



This proceeding concerns an appeal by the petitioner from an action of the East Greenwich School Committee upholding the suspension of his son, John A.P.Doe.

In accordance with Section 16-39-2 of the General Laws of Rhode Island, this matter was heard on July 22 and August 5, 1988. Based upon the testimony taken and the evidence presented at the hearings, we make the following findings:

Facts of the Case

On February 26, Student Doe, a 15-year old freshman at East Greenwich High School, was suspended for one and one-half days following an incident in the school cafeteria. The essential facts regarding this incident are not in dispute.

The petitioner's son and two other students were sitting in the cafeteria during lunch period. A disagreement arose between Student Doe and Student A concerning a bag of candy. Students Doe and A stood up and Student A pushed the petitioner's son who was holding the candy. Student A demanded that Student Doe give him the candy and he grabbed him by the shirt. When Student Doe pulled away, his shirt ripped. Student A again pushed Student Doe, held him and demanded the candy. Student Doe handed the candy to Student A and pushed him away. Student A asked if Student Doe wanted to fight. Student Doe said "no" -- he did not want to get suspended. Then Student A pushed Student Doe who returned the push and turned away. Student A grabbed Student Doe from behind. Student Doe placed his hands on the other student's face and shoulder and pushed him. A teacher approached the students and when Student Doe looked toward the

the teacher, Student A punched him. The teacher then stepped between them.

Student Doe was given a one and one-half day suspension from school for fighting. The school vice-principal called Student Doe's mother and informed her of the suspension and the reason for it. Student Doe's mother appeared at the school and spoke with the vice-principal and the principal. She informed both school officials that she wished to appeal the suspension. The principal told her he would get the appeal process in writing to her. The decision to suspend her son was stayed and he returned to class.

On the evening of February 26, Student Doe's father encountered the principal in the school parking lot. They discussed his son's suspension in detail. During the ensuing weekend the petitioner spoke to the father of Student A and to several students who were in the cafeteria when the incident took place.

On February 29, the petitioner discussed the matter with the East Greenwich Superintendent of Schools. Later that day the petitioner received the original discipline slip and was informed by the principal that the latter had interviewed three students, two teachers and a custodian, and he had determined that the students were of equal guilt in the incident. During the next few days, the petitioner spoke to at least one of the teachers named <sup>1</sup> by the principal and he also contacted the custodian.

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1] The petitioner asserted at the hearing that his efforts to investigate the matter were hindered by the principal's instruction that the teachers and custodian not speak to him without the principal being present.

By letter dated February 29, the principal informed the petitioner that he was denying the appeal. The principal stated that his investigation supported the vice-principal's decision "that there was a shared responsibility for the fight." The suspension was again stayed based upon the principal's understanding that the petitioner intended to appeal the matter to the Superintendent of Schools. The petitioner discussed the principal's decision with the Superintendent on March 3, 1988.

Shortly thereafter, the petitioner received the East Greenwich Public School Behavior Code containing the procedures for suspensions and the appeal process. He subsequently had further discussions with the Superintendent regarding the preparation of his appeal. In a letter dated April 12, the principal once again advised the petitioner that his son shared responsibility for the fight. The principal set April 25 and 26 as the suspension dates and he notified the petitioner of the need to appeal in writing to the Superintendent. The petitioner immediately contacted the Superintendent and expressed his displeasure at the principal's action. A meeting between the petitioner and the Superintendent was scheduled for April 22.

On May 6, the Superintendent upheld the suspension. The Superintendent's decision set forth his investigation which included conversations with Student Doe and three students whose names were provided by Student Doe. The Superintendent concluded that Student Doe's conduct was partly responsible for the fight and that proper procedures were followed. The petitioner appealed to the East Greenwich School Committee. At a hearing conducted on May 26, the School Committee denied the petitioner's appeal of the Su-

perintendent's decision.

Position of the Parties

The petitioner first contends that his son did not engage in fighting on February 26. He alleges that the evidence shows that his son acted in self-defense and sought to avoid a fight. Second, the petitioner contends that he was effectively denied an opportunity to appeal the suspension to the principal,<sup>2</sup> and that the school administration failed to follow the hearing procedures as delineated in the Behavior Code.

The School Committee argues that it properly concluded on the basis of the evidence before it that Student Doe's actions constituted involvement in a fight. It also asserts that the petitioner was afforded due process in accordance with school policy for suspensions of ten (10) days or less.

