

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JANE X. DOE  
V.  
JOHNSTON SCHOOL COMMITTEE

DECISION

Held: Precisely tailored pre-existing rule  
not needed in school discipline  
cases.

Date: January 21, 1994

The Johnston School Committee has issued a disciplinary code which categorizes nineteen (19) different offenses as being of such gravity that they require the imposition of a "major suspension". Offense number one (1) in pertinent context reads as follows:

**A. Major suspensions** - are temporary dismissals from school for a minimum of three (3) days and a maximum of ten (10) days for the offenses listed below or others as may be determined by the school principal or assistant principal when perpetrated on school grounds, in the school building, on the school buses and at school functions. Major suspensions will be given when the following major infractions are committed.

1. The possession and/or use on schools grounds of explosives, weapons or instruments with the intent to do bodily harm - a maximum of ten (10) days suspension and mandatory appearance before the Superintendent of Schools and/or school committee.

In the case at hand the record establishes that the petitioning student, who attends the Johnston High school, had an excellent disciplinary record until October 9, 1993 when she was found to be in possession of a revolver on school grounds. For this offense the school committee suspended her for the remainder of the 1993-1994 school year.

Officer Jay Bianco, of the Johnston Police Department, testified that on October 9, 1993 while on patrol he received a radio call informing him that the petitioner was driving a vehicle of a certain description. He was informed that petitioner might have a weapon in the vehicle. The officer spotted the petitioner sitting with her friends in the vehicle which was parked in the high school parking lot. The officer approached the vehicle and asked the petitioner to step out of it. She complied and the officer found the revolver under the car seat. The officer testified that he never felt threatened by the petitioner and that he did not believe that she intended to do harm to anyone.

The weapon was "a stainless 32 caliber revolver". It was unloaded and there were no cartridges in or near the vehicle. There is testimony on the record that revolver was something of an antique and that it was made in the 1800's. It was also suggested on the record that it would be difficult to locate the required old style "rim fire" cartridges which would have to be used in the weapon.

When the school committee rested its case the petitioner moved that the decision of the school committee to suspend her for the rest of the 1993-1994 school year should be reversed for the following reasons:

1. The Johnston High School disciplinary code provides for only a ten (10) days suspension for possessing a weapon on school property.
2. The Johnston High School disciplinary code requires "intent to do bodily harm" before the possession of a weapon may be punished and the record, as it now stands, contains no proof of intent to harm anyone.

We think that petitioner's first argument is without much merit. A reading of the disciplinary code in its entirety shows us that the "mandatory appearance before the Superintendent and/or school committee" required in cases involving the possession of a weapon is to enable the school committee to impose a long term "exclusion" (suspension).

Petitioner's second argument presents a more difficult issue. Indeed, if this were a criminal case we would probably have to find that the "charges" against her should be dismissed since there is no evidence that she ever intended to inflict bodily injury on anyone.

Still school disciplinary codes are not "criminal codes". The United States Supreme Court stated in Bethel School District vs. Fraser, 106 S.Ct. 3159 (1986) that:

Respondent contends that the circumstances of his suspension violated due process because he had no way of knowing that the delivery of the speech in question would subject him to disciplinary sanctions. This argument is wholly without merit. We have recognized that "maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship." New Jersey v. T.L.O., 469 U.S. at ---, 105 S.Ct., at 743. Given the school's need to be able to impose disciplinary sanctions for a wide range of unanticipated conduct disruptive of the educational process, the school disciplinary rules need not be as detailed as a criminal code which imposes criminal sanctions. Cf. Arnett v. Kennedy, 416 U.S. 134, 161, 94 S.Ct. 1633, 1647-48, 40 L.Ed.2d 15 (1974) (REHNQUIST, J., concurring).

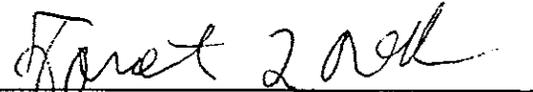
In Richardson v. Thurston, 424 F.2d 1281 (1st. Cir., 1970) the First Circuit Court of appeals, in dealing with a school disciplinary case, wrote:

Plaintiff, too, advances a narrow argument for prevailing ---the lack of any specific regulation authorizing suspension of unusual hair styles. We do not accept the opportunity. We take as given defendant's allegation in his answer that parents and students ---including plaintiff--- were aware that unusually long hair was not permitted. Moreover, we would not wish to see school officials unable to take appropriate action in facing a problem of discipline or distraction simply because there was no preexisting rule on the books.

In sum we conclude that school committees, under their general authority to manage schools (G.L. 16-2-9) have authority to impose suspension in cases of this nature even in the absence of a precisely tailored pre-existing rule.

Conclusion

Petitioner's motion to dismiss is denied. The hearing will resume on a near date to be agreed upon.

  
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Forrest L. Avila, Hearing Officer

Approved:

  
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Peter McWalters  
Commissioner of Education

January 21, 1994  
Date