

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

Jay S.

v.

Cumberland School Committee

DECISION

HELD: There is no requirement that witnesses be called in school suspensions of ten days or less.

DATE: February 16, 1999

Statement of the Case

This is an appeal of a three-day disciplinary suspension imposed against Jay S. for throwing an egg at a school sponsored event. This suspension has been sustained by the superintendent in Cumberland and by the Cumberland School Committee. It is now before the Commissioner for further review.

Each year Cumberland High School sponsors a school spirit week. One of the events is an egg tossing competition where students are paired off for the purpose of tossing an egg between partners over increasing distances. The idea seems to be to see which pair can toss the egg furthest without breaking it. This is not a favorite event with school administrators, but the contest seems to have great traditional significance in Cumberland where it has been scrupulously observed for, as lawyers say, time out of mind. School administrators chaperone the event closely and recognize the proclivity of some non-participating students to bring contraband eggs to the event for the purpose of ad hoc free lance throwing. This practice is strictly forbidden and students are admonished against it, but at times it has occurred. This is one such occasion.

A school administrator testified that he saw an unauthorized egg hurled from a group of seniors toward a group of sophomores. He then placed himself to the rear of the seniors. From his position of vantage, he testified that he saw Jay S. toss an egg towards the sophomores. Jay S. testified that he did toss an egg but that it was in a direction away from other students towards an open field. The administrator did not see it that way but he gave Jay S. a chance to defend himself before he took Jay S.'s name down for further disciplinary action the next day.

The next day the school principal asked Jay S. about the incident and also later spoke with the administrator who saw the incident. The principal then imposed a three-day suspension in accordance with the rules.

Jay S.'s parents object to this suspension for the following reasons:

1. They don't believe that Jay threw the egg toward the sophomore but rather that he threw the egg into an open field.
2. Another student at a different event is said to have broken an egg over a student's head and only received detention for the offense.
3. The school principal failed to talk with a student witness who might have substantiated Jay S.'s story.
4. The parents were not informed of the right to appeal the suspension.

Conclusions of Law

Neither the Regulations of the Board of Regents nor the due process clause of the United States Constitution require the calling of witnesses in school suspension cases of less than ten days. In Goss v. Lopez, 419 U.S. 565 (1975) the United States Supreme Court said:

We stop short of construing the Due Process Clause to require, countrywide, that hearings in connection with short suspensions must afford the student the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge, or to call his own witnesses to verify his version of the incident. Brief disciplinary suspensions are almost countless. To impose in each such case even truncated trial-type procedures might well overwhelm administrative facilities in many places and, by diverting resources, cost more than it would save in educational effectiveness. Moreover, further formalizing the suspension process and escalating its formality and

adversary nature may not only make it too costly as a regular disciplinary tool but also destroy its effectiveness as part of the teaching process.

For suspensions of less than ten days the Regulations of the Board of Regents say this:

For suspensions of ten (10) days or less:

- a. that the student be given oral or written notice of the charges against him/her;
- b. that if the student denies the charges, the student be given an explanation of the evidence the authorities possess;
- c. that the student be given the opportunity to present his/her version; and
- d. that notice and hearing generally should precede the student's removal from school since the hearing may almost immediately follow the incident but if prior notice and hearing are not feasible, as where the student's presence endangers persons or property or threatens disruption of the academic process, thus justifying immediate removal from school, the necessary notice or hearing shall follow as soon as practicable.
- e. That in the event a student has not attained the age of majority (18 years), notice containing the reason for suspension and the duration thereof be given to the parent or guardian. Such notice shall be given in the parent's spoken language, unless it is clearly not feasible to do so.

The law requires every school committee to establish a student discipline code:

16-21-21. Student Discipline Code. – Each school committee shall make, maintain, and enforce a student discipline code. The purpose of the code is to foster a positive environment which promotes learning. The department of elementary and secondary education shall provide necessary technical assistance in the development of the student discipline code. The school committee shall cause the student discipline code to be distributed to each student enrolled in the district. Each student and his or her parent, guardian, or custodian shall sign a statement verifying that they have been given a copy of the student discipline code of their respective school district.

It is neither necessary nor appropriate for a school discipline manual to approximate the specificity of some penal law code. In Bethel School District v. Fraser, 106 Ss. Ct. 3158, 92 Led, 2d 549, 32 #duc. L.R. 1243 (1986), the United States Supreme Court observed:

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.

School committees have broad authority to construe their own rules. Board of Education of Rogers, Arkansas v. McCluskey, 458 U.S. 966, 102 S.Ct. 3469, 73 L.Ed. 2d 1273, 5 Educ. L.R. 136 (1982)

The discipline code of Cumberland High School states:

22. There will be no throwing of snowballs, apples, food, etc. on campus. Students violating this rule will be subject to a three-day suspension. Repeated violations will necessitate a ten-day suspension.

The discipline code of Cumberland High School allows a disciplinary suspension to be appealed to the superintendent and the school committee. The proposed suspension is stayed during the duration of the appeal. (Cumberland High School Discipline Code, pages 73 and 74)

Discussion

While the parents in this case argue that a witness should have been interviewed, there is simply no requirement that witnesses be interviewed in suspensions of ten (10) days or less. Goss v. Lopez, 419 U.S. 565 (1975) The parents also contend that the field where the incident took place is not part of the school campus but from the testimony of Mr. Dyson we conclude that it is. Even if the field was not a part of the school campus, the event in question was a school function and thus the participants in it were subject to school discipline even if an exact pre-existing rule covering the misconduct was not in the school discipline code.

In Richard v. Thurston, 424 F.2d 1281, (1st Cir. 1970), the First Circuit Court of Appeals stated:

...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.

Furthermore we cannot find that the penalty imposed in this case was excessive or disproportionate. School discipline is not an exact science and many factors must be taken into account in making disciplinary decisions. While the parents argue that they have heard of another student who only received a day or two of detention for breaking an egg over another student's head, school officials testified that they did not concur in this punishment which had been imposed by a teacher. Instead of increasing the punishment imposed they contented themselves with correcting the teacher who had imposed the lenient punishment. In doing this we cannot say that the administrators were wrong.

We also must reject the argument that the parents had no notice of the appeal route since the appeal route is fully discussed in the disciplinary handbook.

In the end this case comes down to whether Jay S. threw an egg at a group of sophomores. While this proposition is not subject to perfect proof we believe the school administrator when he states that he saw Jay S. throw an egg toward a group of sophomores. We therefore must sustain the suspension which was imposed.

Conclusion

The appeal is denied and dismissed and the suspension is sustained.

Forrest L. Avila
Hearing Officer

APPROVED:

Peter McWalters
Commissioner of Education

DATE: February 16, 1999