



AMERICAN CIVIL LIBERTIES UNION OF UTAH FOUNDATION, INC
355 NORTH 300 WEST, SALT LAKE CITY, UT 84103
(801) 521-9862 PHONE • (801) 532-2850 FAX
ACLU@ACLUUTAH.ORG • WWW.ACLUUTAH.ORG

June 27, 2007

J. Cal Evans
Director of Compliance
Jordan District Schools
9361 South 300 East
Sandy, UT 84070

RE: [REDACTED]'s expulsion from Jordan High School

Dear Mr. Evans,

Pursuant to our phone conversation on June 22, 2007, this letter serves to inform you of my concerns regarding [REDACTED]'s expulsion from Jordan High School this past school year.

It is my understanding that X was expelled for possessing marijuana found in her car, which was parked on a public street near Jordan High School. My concern rests primarily on the fact that [REDACTED] may have been denied due process, as is afforded her under both the United States and Utah constitutions. Here, I am concerned that notice was not adequately provided to [REDACTED], that her possession of marijuana in a car, located off the school premises, subjected her to school discipline.

Both the United States and Utah Constitutions protect citizens from deprivation of liberty or property absent due process of law. U.S. Const. amends. V and XIV, § 1; Utah Const. art. I, § 7; *In re Discipline of Sonnenreich*, 2004 UT 3, ¶ 37, 86 P.3d 712 (“Utah's constitutional guarantee of due process is substantially the same as the due process guarantees contained in the ... United States Constitution.” (quotations and citations omitted)).

Due process in turn requires that statutes, laws or regulations that subject an individual to penal consequences “adequately notice[] the proscribed conduct.” *State v. Morrison*, 2001 UT 73, ¶ 13, 31 P.3d 547 (citation and quotation omitted); *see also Kolender v. Lamson*, 461 U.S. 352, 357 (1983) (stating that due process requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.”); *State v. MacGuire*, 2004 UT 4, ¶¶ 13-14, 84 P.3d 1171. In the words of the Utah Court of Appeals, “fair notice is essential to the constitutional enforcement of a law.” *South Salt Lake City v. Terkelson*, 2002 UT App 405, ¶ 14, 61 P.3d 282.

Students do not lose all due process rights simply as a result of their status as students. *Goss v. Lopez*, 419 U.S. 565, 579 (1975). Therefore, in the context of school regulations, fair notice is no less important or necessary. For example, in *Galveston Independent School Dist. v. Boothe*, a court held that expulsion of a student for possession of marijuana on a street adjacent to the

campus was void, where the school rules and regulations failed to fully apprise him that his conduct was proscribed. 590 S.W.2d 553, 557 (Tex. Civ. App. 1979); *see also Packer v. Board of Educ. Of Town Thomaston*, 717 A.2d 117, 130 (Conn. 1998) (holding expulsion of student for possession of marijuana off-campus was void for vagueness even where school regulation specifically mentioned off campus conduct, but was nonetheless unclear, and thus did not provide sufficient notice); American Jurisprudence 2nd on Schools § 305 (stating that “the expulsion of a student for possession of marijuana in a car parked adjacent to the school campus is void and unenforceable when the expulsion is not made pursuant to any rule or regulation promulgated by the school board, and when the **student was not fairly apprised that he could be expelled for the possession of marijuana off the school campus.**”) (emphasis added).

Here, a close examination of the Jordan High School Policy Manual (“Manual”) reveals that while it extensively details consequences for possession of illegal substances on campus, or at school-related events held off campus, it does not alert students that the same type of offense, committed off campus, and not in connection with a school event nonetheless subjects them to disciplinary consequences at school. *See* Jordan School District Statement of Policy on Drugs and Alcohol, section number AS90. Thus, [REDACTED] was not put on notice of the consequences attendant to her off campus conduct.

Based on the foregoing, I respectfully request that the Jordan School District amend the Manual to fully inform students of its disciplinary policies, so that students have adequate knowledge of the consequences of their conduct. This will serve not only to satisfy the constitutional requirement of notice, but will undoubtedly provide a more effective means of deterring students from possessing or using illegal substances during school hours and near school premises. Finally, implementing such a policy will provide for uniform enforcement of school regulations, thus avoiding potential concerns of arbitrary enforcement.

We are also hoping that some compromise position can be reached regarding [REDACTED]'s status. We understand her to be a bright student with a promising future, and a positive member of your school community, this particular event notwithstanding. Her ability to continue her education at your institution will not only be in her best interests, but would increase her chances of becoming a responsible and contributing member of society.

Please feel free to contact me if you have any questions. I can be reached at 801-521.9862 x. 103. I look forward to hearing from you soon, so as to resolve this matter satisfactorily.

Thank you,

Marina Lowe
Staff Attorney