

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JANE V. DOE  
VS.  
JOHNSTON SCHOOL COMMITTEE

DECISION AND INTERIM ORDER

Held: Student Doe's suspension is modified and he is to be readmitted to school.

Date: November 16, 1993

Travel:

Mrs. Jane Doe filed a letter of appeal with Commissioner Peter McWalters on October 12, 1993. She sought review of the decision of the Johnston School Committee to suspend her son from school for the balance of the 1993-94 school year for violation of school regulations. The Committee made its decision to suspend Student Doe on September 28, 1993, following a hearing.

Mrs. Doe's letter of appeal alleged that her son's suspension was excessive and constituted a unilateral change in placement in violation of the Regulations of the Board of Regents for Elementary and Secondary Education Governing the Special Education of Students with Disabilities.

The undersigned was designated to hear the matter, and an Interim Order hearing was held on October 27, 1993.<sup>1</sup> The appellant appeared pro se to argue her case. The Johnston School Committee appeared through its counsel. The record in this case closed on October 29, 1993.

Jurisdiction to hear the appeal lies under R.I.G.L. 16-39-1, 16-39-2, and 16-39-3.2.

Findings of Relevant Facts

- Student Doe is twelve years old, resides in Johnston, Rhode Island with his parents and, until his suspension, attended seventh grade at the Ferri Middle School in Johnston. ( Tr. P. 32; H.O. Ex 1; S.C. Ex. A).
- Student Doe, prior to his suspension, was receiving special education services at the Ferri Middle School to address his specific learning disabilities. (Tr. p. 43)

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<sup>1</sup> The appellant requested deferral of the hearing to this date to afford her the opportunity to prepare the case on her son's behalf.

- During the school day on September 21, 1993 Student Doe put black shoe polish on the walls of the first and second floor lavatory.<sup>2</sup> (Tr. p. 15-17)
- The words "TAZ 93" were written on the stalls of the first-floor lavatory. When confronted by school officials, Student Doe immediately admitted to putting the shoe polish on the walls of the lavatory. (Tr. p.17)
- Johnston police were called by school officials, who transported the student to headquarters, where he was placed under arrest for vandalism to school property. (S.C. Ex. A & B)
- Student Doe admitted to police that he had written on the walls of the school lavatory with black shoe polish, which was confiscated by the police. (S.C. Ex. B)
- The Johnston police also filled out a family court petition requesting that Student Doe be adjudicated as "wayward" because he wrote graffiti on the lavatory walls in violation of 11-44-1 of the General Laws.<sup>3</sup> (S.C. Ex. A)
- Student Doe was thereupon released to his mother. They returned to school where they were given graffiti remover and paper towel. Mrs. Doe supervised her son as he proceeded to remove the shoe polish from the walls. (Tr. pp. 73-74)
- The principal testified that the janitor removed the shoe polish that was later discovered in the upstairs lavatory. (Tr. p. 52)
- The principal anticipates that the school janitor will have to paint the walls on school vacation so that all trace of the shoe polish will be removed. He expects this process to take a total of three to four hours of the janitor's time. (Tr. p. 42)

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<sup>2</sup> Although Mrs. Doe testified that to the best of her knowledge only one lavatory was affected (and this is the damage documented in the police report) the principal testified that later in the school day it was discovered that the second-floor bathroom was also vandalized. However, at the hearing before the School Committee, evidence was presented regarding graffiti in one lavatory only. (Tr. p. 52)

<sup>3</sup> The record does not indicate whether the petition was actually filed in the Family Court or whether any further action was taken on the petition.

- On September 28, 1993 the Johnston School Committee voted to exclude Student Doe from school for the remainder of the 1993-94 school year because of his "violation of school regulations." (Appellants Ex.2)
- The School Committee also voted to provide Student Doe with home tutoring during the period of his suspension. He is scheduled to receive five hours of tutoring per week, but at the time of hearing (October 27, 1993) tutoring services had just been implemented and at a level of three hours per week. (Tr. pp. 60, 69-70)
- Student Doe's in-school academic program had been modified to accommodate his specific learning disabilities and to provide him with supplemental resource instruction. (Tr. pp. 90-91)

#### Positions of the Parties

Mrs. Doe argues that the penalty imposed on her son by the Johnston School Committee is excessive, given the misconduct which occurred. She urges us to consider that his in-school misconduct resulted in no permanent damage to school property, and that her son removed all of the shoe polish from the walls immediately after the incident.<sup>4</sup> A suspension given on September 28th for the remainder of the school year is an extreme penalty, one which is more appropriately imposed, she argues, on students who are violent or bring weapons to school.

