

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JANE S. DOE

vs.

COVENTRY SCHOOL COMMITTEE

DECISION

Held: School Committee (1) properly applied normal disciplinary procedures to student claiming special education procedural protections, and (2) did not abuse its discretion in denying student academic credit for home tutoring received after her exclusion from school.

May 24, 1993

Introduction

This matter concerns an appeal to the Commissioner of Education by the mother of student Doe challenging the School Committee's exclusion of the student from Coventry High School for the remainder of the 1992-1993 school year and the refusal to give the student academic credit for the home tutoring she has received following her suspension from school.¹

For the reasons set forth below, we deny the appeal.

Background

On January 7, 1993, the Coventry School Committee rendered a decision in which it "expelled" 15 year-old student Doe from Coventry High School for the remainder of the 1992-1993 school year for "a premeditated assault" and "vicious physical abuse" of another student on December 14, 1992.² (Appellant's Exhibit 3). The School Committee found in its decision that student Doe (1) "displayed an attitude of defiance toward school authorities," (2) "displayed a poor attitude toward school in general," (3) "had a high rate of absenteeism," and (4) "is failing in all her classes." The School Committee concluded its decision by suggesting that student Doe immediately contact the superintendent of schools

for the purpose of giving consideration to any alternatives which might be provided [her] to, in some other way aside from being in attendance in classes at Coventry High School, continue her educational process without a total loss of the school year.

1 This appeal was assigned to the undersigned hearing officer and heard on February 2, 1993 and February 24, 1993.

2 The School Committee conducted a hearing in this matter on January 5, 1993.

Evidence presented in this proceeding shows that student Doe received a special education evaluation by the Coventry special services office in November 1991 while she was a 9th grade student at Coventry High School. The following findings were included in her Team Summary and Recommendations Report:

- o Currently, [student Doe] is failing three subjects and getting D's in three others. She is in slow paced classes including a reading oriented English placement.
- o Her teachers report that [student Doe's] poor grades are due mainly to a lack of effort. She seems more interested in socializing than applying herself to school learning.
- o [Student Doe's] absences for the first quarter are to (sic) high.
- o [Student Doe] experienced academic and behavioral difficulties at Coventry Middle school last year.
- o [Student Doe] seems to have adequate abilities in order to achieve success in school but lacks a sense of purpose to her school experiences.
- o [Student Doe's] poor grades are due primarily to lack of effort and disinterest in the academic aspects of school.
- o [Student Doe] should meet with her guidance counselor to discuss educational/vocational goals and how her high school classes can help her meet her goals. [She] needs to develop internal motivation for school achievement.
- o [Student Doe] is at risk for more serious social maladjustment. It is strongly recommended that the family's involvement with Tides Family counseling should continue. (Appellant's Exhibit 2).

The evaluation did not recommend any special education services for student Doe. ³ No review of the evaluation was requested.

Student Doe's residence changed in January 1992 and she left Coventry High School. She returned to Coventry High School in September 1992. As is evident from the School Committee's decision of January 7, 1993, student Doe's problems in school continued,

3 Social maladjustment is not defined as a disability under applicable regulations.

including 5 suspensions prior to the December 14, 1992 assault. No referral for a special education evaluation was made from November 1991 to the date of the assault, although student Doe's mother stated that she had spoken to the student's guidance counselor concerning help for her daughter.

Student Doe was eventually referred for a special education evaluation by Appellant's counsel, on behalf of the student's mother, after the student's exclusion from school.

The School Department has provided student Doe with 5 hours of home tutoring per week following her exclusion from school. A "Homebound Tutoring IEP" was prepared by the special services office for the period of January 11, 1993 to June 1993. It states that student Doe "will maintain grade level work" in 6 specified subject areas and that "homebound tutoring is due to exclusion from school." (Appellant's Exhibit 5).

By letter of January 27, 1993, the special services office notified student Doe's mother that "the IEP we wrote on January 11, 1993 was inappropriate" because "IEP's for the purpose of home tutoring are exclusively for injury or illness." The letter further stated that "this will not alter the tutorial services as currently arranged and that there is no need for an IEP for the provision of these services." (School Committee Exhibit 4).

