Court Judge of Jackson County



G. CHARLES BORDIS, IV

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STATEMENT OF ISSUES

ISSUE 1:

WHETHER THE OCEAN SPRINGS SCHOOL DISTRICT FAILED TO COMPLY WITH REQUIREMENTS REGARDING THE NEED TO MAINTAIN A RECORD OF THE HEARING CONDUCTED BEFORE THE BOARD OF TRUSTEES AND WHETHER THE CIRCUIT COURT ERRED IN DENYING THE REQUEST FOR INJUNCTIVE RELIEF.

ISSUE 2:

WHETHER THE LOWER COURT COMMITTED MANIFEST ERROR IN DENYING THE APPELLANT INJUNCTIVE RELIEF SOUGHT.

ISSUE 3:

WHETHER THE DUE PROCESS RIGHTS OF BAILEY KEETON, A MINOR, WERE VIOLATED BY THE OCEAN SPRINGS SCHOOL DISTRICT'S FAILURE TO FOLLOW ITS OWN POLICY IN AFFORDING THE MINOR TWO SEPARATE HEARINGS.

ISSUE 4:

WHETHER THE LOWER COURT COMMITTED MANIFEST ERROR IN DISMISSING THE APPELLANT'S APPEAL FROM THE OCEAN SPRINGS SCHOOL DISTRICT AS MOOT.

ISSUE 5:

WHETHER THE LOWER COURT WAS IN ERROR AND APPLIED AN ERRONEOUS LEGAL STANDARD IN FINDING THAT THE DUE PROCESS RIGHTS OF BAILEY WERE NOT VIOLATED AND THAT THE OCEAN SPRINGS SCHOOL DISTRICT FOLLOWED ITS POLICY.

STATEMENT OF THE CASE

Christopher Bailey Keeton, a minor, hereafter referred to as “Bailey”, is a student who attended school in the Ocean Springs School District. At all times mentioned herein, he was an 11th grader at Ocean Springs High School. Also attending the Ocean Springs School District is Bailey’s brother, William Gray, who is 13 years old.

In April 2016, Bailey attended the prom. He, along with several other minors, boarded a privately owned bus for transportation to the prom. The prom was arranged for by private funding and was scheduled in Biloxi, Harrison County, Mississippi. The prom was not conducted at Ocean Springs High School nor was it conducted at any locale within Jackson County, Mississippi. Upon arriving at the privately selected site in Biloxi, Mississippi, Bailey exited the bus and entered the prom. He participated in prom activities and later returned to his home in Ocean Springs, Mississippi.

Upon arrival at his home, Bailey began to prepare for bedtime; however, he was interrupted by a phone call from an Ocean Springs High School administrator. The phone call informed Bailey that administrators suspected alcohol use by minors including Bailey. The school administrator directed Bailey to drive back to the site of the prom in Harrison County, Mississippi. At no time, did the Ocean Springs High School administrator contact either of Bailey’s parents. Oddly, the administrator had access to Bailey’s parents on speed dial but elected not to notify his parents of the happenings of that evening. Bailey complied with the directive of the district administrator and drove himself to Biloxi. Upon arrival, Bailey learned that administrators suspected alcohol use on the bus and that several students had their

telephones confiscated and viewed to determine the names of those who used the private bus for transportation to the prom. Once Bailey entered the building in Biloxi, he was taken to a room where he was met by a district administrator. There, Bailey was interrogated as to the presence of alcohol on the privately owned bus, as well as, his own personal use. Bailey was not afforded the opportunity to contact his parents, an attorney or anyone else. He was given a choice to either submit to interrogation or to be turned over to the Biloxi police department.

During the interrogation by the administrator, Bailey advised that he possessed no alcohol on the bus. He did state however that another student on the bus had Gatorade bottles. The Gatorade bottles were those sold commercially at local stores. The bottle was a "white Gatorade" which included an orange top and commercial wrapping containing the word "Gatorade." Bailey further informed that he took a Gatorade because he was thirsty. He took a sip of the Gatorade and after taking two more sips realized that there was something more than Gatorade contained in the bottle. He, at that point, returned the bottle to the other student. Bailey, a minor, was then directed by the administrator to write on a piece of paper the events as relayed to the administrator. Bailey simply wrote that he had three sips from the Gatorade bottle. Bailey did not write that he possessed alcohol nor did he write that he had consumed three sips of alcohol. Bailey's written statement indicated that "I did absolutely nothing wrong." No further accusations were made against Bailey. The administrator then allowed Bailey to drive back to Ocean Springs. Bailey was never accused of having actual possession of alcohol.

As a result of the interrogation, Bailey learned that the district had no proof of the presence of any alcohol. He also learned that pictures of certain students were retrieved from

the phones of other students where students did consume alcohol. However, no such photograph or evidence regarding Bailey was ever presented.

