

## **G. C. v. Owensboro Public Schools 711 F.3d 623 (6th Circuit Court of Appeals – Kentucky).**

**March 28, 2013**

### **Summary**

High school student attending public school as an out-of-district pupil brought action against city school district, superintendent, principal, and two assistant principals, claiming school officials violated his due process rights when he was expelled without a hearing. In addition, student claims school official violated his 4<sup>th</sup> Amendment right to be free from search and seizure when officials seized and searched the contents of his phone. The Appellate Court ruled that the student was entitled to a hearing and school officials impermissibly seized and searched student's phone.

### **Background**

From 2005 to 2008, G.C. enrolled as an out-of-state district student in the local public school. Under a reciprocal agreement and the policy of the public school, the continued enrollment of non-resident students in the school was subject to the recommendation of the school principal and the approval of the superintendent.

During the next two years, G.C. had disciplinary issues and was suspended twice. During his last year, G.C. complained of depression and suicidal thoughts. During this time, school officials confiscated his phone on at least one occasion to assess G.C.'s seriousness regarding his claims of suicidal feelings. After this incident, he served another in-school suspension and a subsequent suspension for yelling and hitting a locker. The principal recommended that the Superintendent revoke his authorization to attend the school as a non-resident student. The superintendent refused to do so.

The following year, G.C. enrolled in the school using his grandparents' in-district address despite living at his out-of-district home with his parents. Less than a month after being enrolled, G.C. violated the school's cell-phone policy by texting in class. The phone was taken away and searched on the pretext that the school wanted to be sure that G.C. was not suicidal or a threat to others. A meeting was held between the superintendent and the parents during which the parents were informed that G.C. was expelled, but retained the right to attend high school in his own district.

The parents of G.C. filed suit seeking recovery for the alleged violation of G.C.'s due process rights given the lack of hearing on the expulsion and recovery for the alleged illegal search of G.C.'s phone.

## **Holding**

Under clear U.S. Supreme Court precedent, the 6<sup>th</sup> Circuit Appellate Court first held that students, facing a suspension of no more than 10 days are entitled to oral or written notice of the charges, an explanation of the evidence if the charge is denied and an opportunity to present counter-arguments. Suspensions lasting longer, or that are permanent, may require more formal procedures.

At trial, the high school claimed that G.C. was not expelled but, simply, his right to attend the high school as an out-of-district student was revoked. Thus, G.C. was not entitled to a pre-expulsion due-process hearing because his right to an education was not taken away, just his right to obtain an education *at this school* was taken away. The Appellate Court rejected this argument. The court determined that the right to a public education is a property interest and his in-district/out-of-district status was irrelevant to his right to due process. However, the fact that the school **gave** G.C. the out-of-district public education required that school give G.C. a hearing before it revoked that education.

The Appellate Court next addressed G.C.'s claim that the school seized and searched his phone in violation of his 4<sup>th</sup> amendment rights. The rules governing search and seizure in a public school are more relaxed than those applied outside the school context. The legality of a search of a student's person, belongings, etc., depends on the reasonableness of the search under all the circumstances. This involves the twofold inquiry into (1) whether the search was justified at the search's inception [*i.e.*, the search will garner evidence that a student has violated or is violating the law or the rules of the school or is in imminent danger on school premises] and (2) whether the search actually conducted was reasonably related in scope to the circumstances which justified the interference in the first place [*i.e.*, tailored to the nature of the infraction and must be related to the objectives of the search].

The school attempted to justify its search on the basis of G.C.'s history of suicidal thoughts and drug abuse. The Appellate Court disagreed that G.C.'s history was sufficient to justify the search. Instead, the Court found that the mere act of texting, without more, does not demonstrate criminal activity sufficient to justify a search at its inception. Thus, the Appellate Court concluded the school violated G.C.'s 4<sup>th</sup> Amendment rights.

## **Learning Point:**

By strictly following its procedures, the school here failed to appreciate the substantive results of its actions. It is often times difficult to adhere to the Constitutional norms of due process and



other rights. However, school should always remain vigilant as to how the policies are being implemented and whether such policies and procedures are still working well (or properly) in accordance with Constitutional requirements..