

**THE HIGH COURT  
JUDICIAL REVIEW**

**[2013 No. 387 J.R.]**

**BETWEEN**

**BOARD OF MANAGEMENT OF THE COLLEGE**

**APPLICANT**

**AND**

**THE SECRETARY GENERAL OF THE DEPARTMENT OF EDUCATION,**

**G.M. AND OTHERS**

**RESPONDENTS**

**AND**

**A and B**

**NOTICE PARTIES**

**Judgment of Mr. Justice Hedigan delivered on 31st day of July, 2013.**

1. The applicant is the Board of Management of a secondary school. On the 19th April, 2013, the second, third and fourth named respondents herein sitting as an Appeal Committee constituted by the first named respondent pursuant to the provisions of s. 29 of the Education Act 1998 determined an appeal taken by C, the son of the notice parties A and B. The Board of Management had previously decided to exclude C from the school following an investigation into the sale and supply of controlled drugs, marijuana or cannabis on the premises of the school. The decision of the Appeal Committee upheld the appeal giving as the reasons therefor:

(1) that C's involvement with drugs in the College, Galway, was a very serious matter;

(2) that the College was unable to provide definitive proof that C supplied illegal drugs or offered them for sale or that he admitted to supplying drugs or to offering them for sale.

In addition, the Committee found that there were shortcomings in relation to the procedures followed by the College.

2. The applicant's case is that in arriving at their conclusions the Appeal Committee, among other things, failed to abide by the correct standard of proof, failed to take into account the relevant material, reached a decision on the appeal on a ground which had not been advanced by the notice parties, had not been notified to the applicant and was inconsistent with the express and implied acknowledgments of both the notice parties and their son on repeated occasions and, finally, failed to give reasons for rejecting the undisputed evidence before them. I hold that the relevant background facts according to the uncontradicted evidence is as follows.

3. C is a student of the College. He is fifteen years old now. Students of the College are subject to the conditions prescribed by the Substance Abuse Policy and the Suspension and Expulsion Policy. The Substance Abuse Policy states the following:

"As per the Discipline Policy of the school a graded system of firm and consistent sanctions will apply to students involved in drug related incidents. Sanctions including suspension or expulsion may be imposed depending on the seriousness of the incident. In cases of repeated serious misbehaviour and in the case of sale of illegal drugs expulsion will be recommended."

4. On the 17th January, 2013, a student in the school was apparently assaulted by another student. It turned out on investigation that this assault had occurred as a result of money apparently owed for drugs purchased. Given the seriousness of this allegation, the Deputy Principal and the Principal commenced an investigation of the entire matter. The Principal interviewed both the students in question and they admitted to a version of events that indicated that the assault had arisen as a result of a drugs related debt. During the course of the Principal's investigation into this incident, the notice parties' child's name was mentioned and it became apparent that others in the group also sometimes provided the drugs which were usually provided at a charge. On the 22nd January, 2013, the Deputy Principal interviewed C. There are notes available of this interview. These state that C admitted the following:

(1) he consumed drugs in the school;

(2) he had purchased drugs off other students;

(3) he confirmed sometimes he supplied drugs to his school friends;

(4) he confirmed he first started using drugs in his first year;

(5) he confirmed that he actually had cannabis in his possession at the time and he removed a small sachet of that from his sock. He told the Deputy Principal that he paid €25 for this and that he had obtained the money from his grandparents.

The Deputy Principal interviewed boys on the 25th January, 2013. One confirmed that he was offered drugs by C in the boys' toilets and another informed the Principal and the Deputy Principal that C may have sold drugs to another boy. Another boy who was interviewed on the 28th January, 2013 stated that he had also offered him drugs two to three times.

5. On the 28th January, 2013, the son of the notice parties admitted in the presence of his parents and in the presence of the school Principal and Deputy Principal that he had had possession, had used and had supplied drugs within a small group of drug users and that others in the group usually paid. No minutes have been produced of this meeting but the Principal gave a full account thereof both to the Board of Management and to the Appeal Committee and that account has never been denied or criticised other than that it was biased for other reasons. C also acknowledged at this time that he along with another student had been in possession of a block of cannabis in the school which was approximately 5cm long, 2.5cm wide and 1cm thick. He explained that he and his school friend had planned to sell half of the block and keep the remainder for their own use. The block had originally cost €100 and each student had paid €50 for it. He confirmed that he had offered some of it for sale to several students and some of it had been sold to another student who had not paid for the cannabis. He confirmed that both he and his school friend were involved in making the deal. On subsequent interview the third student confirmed the details as given. This interview in the presence of his parents formed the basis of a report which the Principal made to the Board of Management. Prior to the Board of Management meeting to consider the position of the notice parties' son, a copy of this report was given to the notice parties. It said he had been involved in possession, supply, use and sale of cannabis in the school.

