

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JOHN A.M. DOE

V.

WOONSOCKET SCHOOL
COMMITTEE

DECISION AND INTERIM ORDER

Held: Student Doe's suspension from school was invalid, as it was in violation of Regents Regulations Governing Disciplinary Exclusions (July 1976) and Regents Regulations Governing the Special Education of Students with Disabilities (August, 1992).

DATE: July 6, 1993

Travel:

This matter was appealed to Commissioner Peter McWalters on May 12, 1993. It was assigned for hearing and decision shortly thereafter. Hearing was held on June 10, 1993 and the record closed upon receipt of the transcript on June 15, 1993.

Findings of Relevant Facts

- Student Doe is thirteen years old and enrolled in the sixth grade at the Woonsocket Middle School.
- Student Doe has a diagnosed learning disability and has been receiving special education services since first grade. (S.C. Ex. F Appellants Ex. 1)
- Most recently, his placement was changed from a "mainstream" setting with resource assistance to self contained classes for English, science, and social studies. He also receives speech therapy. (S.C. Ex. F)
- Until October of 1992 Student Doe lived with his biological father and stepmother. At that time he was removed from his home by DCYF because of a history of physical abuse in the home. Custody was given to his mother, with whom he presently lives in Woonsocket. (Tr. p.20 Appellant's Ex. 1)
- During his period of enrollment in the Woonsocket school system, he has not been a disciplinary problem. (Tr. pp 38, 51)
- On March 17, 1993 Student Doe brought a loaded BB gun to school. The Co-principal of the school, Mr. Hazard, discovered the weapon and turned it over to police (Tr. p.50). Student Doe was immediately suspended from school.
- On March 24, 1993 Student Doe's mother was sent a notice from Superintendent Josephine Kelleher indicating that a hearing would be held by the Woonsocket School Committee on March 31, 1993. (S.C. Ex. C)
- Student Doe and her son appeared for the hearing on March 31st, but a quorum of the School Committee was not present. The meeting was postponed and Student Doe's mother was told that she would be notified of the new date.
- At a meeting on April 7, 1993 the Woonsocket School Committee met to consider the matter, and voted to expel¹ Student Doe for the remainder of the school year and provide him with four (4) hours of tutoring per week during the period of his suspension .

¹ the School Committee uses the word "expulsion" to describe a suspension for the balance of a school year. In Rhode Island, students in public schools cannot be permanently expelled.

- Neither Student Doe's mother, nor anyone on Student Doe's behalf, appeared at that meeting. Student Doe's mother did not receive the notice of the meeting that had been mailed to her by certified mail, until April 13, 1993, some six (6) days after the meeting (S.C. Ex. D)
- Superintendent Kelleher called Student Doe's mother the night of the meeting, after the vote to expel the student had been taken, to see if she could attend that night. The mother indicated she could not at that point in time. (Tr. p. 52)
- Shortly after the School Committee meeting and vote of April 7, 1993 the mother was notified of the action that had been taken and of her right of appeal to the Commissioner of Education. (S.C. Ex. A)
- The student's mother filed an appeal with the Commissioner on May 12, 1993.
- On June 9, 1993 a multi-disciplinary team meeting was convened to determine whether Student Doe's misconduct was related to his handicapping condition.
- The multi disciplinary team concluded there was no relationship between Student Doe's misconduct and his handicap.(S.C. Ex. F)
- The team reviewed and considered the psychological evaluation of the student conducted by the Burrillville School Department on March 5, 1991. It did not consider, because it had not yet received a copy of it, a May 28, 1993 psychiatric evaluation of the student that had been ordered.. (Tr. pp. 66-69)
- The May 28, 1993 psychological evaluation ² indicates, inter alia, that Student Doe suffers from: attention deficit hyperactivity disorder, severe; oppositional defiant disorder, severe; dysthymia, secondary type; conduct disorder, solitary aggressive type, provisional³.
- On March 10, 1993, the Woonsocket School Committee adopted a policy (which reinforced an existing school policy) stating that possession of a weapon in any school building or on school grounds would result in "an immediate suspension for an expulsion hearing". (S.C. Ex. B & E)

² conducted by the school department's psychiatrist at the mother's request

³ the report recommended that the student be placed on medication and have therapy to help him "devise ways of coping with his very stressful life without self-defeating behaviors". The mother testified her follow up on these recommendations has produced positive results in her son's behavior. (Tr. pp 18-19)

Position of the Parties:

Student Doe's mother appeared pro se at the hearing to argue that (1) her son didn't know what he was doing or why he took a gun to school (2) the procedures accompanying her son's suspension were inadequate (3) as a special education student her son is extremely disadvantaged by his suspension in that he is unable to participate in the full complement of special education services at the Middle School in Woonsocket. She argues that four hours of tutoring per week is inadequate, given her son's educational needs. She testified that as soon as she received custody of Student Doe in the fall of 1992 she "knew there was something wrong with him". She feels that the May 28, 1993 psychiatric evaluation accurately identifies behavioral problems she has observed in her child. She also disagrees that his disabilities are unrelated to the misconduct, a determination of which she did not become aware until the hearing before us.

