

## **ACLU of Northern California**

N.P. and M.H. v. Antioch Unified School District

May 7, 2008

Does a school district have the authority to expel students based on an incident involving a school resource officer that occurred off campus and after school? A Contra Costa County Superior Court ruled in May 2008 that the Antioch Unified School District violated the rights of two students when it expelled them from Deer Valley High School following an off-campus incident in which police officers pepper-sprayed the students and arrested them. The judge overturned the expulsions.

The American Civil Liberties Union of Northern California and Berkeley attorney Jivaka Candappa sued the district on behalf of the students, arguing that it lacked the authority to expel the students based on the incident, and that the students' due process rights were violated during the expulsion hearings.

School authorities argued that the students' involvement in the incident could be viewed as a violation of the Education Code because one of the police officers involved in the incident was also the school resource officer assigned to Deer Valley High School.

The incident leading to the case occurred on March 7, 2007, when three students were walking through the parking lot of Deer Valley Plaza. They were stopped by an officer of the Antioch Police Department, who accused them of blocking traffic by walking through the parking lot rather than on the sidewalk. After a second encounter with the officer, one student ran away, and the officer gave chase, holding a canister of pepper spray in his hand.

The officer and others who joined him apprehended the student at a nearby gas station, where they pepper-sprayed him, threw him to the ground, and forcefully arrested him. They also pepper-sprayed and forcefully arrested several other students. Among the officers involved in the incident was the school resource officer assigned to Deer Valley High School, who is also an employee of the Antioch Police Department. After a brief investigation by the vice principal, the students were suspended.

In May 2007, the school district held expulsion hearings for each of the seven students who had been arrested. At these hearings, the police officers involved in the incident submitted police reports with detailed accounts of the incident, but attorneys for the students were not allowed to cross-examine the officers. In June 2007, the Antioch school board voted to expel the seven students.

Three of the students appealed their expulsions to the Contra Costa County Board of Education. The board reversed the expulsion of one of the students, but upheld expulsions of two others. Thereafter, the ACLU, along with Candappa, brought suit in Contra Costa County Superior Court on behalf of two of the students.

In his May 7 ruling overturning the expulsions, Judge Thomas Maddock stated that the district had no authority to expel the two students because the school resource officer involved in the incident was working with the Antioch Police Department and was therefore acting as a regular police officer, not as a school official. Moreover, the incident occurred off campus and after school. Accordingly, the incident was insufficiently related to school to serve as a basis for expulsion.