On May 9, 2016, Bailey was notified that the assistant principal of the Ocean Springs High School recommended that he be suspended for a period of ten days followed by expulsion to the Alternative Educational Center for a period of forty-five days (T-127; RE-1). On May 9, 2016, Bailey and his parents notified the principal of their intent to appeal the assistant principal's recommendation (T-128; RE-2). The Ocean Springs School District acknowledged the appeal of Bailey and his parents and directed them to a hearing on May 13, 2016. Bailey and his parents appeared on May 13, 2016 as directed. Upon arrival, the district presented Bailey and his parents to the Ocean Springs School Board Trustees. Following the May 13, 2016 hearing, correspondence from the school district was issued to Bailey and his parents on May 18, 2016 notifying them that the Board of Trustees accepted the recommendation of the assistant principal of the Ocean Springs High School (T-129; RE-3). Prior to this time, Bailey was not allowed to return to normal academic setting but was forced into out-of-school suspension for nine days and then expelled into the Alternative Educational Center. The May 18, 2016 letter from the district was sent by regular mail (RE-3).

On May 24, 2016 Bailey and his parents perfected an appeal of the decision of the Board of Trustees for the Ocean Springs School District by filing a Petition in the Circuit Court of Jackson County, Mississippi (T- 4-11; RE- 4-10). On May 23, 2016 a Bill of Exceptions was prepared by counsel for Bailey Keeton and submitted to the Ocean Springs School District. The Bill of Exceptions was signed by the president of the Board of Trustees for the Ocean Springs

School District on June 23rd and was filed on June 30, 2016 (RE- 11-13). Upon being notified of the filing of the appeal, the district produced no record of the proceedings involving Bailey which took place before the Board of Trustees of the Ocean Springs School District (T-33, 32, 35). The Bill of Exceptions indicated that the Ocean Springs School District would produce a complete record of proceedings before the Board of Trustees; however, this was not done. With the filing of the Bill of Exceptions and the setting of a hearing, Bailey learned that a stenographer or court reporter was not present during the hearing before the Board of Trustees of the Ocean Springs School District nor was the hearing recorded. As such, there is no record of the proceedings involving Bailey Keeton. On June 30, 2016 Bailey filed a Motion for Injunctive Relief requesting that this Honorable Court review and order the Ocean Springs School District to comply with its own policy (T- 39, 46; RE- 14-18).

At issue in this cause is Policy JCAA-Due Process (T- 31, 32; RE- 27-31). This policy involves appeals and suspensions and expulsions. The policy divides appeals into two classes. Class I only addresses those students who are accused of violating the district's drug policy, weapons policy or those accused of committing violent acts on educational property. In Class I, students who appeal the decision of the Board of Trustees are required to remain suspended/expelled until such time as a hearing/appeal is complete. On the other hand, the Class II appeals involve all other disciplinary actions other than students being accused of violating the district's drug policy, weapon policy or those accused of committing violent acts on educational property. Those students who perfect appeals in Class II, have a right to return to the normal classroom setting prior to hearings/appeals. Further, students in Class II appeals shall

have the right to be heard before the District Discipline Committee (T-31, 32; RE- 27-31). In addition, following a hearing before the District Discipline Committee, students involved in Class II appeals have a right to request an appeal for a second hearing before the Board of Trustees of the school district. Bailey Keeton was denied the right to return to the normal classroom setting prior to his hearings/appeal. Further, it is undisputed that Bailey was never afforded the opportunity to be heard by the District Discipline Committee as required by Policy JCAA-Due Process (T-31,32; RE- 27-31).

The Motion for Injunctive Relief was set before the Circuit Court of Jackson County, Mississippi. The lower Court allowed Bailey to present his Motion; however, Bailey was not allowed to testify nor was Bailey allowed to call any witnesses on his behalf and in support of the Motion for Injunctive Relief. Following the hearing on the Motion for Injunctive Relief which did not include any testimony, the Court ruled from the bench and denied Bailey his request for injunctive relief (T-90; RE-19). Bailey filed a Motion to Alter, Amend and for Reconsideration; however, his request for reconsideration and for an order directing the Ocean Springs School District to comply with its own policy was summarily denied (T-91-93; T-165; RE- 20-22, 23-24). The lower Court also set forth a briefing schedule in its April 10, 2017 Order Denying the Motion to Alter, Amend and for Reconsideration (RE- 23-24). The briefing schedule was complied with by both parties.

On July 18, 2017, the lower Court entered an Order Dismissing as Moot the appeal of Bailey and further found that pursuant to the policy of the Ocean Springs School District, Bailey's alleged offense was a Class I offense (RE- 25-26). Finally, the lower Court found that

the due process rights of Bailey were not violated (RE- 25-26).

Aggrieved by the decision of the lower Court, Bailey perfect his appeal to this Honorable Court.

