

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

MR. AND MRS. JOHN DOE
VS.
COVENTRY SCHOOL COMMITTEE

DECISION

Held: Penalty specified in statutory
policy manual (G.L. 16-2-32)
prevails over penalty specified in
student handbook.

Date: April 3, 1995

Background

The high school student in this case has stipulated that he sold marijuana to other students on school property. This was his first offense. On January 5, 1995 the school committee suspended this student for the remainder of the school year. The school district high school handbook provides as follows:

Unauthorized possession, selling, consumption or being under the influence in the school, or at school sponsored activities on school grounds of dangerous drugs, narcotics or alcoholic beverages (Dangerous drugs or narcotics shall mean any controlled drug as defined in R.I. General Statutes, classified generally as amphetamine type and other stimulate and depressant drugs, and in addition, those substance known as methaqualone. Unauthorized use or possession without a valid prescription.)

A. 1st Offense:

1. Mandatory suspension for 10 days.
2. Expectation of parental and student volunteer agreement to enroll in a substance abuse awareness program and fulfill appropriate training as determined necessary by the selected agency.
3. Referral to the Coventry School Committee, through the superintendent of schools where such a commitment cannot be reached.
4. Reporting of the incident to the Coventry Police Department and Coventry School Committee. (Emphasis added)

The high school handbook is distributed at the beginning of the school year. Parents and students are required to sign the handbook to show that they have read it. The student now appeals contending that under the handbook he could not have been suspended for more than 10 days for a first offense of selling marijuana.

In response to this claim the school district points out that in accordance with statutory requirement (G.L. 16-2-32) it has promulgated a policy manual.

The statute reads as follows:

16-2-32. Policy manual for school committee. -- All school committees in the state of Rhode Island will have a policy manual not later than January 30, 1979. The policy manual will have all school committee policies in writing, properly indexed, and kept up to date. The policy manuals will be a source used to govern each school system. At least one policy manual will be available to the faculty and staff in each school library. At least one policy manual will be available for public reference at each administrative building and public library. (Emphasis added)

Testimony indicated that copies of the policy had been filed in all the places required by statute. With regard to the first time sale of drugs on school premises the school policy manual states:

Distributing:

Students who share, distribute and/or sell narcotics, alcohol, or other dangerous drugs to other students or persons on district property or at any school-sponsored activity shall be recommended for expulsion.

Expulsion:

The term "expulsion" means the exclusion of a pupil for more than ten (10) consecutive school days by the school committee.

As can be seen the above quoted language provides for expulsion for more than ten (10) days for a first offense of selling marijuana. The school committee

contends that the terms of the duly promulgated and published policy manual should prevail over the terms of the school handbook.

Discussion

If student handbooks were intended to serve as criminal law codes and if school discipline were a branch of the criminal law we would concur with the petitioner and rule that nothing more than a 10 day suspension could be imposed in this case. But school discipline codes are civil in nature and do not form part of the criminal law. School discipline matters are not examined with the rigor of criminal law due process standards.

Still school disciplinary codes are not "criminal codes". The United States Supreme Court stated in Bethel School District vs. Fraser, 106 S.Ct. 3159 (1986) that:

Respondent contends that the circumstances of his suspension violated due process because he had no way of knowing that the delivery of the speech in question would subject him to disciplinary sanctions. This argument is wholly without merit. We have recognized that "maintaining security and order in the school 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 impose criminal sanctions. Ct. Arnett v. Kennedy, 416 U.S. 134, 161, 94 S.Ct. 1633, 1647-48, 40 L.Ed. 2d 15 (1974) (REHNQUIST, J., Concurring).

In Richardson v. Thurston, 424 F.2d 1281 (1st. Cir., 1970) the First Circuit Court of appeals, in dealing with a school disciplinary case, wrote:

Plaintiff, too, advances a narrow argument for prevailing ---the lack of any specific regulation authorizing suspension of unusual hair styles. We do not accept the opportunity. We take as given defendant's allegation in his answer that parents and students -- including plaintiff---were aware that unusually long hair was not permitted. Moreover, 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.


In the present case the petitioner had more than fair notice that selling marijuana violated school rules. He also had statutory notice in the policy manual of the penalty which had been established for the first time sale of marijuana. G.L. 16-2-32. We can find no violation of due process here.

We concur with the School Committee. We do not believe that simply because a different penalty appears in the informal student handbook that the school committee should be "estopped" from applying a validly enacted penalty which has been published in the form required by statute. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). City of Warwick v. Almac's Inc., 442 A.2d 1265. We cannot see how the lesser penalty contained in the handbook can be seen as an "inducement" to sell marijuana upon which the petitioner could lawfully base an argument of "detrimental reliance". Moreover, contrary to the arguments of the petitioner, we cannot see how the elements of contract law provide the petitioner with any help. While the student and the parent signed the student handbook there was plainly no consideration exchanged and so no contract was formed. Hayes v. Plantations Steel Co., 438 A.2d 1091.

Conclusion


The appeal of the petitioner is denied and dismissed and the decision of the school committee to suspend the petitioner for the rest of the school year is affirmed. The school district is requested to review the entire student handbook to

ensure that it accurately reflects school committee policy as enunciated in the school committee's policy manual. (G.L. 16-2-32).



Forrest L. Avila, Hearing Officer

Approved:



Peter McWalters, Commissioner

April 3, 1995

Date