

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER
OF
EDUCATION

.....

In the Matter of A. L.

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DECISION

Held: The penalties imposed in this case are affirmed, except that the petitioner may participate in interscholastic sports.

DATE: October 15, 1999

Statement of the Case

The student in this case is an excellent scholar athlete with an exemplary record of school citizenship. She is in a college preparatory program. While her grades will certainly gain her admission into college there is a possibility that her participation in interscholastic athletics might qualify her for an athletic scholarship. She has been suspended from school for five days and suspended from all school activities for the remainder of the school year. This discipline was imposed for use of alcohol before a school event. She is appealing this disciplinary action to the commissioner.

Standard of Review

We exercise de novo review in this case. The scope of review is well expressed in Appeal of Cottrell, 10 R.I. 615 (1873):

It would no doubt make the office of commissioner easier and more pleasant, to take away this power. The decision of such cases leads frequently to enmities, or charges of being subject to improper influence. School committees, however honest, may be subject to local influences; and the very knowledge that their determination was likely to be reviewed by a disinterested person might, in many cases, prevent an improper decision, and a commissioner would seldom reverse a decision of a committee unless he was satisfied that the public good or justice to individuals required it. And for the purpose of securing uniformity in the administration of the law, this provision is very important.

(See: Pawtucket School Committee v. State Board, 103 R.I. 359 (1968))

The Commissioner of Education has authority to sustain, reverse, or amend the disciplinary decisions of school committees. Pawtucket School Committee v. Board of Regents, 513 A.2d 13 (R.I. 1986). It is noted that R.I.G.L. 16-2-17 provides for direct review

by the Commissioner, if requested by student's family, of a suspension imposed by a Principal acting as designee of the School Committee.

Jurisdiction

Jurisdiction is present under R.I.G.L. 16-39-1 and R.I.G.L. 16-39-2. The respondent argues that since extracurricular activities are involved in this case, we should not exercise jurisdiction in this matter. The answer to this is that extracurricular activities are part of a student's education as specified in Rhode Island's Basic Education Plan (BEP, Topic 29, Student Activities Program). Extracurricular activities are extremely important in the educational life of many students. In any event, even if all of this were not so, the Board of Regents has never exercised its authority to limit review of some cases. R.I.G.L. 16-39-6.

Relevant School Policies

1. The school district in this case has a strong policy prohibiting alcohol use before a school event:

Alcohol and Drugs: The use of alcohol or drugs before school, during school or prior to any school activity is considered a most serious violation of the school discipline policies and will be dealt with according to the penalties outlined in Policy #5114. Any offense involving alcohol and/or drugs will result in a period of social probation for one calendar year in addition to other penalties which include a suspension from school for a minimum of 5 school days, the exact length dependent upon the circumstances. The period of probation will be subject to review after six months. Student Handbook, 1999-2000, "Disciplinary Actions," 10.

Social Probation: Certain offenses, including but not limited to those that occur at school-sponsored extracurricular activities, may result in probation. During the assigned period of probation the student may not participate in any after-school, evening or extracurricular activities, including athletics as spectator or participant. Student Handbook, 1999-2000, "Disciplinary Actions," 8.

The school district recognizes the serious consequences which may result when a student is barred from participation in athletics. It has concluded, however, that "social probation" is an effective tool of school discipline which discourages alcohol use by students. The school district believes that the safety and well-being of the students and the school system is enhanced by this policy. This policy has been regularly reviewed but in the end the decision has always been that it is worthwhile and very effective in the school system.

2. The school system has also adopted policies concerning student athletes. Under these policies student athletes:

1. Must appreciate and understand that their behavior is observed and emulated by many who are younger.
 2. Live up to the high standard of sportsmanship established by our League.
 3. Accept and understand the seriousness of your responsibility, and the privilege of representing your school and community.
- School Athletic Handbook

Findings of Fact

The petitioner in this case has been suspended from school for five days and has also been placed on social probation for the rest of the year which makes her ineligible to participate in interscholastic athletics. All of this results from the fact that she imbibed an alcoholic beverage immediately before a school dance. This is not to suggest that this high

school student was under the influence of alcohol or that she consumed any great amount of alcohol. In fact, she described her consumption in, as lawyers say, de minimus terms. In her recollection of events she went to a friend's house where she was to meet with a number of other girls to complete preparations for attending the school dance. She changed into her clothes at her friend's house in an upstairs bedroom, she went down the stairway, saw a cup with liquid in it and decided to take a sip – to her surprise the cup contained an alcoholic beverage. She stopped drinking it. She then noticed in an adjoining room that other containers of alcohol were in plain view. When she realized this she insisted on leaving the house and going to the dance.

We cannot quite completely accept all of the petitioner's recollections of these events. We think that to some extent her portrayal of these events is rebutted by her own demeanor and bearing, as well as by the circumstances and her own words. Petitioner appears to us to be an intelligent person who is very careful about her own health. It does not seem very probable to us that she saw some unknown person's cup, containing an unknown potion, of unknown provenance, and that she then decided to take a quick swig out of it.