6. On the 1st February, 2013, the notice parties wrote to the Principal of the school and, *inter alia*, stated:

"(C) has made a dreadful mistake and he now fully understands how wrong this was. He is deeply sorry to us his parents and to his school and has promised us that nothing like this will ever happen again."

It is clear from the contents of this letter that the notice parties accepted that their son's conduct was inappropriate and it is also clear that they were in no doubt as to the nature of that conduct. It was, as it said, possession, supply, use and sale of cannabis in the school.

7. By letter dated the 7th February, 2013, the Principal of the College responded in writing and stated:

"As you are aware (C) has been involved in very serious misconduct in school. He has been involved on a number of occasions in the possession use supply and sale of illegal drugs."

The letter also confirmed that the Principal would be recommending the expulsion of C to the Board of Management. The Principal made it clear that she had made this decision "following a thorough investigation of the case carried out by myself and (the) Deputy Principal and following reference to our Substance Abuse Policy". No response was made to this letter disputing its contents. However, in the light of that letter, the notice parties wrote to the Chairman of the Board of Management on the 14th February, 2013 confirming that they fully understood that what C had done was wrong and that they understood the school's position. Again there was no reference to the Principal's letter of the 7th February, 2013 as having contained any inaccuracy.

8. Prior to the Board of Management meeting on the 18th February, 2013, the school Principal forwarded a copy of her report to the notice parties. She made a presentation to the Board of Management on the 18th February, 2013 based on that report. The notice parties attended the Board of Management meeting and did not dispute the contents of the submission made by the Principal nor was there any suggestion made that the letter of 7th February, 2013 or the Principal's report had been in any way inaccurate. The Board of Management decided to exclude C from the school. On the 19th February, 2013, the Chairman of the Board of Management wrote to the notice parties to inform them of the decision. The notice parties were informed that the conduct of C had been found to amount to gross misconduct. In response, on the 21st February, 2013, the notice parties wrote seeking a variety of documentation but in the course of the said letter it was never disputed that their son had admitted to the sale and supply of drugs in their presence as recounted in their presence at the Board of Management meeting. The formal decision to exclude C from the school was required to be postponed pursuant to the provisions of the Education Act 2000 and he was therefore suspended for a period of twenty days.

9. In further correspondence from the notice parties of the 11th March, 2013, no suggestion was made that the Principal had inaccurately recorded and/or given an inaccurate account of the admissions made by C. On the 15th March, 2013 the notice parties wrote to the Chairman of the Board of Management. They raised two issues in respect of the minutes of the Board of Management. Firstly, they referred to the fact that the minutes recounted "a detailed and lengthy account of the incident was relayed by (the Principal) together with relevant interviews and meetings which took place around this event". The parents stated that they wished "to clarify that (the Principal) read a prepared report and no interviews or minutes of meetings were read at this time". Thus it can be seen that from the notice parties' own perspective they were aware of the basis upon which Ms. Q. had made a recommendation to the Board of Management which was related to her own personal knowledge and experience of the admissions made in the presence of the notice parties.

10. The notice parties appealed this decision. Their appeal consisted of two aspects. Firstly, the notice parties' dealings with the applicant herein and the alleged refusal of the Board of Management to accede to their request for leniency, and, secondly, alleged breaches of fair procedures. In particular, the notice parties raised the fact that additional documentation was provided to the Board of Management after they had left the Board meeting on the 18th February, 2013. They also referred to the fact that the Deputy Principal attended the Board of Management after they had left. There was no reference in the appeal documents to any suggestion that C had not admitted to selling and supplying illegal drugs in the presence of his parents as alleged and as described to the Board. The notice parties did not indicate in the course of the pre-appeal procedures that they disputed or would dispute the substantive admissions made by their son. The Principal prepared an updated report for the Appeal Committee following consideration of the grounds submitted by the notice parties.

11. On the 19th April, 2013, the appeal hearing took place. The Principal was accompanied by the Chairperson of the Board of Management and by the Deputy Principal. The Chair then invited the notice parties to make their presentation to the meeting. A proceeded to make the presentation and he spoke entirely from his grounds of appeal document and, in particular, Appendix 2. That appendix does not suggest at any point that their son had not sold or supplied drugs and does not suggest that the admissions which he had allegedly made in their presence and in the presence of the school authorities had not been made or, if made, were anything other than the truth. Accordingly, and in accordance with Appendix 2, A in the course of his submissions did not assert, claim or suggest that his son had not been responsible for the sale and supply of drugs. He did not then nor has he ever denied his son's involvement in the sale and supply of cannabis. At the conclusion of the presentation of the appeal on the part of the notice parties, the Chair asked the school authorities to make their presentation. The Principal has confirmed on affidavit that she also spoke from her prepared notes. The Principal recounted in the course of her presentation the fact that C had admitted the sale and supply of drugs in his parents' presence and the affidavits confirmed she was not challenged on this at the time by the notice parties, nor was

