

Student Discipline Law Bulletin

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Fourth Amendment

Weapon seized from student during search at school

Citation: *Com. v. Smith*, 72 Mass. App. Ct. 175, 889 N.E.2d 439 (2008)

Assistant headmaster Miguel Prieto was the senior disciplinarian at Brighton High School, within the Boston, Massachusetts public school system. One of Prieto's duties was to monitor the arrival of students at the front doors of the school each morning between 6:45 A.M. and 8:00 A.M. The front doors were the only authorized entrance, as they were equipped with a metal detector.

On the morning of February 13, 2004, Prieto did not see Ahmed Smith, a student at the high school, arrive. That was noteworthy to Prieto because he and Smith had a standing arrangement for Smith to drop his belongings in Prieto's office at the start of each school day. But Smith failed to follow that practice on February 13, 2004, and at 9:00 A.M. that day a school administrator found Smith in an "unauthorized area" on the third floor of the school. Smith was taken to an office for an administrative search supervised by two school administrators and two school police officers. When Smith resisted the search, they asked Prieto to step in because of his good relationship with Smith.

When Prieto arrived on the scene, he was informed that Smith had been in an unauthorized area that morning and also that, on the previous day, Smith had been sent home and told:

"If you leave here you can't come back without a parent." Smith did not bring a parent with him to school on February 13, 2004, thereby failing to abide by that order. While Prieto attempted to get Smith to submit to a search, he took Smith's jacket (which he thought was suspiciously heavy) and found a .380 caliber handgun and ammunition in a pocket, after which the school police arrested Smith.

Smith subsequently filed a motion with the court to suppress the firearm and ammunition found in his jacket so that it could not be used as evidence against him. As a result, a hearing with a motion judge took place during which Prieto testified. In making a decision, the motion judge also considered Brighton High School's student handbook, the Boston public schools' code of discipline, and the Boston public schools' student search policy.

The code of discipline sets forth "rights of students" which include a right not to be searched except by designated school administrators based on reasonable cause. Brighton High School's student handbook states that "students that are found in the hallway 10 minutes after the second bell rings and without a pass are in violation of the code" and it provides notice that students are subject to search based on reasonable cause to suspect violations of the code.

Contributors

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Following the hearing, the motion judge denied Smith's motion to suppress the evidence. The motion judge determined that the search was justified based on three factors: 1) Smith's violation of a school rule by his presence in the hallway during class; 2) his violation of a school rule by his failure to enter the building through the authorized entrance, namely, the front doors, which are secured with metal detectors, during specific arrival hours; and 3) his failure to follow an arranged plan of dropping his belongings in Prieto's office at the start of the school day. After a trial, Smith was convicted by a Massachusetts Superior Court jury of unlawful possession of a firearm and unlawful possession of ammunition. He chose to appeal his conviction.

DECISION: Affirmed.

The appeals court began its analysis of the case by reviewing some principles of constitutional law as it applied to Smith's argument. The appeals court noted: "It is well settled that the Fourth Amendment's prohibition of unreasonable searches and seizures applies to searches conducted by public school administrators. The Supreme Judicial Court has acknowledged that, notwithstanding the legitimate goal of school administrators to maintain a safe learning environment, students continue to have a legitimate expectation of privacy in their persons and in the items they bring to school."

According to the appeals court, in order to achieve a balance between those two equally legitimate needs and expectations, the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject, particularly the warrant requirement. The warrant requirement is unsuited to the school environment because it requires a teacher to obtain a warrant before searching a child suspected of an infraction of school rules (or of the criminal law, as in this case); this

would unduly interfere with the speediness needed to carry out disciplinary procedures effectively in schools. Thus, school officials need not obtain a warrant before searching a student who is under their authority.

Not only is obtaining a warrant impractical in a school setting, but also the level of suspicion required to justify a warrantless search has been modified within the school context. Ordinarily, even a search that may be conducted without a warrant nevertheless would require a basis of probable cause to believe that a crime had been committed in the first place. The essence of the Fourth Amendment is the requirement that searches and seizures be reasonable; however, the appeals court here recognized that in certain limited circumstances neither is required. Accommodating students' privacy interests with the substantial need of school administrators to maintain order and a safe learning environment does not require that searches be based on probable cause to believe that a student had violated or was violating the law. Rather, the appeals court ruled, the legality of a search of a student should depend simply on "the reasonableness, under all of the circumstances, of the search."

