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Case Underscores Need for Knowledgeable Application of Disciplinary Policies

By Anthony P. Sciarrillo

School districts, administration and faculty must be well informed of their district's disciplinary code and practices if they want to avoid liability. In a recent unpublished opinion issued by the United States District Court of New Jersey, the parents of a pre-school disabled African American child, ("D.C."), brought suit against the Franklin Township school district and Vice Principal alleging that the disciplinary suspensions that were issued for their son were grossly out of proportion to the norm and based on D.C.'s race. Specifically, the plaintiffs alleged violations of D.C.'s federal civil rights under 42 U.S.C. § 1983, and the New Jersey Law Against Discrimination ("NJLAD").

In this case, *Clark v. Board of Education of Franklin Twp. Pub. Sch.*, D.C. had been deemed eligible for special education services under the disability category of "Pre-School Disabled," based upon his behavioral problems. As a result, the district developed an Individualized Education Plan (IEP) for D.C. pursuant to the Individuals with Disabilities Act that indicated, among other things, that he would not be exempt from the School District's Student Code of Discipline. Notably, the District's Discipline Code for the 2003-04 year addressed suspensions from grades K-12 *only*.

In the spring of 2004, the Vice Principal, ("VP"), who was in charge of discipline, suspended D.C. for more than 16 days, nine of which were deemed "mandatory," for his aggressive behavior. Specifically, D.C. had kicked, punched, head-butted, and pushed his teacher and fellow classmates on numerous occasions. The school conducted a Behavioral Intervention Plan (BIP) to address D.C.'s behavioral problems since it was the school's determination that "he did not appear to understand the consequences of his actions."

On June 16, 2004, school officials met with D.C.'s parents to discuss his annual review. According to the plaintiffs, after the meeting they went to get copies of the suspension paperwork, and while in the hallway outside of the VP's office they heard him say, "I don't like that little black kid, he reminds me of one of those little black kids in the ghetto." Afterwards, the parents took their complaints regarding the manner in which the VP was imposing disciplinary suspensions to the attention of the School District Superintendent.

Claims Against the School District

In this action, the court addressed the federal civil rights ("§1983") and NJLAD claims together because they have been similarly (*cont'd* ➔)

interpreted. The court stated that in order for the school district to be liable, the plaintiffs had to prove (1) there was a violation of D.C.'s rights pursuant to an official policy, custom, or practice; and (2) the School District's policy or custom caused the violation. An official policy could be found in violation "even if it did not receive formal approval through the body's official decision making channels," or "if the need to act was so obvious that the school district's failure to act could be said to amount to an official policy of inaction." Moreover, the court opined that a school district cannot be held liable under §1983 merely for "employing the offending employee."

To that end, the court granted summary judgment in favor of the school district, finding that the school district did not ignore the parent's concerns; rather, they took swift action to rectify the situation by paying for D.C. to be placed in a special school for children with behavior problems; they made clear to the parents that the school's suspension policy did not apply to pre-school children, and there was no indication that they condoned the VP's behavior since the superintendent acknowledged that mistakes were made in the way he treated D.C. Further, there was no allegation anyone other than VP said or did anything racially motivated.

Claims Against Vice Principal

Conversely, the court held there was an issue of fact as to whether the VP's actions were (1) purposefully discriminatory based on D.C.'s race, and (2) whether D.C. was treated different from others similarly situated because of his race. The court focused on many factors including: the lack of any provisions in the discipline code that expressly addressed pre-school children, despite the VP's contention that he was unaware of the provisions in the 2003-04 code; the plaintiff's testimony that D.C. was the only African American student in the preschool disabled program, and that the only pre-school disabled child ever suspended by the VP was an African American. Likewise, the VP's testimony indicated that he did not recall ever suspending any preschool child, pre-school *disabled* child,

or ever imposing a nine-day or longer suspension on any preschool child. Also, the VP testified that he did not have a reason to believe that D.C. understood that the imposed suspensions were intended to punish. The VP contended that D.C. was treated differently because of his behavior, not his race; however, given the aforementioned facts, and the alleged racial epithet directed at D.C., the court reasoned that it was for a jury to decide whether D.C. was intentionally discriminated against and treated differently based on race.

The current state of the law under *N.J.A.C.* 6A:14-2.8(a)(1) states that "preschool students with disabilities shall not be suspended, long-term or short-term, and shall not be expelled." Thus, it is in the best interest of school districts to incorporate this law into all school disciplinary codes and procedures. Also, this case demonstrates that school districts, administration and faculty must ensure that their discipline policies are expressly codified to ensure that all parties are acting within the scope of their authority. It is also imperative that school officials are educated on all disciplinary policies, and they are being applied consistently and uniformly amongst all students. It goes without saying that racially charged commentary is unacceptable, yet all employees must be vigilant that the slightest impropriety can be misconstrued negatively, despite the lack of any bad intentions. Lastly, school districts must take notice of all disciplinary actions that are being administered by their faculty and staff to make sure that a pattern and practice of arbitrary and excessive punishments are not being instilled in the schools contrary to express policy. Districts must be attentive to all parental concerns and confront all problems as quickly as possible to avoid any appearance of acquiescence in mistakes on behalf of faculty and staff.



The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Anthony P. Sciarrillo of the EdLaw Group at edlawgroup@lindabury.com.