0003-95

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

GIA A., CLAUDETTE B., KARYN P., AND ERIN W. V. CUMBERLAND SCHOOL COMMITTEE	DECISION

Held: Suspension of students for activity found to be protected by the First Amendment is set aside.

January 20, 1995

Introduction

This is an appeal on behalf of Gia A , Claudette B , Karyn P , and Erin W from a decision of the Cumberland School Committee suspending them from school for 3 days for participating in a student walkout at Cumberland High School.[1]

For the reasons set forth below, we sustain the appeal.

Background

The evidence in this matter supports the following facts which were read into the record by the chairperson of the School Committee at its January 11, 1994 hearing:

> Gia A , one of the appellants here, was concerned about the enforcement of the high school dress code, more particularly, the high school administration's interpretation of the dress code in a particular case, and Ms. A circulated a petition among the high school students, which petition asked the administration to clarify the dress code. Ms. A collected approximately 550 signatures on the petition. Ms. A made repeated, unsuccessful attempts to present the high school principal, Ms. Cipriano, with the petition [at] Ms. Cipriano's office. Ms. Cipriano was not available to accept the petition.
>
> When the appellants were unsuccessful in presenting their petition to the administration, on October 8, 1993, they and a number of other students, instead of going to their first period regularly assigned classes, gathered outside the high school building in a peaceful protest.
>
> Ms. Cipriano, [Assistant Principal] Mr. Casey, and [Assistant Principal] Mr. Scullin approached the protestors. Ms. Cipriano instructed them to return to class, with the assurance that if they did so, they would not be penalized. Some of those assembled returned to class. The appellants did not. [School Committee Exhibit 12, pp. 3-4].

The record further shows that approximately 30 students gathered

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1 This matter was referred to the undersigned hearing officer and hearings were conducted on June 6 and June 16, 1994. The record in this proceeding closed on July 18, 1994.

on the front lawn of the high school during the first period class to protest the application of the dress code. Appellants received suspension notices stating that they had "violated the school rules pertaining to participating in an illegal walkout on 10-8-93." [School Committee Exhibit 2]. Following hearings, each of the Appellants received a decision from the administrative assistant to the superintendent for human resources stating that they had participated in an "illegal walk out in violation of school rules."[2] [School Committee Exhibit 7]. These decisions, which imposed 3-day suspensions, were upheld by the School Committee at its January 11, 1994 hearing.[3]

The discipline section of the Student/Parent Handbook for Cumberland High School lists "Danger and Disruption" as one of the "Major Offenses" for which a student may be suspended. [Joint Exhibit 1]. The handbook lists six specific items under "Danger and Disruption:" (1) Arson, theft, vandalism, destruction of property; (2) False fire alarms; (3) Explosion of fireworks and explosives;

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2 The decisions set forth an alternative basis for suspension in that Appellants' failure to follow the principal's direction to return to class was found to be in violation of a provision in the handbook which states that a student's refusal "to obey a staff member in the process of carrying out the prescribed disciplinary measures may be cause for suspending the student at any point in the discipline procedure." [School Committee Exhibit 7].

3 Following the hearing, counsel for Appellants requested a written decision from the School Committee. A written decision was issued on February 15, 1994. It states that the Committee met on January 11, 1994 to consider the appeals of the students, "each of whom were suspended from school for leaving their scheduled classes, and engaging in what the School Committee considered a 'walkout.'" The decision also states that the Committee voted at the meeting "to uphold the decision by the school administration to suspend the students." [Appellants Exhibit 1]. The record further shows that on January 27, 1994, Ms. Cipriano met with the School Committee in closed session to discuss issues related to the events of October 8, 1993. Appellants did not receive notice of Ms. Cipriano's meeting with the School Committee.

(4) Possession or use of tobacco, alcohol, or drugs; (5) Riot, strike, walkout; and (6) Carrying or using weapons or dangerous instruments.