The reasonableness of a search can be determined with a two-step test by asking: 1) was the search justified at its inception; and 2) if the search was justified at its inception, was it limited in scope to those measures "reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction?"

Under ordinary circumstances, a search will be justified at its inception when there are reasonable grounds, i.e., reasonable suspicion, that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. Here, Smith contended that the motion judge should have suppressed the firearm and the ammunition because,

according to Smith, the school administrators lacked reasonable suspicion to search him, as there was no nexus—or connection—between the school’s rule about unauthorized presence in the hallway and the purpose of the search. But the motion judge was correct in concluding that the search of Smith was both reasonable at its inception and then limited in scope to an extent “reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.” This was because, at the time Prieto searched Smith, Prieto was aware that Smith had not entered the building through the metal detectors (thereby avoiding the standard morning search) and had avoided leaving his belongings in Prieto’s office, as was the usual practice. In addition, Prieto was informed of the incident from the previous day, when Smith had been told not to return to school unless accompanied by a parent. Furthermore, Prieto was aware of Smith’s presence in an unauthorized area, which Prieto knew violated school rules.

The facts known to Prieto reasonably would lead a person to conclude that Smith was concealing a weapon or some other contraband, and he conducted the search in a way that was reasonably related to the possible concealment of a weapon. Prieto even limited his search to Smith’s jacket and did not even conduct a patfrisk of Smith. Consequently, the appeals court ruled that Prieto’s search was reasonable under the circumstances and affirmed the decision of the motion judge that the evidence found in Smith’s jacket should not be suppressed.

Immunity from Liability

School system immune because it exercised ordinary care in investigating student’s harassment claims

Citation: *Beacham v. City of Starkville School System*, 2008 WL 2426732 (Miss. Ct. App. 2008)

On July 5, 2002, Ashley Beacham attended a non-school-related pool party at a classmate’s home where she was secretly videotaped changing into her swimsuit by several boys with whom she went to school. When Ashley found out about the videotape two weeks later, she instituted juvenile court proceedings against the boys and filed a civil suit against the boys’ parents through her mother and guardian, Candace Beacham.

One month after the incident, Ashley began her freshman year at Starkville High School. At that time, Candace called Dr. King David Rush, the principal of the school, and informed him of the videotape incident, the pending youth court proceedings, and a restraining order against the boys, who were also attending the high school that year. Dr. Rush assured Candace that he would do what he could to make sure nothing happened between Ashley and the boys at school.

Later, Candace claimed that Ashley had been harassed on school grounds, despite Dr. Rush’s assurance that he would monitor the situation. She filed a lawsuit against the City of Starkville School System in circuit court, alleging that the school system had been negligent in failing to protect Ashley from harassment by her fellow students and, consequently, was liable for damages including mental anguish and

the expenses her family had incurred due to the harassment. Specifically, Candace contended that the school system had not used “ordinary care” to protect Ashley from harassment by the boys and their parents during school, at school sporting events, and throughout the Starkville community.

When the case went to trial, Candace claimed that three specific incidents of harassment had taken place on school grounds: 1) Ashley supposedly was harassed in the school cafeteria by one of the boys involved in the videotape incident while another male student looked on; 2) Ashley had been placed in a biology class that one of the boys involved in the videotape incident was also enrolled in; and 3) Ashley, being a cheerleader for Starkville High, was harassed at school sporting events by the boys involved in the videotaping incident and their parents. However, the circuit court found no evidence of harassment.

On September 5, 2006, it ruled that, under the Mississippi Tort Claims Act, the school system was immune from being sued because it “took reasonable steps to prevent any harassment at school, and those steps were successful.” The circuit court further concluded that, even if the school system was not immune, the evidence did not show that it breached any duty to Ashley; nor did it prove that the school system was responsible for any damages. The case was dismissed but Candace appealed the decision.

DECISION: Affirmed.

