

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

In Re: Student C. v. Chariho

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DECISION

Held: Since procedural due process was complied with, and given that the evidence supports the decision that was made, the appeal must be denied and dismissed.

DATE: February 13, 2009

Travel of the Case and Jurisdiction

The student in this case was given a three-day out-of-school suspension that was sustained by the school committee. “This sanction was imposed as a consequence of the determination that, in violation of [school rules the student] had knowingly consumed an alcoholic beverage prior to the [school dance] and that she was therefore in possession of alcohol at the school dance.”¹ Jurisdiction is present under R.I.G.L.16-39-1 and R.I.G.L. 16-39-2.

Preliminary Conclusions of Law

This is a three day suspension case. In suspension cases of three days or less, Board of Regents’ regulations, tracking the Supreme Court decision in *Goss v. Lopez*, 419 U.S. 567 (1975), do not mandate the availability of sworn testimony or the opportunity to cross-examine witnesses as necessary elements of a valid disciplinary process. Moreover, in a prior decision, the Commissioner has held that:

“We take the position that when the Board of Regents enacted its present regulations governing suspensions of fewer than 10 days it inferentially used its authority under R.I.G.L.16-39-6 to narrow the scope of review which the commissioner should use, in most cases, in hearing appeals from such short-term suspensions. It would have made little sense to allow schools to use an abbreviated due process procedure for short-term suspensions while at the same time requiring the commissioner, on review, to accord the student a full trial type hearing.”²

We see no reason not to follow the holding of this prior case in the matter now before us.

Positions of the Parties

The Parent

The parent in this case has stated that: “My disappointment comes from upholding a decision based upon inconsistent hearsay without any physical evidence, nobody contacted us while this was happening and our daughter was denied the chance to physically prove her claim of innocence.”³ In sum the parent contends that there was insufficient evidence to show that the student had consumed alcohol before the school dance.⁴

The School District

The school district contends that it followed correct procedures and that it reached a correct decision in this matter.

Findings of Fact

¹ School Committee Exhibit 1.

² *In the Matter of Student C.V. v. North Providence*, Commissioner of Education, May 30, 2003.

³ School Committee Exhibit 1. E-mail from parent, Sent: Wed 10/4/2006 5:25 PM.

⁴ Summary of ... Suspension Appeal Investigation, October 2, 2006.

1. The student stated to school authorities that, "...she was not drinking and had only a sip of whisky and cranberry juice; she indicated that she did not know what she was drinking."⁵
2. A school district official, with permission of parents of the other concerned students, interviewed all the other students involved in this matter. These interviews indicated that the drinking now at issue was planned a week in advance and that conversations, by means of AOL Instant Messenger, concerning this drinking, continued during the week prior to the dance. "All students interviewed indicated that [the student] was, in fact, drinking (an undetermined amount) and that she was very well aware of what she was drinking."⁶
3. There is a witness statement from professional staff indicating that this student was in fact under the influence of alcohol at the dance.⁷
4. There is sufficient evidence on the record to sustain the judgment that the student in this case had knowingly consumed an alcoholic beverage before attending the school dance. The proof in this case may not rise to the level of proof beyond a reasonable doubt or even proof by clear and convincing evidence, but it certainly does suffice to sustain a three day school suspension.

Conclusions of Law

1. The Board of Regents Short Term Suspension Regulations were Complied With.

The Board of Regents' school suspension regulations governing suspensions of 10 days or less require the following procedures:

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.

In the case at hand, it is evident that the student was accorded all these rights. It is true, of course, that these rights are not as extensive as those provided to students who face a potential suspension of more than 10 days, given the fact that in such short term suspension cases cross examination and a trial type hearing are not required. There is nothing impermissible in this. The United States Supreme Court

⁵ Letter to parent, October 2, 2006 from the superintendent.

⁶ Letter to parent, October 2, 2006 from the superintendent. Summary of ... Suspension Appeal Investigation, October 2, 2006. See also: Transcript, page 12.

⁷ Events at Homecoming Dance, September 30, 2006. Statement of director.

stated in *Goss v. Lopez*, 419 U.S. 567 (1975):

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.

In sum, we can find no procedural defect in this case which would cause us to overturn the decision made by local school authorities.

2. School Discipline and off School Grounds Misconduct

In this case the parent also seems to argue that drinking off school grounds can never be held to be relevant to the imposition of school discipline. Of course, the short answer to this contention is that the record before us indicates that the student was visibly under the influence of alcohol at the dance.⁸ Even if this were not the case, it is well accepted that misconduct taking place outside of school can become the subject of school discipline if this conduct directly impinges in a negative way on school functions. For this reason school discipline is generally understood to extend to conduct taking place at school or school related activities. The reach of school discipline includes students walking to and from school, students using school transportation, and students congregating near the school.⁹ School discipline may also, as it does in the case now before us, extend to student misconduct that occurs in a context which impacts the school program, but which did not take place at school, or occur during school hours.¹⁰ It is evident to us that the consumption of alcohol just before a school dance has an impact on a school program. Such conduct puts the student and others at risk. The school therefore has a direct and proper interest in discouraging drinking before school events.

3. School Rules Are Not To Be Interpreted As If They Were Criminal Law Statutes.

Rhode Island law requires every school committee to have a student discipline code:

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.¹¹

⁸ Events at Homecoming Dance, September 30, 2006. Statement of director.

⁹ *School Manual of Rhode Island*, 1896, page 353.

¹⁰ *In the Matter of Student R.C. Doe, Commissioner of Education*, May 14, 2001. *v. Cumberland School Committee*, Commissioner of Education, August 24, 2001.; *J.S. v. Bethlehem Area School District*, 757 A.2d 412 (Pa.Cmwlth. 2000); *Donovan v. Ritchie*, 68 F.3d 14 (1st Cir.1995); *Nicholas B. v. School Committee of Worcester*, 587 N.E.2d 211 (Mass. 1992) The first American case to deal with this issue is said to be *Charlotte A. Sherman vs. The Inhabitants of Charlestown*, 62 Mass. 160 (1851).

¹¹ R.I.G.L. 16-21-21.

The United States Supreme Court has held that a school discipline code does not need to have the specificity of a penal law code:

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.”¹² 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.¹³

On the same point 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.¹⁴

Following suit, the Commissioner has held that the Rhode Island law (R.I.G.L.16-12-3) that requires teachers to "implant...the principles of morality and virtue" creates:

[A] *good cause* standard for disciplining a student whose misconduct violates the fundamental rules of decent behavior in a context which impacts the school program, but which does not fall within the exact domain of a specific item in a general school discipline code. The standard of good cause is, of course, constitutional.¹⁵

In the case at hand the parent makes an argument to the effect that while the student may have consumed alcohol before the school dance, there is no evidence that she possessed alcohol at the dance in violation of school rules prohibiting the possession of alcohol at a school function... The short answer to this argument is that there is evidence that the student consumed alcohol before the dance and that she was under the influence of alcohol at the dance – all items of misconduct warranting school discipline. In any event, as we have just pointed out, school rules are not criminal statutes and so they are not to be given narrow technical readings.

Conclusions

For the reasons discussed above, the appeal must be denied and dismissed.

Forrest L. Avila, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

February 13, 2009
Date

¹² Citing: *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

¹³ *Bethel School District v. Fraser*, 478 U.S.675 (1986),

¹⁴ *Richard v. Thurston*, 424 F.2d 1281, (1st Cir.1970); *Nicholas B. v. School Committee of Worcester*, 587 N.E.2d 211 (Mass. 1992)

¹⁵ *In the Matter of Student R.C. Doe, Commissioner of Education* May 14, 2001.