Analysis and Conclusion

The Behavior Code provides for detention, suspension or expulsion for students who engage in fighting. The evidence clearly establishes that on February 26, 1988, Student Doe and Student A had an altercation in the cafeteria. We find sufficient evidence to establish that both students participated in a physical struggle during this altercation. Student Doe admits he pushed Student A several times during the incident. The last push occurred while Student Doe was being held from behind, and involved placing his hand on Student A's face. We find that Student Doe's actions could reasonably be viewed as participating in and contributing to a physical

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2] The petitioner argues that the principal upheld the suspension before the former received the appeal process and that the principal, after staying his decision, later arbitrarily set dates for the suspension to be served.

confrontation. Accordingly, we conclude that the school administration was warranted in finding that Student Doe engaged in fighting.

Turning to the procedural aspect of this case, we recognize that a student facing suspension from public school is entitled to the protections of due process. Due process is a flexible standard, however, and the sufficiency of procedures is judged in light of the facts and circumstances of a particular case.

In Goss v. Lopez, 419 U.S. 565 (1975), a case involving disruptive conduct by high school students, the Supreme Court addressed the question of how much procedural process was due students who were suspended for periods of up to ten (10) days. The Court stated that at a minimum, "students facing suspension. . . must be given some kind of notice and afforded some kind of hearing. . ." The Court stopped short of holding due process to require "that hearings in connection with short suspensions must afford the student the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge, or to call his own witnesses to verify his version of the incident."

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3] The petitioner presented testimony concerning an incident in which Student #1, after being bothered by Student #2, pushed Student #2 into a window, cutting his arm. Student #1 was not disciplined, and the petitioner contends that the fighting rule is being applied to his son in a disparate manner.

The school explained its action by stating it viewed the window incident as one of harassment, not fighting, because its investigation revealed, and Student #2 admitted, that Student #2 was solely responsible for the incident. The school's investigation of the incident at hand did not show one student to be solely responsible, but showed shared blame by the two students involved. In view of the above, we do not find that the Behavior Code was applied inconsistently in this case.

Rather, the Court stated that:

. . . due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story.

The effective notice and informal hearing required by Goss v. Lopez, supra, in short suspension cases have been adopted by the East Greenwich school system in its Behavior Code (Appendix A). The Behavior Code also provides an appellate procedure which, according to the Superintendent of Schools, is applicable to all disciplinary decisions (Hearing Procedure, Section 3.7),

Having reviewed the school system's procedures and the actions of school officials, we find that the student and his parents were afforded due process. The record shows that Student Doe and his parents were informed of the suspension, its duration and its basis. They were also provided with an opportunity to respond to the charge, explain their version of the facts and defend their position. A continuing dialogue between the petitioner and the respondent existed from the date of the cafeteria incident to the School Committee's denial of the petitioner's appeal.

As for the petitioner's contention that he was denied the full panoply of rights listed in Sections 3.1 through 3.6 of the East Greenwich hearing procedure, we emphasize the difference between informal and formal hearings. As discussed earlier, in the case of a short suspension, an informal hearing has been deemed sufficient protection against mistaken or unfair exclusion from school. Trial-type procedures are not required

in the short suspension hearing. While we agree with the petitioner that the suspension procedure as written does not clearly distinguish between informal and formal hearings and thus requires clarification, we hold that the short suspension procedure, as interpreted and applied in this case, complied with the requirements of due process.<sup>4</sup>

In conclusion, we find sufficient evidence to support the suspension of Student John A. P. Doe, and we find that the suspension decision was imposed with due regard for the procedural rights of the student.

Accordingly, the appeal is denied.

4] Viewing the workings of the entire appeal process in this case, we are unable to find that the petitioner's due process rights were infringed by the handling of the appeal at the principal's level, nor by the principal's instruction that the teachers and custodian refrain from speaking to the petitioner in the principal's absence.

*Paul E. Pontarelli*

Paul E. Pontarelli, Esq.  
Hearing Officer

September 1, 1988

Approved:

*J. Troy Earhart*

J. Troy Earhart  
Commissioner of Education

In-School Suspension is defined as the temporary exclusion of a student from attendance in classes. Students are required to fulfill subject requirements while detained by the administration. Parents will be contacted.

Suspension is defined as the temporary exclusion of a student from physical presence on the school property. All suspensions will be the responsibility of the principal and his/her designee in conformance with the decisions of the United States Supreme Court which provides for procedural due process.