Mr. Raymond E. Spear, Superintendent of Schools, testified that "there never has been a situation where credit has been granted for tutorial services while a student is under expulsion." (2/24/93 transcript, p. 57). Mr. Spear further testified that the decision not to award credit was an "administrative judgment"

made by him (2/24/93 transcript, p. 65), and that to grant credit in such a situation

would place, in my opinion, the district in a very untenable position of saying a youngster can disobey rules and regulations, be given 5 hours or thereabouts of tutorial services a week, and be granted the same credit that all our students are required to go into school and put in a minimum of 25 hours of classroom instruction. (2/24/93 transcript, p. 57).

(Mrs. Spear explained that the provision of tutorial services to an expelled student is to

provide a vehicle whereby the youngster can continue to maintain their involvement with some educational learning during . . . the remainder of the school year, so that when they re-enter school in the following fall, they won't be coming from a complete absence of any academic work. (2/24/93 transcript, p. 56).

Positions of the Parties

Appellant contends that the School Committee acted improperly by suspending student Doe without first exploring the possibility that she has a behavioral disorder. Appellant argues that student Doe "fit the exact profile of a student who should have been identified and referred for additional evaluation," (2/2/93 transcript, p. 7), and that the School Department was on notice that student Doe might have a behavioral disorder. In support of her argument, Appellant points to Section One, Part V, 4.3 of the Regulations of the Board of Regents Governing the Special Education of Children with Disabilities which states in part:

While the classroom teacher and others having professional dealings with the child and the parent(s) will have a variety of reasons for referring a child with a suspected disability, it is strongly recommended that they give particular attention to children failing two or

more subjects at midyear, children failing to be promoted at the end of the school year, children frequently suspended from school, children with unexplained absences from school and children who demonstrate any negative change in alertness, learning or behavioral capacity upon their return to school after an illness or accident.

Appellant further relies on the case of Doe v. Rockingham County School Board, 658 F.Supp 403 (W.D.Va. 1987), which addressed the applicability of the procedural protections of the Education for All Handicapped Children Act to a school board's refusal to reinstate a suspended student after being notified of the student's possible learning disability. It is Appellant's contention that once a school is on notice that a student might have a disability, it cannot commence disciplinary proceedings against the student without first providing the student with the full range of procedural protections, including the right to "stay put" in his or her current educational placement pending evaluation.

Appellant also contests the failure to provide student Doe with academic credit for the home tutoring she has been receiving. Appellant bases her argument for credit on the language of the School Committee's January 7, 1993 decision and the School Department's practice of awarding home-tutoring credit to students who are absent from school because of illness or injury.

The School Committee contends that student Doe's suspension was procedurally and substantively proper, and that Appellant has inappropriately used this proceeding as a special education due process hearing. It notes that Section One, Part V, 4.3 of the Special Education Regulations recommends, not requires, the

referral of children in certain circumstances, and that student Doe had not yet received her midyear grades when the assault occurred. The School Committee argues that the Rockingham County School Board case is distinguishable because the notice of disability to the school board in that case consisted of a diagnosis by a licensed psychologist.

The School Committee also asserts that the Commissioner does not have jurisdiction to hear the home-tutoring credit issue because Appellant did not previously appeal the issue to the School Committee. It further contends that 5 hours of home tutoring per week is not the equivalent of 25 hours of classroom instruction and therefore cannot be the basis of academic credit for a student who has been suspended from school for serious misconduct.

Discussion

The facts of this case require us to reconcile two important aspects of the educational process -- student discipline and special education. There is no dispute that student Doe committed a serious physical assault upon another student. Nor is there any dispute that student Doe's misconduct warranted a response from school officials. There is a dispute, however, as to whether the School Committee's application of its normal disciplinary procedures to student Doe was the appropriate response given the surrounding circumstances.

We find the Rockingham County School Board case to be an instructive framework in which to decide this appeal.

That case involved a child in the third grade who "had long been a disciplinary problem and had been involved in a series of

incidents which were both disruptive and somewhat violent." 658 F.Supp at 405. After a particularly severe incident on January 9, 1986, the child was suspended from school until February 13, 1986, the date of the next school board meeting. The child returned to school on January 13 after the child's mother spoke with the superintendent. Another disruptive incident occurred on January 15, and the child was again suspended from school. School officials refused to grant a hearing on the matter until the next school board meeting on February 13.