The position of the School Committee is that Student Doe's misconduct was not a manifestation of the disability he was known to have at the time of the multi-disciplinary team meeting, i.e. his diagnosed learning disability. Since the misconduct was not related to his handicapping condition, Student Doe was rightfully subjected to the harsh penalty applicable to possession of a weapon in school -- expulsion.

Although he acknowledges that there are some technical procedural violations, counsel for the School Committee notes that an effort was made to inform the parent of the hearing. While it was unfortunate that Student Doe's mother was not present at the meeting, counsel argues that her presence would not have altered the Committee's "key findings"-- that Student Doe was in possession of a loaded weapon in school.

Decision

Student Doe's suspension by the Woonsocket School Committee was accomplished without compliance with due process, Board of Regents Regulations Governing Disciplinary Exclusions of Students from School, or Regulations Governing the Special Education of Students with Disabilities.

Our findings of fact indicate that without explanation, the School Committee expelled Student Doe without compliance with Sec. IV 4.2 of the latter regulations which provides:

If a student is to be suspended for longer than ten (10) days... the Individualized Education Program (IEP) Team must meet prior to the suspension and determine whether the disciplinary infraction was a manifestation of the student's disability. (emphasis added)

Not only did the IEP team meeting not take place prior to Student Doe's suspension, it was not held until the day before the hearing before us -- almost three months after this student's exclusion from school. Special education regulations further require that in the event a finding is made that the infraction is not related to the disability, normal disciplinary procedures may be imposed but only after notice of procedural safeguards, including the right to an impartial due process hearing has been given to the parent. No such notice was given in this case.⁵

Other applicable regulatory requirements were similarly ignored. Regents Regulations Governing Disciplinary Exclusions of Students From School (F.- 6.3 July 8, 1976) explicitly require that a student be afforded a hearing by the School Committee prior to a suspension in excess of ten (10) days. Yet, despite knowledge that Student Doe's mother was desirous of addressing the School Committee on the issue of the penalty for her son⁶, she was deprived of this opportunity. Upon learning of the fact the mother had not received prior notice of the April 7, 1993 "hearing" the School Committee did not provide any subsequent opportunity for the mother to be heard.

As we recently observed in the case of John A.K. Doe v. Woonsocket School Committee,⁷ the United States Supreme Court has determined that a student's entitlement to public education is a property interest protected by the Constitution. It is for this reason that in exercising the broad authority to enforce standards of conduct in schools, officials may do so only when they adhere to the minimum procedures required by the due process clause. Opportunity for a meaningful hearing is a minimum requirement, and a requirement clearly unmet in this case. We can think of no less meaningful a hearing than none at all.

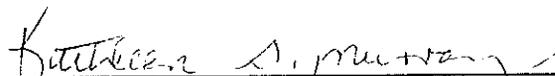
⁵ had notice been given, it appears clear that the student's mother would have invoked her right to challenge this determination.

⁶ there was never a dispute about whether Student Doe was guilty of violating the weapons policy.

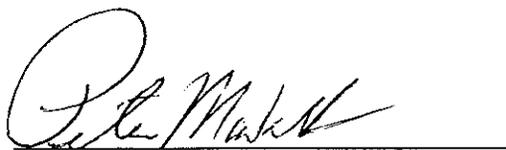
⁷ Decision of the Commissioner dated April 8, 1993

Since it did not observe due process requirements, or follow the rules applicable to disciplinary exclusions for students with or without disabilities, the Woonsocket School Committee's expulsion of Student Doe is invalidated. Student Doe's suspension from the period of March 17, 1993 to the end of the school year was illegal and he is therefore entitled to be "made whole" for the educational deprivation resulting from his illegal suspension. The Woonsocket School Committee is ordered to provide the services of which Student Doe was deprived over the course of the summer. This process is to be overseen by Allegra Jones, of the R.I. Department of Education who is hereby appointed a special visitor in this case.

Also, our order is entered as both our final decision and interim protective order in this matter under R.I.G. L. 16-39-3.2. This case is not one which we judge to arise "solely under §16-2-17," and an interim order is required to ensure that Student Doe receives special education pending any further hearings.


Kathleen S. Murray, Hearing Officer

Approved:


Peter McWalters, Commissioner

Date: July 6, 1993