STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JOHN A.K. DOE
V.
WOONSOCKET SCHOOL COMMITTEE

Held: The School Committee violated Regents regulations governing exclusions of students from school. Student Doe's suspension is modified on the basis of these procedural deficiencies and Student Doe's overall record.

DATE: April 8, 1993

Travel:

Student Doe, who is eighteen years old, registered an appeal with Commissioner Peter McWalters following the January 6, 1993 vote of the Woonsocket School Committee to suspend him from school for the balance of the school year. The undersigned was designated by the Commissioner to hear the matter on January 21, 1993. On January 25, 1993 the parties appeared for hearing, evidence was taken and argument received. The record closed on February 8, 1993.

Jurisdiction to hear the appeal lies under R.I.G.L. 16-39-1 and 16-39-2.

Findings of Relevant Facts

- Student Doe is eighteen years of age and lives in the city of Woonsocket. Until this suspension he was a senior at Woonsocket High School.

- Student Doe has attended Woonsocket public schools throughout his life, except for a long-term suspension during school year 1991-92 and during the period of his present suspension. Tr. pp. 140-141

- Student Doe's attendance was sporadic during the first couple of months of school year 1992-93. He started to attend school regularly some time in the beginning of November 1992, (S.C. Ex. F; Tr. p. 157)

- On November 18, 1992 Student Doe became involved in an incident with his physical education teacher. During the incident, Student Doe used profanity and threatened the teacher with bodily harm. Tr. pp. 13-16.

- After the incident Student Doe removed himself to the Principal's office where he sat quietly until he was led from the building by the Vice Principal. Tr. pp. 25-28.

- Before getting into his car, Student Doe stated to the the Vice Principal that he was "going to get" the teacher with whom he had argued. Tr. pp. 27-28.

- Student Doe was thereafter notified in writing on November 20, 1992 that as a result of the incident he was suspended. S.C. Ex. G.

- On December 11, 1992 Superintendent Josephine Kelleher sent Student Doe a notice that she would be presenting a recommendation to the school committee that he be expelled from school.[1] S.C. Ex. A.

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1 The word "expulsion" as used by the committee is used to mean a suspension for the balance of the school year.

- The notice of December 11 indicated that Student Doe would have opportunity to "show cause why this recommendation should not be approved" by the committee. S.C. Ex. A.

- The notice to Student Doe indicated that the date of the hearing was to be December 30, 1992. He was later notified that the hearing would not be held until January 6, 1993. S.C. Ex. B.

- Student Doe, together with a representative[2] attended the hearing before the Woonsocket School Committee. At the conclusion of the meeting the School Committee voted unanimously to expel Student Doe "effective January 7, 1993 through the last day of school in June, 1993." S.C. Ex. D; Tr. p. 91.

- Superintendent Kelleher notified Student Doe of the School Committee's decision by letter dated January 7, 1993. S.C. Ex. D.

- During school year 1991-92 Student Doe was suspended from the end of March through the conclusion of the school year. Tr. p. 82.

- The reason for Student Doe's suspension in March of 1992 was that he had beaten a fellow student, using his fists and some chairs, because he believed the student was responsible for damage to his car. Student Doe had returned to school after the close of the school day, entered a detention hall where the other student sat, threw him to the ground and hit him until he was satisfied that he had had enough . Tp. 127-129, 154-155.

- The student who was assaulted did not suffer serious injury. Tr. p. 39, 63.

- Because of Student Doe's good academic record, his virtually unblemished disciplinary record at the time, and the fact that he had been a founder of the school's "human rights squad"[3] Student Doe was provided with home tutoring during his 1992 suspension. Tr. p. 86.

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2 who also represented him at the hearing at the Commissioner's level.

3 a group formed to address racial discrimination and promote harmony among students at Woonsocket High School. (Tr. p. 121)

- Student Doe is described by Woonsocket High School's Principal as a very good student (Tr. p. 94) whose grades went down due to sporadic attendance at the beginning of his senior year.

- All of Student Doe's teachers had previously found him to be cooperative. Tr. p. 106.

- He was regarded by the Assistant Principal, whom he had known since ninth grade, as a "model" student. Tr. p. 36.

- Incidents of violence have been on the rise at Woonsocket High School over the past couple of years and the Principal has undertaken several steps to curb violence in school. Tr. p. 116-118.

Decision

The threat of physical harm against a teacher by a student who has shown himself to be capable of violence is behavior justifying a most serious response by school administrators. Student Doe's use of profanity and threats against his gym teacher (in front of the other students) was unprovoked and inexcusable. Student Doe's only explanation for his conduct was that when he refused to run laps as the teacher requested, the teacher's reaction made him angry and he lost his temper. (Tr. p. 135).