On appeal, Candace argued that the circuit court’s ruling was “clearly erroneous” and “manifestly wrong” because the overwhelming weight of the evidence showed that the school system had not used ordinary care in protecting Ashley. Specifically, Candace argued that Dr. Rush’s investigations into the three harassing incidents were unreasonable because he did not talk to Ashley, personally, about what had hap-

Around the Nation

Virginia

School board's legal fees at \$16,441 and mounting

The King George School Board and Superintendent Candace Brown have so far incurred legal fees amounting to \$16,441 associated with two cases alleging procedural due process violations regarding student discipline issues. In June, nearly \$6,800 was billed for the first round of legal costs incurred by the school board to defend itself and Brown against two due process complaints filed in May by Linda Davis and Januari Rhodes, respectively, regarding their sons, who were involved in separate discipline hearings. Following her son's discipline hearing on April 11, Davis spent a month attempting to get a formal hearing in front of the school board, as was actually required by state law, but her repeated requests were refused by Brown. She then filed her complaint. Rhodes filed a separate complaint on behalf of her own son. An additional bill for \$9,690 was received in mid-July by the school board for work completed to defend both lawsuits. Critics of the school board's decision to incur the skyrocketing legal fees claim that it should have known back on May 23 to call off its legal defense, at which time it had accrued only \$2,070 in services. The school board had an opportunity on May 23 to settle with Davis, which would have included a hearing before the school board that was in compliance with state law, along with a change in school policies and procedures that had been shown to violate due process — an opportunity that would have saved taxpayers upwards of an additional \$14,000 and counting. However, it chose to continue to stand by the policies and procedures.

It is still unclear as to why the members of the school board proceeded with a legal defense for policies they knew were out of compliance with state law. Likewise it is unknown what they hope to win. The harshest critics surmise that it is the ability to continue to deny children their legal rights to due process. In the meantime, additional billable hours are be-

pened. The school system, on the other hand, argued that the circuit court's judgment was proper because Dr. Rush promptly investigated all three matters and questioned the individuals *specifically identified* by Candace herself.

During its review of the case, the appeals court noted that school districts have a duty to protect students from harm under what is known as the "ordinary care standard." A school district is immune from liability for injuries sustained by a student harmed at school so long as it exercised ordinary care to prevent foreseeable harm. Immunity does not exist, however, if the school district fails to use ordinary care.

In its decision, the circuit court determined that the school system had offered substantial proof that it met and exceeded any duty owed to Ashley and was, therefore, immune from liability. The appeals court agreed because it found that there was no evidence to support Candace's allegation that the school system had not used ordinary care to protect Ashley. In fact, contrary to Candace's assertions, the evidence overwhelmingly demonstrated that the school system used ordinary care in investigating Ashley's claims of harassment when it was made aware of the problems. For example, reasonable steps were taken to investigate the allegations by questioning the students involved in the cafeteria incident (even going so far as to bring in an investigator from the sheriff's office) and by getting the teacher to monitor interactions between one of the boys and Ashley in biology class. The school system found no evidence of harassment, a finding that was corroborated by several other witnesses, including students and faculty. As far as the interactions at sports games were concerned, the school system was not responsible for any harassment Ashley suffered outside of school that was linked to the videotape incident. Instead, the school system could *only* be held liable where

it failed to exercise ordinary care to prevent foreseeable harm.

The appeals court acknowledged that Dr. Rush had not specifically questioned Ashley regarding the incidents; however, he explained that he simply took her parents' word for whatever events supposedly had happened. According to the appeals court, Dr. Rush's lack of personal interaction with Ashley simply was not enough to determine that the school system had not exercised ordinary care. Consequently, it concluded that the school system not only exercised ordinary care, but also conducted a reasonable investigation into the alleged incidents of harassment and was, therefore, immune from any liability. As such, the appeals court affirmed the circuit court's judgment dismissing the lawsuit.