SUMMARY OF ARGUMENTS

ISSUE NO. 1

Bailey Keeton timely appealed the recommendations of the assistant principal of the Ocean Springs High School which expelled him for an alleged violation of the Alcohol Policy. The Ocean Springs School District forwarded the appeal directly to the board of trustees in a violation of its own policy. The hearing conducted before the board of trustees was not recorded nor was a stenographer present. In the Bill of Exceptions and responses by the district, the district indicated that a “complete record” would be produced; however, it has now been determined that no record was maintained by the district. As such, no record of the testimony and evidence was available to the lower Court and the student should not suffer as a result of the district’s negligence.

ISSUE NO. 2

Policy JCAA - Due Process establishes two separate classes of suspensions and expulsions. Class I involves only the offenses which involve a violation of weapons policy, violation of drug policy and acts of violence committed on school property. All other suspensions and expulsions are considered as Class II. Bailey is accused of violating the district’s Alcohol Policy (JCDACA) which is Class II.

Students expelled for a Class I violation are required to remain expelled during the pendency of hearings/appeals. There is no such requirement for Class II expulsions. During the pendency of appeals/hearings, Baily should have been allowed to return to the normal academic environment. The lower Court applied the wrong legal standard in denying Bailey’s request for

injunctive relief.

ISSUE NO. 3

Bailey is accused of violating the district's Alcohol Policy (JCDACA). As a Class II expulsion, Bailey was entitled to two (2) separate hearings once he appealed the decision of the assistant principal at the Ocean Springs High School. Pursuant to the district's Due Process Policy (JCAA), Bailey is guaranteed a right to appeal to a District Discipline Committee. If not fully satisfied with this initial hearing, the policy allows an appeal to the board of trustees. The district deprived Bailey of the right to a hearing before the District Discipline Committee by sending his appeal directly to the board.

The lower Court erroneously found that Bailey's expulsion was Class I and that he was not entitled to a hearing before the District Discipline Committee (RE- 27-31). The decision of the lower Court was clearly erroneous as the Due Process Policy is contrary to the findings of the lower Court.

ISSUE NO. 4

The lower Court dismissed Bailey's appeal as moot because Bailey's expulsion period was completed by the time the lower Court ruled on the appeal.

The appeal filed by Bailey deals with his future and is not simply an effort to submit absent or academic issues to this Court. Bailey's expulsion has and will continue to hinder his academic opportunities.

Bailey's appeal is one which is "capable of repetition yet evading review." The 45 day expulsion is much shorter than the time required to appeal the decision to the Circuit Court and

ultimately to this Court. The student should not suffer as a result of situations beyond his control such as congested dockets, court terms, quorums of boards, decisions taken under advisement, etc.

ISSUE NO. 5

The lower Court determines that Bailey's argument was without merit because consumption of alcohol was a Class I expulsion which did not require a hearing before the District Discipline Committee. The lower Court simply "missed it" and as such, the Circuit Court judge abused his discretion by determining that violation of the district's Alcohol Policy was anything other than a Class II expulsion which required a hearing before the District Discipline Committee.

ISSUE NO. 1

WHETHER THE OCEAN SPRINGS SCHOOL DISTRICT FAILED TO COMPLY WITH REQUIREMENTS REGARDING THE NEED TO MAINTAIN A RECORD OF THE HEARING CONDUCTED BEFORE THE BOARD OF TRUSTEES AND WHETHER THE CIRCUIT COURT ERRED IN DENYING THE REQUEST FOR INJUNCTIVE RELIEF

Bailey Keeton appealed the recommendation of the assistant principal by providing notice to the principal for his intent to appeal. Bailey's appeal was acknowledged by the principal and forwarded to the district. Bailey was then notified of a hearing at which he appeared. The hearing which was set by the district was not in compliance with the district's policy. The hearing set by the district was set before the Board of Trustees of the Ocean Springs School District rather than the District Discipline Committee as required by the district's policy.

Bailey and his parents appeared as ordered by the district. Several days after the hearing, Bailey was notified that the Board of Trustees decided to accept the recommendation of the assistant principal which resulted in Bailey's expulsion for violation of the district's Alcohol Policy (T-129; RE-3).

Bailey then filed a timely appeal to the Circuit Court of Jackson County, Mississippi in accordance with law (T- 4-11; RE- 4-10).

Once appealed, the district is required to provide unto the court a record of the proceedings before the Board of Trustees for the Ocean Springs School District. The district, by and through its president, executed a Bill of Exceptions and filed the same in this cause. The district represented in the Bill of Exceptions that a complete record of the proceedings before the Board of Trustees would be presented to the court. (T 33-35, 44-46)

The district has provided no record of the proceedings before the Board of Trustees for

the school district to the lower Court or this Court. It has now been determined that a court reporter or stenographer was not present during the hearing before the Board of Trustees nor were the proceedings recorded. (T 61-63) Without the benefit of a record, this Honorable Court is unable to review the evidence submitted on behalf of Bailey nor is the reviewing Court able to review the testimony presented.

Hence, the decision of the Board of Trustees was capricious and should be vacated.