On January 20 a licensed psychologist examined the child and determined that the child had a learning disability. School officials were notified of the psychologist's diagnosis on January 29. Arrangements were made to test the child for learning disabilities the following week, but school officials refused to lift the suspension and denied the parents' request that the child be reinstated in school pending the testing. The parents filed suit in federal district court seeking a temporary restraining order to force the child's readmission to school and to order further procedural due process.

In addressing the issue of whether jurisdiction existed under the Education of All Handicapped Children Act (EAHCA), the court observed that

The facts of this case require that the issues be discussed in a bifurcated manner. First, the plaintiff's due process rights must be considered regarding the plaintiff as a normal child facing a 29-day disciplinary suspension, since school officials did not initially perceive that the plaintiff was handicapped. Second, once school officials were notified of [the child's] learning disability, the plaintiff's due process rights as a handicapped child must be reconsidered in light

of the Education for All Handicapped Children Act.
658 F.Supp at 407.

The court went on to find that the school board's refusal to reinstate the child after having learned of the child's possible disability triggered the full procedural remedies of the EAHCA. The court expressed its agreement with other cases which held that leaving a handicapped child under disciplinary suspension during the pendency of administrative proceedings violates the "stay-put" rule of the EAHCA. The court held that the parents' complaint stated a cause of action permitting the court to accept jurisdiction under the EAHCA.

Consistent with the court's approach in the Rockingham case, we have considered the circumstances of this case as they existed at the time of student Doe's misconduct and at the time of the School Committee's disciplinary hearing.

Our examination of the circumstances existing at the time of student Doe's misconduct fail to establish that the school department was on notice that student Doe had a suspected disability. The record shows that student Doe received a special education evaluation in November 1991. The evaluation did not find any disability. No review of the evaluation was requested. The record also shows that student Doe left the Coventry school system in January 1992 and did not return until September 1992. The difficulties she experienced upon her return were similar to those addressed in her special education evaluation of November 1991. As previously noted, those difficulties were attributed to student Doe's lack of motivation and effort, not to any disability.

Student Doe obviously added to her difficulties when she

committed a serious physical assault in the school, but we do not find any basis in the record for labeling student Doe as a child with a suspected disability by virtue of the assault. Nor do we find that the guidelines contained in Section One, Part V, 4.3 of the Special Education Regulations establish a suspected disability as of the date of the assault when we consider the results of the November 1991 evaluation, student Doe's subsequent absence from the school system, and the similarity of student Doe's conduct during the first 3 months of the 1992-1993 school year to that of her previous conduct while attending Coventry schools.

We further find that the circumstances of this case had not changed at the time of the School Committee's disciplinary hearing. Unlike the Rockingham case, no additional evidence was received by school officials which would identify student Doe as a child with a suspected disability. Although a referral for a special education evaluation was made on behalf of student Doe's mother after the School Committee's decision in this matter, we do not find that a parent's referral for evaluation precludes the application of the school's normal disciplinary procedures absent other evidence indicating that the child has a suspected disability.

Based on our findings that the circumstances of this case do not establish student Doe as a child with a suspected disability at the time discipline was imposed, we hold that the School Committee acted properly in applying its normal disciplinary

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procedures to student Doe. We also hold that the refusal to
grant student Doe academic credit for the home tutoring she has
received following her exclusion from school was a reasonable
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exercise of discretion. We base this holding on the statement in
the School Committee's January 7, 1993 letter that it wished to
avoid a "total" loss of the school year, thereby implying there
would be some loss to the student, and on the superintendent's
explanation of the reason for the denial of credit and the
purpose of the tutoring.

Accordingly, we deny the appeal.

Paul E. Pontarelli

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters

Peter McWalters
Commissioner of Education

Date: May 24, 1993

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- 4 If a suspected disability is subsequently established, or if a special education evaluation reveals that student Doe has a disability, the procedural protections would attach and the normal disciplinary procedures could not be applied to the student. We also note that procedural safeguards apply to decisions made in the special education referral and evaluation process.
- 5 In so holding, we assume for the sake of argument that we have jurisdiction to decide this issue.