

19. Students who prevent tragedies should not be sanctioned for doing the right thing lest they be inhibited from acting. Put another way, by punishing the Plaintiff, the North Andover School District has conveyed a message to all students that they should *not* help peers who may be at risk because of drugs or alcohol. Obviously, this means forcing students to drive in unsafe conditions, or continue ingesting harmful substances, or expose themselves to increased risk of sexual assault and other harmful activities associated with diminished capacity.

20. A student leader at North Andover High School who fails to protect a friend in danger would not be conducting herself in accordance with the school's Handbook for Athletes which provides that team captains are supposed to "set a good example both on and off the court." A good "example" includes helping a young person get home safely and resisting peer pressure to drink alcohol, especially in an environment where "everyone else is doing it."

21. The Plaintiff's mature handling of the situation should have been celebrated, not punished, because it takes bold leadership among young people to help break the ties that bind vulnerable high school students to high-risk activities. Likewise, rewarding students who make tough choices NOT to engage in dangerous behavior helps to inspire other students to do the same thing. Punishing the Plaintiff sends the exact opposite message: that a student should turn a blind eye to young people in trouble and worry more about their own concerns than helping others.

22. In addition to poor judgment, North Andover's decision to punish the Plaintiff violates her equal protection rights and rights under Title IX of the Education Acts and Title IV of the Civil Rights Act because serious offenses committed by male athletes have not resulted in similar sanctions. For example, a police log entry dated November 20, 2012 states that a male student was arrested at age 17 for underage possession of alcohol at the intersection of Boxford Street and Candlestick Road at 9:55 p.m. on Friday, November 16, 2012. That student was suspended from playing the team's last football game, which was Thanksgiving Day and the penalty was carried over for only two games when he began his basketball season thereafter.

23. The imposition of sanctions also violates the Plaintiff's rights under the due process clause of the Massachusetts and United States Constitutions as there is no evidence that the Plaintiff even committed the offense of "minor in possession of liquor," much less proof beyond a reasonable doubt. In turn, the evidence is necessarily insufficient to justify sanctions under the school's "chemical health" policy for student athletes.

24. Massachusetts law provides that minors are forbidden to "knowingly possess[], transport[], or carry[] alcohol." Mass. Gen. Laws Ann. 138 Section 34C. The Plaintiff cannot possibly be held criminally liable for such an offense because, as stated by the officer at the scene, the Plaintiff was not drinking, had no alcohol on her person, had no involvement with alcohol-related activity and had no *intention* to possess or consume alcohol. In such circumstances, there is no crime because there is neither actual nor constructive possession. See *Commonwealth v. Sespedes*, ante 95, 99 (2004); *Commonwealth v. Ortega*, 441 Mass. 170, 174 (2004); *Commonwealth v. Boria*, 440 Mass. 416, 418 (2003); *Commonwealth v. Garcia*, 409 Mass. 675, 686 (1991); *Commonwealth v. Brzezinski*, 405 Mass. 401, 409 (1989); *Commonwealth v. Delarosa*, 50 Mass. App. Ct. 623, 626 (2000); *Commonwealth v. Rosa*, 17