the issue raised with her by the Committee and thus the hearing proceeded. At this stage of the Appeal Committee hearing, A stated in relation to the Principal's statement that C had admitted to having sold and supplied drugs, "that is not written down anywhere, show me where it is written in any document". It must be noted that again he did not dispute the admission had been made but demanded only to see where it was written. A short break then intervened. It is not clear why this occurred. It would appear that after resuming the Principal was unable to point out where in any document such an admission occurred. It is argued that this first admission was not considered so grave that the school considered initially that C could return to school the next Monday. The reality is that it is an admission of supplying cannabis and it clearly did form a part of the matrix of fact that ultimately informed the decision to exclude.

12. It is hard to understand how any of the parties or the Appeal Committee could not readily locate this admission. It appears on the bottom of the second page of the notes and should have been readily identifiable to all. In any event, this particular aspect of the appeal hearing lasted only a few minutes in a hearing that stretched over two and a half hours.

13. It is clear that almost the entire of the hearing was firstly A's exposition of the grounds of appeal which largely consisted of his reading the grounds submitted. The main body of the hearing was the exposition by the Principal of the school's case. The Deputy Principal was present if required to corroborate what the Principal had said. The Principal was not challenged on her account of the school investigation save for the referenced question above, i.e. "where it is written". Before the Appeal Committee also was the Principal's report to the Board of Management dated the 18th February, 2013. The contents of this were never challenged. In his first affidavit sworn herein, the Chair of the Committee stated they thought the school was relying upon the notes of the interview alone.

#### **The test to be applied**

14. In judicial review of a decision made by a body such as this, the Court's jurisdiction is a limited one. The limited circumstances in which the Court can intervene are however varied. Among them is the obligation to comply with fair procedures. This obligation is a dual one. Both parties are entitled to fair procedures. The correct question must be addressed and all the relevant factors must be taken into account and irrelevant factors excluded. The decision must be rational in the sense of that term in jurisprudence, i.e. the decision must not plainly and unambiguously fly in the face of fundamental reason and common sense. See *Rawson v. The Minister for Defence* [2012] IEHC 26 and the *City of Waterford Vocational Educational Committee v. The Secretary General of the Department of Education and Ors.* (Charleton J., High Court, 27th July, 2011).

15. It is difficult to understand first of all how the Appeal Committee could have considered that the school was relying exclusively upon the notes of the interview as was deposed to by the Chair thereof. Further elaboration in later affidavits does not really alter this original basis for its reasoning. The hearing scarcely featured these notes at all. The school's case was clearly based not just upon the admissions made in those notes in the first place but upon what had then transpired though the subsequent interview of the 28th January, 2013, the report to the Board of Management, the correspondence and the account of the s. 24 meeting of the 28th February, 2013, the facilitation meeting. At no stage during any of these meetings or in response to correspondence or reports did the notice parties ever deny that C had been involved in the use, sale and supply of cannabis. Most notably, the grounds of appeal did not include any denial. It was not in issue in the appeal. Up until the question asked by A "where is it written", everything had proceeded upon the basis clearly understood by all that had been involved as above. Thus the decision of the Appeal Committee flew entirely in the face of the facts as outlined by the Principal and agreed by all but did so without giving any indication of why it did so. It simply stated the College was unable to provide definitive proof;

(a) that (C) supplied illegal drugs or offered them for sale;

(b) that he admitted to supplying drugs or to offering them for sale.

16. The Committee therefore failed to explain properly its reasoning. Moreover, on my consideration of the above, the decision made flew in the face of the evidence before the Committee and in the face of reason and commonsense. It cannot be allowed to stand and I must therefore make an order quashing the decision of the 19th April, 2013 of the second to last named respondent's, an order also quashing the direction of the first named respondent of the 2nd May, 2013 and I will make an order remitting the notices parties' appeal to a freshly constituted Appeal Committee.

17. Finally, I would like to say this. I can understand that parents faced with the difficult situation the notice parties find themselves in here will jump to the defence of their child. However, it must be said that whilst their original approach from first notification up to the appeal hearing was a correct and proper one, what has transpired since does not appear wise or calculated to help their son in the long run. C is just over fifteen years old. He and his parents initially admitted the conduct with which we are dealing herein. He is not the first and certainly will not be the last to fall into error. Every one of us at some time or times in our lives falls in ways great or small. The measure of our lives however is not that we fall but that we rise again. We can only ever rise again when we confront and admit our fall and accept its consequences. Until we do that, we can never rise and get past our fall from grace. When we do, the path is always upwards and onwards. I hope the notice parties will reflect upon this in the trying times that lie immediately ahead.