ISSUE NO. 2

WHETHER THE LOWER COURT COMMITTED MANIFEST ERROR IN DENYING BAILEY KEETON THE INJUNCTIVE RELIEF SOUGHT

On May 18, 2016, the Assistant Superintendent of the Ocean Springs School District forwarded a letter to Mrs. Allison Gray, the mother of Bailey, a minor who was enrolled in the Ocean Springs School District as a student (T-127; RE-1). The written correspondence advised Mrs. Gray that Bailey was “expelled” from the Ocean Springs High School. The letter further informed Mrs. Gray that the Board of Trustees for the Ocean Springs School District accepted the recommendation of the assistant principal of the Ocean Springs High School (RE-3).

Upon receiving the correspondence dated May 18, 2016, Mrs. Gray, on behalf of her son, Bailey, consulted an attorney and filed an appeal in accordance with Mississippi Code Annotated §37-7-115 (1972, as Amended) on May 24, 2016.

The 2015-2016 academic year ended on or about May 24, 2016.

Mrs. Gray, on behalf of her son, Bailey, filed a Motion for Injunctive Relief (T-39-46; RE-14-18). In the Motion, Bailey sought the entry of an Order which stayed the decision of the Board of Trustees for the Ocean Springs School District to expel the student. Further, the Motion sought an Order which directed the return of the student to the normal academic curriculum and classroom during the pendency of the appeal.

The lower Court considered the Motion for Injunctive Relief but did not allow the student to testify or call witnesses on his behalf.

On August 4, 2016, the day before the start of the 2016-2017 academic year, the lower court denied the Motion for Injunctive Relief filed on behalf of Bailey. The Order denying the

Motion for Injunctive Relief was entered by the lower court on August 12, 2016 (RE-19). The Order of the lower court gave no reasoning for the denial of injunctive relief.

With respect to the request for injunctive relief, Policy JCAA of the Ocean Springs School District is at issue. (T-73, 74; RE- 27-31) The policy, which was adopted by the Board of Trustees for the Ocean Springs School District on August 8, 2006 and revised on September 17, 2008, develops two (2) classes of suspensions and expulsions. Class I involves only those students who are suspended or expelled for violating the district's drug policy or weapon's policy and those who have committed a violent act on educational property. Class II involves students who are suspended for any reason other than a violation of the district's drug policy or weapons policy and those who commit a violent act on educational property.

In the case subjudice, it is undisputed that Bailey is being accused of violating the district's alcohol policy which is identified as Policy JCDACA (T-31, 32; RE- 32-34). As a matter of fact, the written correspondence from the district to Bailey's mother specifically states that Bailey was expelled for violation of the Alcohol Policy (JCDACA) (T-129; RE-1).

Bailey has never been accused of violating the district's weapons policy or drug policy and has never been accused of committing a violent act on educational property.

In summation, Bailey's expulsion recommendation is identified as a Class II Expulsion.

The district's Due Process Policy (JCAA) provides as follows with respect to Class I suspensions and expulsions:

"Due to the seriousness of offense, the student shall remain suspended and/or expelled pursuant to the principal's recommendation until such time as the hearing occurs."

The district's Due Process Policy does not include a similar provision with respect to

Class II suspensions and expulsions.

Based upon the fact that the recommendation to expel Bailey was based upon an alleged Class II violation, the student should have been returned to the classroom prior to the completion of his appeal. Obviously, the student was not considered dangerous nor was he accused of a serious Class I offense.

The policies adopted by the Board of Trustees for the Ocean Springs School District constitute the “law of the Ocean Springs School District”. A school board has no authority to violate its own policy. Cf. Covington County v. GW, 767 So.2d 187 (Miss. 2000)

As a political subdivision, the interpretation of the district’s policy is comparable to the interpretation of legislative intent when considering statutes. Whatever the legislature says in the text of the statute is considered the best evidence of the legislative intent. Mississippi Dept. of Transportation v. Lori Allred, 928 So.2d 152 (2006), Pegram v. Bailey, 708 So.2d 1307 (Miss. 1997)

In this case, the district policy is clear and unambiguous. The intent of the school board is set forth in the policy. The school board did not intend for students accused of Class II violations to be deprived of the right to return to the normal academic setting during the pendency of the appeal.

The school board included a provision which required those accused of Class I violations to remain suspended during the pendency of the appeal/hearing. The school board had every opportunity to include a provision which prohibited those accused of Class II violations from returning to the normal academic setting during the pendency of the appeal/hearing, but the

board chose not to. As can be seen from the Due Process Policy (JCAA), the school board considered the policy on November 10, 1987, August 12, 1997, August 8, 2006, July 15, 2008 and September 17, 2008 (T-73, 74, 75; RE- 27-31). While considering the policy on five (5) different occasions, the school board never included a provision which required Class II violations to be treated the same as Class I violations. Hence, it is clear that the intent was for those accused of Class II violations to be allowed to return to the normal academic setting during the pendency of the appeal/hearings.