Civil Rights

Inference of race discrimination not proven and no property right in an education at university established by black sorority members

Citation: *Williams v. Wendler*, 530 F.3d 584 (7th Cir. 2008)

Three black female students at Southern Illinois University, a state university, were suspended by the university, one for two years and the other two for three years, for hazing another black female student, who was pledging the students' sorority, Zeta Phi Beta. Hazing was defined in the university's Student Conduct Code as "any action required of or imposed on current or potential members of a group which produces or is reasonably likely to produce bodily harm, humiliation or ridicule, substantial interfer-

ence with academic efforts, or significant impairment or endangerment of physical well-being, regardless of the consent of the participants.” The hazing incident was discovered after the female student dropped out of the pledging process and complained to university authorities, who instituted the internal administrative proceeding that resulted in the suspensions. The sorority members subsequently brought a civil rights lawsuit against the university.

The sorority members contended in their lawsuit that the suspensions violated Title VI of the Civil Rights Act of 1964, which forbids racial discrimination by recipients of federal grants, such as learning institutions like the university, and also the equal protection and due process clauses of the Fourteenth Amendment. Initially, the district court judge granted summary judgment, i.e., judgment in favor of one party in a case without the necessity of holding a trial, in favor of the university on the discrimination claims. The judge also dismissed the due process claim. The sorority members appealed the decision, and the case was reviewed by the Court of Appeals of Illinois.

DECISION: Affirmed.

In its review, the appeals court first clarified that the sorority members’ discrimination claims — the Title VI and equal protection claims, respectively — were identical: the university allegedly had punished the sorority members more severely than if they had been white. The appeals court then elaborated on why those claims failed. It noted that in a typical case of racial discrimination a person of one race loses out in a competition with someone of another race, as when a black person is fired and replaced by a white person (or, occasionally, vice versa). In this case, three black people hazed another black person. The university authorities were not choosing between black and white in punish-

ing the hazers, but between black and black, which is like choosing between white and white. There can, it is true, be “racial” discrimination within the same race. Still, if—as the sorority members claimed—the university systematically treats black hazing more unforgivingly than white hazing, then, even if the result is to give black pledges more protection than white ones, the differential treatment would be actionable, i.e., a legitimate legal claim, because it would be discrimination against black hazers on account of their race. Discriminating against a person on the basis of his or her race is not offset by discriminating in favor of other people of the same race.

Even if black sororities or fraternities were found to treat their pledges worse than white ones do, that would not justify a rule that black hazers are to be punished more severely than white ones. The sorority members argued that disciplining blacks more harshly than whites for offenses of similar gravity is evidence of racial discrimination. The appeals court agreed with their argument. To that end, the sorority members pointed to two instances of the lenient treatment of white hazers, despite the fact that those instances bore no similarity to the chain of events in their case. The court of appeals noted the dissimilarity and felt that, in any event, two cases were an inadequate sample on which to base an inference of discrimination. The court stated that if the cases the sorority members cited were factually identical except for a racial difference, it would permit an inference of discrimination. But, here, the sample was too small and there were too many other differences to fairly draw a comparison. Thus, the sorority members’ suspension did not give rise to an inference of race discrimination.

As for the sorority members’ due process claim, it had been alleged that the disciplinary procedures employed by the university in this case, though elaborate, were a “sham” and that

ing accrued by the school board and Brown’s attorneys.

Source: *The Journal Press*

Missouri

Fulton parents not happy with perception of student discipline

Recently, questions have arisen regarding student discipline within the Fulton School District, namely, at what point, exactly, does the school district have the authority to investigate a student for misconduct?

During a special open school board work session in mid-July, a debate centered around the issue of when a student should be investigated and held accountable to a citizenship contract based on Missouri State High School Activities Association eligibility guidelines — including an agreement not to drink, smoke or do drugs — that students are required to sign every year before being allowed to participate in extra-curricular activities. In the past, the school board has expected a school official to investigate if he or she had reason to suspect a violation of the contract. The current board decided to seek parental input, and the overwhelming consensus was that not all Fulton parents are happy with how that policy has been carried out. “I don’t think hearsay is a reason to bring a kid in for questioning, period,” stated one parent. “I agree,” said parent Catherine Christensen. “I think we’ve created a severe amount of distrust with the current policy. There has to be more than just locker room rumors because with kids, stories get blown out of proportion,” she continued.

