

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JOHN A.V. DOE

vs.

CRANSTON SCHOOL COMMITTEE

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INTERIM ORDER AND DECISION

Held: Student referred for special education evaluation prior to misconduct and institution of disciplinary charges is a "student with disabilities" and therefore entitled to protections under federal and state law.

March 29, 1994

Introduction

This matter concerns an appeal to the Commissioner of Education on behalf of student Doe following the Cranston School Committee's imposition of discipline against him. (Hearing Officer's Exhibit 1).¹

For the reasons set forth below, we find that student Doe is entitled to remain in his previous school of attendance pending the completion of his special education evaluation and the outcome of any administrative or judicial proceeding concerning the results of that evaluation.

Background

Student Doe is a 7th grade student at a Cranston junior high school. He is 12 years old.

On February 3, 1994, the student's parents contacted the school social worker and requested a meeting to discuss the student's second-quarter grades and to determine whether he has any learning disabilities. A meeting was scheduled for February 8th.

On February 4th, school officials received a complaint that Student Doe had a knife in his possession in school. School officials met with student Doe twice that morning and questioned him about the knife. Student Doe's person, locker, and bookbag were searched on both occasions. No knife was found.

On February 7th, the school principal learned that the Cranston police were investigating student Doe's alleged possession of a knife on February 4th. The principal informed the superintendent

¹ This appeal was assigned to the undersigned hearing officer and heard on March 11, 1994. The record in this matter closed on March 17, 1994.

of schools of the police's involvement. The superintendent directed the principal to conduct a full investigation of the matter and to keep him posted.

On February 8th, student Doe's parents met with the school social worker and guidance director. They discussed possible ways to improve the student's educational skills. The parents signed a paper authorizing the school district to perform testing to determine whether their son has a learning disability.²

On February 9th, the Cranston police contacted the superintendent and provided him with the statements that had been taken during their investigation of the February 4th knife incident. One of the statements was from student Doe, who admitted that he was given a knife in school on February 4th by someone he had never seen before and who was wearing "some type of ski mask." (Appellant's Exhibit 1). Student Doe also stated that he gave the knife to another student in school.

This student also provided the police with a statement, in which the student stated that during social studies class student Doe asked him to hold a knife. The student refused. Later in the day the student was suspended from school, and as the student was leaving school, student Doe again asked the student to hold the knife. The student took the knife and went home.

A third student provided the police with a statement. According to the statement, student Doe gave this student a knife to hold during social studies class when he was called to the office

2 The testing of student Doe, which commenced following the February 8th meeting, had not been completed as of the date of the hearing in this matter.

for questioning. When student Doe returned to class, the student gave him the knife back.

On February 10th, the superintendent recommended that student Doe be suspended for 10 days based on the statements received from the police.³ Further discipline was proposed to be considered by the School Committee at a February 28th meeting.

Following a hearing on February 28th, the School Committee voted to adopt the superintendent's recommendation to suspend student Doe for an additional 10 days, transfer him to another junior high school to be selected by the superintendent, and consider a request at the end of the school year to return him to his original school.⁴

Positions of the Parties

Appellant contends that there is no direct evidence establishing that student Doe exercised exclusive control and dominion over the knife in question. It argues that student Doe has been unfairly singled out for discipline, and that the punishment is excessive. Appellant also stresses that the special education evaluation process has not been completed, and that it may result in a finding that the student has special needs which can best be addressed in his present school.

3 The Disciplinary Procedure for Cranston Secondary Schools prohibits the "Possession and/or control of dangerous weapon(s)." It further provides that "Students under the age of 16 will be suspended until a decision is rendered concerning an exclusion proceeding." (School Committee Exhibit 2).

4 No other students were disciplined with regard to this incident.

The School Committee contends that the evidence shows that student Doe committed a serious infraction of school rules. It maintains that no learning disability has been determined as of this time, and that even if one had, student Doe's status-quo educational placement would be the suspension and transfer provisions of the School Committee's February 28th decision.

Discussion

Based on the evidence in the record, we find that student Doe had a knife in his possession in school on February 4, 1994. Furthermore, this misconduct was in violation of the school's disciplinary policy.