Class I violations are considered to be serious and often involve violence with offenders being a danger to other students. Class II violations do not involve violent acts and there is no reason to deny a student access to the normal academic setting during the pendency of an appeal for reasons such as congested Circuit Court dockets, Courts being out of term, or inability to arrange for a quorum of board members, etc. A student who has appealed a decision and who has a legitimate, valid position on appeal has absolutely no control of situations involving court dockets, the length of time that a Circuit Court Judge takes in deciding motions and appeals, etc. Yet, these very situations penalize the student. In this case, these situations led to the lower Court determining that Bailey's appeal was moot since Bailey's expulsion was completed while he waited on the Court system.

As will be shown in a later part of this brief, the lower Court has always been confused by this case. The lower Court found that Bailey's expulsion was a Class I expulsion. This is clearly erroneous as the district policy places only drug offenses, weapons offenses, and violent acts on school property in Class I.

Had the lower Court considered Bailey's expulsion as Class II, the lower Court would have recognized Bailey's likelihood to prevail on the merits of his appeal and would have granted the injunctive relief to Bailey. The injunction would have prevented the irreparable harm which Bailey was forced to endure as he sought admission into colleges. There was no harm to the district if the injunctive relief was granted. The district's own policy did not consider the offense Bailey was charged with to be serious or dangerous and only required Class I violations to be deprived of a return to the normal classroom pending appeal/hearing. Cf. American Legion Post #134 v. Mississippi Gaming Commission, 798 So.2d 445 (2001). Without a record of any hearing being set before a District Discipline Committee, it can only be determined that the district violated its own policy.

The Order Denying Injunctive Relief entered by the lower Court should be reversed and vacated.

ISSUE NO. 3

WHETHER THE DUE PROCESS RIGHTS OF BAILEY KEETON, A MINOR, WERE VIOLATED BY THE OCEAN SPRINGS SCHOOL DISTRICT'S FAILURE TO FOLLOW ITS OWN POLICY IN AFFORDING THE MINOR TWO SEPARATE HEARINGS.

The policy regarding appeals and suspensions was adopted by the Ocean Springs School District on November 10, 1987 and was revised on August 12, 1997, August 8, 2006, and July 15, 2008. (T- 73-77; RE- 27-31)

Policy JCAA-Due Process provides for two classes of appeal and each class clearly defines the disciplinary cases and types of offenses covered by each. Only three offenses comprise Class I appeals. The three offenses covered by Class I appeals include allegations regarding a violation of the district's drug policy, violation of the district's weapon policy, and allegations regarding students charged with committing a violent act on educational property. (T- 73-77; RE- 27-31) In Class I appeals, the Ocean Springs School District considers these three offenses to be of a very serious nature and the board policy sets forth two requirements which apply only to Class I appeals. The two requirements that apply only to Class I offenses are as follows:

- A. The appeal is brought directly to the Board of Trustees of the Ocean Springs School District;
- B. The student must remain suspended and/or expelled pursuant to the recommendations of the principal until such time as the hearing/appeal occurs.

Class II appeals involve all other disciplinary cases except those in which a student is accused of violating the district's drug policy, weapon policy and those accused of committing

a violent act on educational property. (T- 73-77; RE- 27-31) In Class II appeals, the student's appeal is not taken directly to the Board of Trustees of the Ocean Springs School District. Rather, in Class II appeals the student's case shall be sent to the District Discipline Committee. Further, there is no provision which allows the denial of a student's return to the normal classroom setting prior to the hearing/appeal. In this case, Bailey "...shall have the right to appeal the suspension and/or expulsion to the District Discipline Committee...". In this case, Bailey properly notified the District of his appeal of the principal's recommendation. (T-128; RE- 2). The district elected to bypass Bailey's right to present his appeal to the District Discipline Committee. The District proceeded to send Bailey's appeal directly to the Board of Trustees electing to treat Bailey as if he violated the drug policy, weapon policy or committed a violent act on educational property and further denied his right to have his appeal heard by the District Discipline Committee. In Class II appeals, the student is afforded two hearings. (T-73, 74, 75; RE- 27-31) The first is before the District Discipline Committee. By denying Bailey the right to have his case heard before the District Discipline Committee, the District denied the following rights which are set forth in Policy JCAA:

1. Bailey's right to be represented by legal counsel before the District Discipline Committee;
2. Bailey's right to call witnesses to testify on his behalf before the District Discipline Committee;
3. Bailey's right to cross-examine witnesses before the District Discipline Committee;

4. Bailey's right to make opening and closing statements before the District Discipline Committee;
5. Bailey's right to have the District Discipline Committee consider the testimony of all witnesses and the consideration of all evidence;
6. Bailey's right to have the District Discipline Committee reject, change or modify the recommendation of the principal regarding Bailey's suspension/expulsion.
7. Bailey's right to have his appeal heard by an independent three member committee which was unaware of the incidences regarding alleged "alcohol consumption at the prom by a large number of students".
8. Bailey's right to have his appeal heard by a committee other than the Board of Trustees, which were bombarded with questions about the "prom".

