FOCUS ON COLLEGES, UNIVERSITIES, AND SCHOOLS
VOLUME 5, NUMBER 1, 2011

Does a Student's Property Right to an Education Extend to Participation in Extracurricular Activities?

Fred C. Lunenburg
Sam Houston State University

ABSTRACT

It is clear that students have a property interest in their education and cannot be denied attendance without due process of law; however, this property right to attend school does not extend to extracurricular activities. The prevailing view of the courts is that conditions can be attached to extracurricular participation, because such participation is considered a privilege rather than a right. Although school officials are not required by the Fourteenth Amendment to provide due process when denying students participation in extracurricular activities, a hearing is always advisable.

Property Right to an Education

It is clear that students have a property interest in their education and cannot be denied attendance without due process of law (*Goss v. Lopez*, 1975). In *Goss v. Lopez* (1975), the Supreme Court ruled that public school students possess liberty and property interests in their education, and therefore that constitutional principles of due process apply to school officials in dealing with regulations governing student conduct and other school-related activities. Due process of law is derived from the Fourteenth Amendment to the United States Constitution, which stipulates, in part, that "no state shall . . . deprive any person of life, liberty or property, without due process of law."

Basically, due process is a procedure of legal proceedings following established rules that assure enforcement and protection of individual rights. The guarantees of due process require that every person be entitled to the protection of a fair hearing and a fair judgment. Following *Goss*, several significant federal laws also emerged in the early 1970s and extended through the early 1980s, which further expanded the scope of students' rights. During this period, the courts often upheld students' legal challenges of school policies, rules, and regulations.

Participation in Extracurricular Activities

On the contrary, this property right to an education does not extend to participation in extracurricular activities. Courts generally hold that conditions can be attached to extracurricular participation, because such participation is a privilege rather than a right (*James v. Tallahassee High School*, 1996; *Ryan v. California Interscholastic Federation*, 2001; *Taylor v. Enumclaw School District No. 216*, 2006). The reasoning of the courts is that extracurricular activities, as the name implies, are usually conducted outside the classroom before or after regular school hours, usually carry no credit, are generally supervised by school officials or others, are academically non-remedial, and are of a voluntary nature for participants.

For these reasons, the conditions typically attached to extracurricular participation have been upheld by the courts. School administrators may not be required by the Fourteenth Amendment to provide due process when denying student extracurricular participation, unless the school board has established policies for suspending or expelling students from extracurricular activities. Courts have upheld the suspension of students from interscholastic athletics for violating regulations prohibiting smoking, drinking, use of drugs, or other disciplinary infractions, including off-campus and off-season conduct providing the regulations so stipulate (*Ferguson v. Phoenix-Talent School District No. 4*, 2001). Members of athletic teams and other extracurricular groups (drama, band, debate, cheerleading, and clubs) often are selected through a competitive process, and students have no property right to be chosen.

Other restrictions. Most state athletic associations prohibit involvement in interscholastic competition for one year after a change in a student's school without a change in the parents' address (*Niles v. University Interscholastic League*, 1983; *In re Unites States ex rel. Missouri State High School Activities Association*, 1982; *Parker v. Arizona Interscholastic Association*, 2002; *Ryan v. California Interscholastic Federation*, 2001; *Zeiler v. Ohio High School Athletic Association*, 1985). Courts generally uphold age restrictions on extracurricular participation in an effort to equalize competitive conditions (*Mahan v. Agee*, 1982; *Arkansas Activities Association v. Meyer*, 1991; *Thomas v. Greencastle Community School Corporation*, 1992). Courts usually endorse rules limiting athletic eligibility to eight consecutive semesters or four years after eighth grade (*Clay v. Arizona Interscholastic Association*, 1989; Jordan v. Indiana High School Athletic Association, 1993, *vacated*, 1994). Several states have adopted "no-pass, no play" provisions, which require students to maintain a 2.0 grade point average to participate in athletics (Montana v. Board of Trustees, 1986; Spring Branch Independent School District v. Stamos, 1985; Thompson v. Fayette County Public Schools, 1990; Truby v. Broadwater, 1985). And the *United States Supreme Court, in Vernonia School District 47J v. Acton* (1995) and in *Board of Education v. Earls* (2002), upheld school board policies requiring student athletes and those participating in other extracurricular activities to submit to random urinalysis as a condition of participation.

Conclusion

It is clear that students have a property interest in their education and cannot be denied attendance without due process of law; however, this property right to attend school does not extend to extracurricular activities. The prevailing view of the courts is that conditions can be attached to extracurricular participation, because such participation is considered a privilege rather than a right. Although school officials are not required by the Fourteenth Amendment to provide due process when denying students participation in extracurricular activities, a hearing is always advisable.

References

Arkansas Activities Ass'n v. Meyer, 805 s.W.2d 58 Ark. (1991).
Bd. of Educ. v. Earls, 536 U.S. 822 (2002).
Clay v. Ariz. Interscholastic Ass'n, 779 P.2d 349 (Ariz. 1989).
Ferguson v. Phoenix-Talent Sch. Dist. No. 4, 19 P.3d 943 (Or. Ct. App. 2001).
Goss v. Lopez, 419 U.S. 565 (1975).
In re United States *ex rel.* Mo. State High Sch. Activities Ass'n, 682 F2d 147 (8th Cir. 1982).
James v. Tallahassee High Sch., 104 F.3d 372 (11th Cir. 1996).
Jordan v. Ind. High Sch. Athletic Ass'n, 813 F. Supp. 1372 (N.D. Ind. 1993), vacated, 16 F.3d 785 (7th Cir. 1994).
Mahan v. Agee, 652 P.2d 765 (Okla. 1982).
Montana v. Bd. of Trs., 726 P.2d 801 (Mont. 1986).
Niles v. Univ. Interscholastic League, 715 F.2d 1027 (5th Cir. 1983).
Parker v. Ariz. Interscholastic Ass'n, 59 P.3d 806 (Ariz. Ct. App. 2002).
Ryan v. Cal. Interscholastic Fed'n, 114 Cal. Rptr. 2d 798 (Ct. App. 2001).
Spring Branch Indep. Sch. Dist. v. Stamos, 695 S.W. 2d 556 (Tex. 1985).
Taylor v. Enumclaw Sch. Dist. No. 216, 133 P.3d 492 (Wash. Ct. App. 2006).
Thomas v. Greencastle Cmty. Sch. Corp., 603 N.E.2d 190 (Ind. Ct. App. 1992).
Thompson v. Fayette County Pub. Schs., 786 S.W.2d 879 (Ky. Ct. App. 1990).
Truby v. Broadwater, 332 S.E. 2d 284 (W. Va. 1985).
Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646 (1995).
Zeiler v. Ohio High Sch. Athletic Ass'n, 755 F.2d 934 (6th Cir. 1985).