IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DANIELLE JODUN, et al.,	:	NO. 11 – 00,868
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
JERSEY SHORE AREA SCHOOL DISTRICT,	:	
Defendant	:	Motion for Preliminary Injunction

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ROBIN REIDELL, et al.,	:	NO. 11 – 00,892
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
JERSEY SHORE AREA SCHOOL DISTRICT,	:	
Defendant	:	Motion for Preliminary Injunction

OPINION AND ORDER

On May 23, 2011, the Jersey Shore Area School District Board decided that certain students, who they believed had participated in an underage drinking party on March 12, 2011, would be precluded from participating in any extracurricular activities for a period of sixty school days, based on their Policy 227, and informed the parents of those students of such decision by letter dated May 26, 2011. The letter indicated specifically that the students would not be allowed to attend the graduation ceremony slated for June 4, 2011, as it was considered an extracurricular activity. The instant motions for a preliminary injunction were filed in response to that decision, and the plaintiffs therein seek an injunction which prevents the School District from precluding their participation in the graduation ceremony. A hearing and argument on the motion was heard June 1, 2011.

A court may grant a preliminary injunction only where the moving party establishes the following:

1. That relief is necessary to prevent immediate and irreparable harm, which cannot be compensated by damages.
2. That greater injury will occur from refusing an injunction than from granting it.

3. That the injunction will restore the parties to the status quo.
4. That the alleged wrong is manifest and that the injunction is reasonably suited to abate it.
5. That the plaintiff's right to relief is clear.

Berger v. West Jefferson Hill School District, 669 A.2d 1084 (Pa. Commw. 1995). After considering all of these factors, the Court believes the plaintiffs are entitled to a preliminary injunction.

First, the Court believes that being precluded from participating in the graduation ceremony is certainly immediate, considering that the ceremony is scheduled for June 4, but also that it will constitute irreparable harm. As the United States Supreme Court noted in Lee v. Weisman, 505 U.S. 577, 595 (1992), "Everyone knows that in our society and in our culture high school graduation is one of life's most significant occasions." Preclusion from participation cannot be remedied later, and certainly cannot be compensated by damages.

Second, the Court believes that greater injury will result from refusing the injunction than from granting it. If the Court refuses the temporary injunction and then after further hearing, finds that the School District's decision cannot be upheld, as noted above, the plaintiffs cannot be made whole. On the other hand, allowing plaintiffs to participate in the ceremony will not harm the School District; if the Court later finds the District's actions were appropriate under the law, a declaration to that effect will satisfy any desire on the District's part to reinforce "the moral force of the school's substance use policy".[1] [2]

Third, the injunction will restore the parties to the status quo. There is no question about that.

Fourth, the alleged wrong is manifest – easily understood – and the injunction is not only reasonably suited to abate it, but at this time, the Court sees no other option.

Finally, with respect to whether plaintiffs' right to relief is clear, the standard of review in a matter such as this is well-established:

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[1] The Court assumes this motivation on the District's part; such has not been stated of record. The quote is taken from King v. Hempfield School District, 8 Pa. D. & C. 4th 48, 55 (Lancaster County 1990).

[2] The Court wishes to note that the position in which it finds itself – where even an eventual loss for plaintiffs nevertheless represents in reality a win for plaintiffs at this time – is the result of the District's decision to delay notice to the students until May 26, when complete Court review became impossible.

> [I]n Pennsylvania[,] local school boards have broad discretion in determining school disciplinary policy, Hamilton v Unionville-Chadds Ford School District, 552 Pa. 245, 714 A.2d 1012 (Pa. 1998). "'When one attacks the action of a school board concerning matters committed by law to its discretion, he [or she] has a heavy burden as the courts are not prone to disturb a school board's decision. Indeed, they are without jurisdiction to interfere therewith unless it is apparent that the school board's conduct is arbitrary, capricious and to the prejudice of public interest. Lack of wisdom or mistaken judgment is insufficient.' Commonwealth v. Hall, 309 Pa. Super. 407, 455 A.2d 674, 676 (Pa Super. 1983)"; Giles on Behalf of Giles v. Brookville Area School District, 669 A.2d 1079, 1082 (Pa. Cmwlth. 1995). Moreover, a court is not to act as a "super" school board and substitute its own judgment for that of the school district. Therefore, in the absence of a gross abuse of discretion, the courts will not second-guess policies of the school board. Hoke v Elizabethtown Area School District, 833 A.2d 304, 313 (Pa. Cmwlth 2003); In re Appeal of J.A.D., 782 A.2d 1069 (Pa Crnwlth. 2001).

D.O.F v. Lewisburg Area School District, 868 A.2d 28, 33 (Pa. Commw. 2004). Further,

> [t]o the extent that a school district, and thus the Board, is deemed a local agency for purposes of judicial review, a court must affirm the local agency's decision unless: the local agency has made a constitutional error or committed an error of law; there has been a procedural irregularity; or the necessary findings of fact are not supported by substantial evidence.

Id. In this case, based on the Superintendent's testimony that the District relied on information posted on Facebook, and that they considered that anyone who was present at the party, no matter for what length of time, to have "possessed" alcohol under Policy 227, the Court believes there is a significant question as to whether the Board committed a gross abuse of discretion, whether its actions were arbitrary or capricious, and/or whether its findings were supported by substantial evidence. Thus, while the Court cannot, based on the present record,[3] say that plaintiffs' right to relief is clear, there is enough of a question to find that this factor also weighs in favor of granting the injunction.

Accordingly, the Court will enter the following:

[3] The Court realizes that the record has not been completed, and that to address these issues the District has the right to present further evidence.

ORDER

AND NOW, this 2nd day of June 2011, for the foregoing reasons, the motions for preliminary injunction are hereby GRANTED. The School District is hereby enjoined from denying Aaron M. Reidell, Aaron M. Eck, Robert Sweely, Logan Bechtel, Ryan Spangler, Danielle Jodun, Karen Jodun, and Telef Notevarp the opportunity to participate in the graduation ceremony scheduled for June 4, 2011.

A hearing on the Complaint for Injunction is hereby scheduled for **June 14, 2011**, at **9:00 a.m.** in Courtroom Number 2 of the Lycoming County Courthouse.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Marc Drier, Esq
Joel McDermott, Esq.
J. David Smith, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson