DISORDERLY CONDUCT

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HYPOTHETICAL

The juvenile student walked into school at 8:25 a.m. and immediately walked the hall toward his homeroom class. While in the hallway with several other students, the juvenile yelled “sh-t, this school stinks”. The juvenile’s homeroom teacher was in the classroom preparing for afternoon classes. The homeroom teacher heard the juvenile’s statement and escorted the juvenile to the principal’s office.

On the way to the principal’s office, the juvenile hit a locker with his fist and turned to walk the other way. At the moment the 8:28 bell rang for students to be in their assigned classes, the homeroom teacher convinced the juvenile to proceed to the principal’s office and the homeroom teacher went back to class. The homeroom teacher arrived in class at 8:29.

While in the principal’s office, the juvenile said to the principal, in a very low voice, “I’m going to get you for this”. The juvenile then threw the principal’s cell phone against the wall. As the principal had to be at the dentist in just a few minutes, he called the SRO to handle the situation. The principal and the juvenile were together in the office for about one minute.

The principal left the office. The SRO and juvenile were then alone in the principal’s private office. The juvenile then began yelling and rolling on the floor. He screamed all of the curse words that he knew. The SRO wrestled with the juvenile and, after about 45 seconds, handcuffed the juvenile. At that point the juvenile became very calm and cooperative. The juvenile’s parent arrived about 20 minutes later and took the juvenile away.

STATUTE

14-288.4. Disorderly conduct.

(a) Disorderly conduct is a public disturbance intentionally caused by any person who:

(1) Engages in fighting or other violent conduct or in conduct creating the threat of imminent fighting or other violence; or

(2) Makes or uses any utterance, gesture, display or abusive language which is intended and plainly likely to provoke violent retaliation and thereby cause a breach of the peace; or

(3) Takes possession of, exercises control over, or seizes any building or facility of any public or private educational institution without the specific authority of the chief administrative officer of the institution, or his authorized representative; or

(4) Refuses to vacate any building or facility of any public or private educational institution in obedience to:

a. An order of the chief administrative officer of the institution, or his representative, who shall include for colleges and universities the vice chancellor for student affairs or his equivalent for the institution, the dean of students or his equivalent for the institution, the director of the law enforcement or security department for the institution, and the chief of the law enforcement or security department for the institution; or

b. An order given by any fireman or public health officer acting within the scope of his authority; or

c. If a state of emergency is occurring or is imminent within the institution, an order given by any law-enforcement officer acting within the scope of his authority; or

(5) Shall, after being forbidden to do so by the chief administrative officer, or his authorized representative, of any public or private educational institution:

a. Engage in any sitting, kneeling, lying down, or inclining so as to obstruct the ingress or egress of any person entitled to the use of any building or facility of the institution in its normal and intended use; or

b. Congregate, assemble, form groups or formations (whether organized or not), block, or in any manner otherwise interfere with the operation or functioning of any building or facility of the institution so as to interfere with the customary or normal use of the building or facility; or

(6) Disrupts, disturbs or interferes with the teaching of students at any public or private educational institution or engages in conduct which disturbs the peace, order or discipline at any public or private educational institution or on the grounds adjacent thereto; or

(6a) Engages in conduct which disturbs the peace, order, or discipline on any public school bus or public school activity bus; or

(7) Disrupts, disturbs, or interferes with a religious service or assembly or engages in conduct which disturbs the peace or order at any religious service or assembly.

As used in this section the term "building or facility" includes the surrounding grounds and premises of any building or facility used in connection with the operation or functioning of such building or facility.

(b) Any person who willfully engages in disorderly conduct is guilty of a Class 2 misdemeanor. (1969, c. 869, s. 1; 1971, c. 668, s. 1; 1973, c. 1347; 1975, c. 19, s. 4; 1983, c. 39, s. 5; 1987, c. 671, s. 1; 1993, c. 539, s. 189; 1994, Ex. Sess., c. 24, s. 14(c); 2001-26, s. 2.)

CASELAW

*In the Matter of Debbie Sue Eller*331 N.C. 714, 417 S.E.2d 479 (1992)

The juvenile was adjudicated of two counts of disorderly conduct at school. The juvenile's actions in the first case consisted of juvenile "making a move" toward a student in class causing the other student to "dodge" the move. Upon the teacher's request the juvenile revealed a carpenter's nail in the juvenile's hand.

The second case involved the juvenile striking a radiator in class "more than two or three times" causing a noise that diverted the attention of the students and causing the teacher to cease her lecture for fifteen to twenty seconds each time. Each instance occurred in a basic special education class.

The juvenile contended that the incidents did not rise to a substantial interference with the operation of the school. The Court of Appeals upheld the trial court ruling, but one judge dissented, sending the case to the Supreme Court as a matter of right.

The Supreme Court reversed the lower decisions and held that the conduct did not amount to a substantial interference with the operation of the school. The Court reasoned that the classes "were not interrupted for any appreciable length of time or in any significant way, and the student's actions merited only relatively mild intervention by their teacher."

> In *State v. Wiggins*, 272 N.C. 147, 158 S.E.2d 37, we considered a case wherein the student-defendants demonstrated with signs pertaining to civil rights in front of a high school during school hours. The other students " `look[ed] and carr[ied] on' to such an extent that the principal had `to get them back to their classes and walk up and down the hall . . . trying to keep them in class.' " *Id.* at 151, 158 S.E.2d at 40. Once inside the classrooms, the students peered out the windows to observe the demonstration; a number of students went so far as to travel to other classrooms to gain a better vantage point. *Id.* This Court upheld the lower court's conviction for disorderly conduct. Even more disruptive behavior was considered by the Court of Appeals in *State v. Midgett*, 8 N.C. App. 230, 174 S.E.2d 124 (1970). There, twelve students entered the school secretary's office and informed the secretary that " `they were going to interrupt [school] that day.' " *Id.* at 233, 174 S.E.2d at 126. The secretary then left her office to summon help, and upon her return, she was unable to reenter her office. The defendants occupied the principal's office, moved office furniture in front of the doors and windows, and rang school bells at unofficial times. As a result, school was dismissed early due to the commotion. *Id.* The Court of Appeals upheld the disorderly conduct convictions for substantial interference with the school in violation of the former N.C.G.S. § 14-273.
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> Further support for our view is found in the location of N.C.G.S. § 14-288.4(a)(6) within our statute books. The statute is contained within Article 36A, which concerns "Riots and Civil Disorders." This article was passed by our legislature in 1969, amid the concern generated by the

> tumult of the dramatic civil unrest gripping the nation and this state in the late 1960s. *See Sykes v. Clayton*, 274 N.C. 398, 163 S.E.2d 775 (1968) (title of act may be considered in aid of statutory construction to show intent of legislature); *Ellis v. Greene*, 191 N.C. 761, 133 S.E. 395 (1926) (same). To say that the relatively modest disturbances caused by respondents in the instant case do not rise to this level of concern would appear self-evident.

331 N.C. at 718-720.

In re Brown, 150 N.C. App. 127, 562 S.E.2d 583 (2002)

The juvenile was adjudicated of disorderly conduct at school. The juvenile's actions consisted of talking during a quiz, refusing to follow instructions, shutting a door in the teacher's face, and attempting to keep the teacher from taking the juvenile to the office. The record did not reveal how long the class was without a teacher; however the court noted that "it does not seem to have lasted more than several minutes."

The Court of Appeals reversed the trial court's ruling, finding that these actions did not amount to a substantial interference with the operation of the school in its instruction of the other students. The court relied on *State v. Wiggins* and *State v. Midgett.* The Court noted, "[b]ut if we were to hold that the present actions are of such gravity that they warrant conviction of disorderly conduct, every child that is sent to the office for momentary lapses in behavior could be convicted after such precedent."

In re Pineault, 152 N.C. App. 196, 566 S.E.2d 854 (2002)

The juvenile was adjudicated of two counts of disorderly conduct at school, as well as one count of injury to real property.

For the first count, the juvenile cursed at the teacher and the teacher had to escort the juvenile to the principal's office, thereby "indicating she was away from the classroom for more than several minutes." The court held that the juvenile's actions amounted to a substantial interference due to the "severity and nature of the respondent's language coupled with the fact that Ms. Carlson was required to sop teaching her class for at least several minutes."

For the second count the juvenile argued with another student and cursed while the teacher was on the phone talking to a parent. The juvenile refused to follow the principal's directions and resisted the principal's physical restraints. The Court of Appeals affirmed, finding that the principal, teachers and the assistant principal stopped teaching and performing various administrative duties to deal with the juvenile. Accordingly, the court held that there was sufficient evidence of substantial interference with the operation of the school.

The court distinguished *In re Brown* on the ground that the conduct at issue in *Brown* occurred at the end of an examination, rather than while the teacher was conducting class. The court pointed out that the conduct and language in *Brown* was not as egregious or severe as in this case.

In the Matter of M.G., 156 N.C. App. 414, 576 S.E.2d 398 (2003)

The juvenile was adjudicated of disorderly conduct at school. The juvenile's actions consisted of yelling "shut the f- - k up" to a group of students in the hallway. A physical education teacher, who was on his way to lunch duty in the cafeteria, heard the juvenile and escorted him to the school detention center and related what had happened to personnel. The Court of Appeals relied on *In Re Pineault* and held that the conduct substantially interfered with the operation of school. The court based its ruling on the nature and the length of the disruption. The record did not reflect how long the teacher was away from his assigned duty, butthe court found that the evidence indicated that it was "for at least several minutes."

In the Matter of C.C.M., 165 N.C. App. 543, 600 S.E.2d 901 (2004) (unpublished opinion)

The juvenile was adjudicated of disorderly conduct at school, as well as resisting, delaying or obstructing an officer. The juvenile appealed, contending that the court lacked sufficient evidence to adjudicate the case. The court held that the use of profanity coupled with the fact that a teacher, assistant principal, and resource officer had to stop performing their respective duties amounted to substantial interference with the operation of the school. The Court noted that the juvenile's conduct included shouting profanities in the assistant principal's office, disrespecting the school resource officer, throwing a telephone on a desk and struggling with the officer.

In the Matter of T.S.B., 165 N.C. App. 543, 600 S.E.2d 900 (2004) (unpublished opinion)

The juvenile was adjudicated of disorderly conduct at school. The juvenile appealed, contending that the court lacked sufficient evidence to adjudicate the case. The court stated that the standard for a finding of disorderly conduct at school is proof of "substantial interference with the operation of the school." Reviewing previous opinions, the Court affirmed the trial court's decision. The court held that the juvenile's conduct, which included three separate disruptions over a two hour period, causing one teacher to leave her class unattended for several minutes, and not complying with the school resource officer, constituted a "substantial interference with the operation of the school."

In the Matter of K.F., 2005 N.C. App. LEXIS 40 (2005) (unpublished opinion)

The juvenile was adjudicated of disorderly conduct at school. The trial court found that the juvenile jumped up in the assistant principal's office, said f- - k three or four times and walked out while classes were changing. The juvenile appealed, contending that the court lacked sufficient evidence to adjudicate the case. The Court held that the juvenile's conduct did not amount to a "substantial interference with the operation of the school." The court reasoned that no teacher had to leave other students to deal with the behavior, and instruction was not interrupted. Because the students were changing classes when the SRO restrained the juvenile.

NOTES