Finally, the District denied Bailey the right to request an appeal from the District Discipline Committee. This precious right set forth in Policy JCAA gave Bailey an opportunity for a second hearing (T-73, 74, 75; RE- 27-31). The second hearing would have afforded Bailey an opportunity to present a transcript of the hearing before the District Discipline Committee to the Board of Trustees for Ocean Springs School District.

Again, the school district is bound by the policies it adopts. Clearly, the district's Due Process Policy (JCAA) only allows an appeal of a Class II violation to be made to the District Discipline Committee. There is no provision in the policy which allows the Board of Trustees to consider the appeal of a Class II expulsion. The appeal of a Class II violation, one other than a violation of weapons policy, drug policy or those committing a violent act on educational

property, must be considered by the District Discipline Committee.

The parents of Bailey provided a timely notice of appeal to the district. (T-128; RE- 2) The district was without authority to send the appeal directly to the Board of Trustees. The Board of Trustees for the Ocean Springs School District had ample opportunity to include language in the Policy JCAA which allowed the district to assign Class II cases directly to the Board of Trustees, but it did not. Again, the Board of Trustees reviewed Policy JCAA on at least five (5) occasions since 1987 and never included a provision which allowed Class II appeals to be considered by any other person, body or entity other than the District Discipline Committee (T-73, 74, 75, 76; RE- 27-31).

Once Bailey appealed the decision, the school district had every opportunity to and should have rescheduled a hearing before a District Discipline Committee. This act would have brought the district into compliance with its own policy and would have avoided the denial of due process to Bailey. Instead, the district elected to proceed with the violation of its own policy and allowed the child to suffer as a result. The damages to the child resulting from the district's actions are far reaching and permanent. The child was denied the right to participate in the normal academic setting, denied the right to practice and participate in games with the football team, denied the right to take certain classes, forced to report to colleges the fact that he was expelled and subjected to disciplinary actions, disqualified for potential scholarships, etc. In addition, he has a sibling who is enrolled in the same school district.

It is hereby respectfully submitted to this Honorable Court that there is no possible way to determine that the Ocean Springs School District did not violate its own policy and that the

violation of the policy denied Bailey Keeton certain rights guaranteed to him. Ultimately, Bailey was prohibited from returning to the normal academic setting during the hearing/appeal process and he was never afforded the opportunity to have his case heard by the District Discipline Committee. The decision of the Board of Trustees and the lower Court should be vacated.

ISSUE NO. 4

WHETHER THE LOWER COURT COMMITTED MANIFEST ERROR IN DISMISSING THE APPEAL OF BAILEY KEETON AS MOOT

Following compliance with the briefing schedule set forth by the lower court, Circuit Court Judge Robert Krebs issued an Order Dismissing as Moot on July 18, 2017.

The lower court's only rationale for dismissal was the following statement:

"After completion of that process he filed his appeal of the Ocean Springs School District's decision with this court on May 24, 2016. Keeton then moved for an injunction to stay his nine (9) day suspension and forty-five (45) day expulsion until the appeal was ruled on. The Court rejected that request on June 30, 2016. Since then, Keeton served his punishment at the start of the 2016-2017 school year and has since graduated from Ocean Springs High School, making the issue moot."

The lower court erroneously stated that it rejected the request for injunctive relief on June 30, 2016. The Order of the Circuit Court denying injunctive relief was entered on August 12, 2016. (RE- 19) The lower court provided no findings of fact with request to its decision to dismiss, as moot, the appeal of Bailey.

A. The Appeal is Not Moot Due to the Suspension's Effect on Bailey's Educational Record and Career Opportunities

Generally, appellate courts will not entertain or adjudicate moot issues. Jackson County School Board v. Osborn, 605 So.2d 731 (Miss. 1992). As the School District correctly points out, "the review procedure should not be allowed for the purpose of settling abstract or academic questions ...". Allred v. Webb, 641 So.2d 1218, 1220 (Miss. 1994). However, here the outcome of this appeal has a great and substantive effect on the academic future, and ultimately, the career of Bailey. This case also involves an issue dealing with the due process rights of a student. The

constitutional rights of every student and individual and the rights provided unto every student by the district's policy should never be described as abstract or academic.

If the lower Court's ruling is allowed to stand, Bailey will continue to be forced to disclose that he was expelled from high school when applying to institutions of higher learning, such as college or graduate school. This disclosure will have a very real and negative impact on his ability to obtain entry to institutions. The same holds true when Bailey attempts to apply for gainful employment. To assert that this appeal is moot is to ignore that school suspensions and expulsions carry stigma, which can and will have a direct impact on Bailey in the future.

A useful analogy is that of an individual wrongly convicted of rape, who after having served his sentence, discovers DNA evidence exculpating him from the crime. During the years after release, but before his sentence is overturned, this individual would be required to disclose the existence of his conviction for a variety of reasons, and to a multitude of people. That disclosure would have a very practical impact on his life. Would one argue that overturning the conviction is moot because he had already served his sentence? Certainly not. This very example is applicable in a school setting involving those seeking employment within a school district.