The discipline section includes an attendance policy with sanctions for unauthorized absences from class. The sanction for a first offense is two hours office detention. The handbook provides for a 3-day suspension for a fourth offense.

The handbook also contains a section entitled "Student Rights and Responsibilites," which lists "[a]ll constitutional rights" among the rights of a student.

Positions of the Parties

Appellants contend that the only reason offered for their suspensions in the disciplinary notices they received was for walking out of school. According to Appellants, a suspension for this reason cannot stand because the walkout was not disruptive and therefore is protected under the First Amendment's guarantee of "the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."[4] Appellants also claim that their due process rights were violated by the School Committee's failure to notify them of the January 27, 1994 appearance of Ms. Cipriano in closed session. Appellants request that the suspensions be vacated and that any academic penalties resulting from the suspensions be removed from their records.

The School Committee contends that the type of walkout which occurred on October 8, 1994 is inherently disruptive of school, and that, in any event, ample disruption is demonstrated in the record

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4 Appellants cite Fricke v. Lynch, 491 F.Supp 381 (1980) and Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969) in support of their First Amendment claim.

in this proceeding. The School Committee argues that a student's First Amendment right to free speech is not absolute, and that the handbook's content-neutral rule constitutes a valid restriction on the time, manner, and place of student activity. The School Committee asserts that Appellants "were punished for protest, a prohibited walkout, only when the protest occurred when they were scheduled to be in class." [School Committee's brief, p. 10].

Discussion

In Tinker v. Des Moines School District, the United States Supreme Court addressed the situation "where students in the exercise of First Amendment rights collide with the rules of the school authorities." 393 U.S. at 507. In the Tinker case 3 students were suspended from school for wearing black armbands to protest the war in Vietnam. The Supreme Court stated that a student may exercise his or her First Amendment right of free speech if it is done

> without 'materially and substantially interfer[ing] with the requirements of appropriate discipline in the operation of the school' and without colliding with the rights of others. Burnside v. Byars, [363 F.2d] at 749. But conduct by the student, in class or out of it, which for any reason -- whether it stems from time, place, or type of behavior -- materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of free speech. Cf. Blackwell v. Issaquena County Board of Education, 363 F.2d 749 (C.A. 5th Cir. 1966). Ibid. at 513.

The Court in Tinker found the suspensions to be invalid because the wearing of the armbands was protected by the First Amendment and the record did not

> demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on

the school premises in fact occurred. Ibid.

The Burnside case concerned a high school's enforcement of a disciplinary regulation forbidding students from wearing "freedom buttons." The court in Burnside stated that

> The interest of the state in maintaining an educational system is a compelling one, giving rise to a balancing of First Amendment rights with the duty of the state to further and protect the public school system. The establishment of an educational program requires the formulation of rules and regulations necessary for the maintenance of an orderly program of classroom learning. In formulating regulations, including those pertaining to the discipline of school children, school officials have a wide latitude of discretion. But the school is always bound by the requirement that the rules and regulations must be reasonable. It is not for us to consider whether such rules are wise or expedient but merely whether they are a reasonable exercise of the power and discretion of school authorities.
>
> Regulations which are essential in maintaining order and discipline on school property are reasonable. Thus school rules which assign students to a particular class, forbid unnecessary discussion in the classroom and prohibit the exchange of conversation between students are reasonable even though these regulations infringe on such basic rights as freedom of speech and association, because they are necessary for the orderly presentation of classroom activities. Therefore, a reasonable regulation is one which measurably contributes to the maintenance of order and decorum within the educational system. Ibid. at 748.

Noting the principal's testimony that the students were excluded from school for violating the regulation, not for causing a commotion or disrupting classes, the court in Burnside observed that

> If the decorum had been so disturbed by the presence of the 'freedom buttons,' the principal would have been acting within his authority and the regulation forbidding the presence of buttons on school grounds would have been reasonable. But the affidavits and testimony before the District Court reveal no interference with educational activity and do not support a conclusion that there was commotion or that the buttons tended to distract the minds of the students away from their teachers. Nor do we think that the

> mere presence of 'freedom buttons' is calculated to cause a disturbance sufficient to warrant their exclusion from school premises unless there is some misconduct involved. (emphasis in original). Ibid.

