

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

S- A-, a minor, by her father HAJOW
OSMAN,

Appellant,

v.

PITTSBURGH PUBLIC SCHOOL
DISTRICT,

Appellee.

CIVIL DIVISION

No. SA 16-000569

**MEMORANDUM AND ORDER OF
COURT**

BY:

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MEMORANDUM AND ORDER OF COURT

This matter involves a statutory appeal taken on behalf of a student, referred herein as S- A- from a determination made by the Board of School Directors of the City of Pittsburgh (“District”) to remove a student at Obama Academy and to place her, instead, in Clayton School, pursuant to a determination by the District that S- A- was in possession of a weapon on school property.

An altercation occurred in school on May 9, 2016, during which, according to the findings of the District, S- A- stabbed another student repeatedly in the neck with the point of a pencil. The District suspended S- A- for ten (10) days immediately following the incident. The District urges that its action was consistent with the Code of Student Conduct that is currently in place and that provides, at Part One, under the heading “Rules of Student Conduct”:

...

6. Weapons and Dangerous Instruments: A student shall not possess, handle or transmit a weapon while on any school property, while at any school-sponsored or approved activity or while walking or being transported in any manner to or from a school or school-sponsored or approved activity.

- ° The term “weapon” as used in this Code of Student Conduct shall include but shall not be limited to any knife, cutting instrument, cutting tool, explosive, mace nunchaku, firearm, shot gun, rifle and any other tool, instrument or implement capable of inflicting serious bodily injury. An eligible student under the IDEA may only be moved to an interim alternative education placement for possession or use of a knife with a blade that is 2.5 inches or longer in

length. A knife blade less than 2.5 inches does not meet the definition of a dangerous weapon under the IDEA.

- ...
- A student found to be in violation of this rule following a formal hearing shall be expelled for a period of not less than one year.

The Superintendent of the School District or designee may recommend discipline short of expulsion on a case-by-case basis (24 P.S. §13-1317.2) The Superintendent must consider information provided by the student or parent prior to making a recommendation. ...

§13-1317.2 of the Pennsylvania School Code, which is referenced in the rules states, in pertinent part:

Possession of weapons prohibited,

(a) Except as otherwise provided in this section, a school district or area vocational-technical school shall expel, for a period of not less than one year, any student who is determined to have brought onto or is in possession of a weapon on any school property, any school-sponsored activity or any public conveyance providing transportation to a school or school-sponsored activity.

(b) Every school district and area vocational-technical school shall develop a written policy regarding expulsions for possession of a weapon as required under this section. Expulsions shall be conducted pursuant to all applicable regulations.

....

(d) The provisions of this section shall not apply to the following:

(1) a weapon being used as part of a program approved by a school by an individual who is participating in the program; or

(2) a weapon that is unloaded and is possessed by an individual while traversing school property for the purpose of obtaining access to public or private lands used for lawful hunting, if the entry on school premises is authorized by school authorities.

(e) Nothing in this section shall be construed as limiting the authority or duty of a school or area vocational-technical school to

make an alternative assignment or provide alternative educational services during the period of expulsion.

...

(f) All school districts and area vocational-technical schools shall report all incidents involving possession of a weapon prohibited by this section as follows:

(1) The school superintendent or chief administrator shall report the discovery of any weapon prohibited by this section to local law enforcement officials.

(2) The school superintendent or chief administrator shall report to the Department of Education all incidents relating to expulsions for possession of a weapon on school grounds, school-sponsored activities or public conveyances providing transportation to a school or school-sponsored activity. Reports shall include all information as required under section 1303-A.¹

(g) As used in this section, the term "weapon" shall include, but not be limited to, any knife, cutting instrument, cutting tool, nunchaku, firearm, shotgun, rifle and any other tool, instrument or implement capable of inflicting serious bodily injury.

The District additionally argues that it is to be construed *in pari materia* with 18 Pa.C.S.A. §912, which criminalizes possession of a weapon on school property. That provision of our crimes code states:

(a) Definition.--Notwithstanding the definition of "weapon" in section 907 (relating to possessing instruments of crime), "weapon" for purposes of this section shall include but not be limited to any knife, cutting instrument, cutting tool, nun-chuck stick, firearm, shotgun, rifle and any other tool, instrument or implement capable of inflicting serious bodily injury.

(b) Offense defined.--A person commits a misdemeanor of the first degree if he possesses a weapon in the buildings of, on the grounds of, or in any conveyance providing transportation to or from any elementary or secondary publicly-funded educational institution, any elementary or secondary private school licensed by the Department of Education or any elementary or secondary parochial school.

(c) **Defense.**--It shall be a defense that the weapon is possessed and used in conjunction with a lawful supervised school activity or course or is possessed for other lawful purpose.

Inasmuch as the sole basis on which the District has proceeded is that of possession of a "weapon" as that term is used and defined by legislation and pertinent case law, the Court is constrained to agree with counsel for S- A- that the District, rather than responding to the actual misbehavior, expelled the student for the possession of a weapon. Counsel for S- A- urges that even if the analysis were confined to the District's own rules of conduct, the principle of *ejusdem generis* would preclude the result urged by the District. That principle states that an ambiguous word should be given a precise meaning that is consistent with the words around it. In this matter, the pertinent rule of conduct prohibits possession of a weapon and, by way of further precision, explains that the term weapon includes "any knife, cutting instrument, cutting tool, explosive, mace nunchaku, firearm, shot gun, rifle and any other tool, instrument or implement capable of inflicting serious bodily injury".

Of course, an individual might deliberately utilize any object as an instrument of harm. Nonetheless, the scope of the rule cited by the District cannot reasonably be construed any more broadly than as a prohibition of possession by a student of weapons that are of the same kind as set forth in the list stated in the District's rule. In fact, because that rule is careful to list not merely "any knife" but also cutting instruments and cutting tools and not merely any "firearm", but also shot guns and rifles, it is apparent that the drafters of the rule were aware of the method by which to ensure a broadened scope of the prohibition of weapons. That there was an intent for that scope to encompass a pencil within the definition of weapons proscribed the Code of Student Conduct is not plausible and, certainly, would not have afforded notice to S- A- that possession of a pencil placed her at risk of expulsion.

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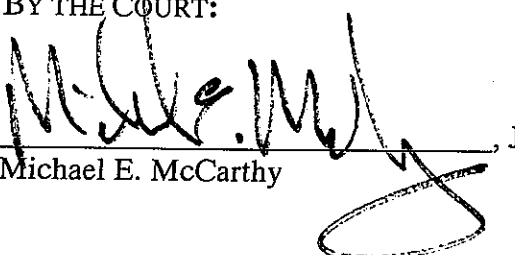
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ORDER OF COURT

And Now, this 20th day of August 2016, the summary appeal is granted and the decision to expel S- A- is reversed.

BY THE COURT:


_____, J
Michael E. McCarthy