This appeal involves more than an abstract or academic question of law. It involves a young man about to enter a critical phase in his life, and whether he will be forced to disclose an embarrassing and, as will be demonstrated below, improper punishment. Therefore, because the outcome of this appeal will result in a substantive and tangible effect to Bailey's future, the appeal is not moot simply because he has served his time.

B. The Appeal Must Survive Based on the “Capable of Repetition, Yet Evading Review” Exception to Mootness

If the Court finds this matter to be moot, it is asserted that an exception applies. “[T]he doctrine which prevents adjudication of moot cases provides an exception for those cases which are capable of repetition yet evading review.” Mississippi High School Activities Ass’n, Inc. v. Coleman, et al, 631 So.2d 768, 772 (Miss. 1994) (citing Strong v. Bostick, 1356, 1359 (Miss. 1987)). The Mississippi Supreme Court has adopted this exception, noting it applies in “situations where (1) the action complained of is too short in duration to be fully litigated before its expiration and ‘(2) [t]here [is] a reasonable expectation that the same complaining party [will] be subject to the same action again’” *Id.*

In the instant case, the nine (9) day suspension and forty-five (45) day expulsion have already been served. (T-188) Indeed, the suspension and expulsion had been served despite Bailey’s request for injunctive relief which would have prohibited such. Therefore, it is inescapable that the “action complained of” (i.e., the suspension/expulsion) was “too short in nature to be fully litigated before its expiration.” Therefore, the first prong of the exception is clearly applicable.

Next, we must examine whether there a reasonable expectation that the same complaining party would be subject to the same action again. Coleman, 631 So.2d at 772. While Bailey has moved on from high school, his parents, the Keetons have a son, William Gray, who is 13 years old and attends the Ocean Springs Middle School. William is an athlete and is following in the path of Bailey. This exact scenario was encountered in Walsh v. Louisiana High School Athletic Ass’n, 616 F.2d 152 (5th Cir. 1980). In Walsh, the Fifth Circuit was faced with

an appeal involving a student who had graduated, but whose parents had other children who would eventually attend the school which rendered the challenged action. *Id.* That Court stated as follows:

[B]ecause the plaintiff parents had other minor children who currently were enrolled at various Lutheran elementary or junior high schools and who ultimately would matriculate at Lutheran High School, the district court reasonably could expect that the same complaining parties again would be subjected to the challenged action in the future.

Id. at 157. Based on these facts, the court held that the second prong of the exception applied, and allowed the appeal to survive. *Id.* As demonstrated above, both prongs of this exception are met. As such, the appeal of Bailey is proper as capable of repetition yet evading review.

C. Precedential Effect

Finally, the Court must examine the precedential effect of dismissing this appeal as moot. In essence, ruling in the School District's favor on this issue would send a distinct, and certainly welcomed message to districts across the State. If the Appellee's interpretation of the law is correct, in order to escape review of disciplinary actions, school districts need only craft their punishments to be shorter in length than the appeal process. This is especially dangerous when one considers that the School District plays a large part in determining how swiftly or slowly the appellate process occurs for any given student. Further, every suspension and expulsion will be shorter than the process of appealing the decision of the board of trustees to the Circuit Court. The right to appeal to the Circuit Court which is guaranteed by the district and the statutes enacted by the Mississippi Legislature is stripped from a student if the decisions of the lower Court is affirmed.

In any event, this appeal is not moot, as the impact of this Court’s ruling on the merits will have long-lasting, and potentially devastating effects on Bailey’s academic life, his career, and his siblings. Regardless, the appeal survives under the “capable of repetition yet evading review” exception.

ISSUE NO. 5

WHETHER THE LOWER COURT WAS IN ERROR AND APPLIED AN ERRONEOUS LEGAL STANDARD IN FINDING THAT THE DUE PROCESS RIGHTS OF BAILEY WERE NOT VIOLATED AND THAT THE OCEAN SPRINGS SCHOOL DISTRICT FOLLOWED ITS POLICY.

The lower Court acknowledged that the Policy JCAA separates appeals and suspensions into two classes: Class I governs the procedures for students who are suspended or expelled for violating the district's drug policies, weapons policies, or committing violent acts on education property and Class II governs any reason that is not governed under Class I.

The lower Court further acknowledged that Bailey contended that he should have been classified under Class II and would have therefore been entitled to a hearing before the District Discipline Committee and that the district's failure to place him in Class II and the district's failure to provide a hearing before the District Discipline Committee is a violation of his due process rights.

Although the lower Court was familiar with Policy JCAA (Due Process), the Circuit Court judge found that Bailey's argument was without merit because "the consumption of alcohol would be a violation of the Ocean Springs School District's drug policy placing him in Class I. As such, the lower Court determined that the Ocean Springs School District followed all policies pursuant to Class I and therefore, there was no due process violation. Without being critical, it is mind boggling as to how the lower Court could reach such a conclusion.

