

IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION

(Cite as 2 D.P.I. App. Dec. 16)

In re Amy A. Cline

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Daryl L. Barnard, Appellant

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v.

:

Dexfield Community School District,
Appellee

:

DECISION

:

:

[Admin. Doc. 467]

The above entitled matter was heard on January 30, 1979, by a hearing panel consisting of Dr. Robert D. Benton, state superintendent and presiding officer; Dr. LeRoy Jensen, associate superintendent, administration; and Mr. David Bechtel, administrative assistant. The Appellant was represented by Attorney Leo G. Nopoulos, and the Dexfield Community School District (hereinafter District) was represented by Attorney David J. Welu. The hearing was held pursuant to Chapter 290, The Code 1977, and Departmental Rules, Chapter 670--51, Iowa Administrative Code. The Appellant appealed a decision of the District Board of Directors regarding disciplinary action taken against his daughter.

I.
Findings of Fact

The Hearing Panel finds that it and the State Board of Public Instruction have jurisdiction over the parties and subject matter.

Amy is a fourteen-year-old eighth grade student in the District. She was characterized by her science teacher, Richard Sorfonden, as being above average academically and excellent behaviorally. There was nothing in the record to indicate that she has had any previous serious discipline problems in the District.

About twenty minutes into her science class on November 2, 1978, Amy spotted a pill laying on the floor near a wastebasket close to her study station. Unknown to Amy, at least two other students in the class had previously had the pill and one of them had thrown the pill on the floor. Amy picked up the pill which she described as a little white pill resembling an aspirin with a cross on it. She testified that she had read materials from the library on drug abuse and thought the pill might be a "white cross," a controlled substance. She said that she was not certain what it was and took it across to show another student. She testified that after consulting with the other student, she intended to throw the pill away in a wastebasket located in Mr. Sorfonden's office, some five to ten feet from where she talked with her friend. About that time, a third student asked Amy what she was doing. Amy apparently replied that she was throwing something away. She did not appear to the third student to have any visible papers or other matter in her hand to be thrown away.

Mr. Sorfonden noticed Amy acting in a "nervous" manner in the rear of the room near a cabinet where he kept unit tests in his programmed science class. Although he had never known her to cheat, he thought Amy may have had a test crib in her tightly held hand. She moved away from the student she was talking to, and he told her to come to him near the middle of the room. She did so with her fist clinched around the pill. Mr. Sorfonden asked Amy three times what she had in her hand and on the third time, took hold of her wrist. He began to pry her fingers open one by one and only then did Amy voluntarily open her hand. She said, "I think it's speed," Mr. Sorfonden did not ask her what she intended to do with the pill, but instead, immediately sent a student to bring Mr. Michael Avise, the principal, to the classroom.

Mr. Avise arrived in a few minutes and took Amy to his office where he reviewed the District's policies regarding the possession of controlled substances with her. The School's policies discussed by Mr. Avise appear in a student handbook which was made available to Amy at the beginning of the school year. The two relevant policies read, in part, as follows:

Good Conduct Rule

* * * * *

- 2. Any student who is found guilty of the consumption, possession acquiring or delivering of alcoholic beverages or dangerous drugs, will be ineligible to participate in any one of the four activity group events. A six weeks suspension is required for the first offense, and twelve calendar months suspension for the second offense.

* * * * *

Tobacco, Alcoholic Beverages, and Illegal Drugs

The possession and/or use of tobacco, alcoholic beverages and illegal drugs or controlled substance by students enrolled in the Dexfield Community Schools is forbidden in school buildings, on school property and at any school sponsored activity.

* * * * *

- C. For possession and/or use of illegal drugs or controlled substances on school property or at school activities.
 - 1. Any student found in violation will be expelled by the Board of Education for a period of time to be determined by the Board.

The word "possession," as used in the policies, was not defined.