No mitigating factors were demonstrated in the record before us. Although Student Doe testified that he has asthma and diabetes (and his physical condition that day was the reason he did not run laps with the other students) he did not attribute his loss of control to his illness. Student Doe testified that he felt intimidated by the teacher,[4] and it was argued that the atmosphere of the gym class was "aggressive". However, no proof was submitted to show how or why student Doe should have felt intimidated. The teacher merely questioned him as to whether he was going to run laps with the other students, a routine way of starting the gym class.

Given the nature of the confrontation and threat against the gym teacher's physical safety, the school committee's response was understandably severe. The suspension was fashioned with the obvious intent to punish Student Doe and to deter others who might contemplate violence, or even the threat of violence in school. We understand, through the testimony of the school Principal, the need for disciplinary action to address what was described as an escalating number of incidents of violence in Woonsocket schools. Undoubtedly, a major objective of the severe sanction imposed on Student Doe was to ensure a secure and safe school environment,

4 Tr. p. 133

and in particular protect the physical safety of the teacher involved. The task of the school committee is a difficult one, and ours is equally difficult.

Our de novo review of this matter requires a redetermination of the appropriateness of the penalty imposed on Student Doe. We must also review to determine if a school district has complied with Regulations Governing Disciplinary Exclusions of Students from School (Board of Regents, July 8, 1976).

A review of the record indicates that the school committee did not observe the requirements set forth in the Regents regulations cited above. To give just a couple of examples, Student Doe was not notified in writing, as soon as practicable after his removal from school, of his right to a prompt public or private hearing at his election. Assuming his discussion with the Principal in early December constituted his "request" for a hearing, the delay up until that point was then further compounded by delay in scheduling and holding a hearing before the school committee. It was not until some seven weeks after Student Doe's removal from school that the school committee actually convened to hear the matter.

In determining procedural requirements for short term suspensions in Goss v. Lopez, 419 U.S. 565, 95 S. Ct. 729 42L.Ed. 2d 725 the Supreme Court stated:

> the authority possessed by the State to prescribe and enforce standards of conduct in its schools, although concededly very broad, must be exercised consistently with constitutional safeguards. Among other things, the State is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that clause. 419 U.S. 565, 574-5 (1975).

The Board of Regents has required certain procedures for both short and long term suspensions. The formal procedures developed by the Board of Regents to ensure that procedural due process would accompany suspensions of more than ten days for students in Rhode Island public schools were not observed here. The overwhelming deficiency is in the failure to provide a prompt hearing.

Although some might argue that the proper remedy for any procedural violations is to void Student Doe's suspension, no such argument has been made before us (and we are not convinced it would be an appropriate remedy in this case).[5]

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5 the Commissioner has previously ruled that procedural due process violations required reversal of a student's suspension. See Frank P. Montecalvo, Jr. v. School Committee of the Town of Johnston (December 1974) decision of the Commissioner.

It does, however, affect our ruling with respect to modification of Student Doe's suspension.

A review of all relevant facts concerning Student Doe's academic and disciplinary history convinces us that a suspension of approximately seven months (November 18 until the end of the school year) for a verbal threat on a teacher is excessive.[6] It is our opinion that a verbal threat against a teacher is misconduct of utmost concern to administrators who must maintain good order and discipline in school; however Student Doe does not have a "history" of being a violent and disruptive student. He had one prior (and serious) incident in school for which he has already been punished. He is otherwise described as a model student, cooperative with his teachers. The misconduct in this particular instance, given the school climate as described by the Principal, is adequately addressed by a two-month suspension.

Remedy

Student Doe should be readmitted immediately. We are inclined to order that he be provided with tutoring and opportunity to make up the school work he has missed since January 18, 1993[7] except that even with such efforts, it is unlikely that Student Doe could graduate with his class in June. It is not our intent to create an exercise in futility for both parties. We do, however, foresee such efforts as being successful if extended over the summer (June - August, 1993). Thus, assuming Student Doe agrees to participate in a summer school/summer tutoring program. We order that upon readmission, he be provided with tutoring and the opportunity to make up the school work he has missed.

Our order that Student Doe be readmitted and provided with additional instructional services is conditioned upon his strict observance of all school rules and continued good behavior.

The appeal is sustained and Student Doe's suspension is modified as set forth in this decision.

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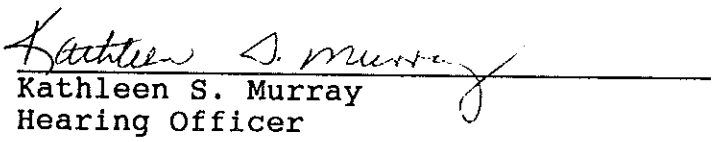
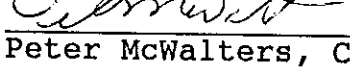
6 we would note the case of Scoggins v. Henry County Board of Education, 549 So. 2d 99 (Ala. Cir. App. 1989) wherein a student who verbally threatened a teacher was merely placed on probation and notified that any further misconduct would result in suspension and possible permanent expulsion.

7 the date he should have been readmitted.



Kathleen S. Murray
Hearing Officer

Approved:



Peter McWalters, Commissioner