

Mass. App. Ct. 495 , 498 (1984) (in the absence of evidence of actual physical possession, there must be proof beyond a reasonable doubt that a person “had knowledge of [the liquor] and had control over it” and, furthermore, that *control* is established by evidence that the individual “had both the ability and the *intention* to exercise control over” the liquor.)

25. While athletes can be held to a higher standard under school rules, the evidence also shows that the Plaintiff did not violate North Andover’s Code of Conduct for Athletic Participation, at page 7, where it states that student athletes are prohibited from being “knowingly in the unlawful presence of” various substances, including alcohol and tobacco. Because the word “unlawful” modifies “presence” and there is nothing “unlawful” under Massachusetts law, North Andover School Rules or even under MIAA rules about a minor “being present” where alcohol or tobacco are being used or consumed, North Andover had no authority to sanction the Plaintiff. Indeed, to construe the school rule as written would be to expose all athletes to sanctions merely for “being present” in a restaurant when adults are drinking wine. A student’s presence is not “unlawful” unless, for example, the person is there without the homeowner’s authority or a person under age 21 is “unlawfully present” in a licensed drinking establishment where entry into the facility is illegal for people under 21. Obviously, neither of these options apply here.

26. Because it is not in dispute that the Plaintiff did not possess or consume alcohol, and was not “unlawfully present” at the Boxford party, it cannot be said that she violated either Massachusetts law or North Andover’s own student conduct rules. Thus, it necessarily follows that there is no justification for the decision to deprive the Plaintiff of her captaincy, or to suspend her from playing even one volleyball game, much less five. Nor was there a basis to threaten her with suspension for three additional games if she did not accept the five-game suspension and lost captaincy.

27. Because the North Andover School District violated its own rules, it has also violated the Plaintiff’s due process rights under *Schaer v. Brandeis*, 432 Mass. 474 (2000) which requires schools to comply with their own rules as a matter of state constitutional law.

28. Because the punishment imposed on the Plaintiff appears disparate “based on sex,” the North Andover School District is subject to equitable and other relief under Title IX and analogous state civil rights laws that prohibit unequal treatment of students in educational programs “based on sex.”

COUNT I – SUBSTANTIVE DUE PROCESS

29. The Plaintiff repeats and incorporates paragraphs 1-28 above.

30. The Defendant violated the Plaintiff’s rights by imposing sanctions without legal justification or authority.

31. As a result, the Plaintiff has suffered and will continue to suffer a violation of her due process rights.