Amy told Mr. Avise that she had picked the pill up off the floor and showed it to another student. She told him that it was possibly "speed," but that she was not certain what it was, and that she had planned to dispose of it. Mr. Avise asked Amy to remove her shoes and socks so that he could look for hidden pills. He also searched her school locker. Apparently, no other pills were found.

After discussing the matter with Amy, Mr. Avise told her that he would have the pill analyzed and that if it were later determined to be a controlled substance, she would be removed from athletic competition for six weeks under the District's Good Conduct Rule. From the record, it is clear that at the time, Mr. Avise did not give con-

sideration to Amy's reasons for having the pill or the circumstances surrounding the incident.

About a week later the result of the analysis was received by the school and it showed that the pill was an amphetamine, a controlled substance. Mr. Avise informed Amy's basketball coach that she would be ineligible for competition for six weeks. Amy was then refused a game uniform and voluntarily dropped from the team.

On December 4, the matter was brought before the District Board of Directors who, after a hearing and deliberation, voted 5-0 to remove Amy from extracurricular activity competition for six weeks and give her a five-day inschool suspension, with no credit given for work completed during those five days. Several of the Board Members stated at that time that the intent or circumstances surrounding the incident of possession were not relevant to a finding that a student was in "possession" of a controlled substance. Further, they stated that if Amy had control over a controlled substance, which she did not deny, it did not make any difference how she got it or what she was going to do with it. One Board Member testified at the hearing that possession and control are synonymous, regardless of whether a student knows what an item is or what the student intends to do with it. He said that as far as he was concerned, if the pill fell from the ceiling and she caught it, she was in violation of the school rule against "possession." In response to a question from the Hearing Panel, he responded that even if something is placed in someone's pocket without their knowledge, they would be in "possession" because knowledge has no bearing on "possession." Another Board Member also testified that students do not need to know that they have something in order to be in "possession," and thus, in violation of Board Policy. Actual mere possession was sufficient.

The local chief of police testified that he had investigated the matter and had found no ground for believing illegal activity had occurred on Amy's part, and that he did not refer the matter to the county attorney. He said that he did not feel under the circumstances, that she knowingly intended to possess the amphetamine.

Amy testified that she did not understand what the word "possession" meant in the school policies, had not been told what it meant and had not thought much about it.

In Newsletter No. 4, dated November, 1978, and distributed after the November 2 incident, District Superintendent Paul Jones reminded parents of the District Policy in the following language:

Drugs - School Board Policy

The policy on drugs is as follows: For possession and/or use of illegal drugs or controlled substances on school property or at school activities.

1. Any student found in violation will be expelled by the Board of Education for a period of time to be determined by the board.

Parents, explain to your children if they find pills on the floor of the school, please call this to the attention of a teacher or administrator. If they do pick up pills please give them to a teacher or administrator immediately. [emphasis added]

The next Newsletter, dated December, 1978, altered the District's position somewhat. That language reads as follows:

Parents - a repeat of an earlier statement

This message was read to all secondary students. Possession of tobacco or drugs is defined as having them on your person, in your

purse or coats. A student with drugs when caught will go before the school board to be expelled from school for a period of time to be determined by the school board. Do not handle any tobacco or drug without prior authorization. If you see any substance you suspect to be a drug, get a faculty member to pick it up and dispose of it for you.

II. Conclusions of Law

The Appellant does not challenge the legal authority of the District Board of Directors to promulgate the rules at issue here, and it is well that he does not. Authority for such rules is clearly established in Sections 279.8 and 279.9, The Code 1977. The primary thrust of the Appellant's appeal is that reasonable school rules were applied to his daughter in an unreasonable manner. We are in agreement with the Appellant's position.

The District Board has taken the untenable position that mere possession of a controlled substance subjects students to discipline under District policies which prohibit the "possession" of controlled substances. The Board gave no consideration to the circumstances involving the possession, such as whether the student had knowledge of what the substance was, whether the student actually intended to possess the controlled substance or whether the student had good reason to possess the controlled substance. We think that such an interpretation of District policies prohibiting "possession" is not reasonable.