Many parents are in favor of enforcing the policies, but feel it should be done in such a way that both students and parents are confident they are being treated fairly. Parents expressed concerns that the perception is that all it takes for a pupil to be called into the principal’s office and investigated is a random comment in the hallway, or one student getting

angry and making up a story about another one. Another perception is that district officials use MySpace and Facebook pages to keep track of what students are up to outside of school, and that students are raked over the coals when they are brought into the principal's office for questioning. Parent Joe Abbott said he feels the district is interfering too much in what should be a parents' realm. "I'm my son's father — it's my job as a parent to discipline my kids," Abbott said. He noted "What we're seeing here is overstepping by the district into parenting. If it's not punished in a court of law, it's hearsay, and should be left to the parents." High school principal Terri Arms did her best to counter those arguments. "We're not trying to manipulate or browbeat these kids," Arms said. "Not once have we investigated because a student came to us and said 'so and so had a party.' Information that we have gotten that leads to these investigations comes from an adult." The board will further discuss the issue and come to a decision regarding the district's policy at its meeting in August.

Source: *Fulton Sun*

Maryland

Cheating scandal prompts changes

After a cheating scandal last year landed an Anne Arundel County high school in hot water with the College Board, the atmosphere of Advanced Placement (AP) testing there changed drastically, said recent graduate Sage Snider. Instead of chattering and toting schoolbooks for a last-minute peek before the national exams this spring, she said, Severna Park High School students silently entered the rooms and carried nothing but calculators. All other materials were banned.

"It was very, very different, and everybody knew why," said Snider, who on June 30, 2008, finished her term as the student representative on the county school board. The aftershocks of allegations of cheating during the May 2007 AP American history exam have extended

the sorority members should have received a lighter punishment. But their claim failed regardless of the adequacy of the procedures, the appeals court concluded. In order to have a due process claim a person must show that he or she has been deprived of a property right. The sorority members claimed that they had a property right in a college education, more specifically in a college education at Southern Illinois University. A college education is not "property" in the usual sense of the word. But in past cases the Supreme Court has read the word "property" in the due process clauses of the Fifth and Fourteenth Amendments to include pretty much any legally protected entitlement, such as a job that carries with it tenure, which means that you can be fired only for cause, or, coming closer to this case, a public high school education.

The sorority members' problem in their case, and the justification for the district court's dismissing their due process claim, was that they premised the claim entirely on the bald assertion that any student who is suspended from college has suffered a deprivation of constitutional property. That cannot be right, the appeals court stated, not only because it would imply that a student who flunked out would have a right to a trial-type hearing on whether his tests and papers were graded correctly and a student who was not admitted would have a right to a hearing on why he was not admitted, but also because the Supreme Court requires more. Specifically, it requires proof of an entitlement—in this case an entitlement not to be suspended without good cause. That is a matter of the contract, express or implied, between a student and a college.

The appeals court provided an example: "Suppose a student had a contract with a college in which he promised to pay tuition, in an amount specified by the college, on the first day of each quarter, and in exchange the college promised not to suspend

him unless he hazed another student; the contract would create an entitlement, so that if the college suspended him for hazing and he denied it he would be entitled to a hearing." But there was no suggestion of such a contract in this case because the sorority members, while calling their claim a "property" claim, denied that they needed to establish an entitlement—an enforceable right—and not merely an entitlement to fair procedure, as that would dissolve the requirement of showing a deprivation of life, liberty, or property which was a precondition to complaining about a denial of due process. In short, they denied themselves out of court.

In summary, the suspension of the sorority members did not give rise to an inference of race discrimination, nor did they have a property right in an education at Southern Illinois University as was required to prevail on a due process claim. Thus, the district court judge's decision to grant summary judgment in favor of the university and to dismiss the due process claim was appropriate. Accordingly, the appeals court affirmed it.

Due Process

School board was required to adequately explain basis for decision to expel student, but failure to provide student with list of low-cost counsel did not violate due process

Citation: *In re Expulsion of N.Y.B.*, 750 N.W.2d 318, 232 Ed. Law Rep. 933 (Minn. Ct. App. 2008)

Before being expelled, N.Y.B. was a freshman at Coon Rapids High School (CRHS) in the Anoka-Hennepin In-

dependent School District (district). Sometime in late November or early December 2006, C.S., another student at CRHS, made comments to other students about N.Y.B.'s racial heritage. During lunch in the school cafeteria on December 13, 2006, N.Y.B. confronted C.S. about the comments. A fight ensued, during which N.Y.B. broke a cafeteria tray over C.S.'s head. School staff promptly broke up the fight. As a result, N.Y.B. was suspended for ten days, pending expulsion, and on December 19, 2006, the principal recommended to the school board that N.Y.B. be expelled for violating the district's physical-aggression policy.