The court held that, in the circumstances revealed by the record, the regulation was unreasonable, and unnecessarily infringed upon the the students' protected right of free expression.

The Blackwell case concerned a similar regulation prohibiting students from wearing buttons. The court concluded that

> as distinguished from the facts in Burnside, there was more than a mild curiosity on the part of those who were wearing, distributing, discussing and promoting the wearing of buttons. There was an unusual degree of commotion, boisterous conduct, a collision with the rights of others, an undermining of authority, and a lack of order, discipline and decorum. The proper operation of public school systems is one of the highest and most fundamental responsibilities of the state. The school authorities in the instant case had a legitimate and substantial interst in the orderly conduct of the school and a duty to protect such substantial interests in the school's operation. Again we emphasize the difference in the conduct here involved and that involved in Burnside. In this case the reprehensible conduct described above was so inexorably tied to the wearing of the buttons that the two are not separable. In these circumstances we consider the rule of the school authorities reasonable. 363 F.2d at 754.

We find at the outset in this matter that Appellants were absent from their first period classes without authorization on October 8, 1993. This conduct is in violation of the attendance policy in the student handbook and contrary to the compulsory attendance law. As a result, Appellants could have been disciplined for this conduct in accordance with the provisions of the handbook and the law.[6]

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6 As previously noted, the student handbook states that the sanction for a first-offense unauthorized absence from class is two hours office detention.

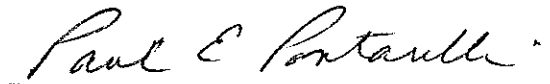
We further find that Appellants were exercising their First Amendment right of free speech when they participated in the assembly on the front lawn of the high school to protest the school administration's enforcement of the dress code. In so finding we rely on the absence of evidence in the record to establish that Appellants' assembly was disruptive, interfered with the educational process at the high school, or violated the rights of others.

Because Appellants' speech in protest of the application of the dress code is constitutionally protected, it cannot in and of itself be the basis for discipline. Yet that is what occurred when Appellants were charged with an "illegal walkout" and suspended for 3 days for engaging in what the School Committee characterized as a "peaceful protest" outside the high school. By imposing a 3-day suspension, instead of the 2-hour office detention specified in the student handbook, the School Committee increased the discipline for an unauthorized absence from class. The basis of the increased discipline was Appellants' speech in protest of the dress code. Contrary to the implication of the "Disruption and Danger" classification in the student handbook, this conduct was not disruptive and therefore is protected by the First Amendment. A student who engages in legitimate First Amendment activity, such as leaving class to peacefully protest the dress code policy, should not receive more punishment than a student who leaves class to engage in non-First Amendment activity, such as going to a store or to an eating establishment. Thus, while Appellants could be given the sanction of 2 hours office detention for leaving class without authorization, we hold that the imposition of 3-day suspensions for their speech

in protest of the dress code is invalid.[7]

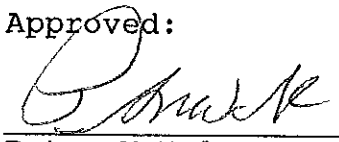
Conclusion

We sustain the appeal because Appellants were disciplined for their constitutionally-protected conduct. We order that the the suspensions be set aside, that any mention of the suspensions in Appellants' academic records be expunged, and that any adverse effect on Appellants' grades resulting from the suspensions be removed.



Paul E. Pontarelli
Hearing Officer

Approved:



Peter McWalters
Commissioner of Education

Date: 1/20/95

7 We do not find merit in Appellants' argument that their due process rights were violated by Ms. Cipriano's January 27, 1994 closed-session appearance before the School Committee because the record fails to establish that the Committee members in attendance reconsidered the prior decision to deny the students' appeal.