

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER
OF
EDUCATION

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In the Matter of A.B.

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DECISION

Held: Student is appealing imposition of penalties resulting from a school suspension, including prohibition from attendance at the senior prom and from addressing his class at graduation. In this *de novo* review we see nothing inappropriate or disproportionate in the penalty which school officials imposed. The Appeal is denied and dismissed.

DATE: June 2, 2000

Statement of the Case

The appellant in this case is a high school senior who received a nine-day school suspension for possessing alcohol on a school trip. As a result of this school suspension he will not be allowed to participate in the senior cruise, address his class in his capacity as a class official, or attend the senior prom. School officials have made a decision that this student will be allowed to participate in graduation exercises. The student is appealing from the imposition of these penalties.

Jurisdiction

Jurisdiction is present under R.I.G.L. 16-39-1 and R.I.G.L. 16-39-2.

Standard of Review

We exercise *de novo* review in this case.¹ The scope of review is well expressed in *Appeal of Cottrell* where the Supreme Court stated:

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, 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 an individuals required it. And for the purpose of securing uniformity in the administration of the law, this provision is very important.²

The Lincoln High School Discipline Code

The Behavior Code of the Lincoln High School applies to “any student attending functions sponsored by our school—at home or away.”³ In the High School Behavior Code there are certain:

VIOLATIONS OF THE STUDENT BEHAVIOR CODE FOR WHICH A STUDENT IS SUBJECT TO SUSPENSION AND/OR EXCLUSION FROM ALL EXTRA CURRICULAR ACTIVITIES FOR A PERIOD OF UP TO 1 YEAR FOR THE FIRST OFFENSE.

¹ *Slaterry v. Cranston*, 116 R.I. 252 (1976)

² *Appeal of Cottrell*, 10 R.I. 615 (1873) See: *Pawtucket School Committee v. State Board*, 103 R.I. 359 (1968)

³ Lincoln High School Handbook, 1999—2000, page 30.

One of these VIOLATIONS is:

The use or possession of alcoholic beverages, narcotics, marijuana, etc. on school property, during school, or at any school function.

However the Discipline Code policy of the Lincoln School High School also states that while in disciplinary matters:

Every attempt at impartiality will be made, individual instances must be weighed against all attendant circumstances and a just and equitable solution sought. As a result, not all seemingly identical rule infractions will be treated with the same penalty.

We find this statement to be in accord with our prior rulings on the issue of “zero tolerance”:

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.

In the present case we are therefore not dealing with a “zero tolerance” school disciplinary code which prevents administrators from exercising discretion in the imposition of penalties. The Commissioner accords great weight to the reasoned discretion of school officials when they exercise this discretion in the cases that come before them. Unfortunately when School officials abdicate their discretion and take shelter behind inflexible rules they deprive the Commissioner of the opportunity to show proper respect for a discretion which they have failed to exercise. Fortunately the matter at hand is not such a case. The Lincoln School Code requires the exercise of discretion in the imposition of any penalty. We endorse school codes of this nature. The case at hand is therefore completely different from situations where there has been a failure to individualize discipline under a “zero tolerance policy.”⁴ It is also very different from a recent case where, by local rule, the impact of a disciplinary penalty varied according to the change of the page on the calendar.⁵

⁴ *In the Matter of Amy L.*, Commissioner of Education

⁵ *In the Matter of B.C.*, Commissioner of Education, May 19, 2000

Findings of Fact

The student in this case, A.B., is a graduating senior who has an exemplary record of academic success at the Lincoln High School.⁶ He is a leader in school activities with a good record of school citizenship. He is a member of the Lincoln High School Band.

In early May of this year A.B., as a member of the High School Band, participated in an out-of-state trip. Before this trip started he knew that another student intended to secretly bring liquor on the trip. A.B. did not inform any school official of this fact. On the bus ride to the band event A.B. came to the conclusion that the student who had brought the liquor was consuming it and that she was being visibly affected by it. He did not inform school officials of this fact. At the Hotel the student who had brought the liquor was becoming loud and boisterous. Student A.B. testified that:

She became loud and kept asking me to drink with her. In an effort to calm her down and stop her from drinking further, I took the bottle from her and brought it to my room, leaving it on the table.

Student A.B. did not inform school officials of this event. Another student, X.Y. entered A.B.'s room.⁷ At this point there is a conflict in the testimony. A.B. testified that he saw X.Y. consume some of the liquor. Other students suggest that A.B. told X.Y. that there was water in the bottle and that he should drink some. All agree that X.Y. sniffed the bottle and that he knowingly began to drink from it. A.B. did not inform school officials of this event. The situation then went from bad to worse. A.B. testified that he left the room and that:

Shortly thereafter, another band member came up to me and said the X.Y. was lying on the floor and speaking incoherently. He was by himself with the other people in the room having fled the room when he got sick. I picked him up and put him on the bed and held him while calling for the other kids on the floor to call the chaperones. X.Y. was taken to an emergency room where he was treated and released. I believe it was later determined that he had an allergic reaction [to] the combination of the alcohol and some medication he was taking.

When the paramedics arrived and were examining X.Y. they asked A.B. if X.Y. had been drinking. There was concern about a potential diabetic reaction. A.B. misinformed the paramedics and denied that X.Y. had been drinking.

Lincoln school officials reviewed this incident. They took into account this student's exemplary prior record. On the facts of the case they decided that a nine day school

⁶ Not his real initials.

⁷ Not his real initials.

suspension and a prohibition from all school events, except graduation exercises, would be an appropriate disciplinary measure.

Discussion

This seems to us to be a case where a student leader failed to act in a responsible way. There are repeated occasions in this story where A.B. could have made a different decision and thereby prevented risk to himself and to others. Instead, on each occasion, he made the wrong decision. In our minds his most glaring mistake was his final decision to deny to paramedics that his friend had been drinking. By that moment of decision A.B. had had repeated opportunities to learn by his mistakes and to make the right decision. Instead he persisted in a completely misguided loyalty to his friends and made a decision that could have put a classmate at very great risk. We see nothing inappropriate or disproportionate in the penalty which school officials imposed in this case. They considered all the facts and circumstances, and, using their own discretion, they made a decision about the appropriate penalty to be imposed on this particular student in this particular case. It is therefore our independent *de novo* decision that the discipline imposed should be sustained.

Conclusion

The Appeal is denied and dismissed.

Forrest L. Avila, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

DATE: June 2, 2000