On February 12, 2007, the school board met to decide whether to expel N.Y.B. and, if so, the length of the expulsion. At the meeting, N.Y.B. read a prepared statement apologizing for the incident. Additionally, N.Y.B.'s attorney addressed the school board, urging it to consider various mitigating circumstances. After deliberation, the school board voted five to one to expel N.Y.B. until December 12, 2007. The school board explained that it made its decision based on the fact that N.Y.B. had violated the school's Code of Student Conduct, specifically, provisions that prohibited willful conduct, assault, and insubordination that endangered other students and faculty. N.Y.B. subsequently appealed the school board's decision to the Commissioner of Education (commissioner).

On appeal, the commissioner determined that "expulsion is a reasonable disciplinary action for assaulting another student and insubordination toward school staff." But the commissioner concluded that the school board's written explanation was inadequate. The commissioner reasoned that, although the school board's decision listed the general offenses of assault and insubordination and quoted the discipline policy, it failed to include the "controlling facts" relied on by the school board, specifically, the facts on which it relied to expel N.Y.B.

for one calendar year, such as "prior practice for similar incidents." The commissioner, therefore, remanded the matter, i.e., sent the case back down, to the school board with instructions to amend its resolution to "provide a written decision that presents the controlling facts upon which the expulsion decision was made in *sufficient detail* to apprise everyone involved of the basis and reason for expelling N.Y.B. for one full calendar year."

On May 3, 2007, the school board amended its original resolution expelling N.Y.B. to be more detailed, quoting the Code of Student Conduct and including justification such as: "when physical aggression requires restraint by staff to prevent harm to other students, the consequences may be more severe." It also stated that, based on prior disciplinary actions it had taken towards other students for violations similar to N.Y.B.'s, it believed that an expulsion of less than one calendar year would be inconsistent with the past practices in similar or less severe cases.

N.Y.B. appealed the resolution, but the commissioner affirmed it. N.Y.B. appealed again, this time to the Court of Appeals of Minnesota.

DECISION: Remanded.

The issues to be decided on appeal were whether the school board: 1) adequately explained its decision to expel N.Y.B. for one calendar year as required by the Pupil Fair Dismissal Act (PFDA) in the Minnesota Statutes; and 2) deprived N.Y.B. of due process.

N.Y.B. challenged her expulsion from CRHS under the PFDA, which governs the expulsion of a public-school student. N.Y.B. argued that the school board's written decision failed to comply with the PFDA's formal requirements. In particular, she argued that, despite the commissioner's directions when he remanded the case, the school board *still* failed to explain why it decided to expel her for one calendar year.

into this summer, when the school board approved a vastly revised academic integrity policy. While the previous policy discussed examples of cheating and plagiarism, the new policy is more specific and allows teachers and administrators latitude in judging additional forms of cheating. The policy, which students helped formulate, includes references to student's texting answers via cell phones and plagiarizing computer "imagery or technology."

"The previous policy had good intentions, but it was poorly drafted," said Victor Bernson Jr., a school board member. "The new one is a stronger, better-written policy," he added. "A well-defined policy that students help write can clear up discrepancies in their minds about what is cheating," said Don McCabe, a business professor at Rutgers University and the founding president of the Center for Academic Integrity. "It also shows them that the school system — and society — takes it seriously. Basically, you're trying to convince students that this is stuff that really matters," McCabe said. A student-led survey of 337 students at Severna Park last year found that 70 percent believed a culture of cheating existed at the school, and 81 percent believed at least a quarter or more of the student body cheated. The survey was taken in the wake of the cheating incident, when three students were accused of smuggling the essay portion of the AP U.S. History exam to the bathroom to look for answers. The College Board, which runs the AP program, banned one proctor at Severna Park High from administering future AP exams and required that the school's AP coordinator be retrained. The three unidentified girls were not allowed to retake the exam to get college credit but kept their history class grades. The 42 other students in the testing room at the time had to retake the four-hour exam. Snider predicts that the school system's new commitment to quashing cheating will send a message to students that times have changed. "It's important for students to understand that the school system is going to follow through," she said.