Since Student Doe's exclusion from school for a period in excess of ten (10) days is a "change of placement" under the IDEA, his mother notes that she has not (a) agreed to a change in his placement, and (b) school officials have not utilized the proper administrative procedures given the lack of consent. This would include an impartial due process hearing to effect a change in placement.

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<sup>4</sup> At that time neither she, nor school officials, were aware that a second lavatory had the same graffiti, which required removal as well.

Additionally, Student Doe's mother argues that the tutoring program being implemented by the School Committee falls far short of meeting his educational needs, and certainly fails to meet the requirements of a "free appropriate public education" which must be provided to special education students who are excluded from school.

Counsel for the School Committee argues that in meting out punishment to Student Doe it needed to make an example of him. Further, the Committee argues that Student Doe "does not fit well within the mosaic of student society at the Ferri Middle School." His exclusion from school for the remainder of the school year prevents Student Doe from having a "negative impact" on the school system.

#### Decision

Although issues have been raised in this case as to whether or not Student Doe's exclusion from school violates both the procedural and substantive requirements of the Individuals with Disabilities Education Act, 20 US C1400 et seq.,<sup>5</sup> we decline to address these issues for two reasons. First, the record in this matter was developed with one of the parties appearing pro se. Although Mrs. Doe has disputed action taken by the school committee by arguments which translate into a sophisticated legal claim that her son has been deprived of his substantive and procedural rights under IDEA, and relevant regulations, the arguments were not advanced precisely enough at the time of hearing to enable counsel for the school committee to respond. Also, the record created by the appellant is not fully developed on the appellant's IDEA claim.<sup>6</sup> Secondly, the

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<sup>5</sup> Together with federal and state regulations implementing IDEA.

<sup>6</sup> Although some evidence was presented that would raise inferences of statutory violations.

focus of the hearing was whether sufficient cause existed to warrant Student Doe's suspension for substantially all of the 1993-94 school year. This issue, on which we differ with the school committee, is dispositive in this matter. For these reasons, then, we decline to decide the special education issues raised by this case.

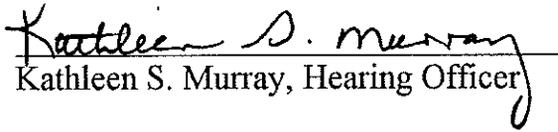
While we recognize that protection of school property from malicious damage is an ongoing battle fought daily by school administrators, responses to such damage in the student disciplinary context must be reasonable. As was stated by our Supreme Court in Goss v. Lopez, 419 US. 565, 95 S Ct. 729, 42 L. Ed 2d 725.

...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... 419 US 565, 574-5 (1975)

Our de novo review in student disciplinary appeals requires a determination of the appropriateness of the penalty imposed on Student Doe. The penalty imposed by the school committee in this case was clearly excessive. No permanent damage was done, and Student Doe, along with his mother, removed most of the shoe polish on the day of the incident. This Student's overall disciplinary record does not indicate that he is a student who has a pattern of violating school rules. There is no evidence that his attitude has been one of disregarding the authority of school officials. His absence from school for the balance of the school year (and the deprivation of the special education services he has been receiving) will undoubtedly have serious long-range consequences-so injurious as to be quite disproportionate to his offense. As of the date of this decision, Student Doe has been excluded from school for over seven (7) weeks.

This is more than ample punishment, and we direct that he be readmitted immediately.

This order is entered as both an interim protective order and final decision in this matter. This case is not one which arises "solely under §16-2-17"<sup>7</sup> and an interim order is required to insure that Student Doe receives special education pending any further hearings and/or appeals in this matter.

  
Kathleen S. Murray, Hearing Officer

Approved:

  
Peter McWalters, Commissioner

November 16, 1993  
Date

<sup>7</sup> Given the issues raised under IDEA and state and federal regulations.