At least one of the persons attending this impromptu house party with the petitioner went to the dance under the influence of alcohol. Another girl attending the party had been named "the designated driver" of the group. This was certainly a wise and commendable decision in an evening which contained some lapses in strictly good judgement. We should also point out that the record is very clear that while the petitioner had consumed some alcohol before the dance the amount she herself consumed was insufficient to place her under the influence of alcohol. Both a school administrator and a police officer testified to this fact.

The girls would have attended the dance without incident except that one of their group was noticed at the dance in a state of visible intoxication. This student was stopped from leaving the dance. School officials knew they had to check on the students who had come to the dance with this student to make sure they would not attempt to leave the dance and perhaps attempt to drive in an intoxicated state. The petitioner in this case was summoned by school officials. She admitted to a school administrator, and later to her mother in earshot of others, that she had used alcohol before the dance. The administrator was able to give a clear and vivid description of petitioner's crestfallen and sincere admission that she used alcohol before the dance.

Discussion

Under local school committee policy any use of alcohol before a school event is prohibited. This is a sensible rule since it is a brightline prohibition which can be readily employed. It entails no subjective test about degree of alcohol consumption or what it means to be under the influence of alcohol. We accept the validity of this rule. We also think that in deciding in a school context whether a child or youth has been using alcohol school officials can use the same methods of evaluating the situation that a parent would use. In the present case, the petitioner's words, her demeanor and bearing, and the attendant circumstances convince us that it is more probable than not that she knowingly consumed some small amount of alcohol before attending the school dance.

School officials face a difficult problem in dealing with alcoholic beverages. For example, in this case, one of the girls in the group the petitioner was with was tipsy at the dance. School officials noticed this. They realized that they had to speak with the other students this girl was with to be sure that these students were not in a similar condition and

about to try to drive themselves home. The wisdom of school officials checking on the well being and the condition of these students is self evident. We find the school administrator in this case acted wisely and correctly. She also displayed great concern about the welfare of the students in her charge. We commend and endorse her actions to protect students from leaving school premises in a condition in which they might be harmed or harm others.

Still, we believe that in the end the question of the extent of the discipline which was meted out in this case cannot be evaded. The discipline given was, of course, exactly the amount of discipline established by the school committee policy. But, was it too harsh in this particular case? We think this is a question which always must be asked.

In prior cases we have pointed out that school officials must always exercise discretion in the imposition of school penalties, John B.L. Doe v. A Rhode Island School Committee, Commissioner of Education, June 13, 1995. We therefore never interpret school rules involving penalties as if they were a version of “the law of the Medes and the Persians” which must literally be applied in every case no matter what the consequences. It should be noted that this is a balanced approach since students cannot avoid school discipline just because of an inartfully drafted school rule. A school always has discretion to impose discipline in appropriate cases. The First Circuit Court of Appeals has said:

“...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.”
Richard v. Thurston, 424 F.2d 1281(1st Cir. 1970)

In criminal law matters this of course is not the approach the courts take. But as the United States Supreme Court has pointed out:

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. Bethel School District v. Fraser, 106 S.Ct. 3158, 92 L.Ed. 549, 32 Educ. L.R. 1243 (1986)

Thus, the broad flexibility and authority the courts have granted to school districts must be buffered by the exercise of discretion. This makes the system workable. Automatic penalties in serious matters, unbuffered by discretion, are not allowable. We think that local school policies recognize this fact. These policies state:

Student conduct shall reflect consideration for the rights of others. The School Committee’s intent is to establish a rational position between freedom for each individual and the necessity for sufficient order to permit the operation of the instructional program.

To this end, the committee looks to its administrative staff to develop and communicate clearly a set of reasonable rules of student conduct. In the development process, it is expected that parent groups will be involved at all levels of the system. In addition, input from the student governing bodies at the high and junior high schools will be included.

Students shall respect duly constituted authority and use established processes to bring about desired change. These processes shall be in the following order: 1) appeal to the student governing body, b) appeal to the principal, c) appeal to the superintendent, and d) appeal to the School Committee.

Maintenance of discipline within the classroom is the responsibility of the teacher. Cooperation may be obtained, if necessary, from the principal, superintendent, or the School Committee. For purposes of discipline and maintaining order in the classroom, teachers are in “*loco parentis*.” Student Handbook, 1999-2000, “Student Conduct,” 31.

We think that, once “*in loco parentis*” authority is claimed so is the discretion that goes with this status. We must therefore exercise our discretion in reviewing the penalty imposed in this case.

Conclusion

The student in this case has no record of prior disciplinary actions. When confronted with her violation of school rules she immediately admitted to the violation. We are of the old school and still believe that this counts for something. The students involved in this situation had learned enough not to hazard themselves or others by using alcohol and attempting to drive. The petitioning student was not under the influence of alcohol at the school dance. She was polite and cooperative with school officials at all times. The loss of a chance to compete for a scholarship can be a matter of very great consequence to this student and her family. These factors cause us to remit a portion of the penalties imposed.

Our independent de novo decision is to affirm the 5-day school suspension imposed. We lift that part of the petitioner's social probation which prohibits her participation in athletics. The School Committee, in accordance with local rule will review this matter to consider this student's participation in senior activities. In all other respects the decision of the local school authority is affirmed.

Forrest L. Avila, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

October 15, 1999
Date