Source: *Baltimore Sun*

By way of review, the appeals court noted that “the PFDA grants a school board the authority to expel a student for up to one calendar year if that student willfully: 1) violates a reasonable school-board regulation; 2) engages in significantly disruptive conduct; or 3) engages in conduct that endangers the student or others.” To ensure the proper application of those criteria when expelling a student, the PFDA mandates that a school board’s decision must be in writing and “state the controlling facts on which the decision is made in sufficient detail to apprise the parties and the commissioner of education of the basis and reason for the decision.” On appeal, the district argued that the school board’s decision, as amended on remand, complied with that requirement. The amended decision stated that the school board expelled 22 students for fighting during the 2006-2007 school year, with disciplinary consequences ranging from expulsion with probationary return after one academic quarter to expulsion for one calendar year. From those matters, the school board concluded “the totality of the circumstances regarding N.Y.B. was at least as egregious as those incidents which led to one-calendar-year expulsions.” The district maintained that that explanation contained “sufficient detail” because it apprised the parties and the commissioner of the rationale for the school board’s decision, namely, that an expulsion of less than one calendar year would be inconsistent with the school board’s past practice.

The appeals court disagreed, stating that an agency not only must identify the evidence on which it is relying, but also it must “explain how that evidence connects rationally with the agency’s choice of action.” The PFDA requires a school board to explain its

decision in sufficient detail to facilitate a meaningful review on appeal.

Here, the school board’s decision stated that: 1) the school board expelled a quantity of students for fighting; and 2) a subset of those students was expelled for one calendar year. But without a factual context, the number and lengths of prior expulsions told the appeals court nothing about the relative seriousness of N.Y.B.’s conduct compared to that of the other students. The decision failed to explain why the school board concluded that N.Y.B.’s conduct “is at least as egregious as those incidents which led to one calendar year expulsions.” Consequently, the appeals court was unable to determine whether the decision to expel N.Y.B. for one calendar year was the product of reasoned decision-making.

Education is a fundamental right in Minnesota, as well as a property interest protected by the Due Process Clause of the Fourteenth Amendment. A student may not be expelled for misconduct without adherence to the minimum procedures required by due process.

Accordingly, the appeals court could not affirm the school board’s decision to expel N.Y.B. for one calendar year because it failed to explain its decision, as required by the PFDA. But the appeals court also could not hold, as N.Y.B. urged, that the school board’s decision was either “arbitrary and capricious” or unsupported by substantial evidence. The appeals court, therefore, remanded the case and directed the school board to ex-

plain its decision in sufficient detail to comply with the PFDA.

N.Y.B. also challenged her expulsion on procedural-due-process grounds. The appeals court pointed out that education is a fundamental right in Minnesota, as well as a property interest protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Thus, a student may not be expelled for misconduct without adherence to the minimum procedures required by due process. The question before the court in this case was whether due process was afforded to N.Y.B.

In support of her due-process claim, N.Y.B. relied on numerous technical violations of the PFDA. For example, the district failed to furnish her with a list of low-cost legal resources. To obtain relief on appeal, however, a party generally had to establish that the alleged error—even a constitutional error—resulted in prejudice, that is, some kind of adverse effect on or damage to the party. Although in past cases the appeals court had recognized the importance of a district’s obligation to provide students with a list of low-cost legal counsel, N.Y.B. was unable to establish that she was prejudiced by the district’s failure to do so, because she obtained an attorney willing to provide pro bono, i.e., free of charge, services on her own. Likewise, N.Y.B. failed to establish prejudice resulting from the other violations of the PFDA. N.Y.B. even acknowledged that she could not demonstrate that she was prejudiced; rather, she argued that her expulsion was “so riddled with procedural flaws” that, when taken collectively, she was deprived of due process. But the appeals court ruled that, in the absence of prejudice, N.Y.B. had not established a basis for relief, so it rejected her claim.

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