

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

T.W., a minor, by her : CIVIL ACTION
mother, E.W., :
Plaintiff, :
 :
v. :
 :
SCHOOL DISTRICT OF :
PHILADELPHIA, :
Defendant. : No. 02-8862

MEMORANDUM AND ORDER

J. M. KELLY, J. FEBRUARY , 2003

Presently before the Court is a Motion for a Preliminary Injunction filed by Plaintiff T.W., a minor, by her mother, E.W., against the School District of Philadelphia ("District"). In her motion for injunctive relief, T.W. claims that the District acted in violation of the Due Process Clause of the Fourteenth Amendment and Pennsylvania law when it expelled T.W. from the George Washington Carver High School of Engineering and Science ("Carver") under the District's newly issued Code of Student Conduct "24/7" disciplinary policy ("24/7 policy") on the basis of her admitted involvement in an altercation occurring off-school property and off-school hours. She requests that this Court order the District to readmit T.W. to Carver immediately and allow her to continue her studies there pending a final determination by this Court of her underlying Complaint.

On February 25, 2003, this Court conducted a preliminary injunction hearing, during which witnesses testified and exhibits

were presented by both parties. Based upon the evidence presented at that hearing, and in consideration of the pleadings proffered by both parties and joint stipulations of facts, the Court's findings of fact and conclusions of law, as required by Federal Rule of Civil Procedure 52(a), are as follows.

I. FINDINGS OF FACT

1. T.W., a 16-year old girl, is an eleventh-grade student in the District. T.W. attended Carver from September 2000 until her expulsion from the school in November 2002. Carver is a highly selective magnet high school that bases its admissions decisions on the student's academic and behavioral record. Carver offers a superior academic program, including a wide range of advanced placement courses.

2. As a result of her expulsion, T.W. was assigned to her neighborhood high school, Simon Gratz High School ("Gratz"), where she currently remains enrolled. Unlike Carver, Gratz is not a magnet school and does not appear to offer as challenging an academic curriculum.

3. District is a public school district created under Pennsylvania state law.

4. On the evening of Saturday, October 26, 2002, T.W. and several of her friends, most of whom were Carver students, attended a "Sweet Sixteen" party held at a local restaurant by S.H., a fellow Carver student. T.W. and her friends attended the party fully knowing that they were not invited since neither T.W. or her friends received an invitation and S.H. had expressly told one of T.W.'s friends not to come.

5. Upon her arrival, T.W. and her friends were told by both S.H. and S.H.'s mother to leave the party. However, T.W. and her friends did not promptly leave. As a result, a fight ensued wherein two friends who had accompanied T.W. to the party and had allegedly harassed S.H. the previous year, assaulted S.H.'s mother. When S.H. attempted to defend her mother, T.W. intervened and engaged in a fight with S.H.

6. After the fight had subsided, the Philadelphia Police reported to the scene and issued a report. The police report describes the incident as a "physical altercation (kicking, pushing, pulling and punching each other), minor injury to all (bumps and marks)."

7. On Monday, October 28, 2002, the principal of Carver heard reports about the fight at Saturday's party from other Carver

students. In response, the principal asked those students with any knowledge of the events taking place on Saturday night to provide her with a written, signed statement.

8. The principal subsequently suspended T.W. and her friends, all of whom the principal determined were involved in the Saturday night fight, for five days.

9. On Friday, November 1, 2002, the principal and a District hearing officer met with T.W., her mother and her sister to discuss the matter further. The principal provided the hearing officer with the written statements she had collected from other students concerning the Saturday night events. Portions of the written statements were read to T.W. at that hearing, which included reports that T.W. and her friends, after the party, had threatened to further harm S.H. on Monday.

10. During the hearing, T.W. presented her own version of Saturday night's events, and, the hearing officer, relying also on the written statements provided to him, followed the principal's recommendation that T.W. should be assigned to another high school.

11. The "24/7" disciplinary provision in the Code of Student

Conduct was the authority for the hearing officer's determination.

12. The "24/7" disciplinary provision provides, in pertinent part, that the disciplinary rules apply to any conduct "off school grounds when the conduct may reasonably be expected to undermine the proper disciplinary authority of the school, the safety of students or staff, or disruption within the school."

13. In her Motion for Preliminary Injunction, T.W. argues that the District's "24/7" policy, as applied to her, is void for vagueness, in violation of the Due Process Clause of the United States Constitution. T.W. also avers that the District lacked authority under Pennsylvania state law to discipline T.W. for conduct that did not occur on school grounds.

14. This Court held a hearing to address T.W.'s motion for a preliminary injunction on February 25, 2003.

II. CONCLUSIONS OF LAW

In consideration of the testimony presented at the hearing, pleadings presented by both parties and joint stipulations of fact, this Court's conclusions of law follow.

1. The Court maintains jurisdiction over T.W.'s due process claim pursuant to 28 U.S.C. § 1343 and exercises pendent jurisdiction over T.W.'s Pennsylvania state law claim.

2. In determining whether injunctive relief is available, the Court must consider and weigh four factors: (1) the probability of ultimate success on the merits; (2) the threat of irreparable harm to the moving party if the injunction is not granted; (3) whether granting the injunction will result in comparatively greater harm to the nonmoving party than the harm that would befall the movant; and (4) whether injunctive relief would be in the public interest. American Civil Liberties Union of New Jersey v. Black Horse Pike Regional Board of Education, 84 F.3d 1471, 1477 n.2-3 (3d Cir. 1996); Creamer v. United States Department of Agriculture, 469 F.2d 1387, 1388 n.1 (3d Cir. 1972).

3. Since injunctive relief is a "drastic remedy," the movant bears the burden of demonstrating, by a preponderance of the evidence, that each of these factors weighs in her favor. Holiday Inns of America, Inc. v. B & B Corp., 409 F.2d 614, 618 (3d Cir. 1969); National Business Services, Inc. v. Wright, 2 F. Supp. 2d 701, 707 (E.D. Pa. 1998).

4. T.W. has not established by competent evidence a reasonable probability of success on her due process or state law claims. Since T.W. is unlikely to succeed on the merits of her underlying claims, our inquiry into the propriety of injunctive relief ends. See Instant Air Freight Co. v. C.F. Air Freight, Inc., 882 F.2d 797, 800 (3d Cir. 1989).

5. Nevertheless, we conclude that even if T.W. had demonstrated her likely success on the merits, injunctive relief is still foreclosed since allowing T.W. to return to Carver would not further the public interest, but, rather, would undermine the District's considerable interest in protecting its students from violence. Accordingly, T.W.'s Motion for a Preliminary Injunction is **DENIED**.

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SCHOOL DISTRICT OF	:	
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O R D E R

AND NOW, this day of February 2003, in consideration of the Motion for a Preliminary Injunction filed by Plaintiff T.W., a minor, by her mother, E.W. (Doc. No. 2), the Response of Defendant School District of Philadelphia (Doc. No. 6), T.W.'s reply (Doc. No. 10), and the Joint Stipulation of Facts thereto (Doc. No. 12), it is **ORDERED** that T.W.'s Motion for a Preliminary Injunction is **DENIED**.

BY THE COURT:

JAMES MCGIRR KELLY, J.