Principals, Assistant Principals and the Superintendent are authorized to suspend for ten days or less. Suspensions of more than ten days are effected only after School Committee action upon recommendation of the Superintendent.

No suspended student may return to school unless his parent or guardian meets with the Administration. Students who are suspended from school will not be able to attend or participate in extra-curricular activities during the period of suspension. Procedures to be utilized for the suspension of students are:

S U S P E N S I O N S O F T E N D A Y S O R L E S S

- a. that the student be given oral or written notice of the charges against him/her;
- b. that, if the student denies the charges, the student be given an explanation of the evidence the authorities possess;
- c. that the student be given the opportunity to present his/her version;
- d. that notice and hearing generally should precede the student's removal from school since the hearing may almost immediately follow the incident; but, if prior notice and hearing are not feasible, as wherein the student's presence endangers persons or property or threatens disruption of the academic process thus justifying immediate removal from school, the necessary notice or hearing shall follow as soon as practical;
- e. that notice containing the reason for suspension and the duration thereof be given to the parent or guardian; such notice shall be given in the parent's spoken language, unless it is clearly not feasible to do so.

S U S P E N S I O N O F T E N D A Y S , E X P U L S I O N

1. The necessary notice and hearing shall be afforded the student prior to suspension or expulsion, except for such time as not feasible wherein the student's presence endangers persons or property or threatens disruption of the academic process, thus justifying immediate removal from school. The necessary notice or hearing shall follow as soon as practical. The student shall be afforded:
  1. a clear, written statement of the reason for suspension or expulsion; and
  2. notice of the right to prompt public or private hearing, at the student's election, and the right to be represented by counsel at such hearing; and
  3. if the hearing is requested, a prompt notice setting the time and place of such hearing, said time and place to be reasonable so as to allow sufficient time for preparation.
- b. The parent or guardian shall be afforded the procedures stated in sections a.1, 2, and 3 above. Such notice shall be written in the parent's spoken language, unless it is clearly not feasible to do so.
- c. The student shall be afforded a hearing at which the student shall have the right to representation by counsel, and the right to cross examine witnesses and to present witnesses in his/her behalf.
- d. There shall be a complete and accurate (stenographic or electronic) record of the hearing including all exhibits. The record shall be preserved.
- e. The student shall be furnished a copy of the record without cost.
- f. A written decision shall be rendered within a reasonable time, based exclusively on the record detailing with the facts presented.
- g. The student shall promptly be provided a copy of said decision.
- h. A copy of the decision shall be preserved.

S P E C I A L \_ E D U C A T I O N \_ E X C E P T I O N

No child specified as handicapped by the Regulations of the State of Rhode Island shall be excluded, suspended or withdrawn from any school based education program for reasons deriving only from the student's handicapping condition.

The sole exception to this regulation shall be whenever the Superintendent of Schools, upon substantial evidence, determines that the child will be an immediate danger to self or others. A child so excluded shall be afforded home tutoring and counseling therapy as determined by an evaluation team in an effort to determine a reassignment to a program which can better meet the specific needs of the student. A complete record of each such exclusion, including the recommendation of the Superintendent of Schools, shall be filed with the Commissioner of Education within thirty days of each such exclusion. Handicapped students excluded for disciplinary reasons must be accorded all the safeguards provided in the Regents Regulations for Governing Exclusions of Students from School.

E A S T \_ G R E E N W I C H \_ P U B L I C \_ S C H O O L S  
H E A R I N G \_ P R O C E D U R E

In order that the due process rights of all individuals who are involved with the East Greenwich Public Schools be protected, the following hearing procedure will be followed at levels:

1. The date, time and place of the hearing will be scheduled at the convenience of contending parties and as quickly as possible after the request for hearing has been received.
2. All requests and subsequent communications will be in writing with copies to each party and to the Central Office file.
3. Upon commencement of such hearing, the presiding official shall read, and, if necessary, explain the rights of the parties in the dispute:
  - 3.1 Right to hear the charges
  - 3.2 Right to legal counsel
  - 3.3 Right to cross-examine witnesses
  - 3.4 Right to call upon witnesses to testify
  - 3.5 Right to a copy of the record of the hearing (if requested in advance of the hearing)
  - 3.6 Right to a written decision
  - 3.7 Right of appeal to a higher level of authority:
    - 3.7.1 Teacher to
    - 3.7.2 Principal to
    - 3.7.3 Superintendent to
    - 3.7.4 School Committee to
    - 3.7.5 Commissioner of Education