However, a threshold question that arises in any student discipline case is whether the student to be disciplined is a regular-education or special-education student. Pursuant to federal and state law, students with disabilities are entitled to procedural protections when discipline is sought to be imposed against them, particularly where the discipline constitutes a change in the student's educational placement.⁵

As set forth previously, the parents of student Doe initiated a request for a special education evaluation prior to his misconduct and the bringing of disciplinary charges. We find, based on the decision of the U.S. Court of Appeals, Ninth Circuit, in Hacienda La Puente Unified School District of Los Angeles v. Honig, 976 F.2d 487 (1992), that student Doe is a "student with disabilities" and

5 Honig v. Doe, 484 U.S. 305 (1988); Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Sec. 1415; Regulations of the Board of Regents for Elementary and Secondary Education Governing the Special Education of Students with Disabilities, Sec. One, IV and IX.

thus entitled to the applicable protections of federal and state law.

In the Hacienda La Puente case, the mother of a 7th grade student had on several occasions expressed concerns to school officials about the child's academic performance and behavior. She requested an evaluation for special education services, but was told that the student did not qualify. The mother obtained an evaluation of the child and presented the results to the school. She again was told the child did not meet the criteria for special education. The child's parents then met with a school vice-principal to discuss their child and the results of the evaluation. One week later, the child was suspended from school for frightening another student with a stolen starter pistol. A month later, the school board expelled the student indefinitely.

The parents subsequently filed a complaint which was heard by a special education hearing officer. The hearing officer concluded that the child had a learning disability, that the misconduct was a manifestation of his disability, and that the child's expulsion was improper. The hearing officer ordered that the student be reinstated to the junior high school he had previously attended.

The school board appealed the hearing officer's decision, claiming that the hearing officer lacked jurisdiction over the matter because IDEA refers to "children with disabilities" and a child must therefore be identified as "disabled" before IDEA's procedural safeguards can be invoked.

The Ninth Circuit rejected this argument, finding that

all disabled students, whether or not possessing "previously identified exceptional needs," are

entitled to the procedural protections afforded under the IDEA. Ibid. at p. 494.

The court therefore concluded that the special education hearing officer had jurisdiction to hear the parents' complaint.

We find the court's decision to be persuasive here. We further find, given the particular circumstances of this case, that the application of the special education procedural protections to student Doe is consistent with our decision in Jane S. Doe vs. Coventry School Committee (May 24, 1993). That case involved the referral of a student for a special education evaluation after the school committee's decision to exclude her from school for the remainder of the school year. We found in that case that the special education procedural protections did not apply because the circumstances did "not establish student Doe as a child with a suspected disability at the time discipline was imposed . . ." (Decision, p. 9).

Consequently, the "status-quo" provisions of federal and state law apply to student Doe. We find that, unless his parents and the school agree otherwise, student Doe must remain in his current educational placement, i.e., the junior high school he was attending at the time of the special education evaluation request, pending the completion of the evaluation and the outcome of any administrative or judicial proceeding that may result from the parties' exercise of their appeal rights.

If it is subsequently established that student Doe has a learning disability, the discipline imposed against him must be

6 The school district retains the right to seek a court order requiring the removal of student Doe from his present educational placement.

reconsidered in light of federal and state substantive and procedural requirements.⁷

Conclusion

For discipline purposes, student Doe is a "student with disabilities" and therefore entitled to the applicable procedural protections under federal and state law. We therefore order that, unless his parents and the school agree otherwise, student Doe remain at his current junior high school educational placement pending the completion of his special education evaluation and the outcome of any administrative or judicial proceeding that may result. If it is established that student Doe has a learning disability, the discipline imposed against him to date shall be reconsidered in light of federal and state law.

Because this appeal raises issues under IDEA and state and federal regulations, we find that it is not exempt from interim relief.⁸ We further find that an interim order is required to ensure that student Doe receives his procedural protections⁹ pending any further hearings or appeals in this matter.

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- 7 Primarily, the individualized education program team must determine whether the disciplinary infraction was a manifestation of the student's disability.
- 8 R.I.G.L. 16-39-3.2 authorizes the Commissioner to issue interim protective orders "In all cases concerning children, other than cases arising solely under Sec. 16-2-17 . . ." The latter section grants school committees the power to suspend pupils.
- 9 See Jane V. Doe vs. Johnston School Committee (Commissioner's decision, November 16, 1993).

Accordingly, this order is entered as both an interim protective order and final decision.

Paul E. Pontarelli

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters

Peter McWalters
Commissioner of Education

Date: March 29, 1994