To punish a student for mere possession of a controlled substance and not for knowledgeable and intentional possession appears to serve no useful purpose in the school environment and may, in fact, lead to negative results, such as general disrespect of school rules. We cannot imagine how a school policy will discourage possession of a controlled substance if students are punished for mere possession and are not required to have knowledge of what the substance is or the intent to possess it. Under such an interpretation, as the Board has placed on the word "possession," a student would be subjected to discipline even if someone secretly placed a controlled substance into the student's pocket, someone gave the student a controlled substance wrapped in a box as a gift, or the student took it away from a five-year-old for the youngster's protection. Punishing such students for mere possession does little to rid controlled substances from the school environment. All that happens is that innocent students are subjected to punishment.

We do not mean to be understood here to find that in order to be punished for possession of a controlled substance the student would have to confess knowledge and intent. An inference of knowledge and intent can be drawn from the circumstances. For instance, had Amy been a known drug abuser, had she carried the pill longer, perhaps to her next class, had she known the original source of the pill to be a drug abuser, or had she been less cooperative with the teacher and principal in revealing the pill and her suspicions about it, a finding on the part of the principal and Board of Directors that she was in "possession" of a controlled substance would be more defensible from a standpoint of reason. However, to act as the District Board did here in refusing to consider the surrounding circumstances is, in our opinion, an unreasonable interpretation and application of an otherwise reasonable school policy.

After the incident of November 2, confusion over "possession" continued in the District. In the November Newsletter the Superintendent directed parents to instruct their children to immediately turn over to teachers pills picked up from the floor. In the December Newsletter, students were instructed to not pick up a drug from the

floor, but to leave them lay until a faculty member could pick it up and dispose of it. Apparently someone realized that under the District Board's interpretation of "possession," the November instruction of turning found pills over to teachers subjected those students following the superintendent's instructions to discipline for possession.

Through research of the parties and our independent research, we have determined that the only Iowa legal precedent on the subject of "possession" appears to be in the area of criminal law. The decision, entitled State v. Reeves, 209 N.W.2d 18 (Ia. 1973), involved a person convicted of "unlawful possession" of narcotics where the state did not define the term "possession." In that case, at page 23, the Iowa Supreme Court determined that before a person could be convicted of unlawful possession of illegal drugs, the state had to establish that the accused had knowledge of the presence and the nature of the substance. The correct criminal statute regarding possession of a controlled substance, Section 204.401, reads in part as follows:

3. It is unlawful for any person knowingly or intentionally to possess a controlled substance . . ." [emphasis added]

In summary, what we have before us is a conscientious school board attempting to cope with the difficult and complex problem of drug abuse. It has not been easy for such dedicated boards to adopt and provide for the proper administration of school policies and rules appropriate to meet the challenges of such a difficult problem. We do not, in any way, wish to reproach the District Board for its efforts in this matter. In the absence of a more specific definition of "possession" in Section 279.9, such actions as they took are understandable. However, we do not see any benefit to the District or to the school environment from the strict interpretation of "possession" which the Board has imposed upon Amy and, in fact, see many possible negative effects from such an interpretation. We can only conclude that an interpretation of "possession" which punishes students for mere possession without at least an inference of knowledge and intent to possess a controlled substance is an unreasonable application of an otherwise reasonable school policy.

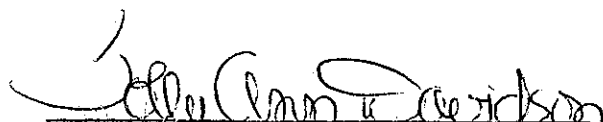
All motions and objections not previously ruled upon are hereby overruled.


III.
Decision

The decision of the Dexfield Community School District Board of Directors in the above entitled matter is hereby overruled. Appropriate costs under Chapter 290 are hereby assigned to the Appellee.

April 20, 1979
DATE

March 19, 1979
DATE


JOLLY ANN DAVIDSON, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION


ROBERT D. BENTON, Ed.D.
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
AND
PRESIDING OFFICER