The Ocean Springs School District has in effect a Drug Policy and a separate Alcohol Policy. The Alcohol Policy (JCDACA) deals exclusively with alcohol, beer, and liquor (RE- 32-34). The Drug Policy only applies to drugs and not alcohol (RE- 35-38).

In this case, the May 9, 2016 correspondence which was sent to the mother of Bailey specifically stated that Bailey violated School Board Policy JCDACA- Alcohol (RE- 1). Bailey was never accused of violating the Drug Policy of the Ocean Springs School District.

The lower Court was obviously confused when issuing the Order Dismissing Appeal as Moot since there is no possible way that the alleged offensive actions of Bailey could be a Class I violation.

In Mississippi, the standard of review for determinations made by a trial judge sitting without a jury is the substantial evidence standard. Church of God Pentecostal, Inc. v. Freewill Pentecostal Church of God, Inc., 716 So.2d 200 (Miss. 1998).

Our Appellate Courts have found that we will not disturb the findings of a Chancellor when supported by substantial evidence unless the Chancellor abused his discretion, was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied. Cotter v. Cuhz Timber Co., Inc. 825 So.2d 669 (2002); Mercier v. Mercier, 717 So.2d 304 (Miss. 1998); and Church of God Pentecostal, Inc. v. Freewill Pentecostal Church of God, Inc., 716 So.2d 200 (Miss. 1998).

Based upon the plain language of the district policies the only conclusion to be reached is that the Circuit Court judge was clearly erroneous in his finding that “the consumption of alcohol would be a violation of the district’s drug policy placing him in Class I.” (RE- 32-34, 35-38).

CONCLUSION

Bailey, a 12th grade student at Ocean Springs High School, was notified by the assistant principal that he was suspended for nine (9) days and expelled for forty-five (45) days due to a violation of the district's alcohol policy. (JCDACA) (RE- 32-34) Bailey appealed the decision in accordance with the district's policy.

In addition to filing an appeal from the Ocean Springs School District Board of Trustees' decision to expel him, Bailey also filed a Motion for Injunctive Relief in the lower court. Bailey was not allowed to present witnesses and the lower court denied injunctive relief which would have allowed Bailey to return to the classroom during the pendency of the appeal. Pursuant to district policy, expulsion for a violation of the alcohol policy is a Class II expulsion. Class I expulsions deal with only violations of the weapons policy, drug policy and violent acts on educational property. Due to the seriousness of the Class I offenses, the policy requires the Class I violators to remain expelled during the pendency of the appeal. Although the district had every opportunity to include a provision which required the Class II violators to remain expelled during the pendency of the appeal, the district did not. The lower court erred in denying the injunctive relief sought by Bailey.

The district's Due Process Policy established two (2) classes of suspensions and appeals (JCAA) (RE- 27-31) Class I is composed of violations of the district's drug policy, weapons policy and for violent acts committed on educational property. Class II is comprised of all other suspensions and expulsions.

The district never alleged that Bailey's expulsion was Class I, but rather, alleged a violation of the alcohol policy, which is a Class II expulsion.

In Class II expulsions, the student is entitled to two hearings. The first hearing is before a District Discipline Committee. If the student is aggrieved by the decision of the District Discipline Committee, the student is entitled to a second hearing before the school board. The Ocean Springs School District denied Bailey the right to a hearing before the District Discipline Committee as required by its Due Process Policy.

As a result of the district's violation of the due process rights of Bailey, the lower court's Order should be reversed. The lower court also dismissed as moot Bailey's appeal of the school board's decision to expel him. The lower court concluded that since Bailey had already served the expulsion prior to the ruling of the lower court, the appeal was moot. Such a decision is devastating to students because the student's rights regarding an appeal are taken away. The lower court's own briefing schedule which was imposed upon the parties was well after the forty-five (45) day expulsion was concluded. Given the requirements and time frames involved with an appeal from a school board decision, a student would never be able to perfect an appeal which would not be deemed moot. Regardless, since the time affiliated with the appeal is longer in duration than the expulsion period, Bailey's case is on which is "capable of repetition yet evading review".

Finally, the lower Court determined that Bailey's expulsion was a Class I violation which was clearly erroneous.

Due to the fact that the lower court applied an erroneous legal standard and issued an Order which was clearly erroneous, the Order of the lower court should be reversed and the Appellant's academic record should be purged of the suspension and expulsion.

Respectfully submitted,

CHRISTOPHER BAILEY KEETON, a minor
by and through his natural guardian and next
friend, ALISON GRAY

BY: GLBtr
G. CHARLES BORDIS, IV

CERTIFICATE OF SERVICE

I, G. Charles Bordis, IV, of counsel for the Appellant, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing Brief of Appellant, to the following individuals at their usual mailing addresses:

1. Alwyn Luckey, Esq., Attorney for Appellee; and,
2. Honorable Robert Krebs, Judge of Jackson County Circuit Court.

THIS the 10th day of January, 2018.

GLBtr
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