

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JOHN B.I. DOE

V.

CHARIHO SCHOOL COMMITTEE

DECISION

Held: Student's indefinite suspension is
invalid under R.I.G.L. 16-2-17.

Date: January 20, 1995

Travel of the Case

On September 16, 1994 Commissioner Peter McWalters received an appeal from Mrs. Doe on behalf of her son, John Doe. Student Doe had been suspended from Chariho High School on May 24, 1994 for assaulting another student.

The undersigned was designated as the hearing officer in this matter and a hearing was convened on October 18, 1994. Mrs. Doe appeared pro se and the Chariho School Committee was represented by its attorney, John G. Earle. At the conclusion of the hearing, counsel for the School Committee indicated his intent to file a memo and the record in this case closed on November 10, 1994 upon receipt of the memorandum.

Issues

- Is Student Doe's suspension supported by the evidence?
- Is Student Doe's indefinite suspension valid under Rhode Island law?
- Can the Chariho School Committee condition Student Doe's reentry into highschool on his participation in counseling?
- Does Student Doe's reentry into Chariho High School pose a threat to the security of students and staff?

Findings of Relevant Facts

- Student Doe is sixteen years old and prior to his suspension, was in Grade 9 of the career and technical program at Chariho High School. S.C. Ex. 5; Tr. p.83.
- On May 24, 1994 Student Doe arrived at school and proceeded to "go after" another student in the lavatory, assaulting him and causing him physical injury. Tr. pp. 60-62; 100-101.

- After notifying the police , the school principal ascertained the extent of the injuries to the other boy and directed the school nurse to notify his parents that he required medical attention. Tr. p. 61.
- The principal spoke to Student Doe about what had happened, and upon the boy's admission that he had intentionally assaulted the other student,¹ he was immediately suspended for five (5) days. This suspension was later increased by Superintendent John Pini for an additional period, until the hearing before the School Committee on June 14, 1994. Tr. pp. 63-64. S.C. Ex. 1.
- Superintendent Pini provided Student Doe's parents with notice of his intent to recommend a suspension of an indefinite period for their son. He also indicated his intent to recommend that the School Committee provide home tutoring during the period of suspension, and that Student Doe would be required to undergo counseling as a condition for his return to school. S.C. Ex. 3.
- Student Doe's parents were also notified in the Superintendent's letter of May 31, 1994 of the procedural rights to which they were entitled at the formal hearing to be held before the School Committee. S.C. Ex. 3. They did not attend the School Committee meeting of June 14, 1994, nor did they register any objection to the Superintendent's proposal. Tr. p. 40.
- At its June 14, 1994 meeting the Chariho School Committee voted to approve the Superintendent's recommendation to suspend Student Doe indefinitely and condition his return to school on his participation in counseling and his demonstration of improvement in his behavior. S.C. Ex. 4.
- The School Committee also voted to provide Student Doe with home tutoring during the period of his exclusion from school. Tr. p. 5. S.C. Ex. 4.
- Student Doe decided he would not participate and has not participated in either counseling or the home tutoring offered by the School Committee. Tr. pp. 80, 87-88.
- During school year 1993-94 Student Doe was involved in 51 disciplinary infractions, including smoking, skipping detention, incidents of disruptive and threatening behavior and the May 24, 1994 incident which precipitated his suspension. S.C. Ex. 2. Tr. pp. 42-62.

¹Student Doe had a disagreement with this student some time prior to the time of this incident.

- Throughout the year, Principal Edward Morgan and other members of the Chariho High School staff utilized various student behavior support strategies for Student Doe. These ranged from individual counseling by the principal (Tr. pp. 49-50), setting up a partial out-of-school program (pp. 50, 51) and providing for Student Doe's participation in the Step Program, in which a psychologist was available to provide counseling to Student Doe on a regular basis.² (Tr. pp. 51, 78-79).
- The disciplinary measures and student behavior assistance provided by school officials proved unsuccessful in improving Student Doe's behavior. (S.C. Ex. 2, Discipline Information Entry covering the period September 8, 1993 through May 24, 1994, Tr. p. 97.
- During school year 1993-94 Student Doe underwent an evaluation by the multi-disciplinary team to determine if he had a disability and was eligible for special education services. He was found not to be eligible for such services.³ Tr. pp. 75-76.
- Both an educational evaluation of Student Doe and his scores on standardized tests indicate Student Doe is capable of better-than-average academic performance. Tr. pp. 46-48 and 76.
- According to his latest report card, Student Doe had failing grades in several of his courses. S.C. Ex. 5.
- It is the professional opinion of Principal Edward Morgan that without an adjustment in Student Doe's behavior the safety of other students and the educational process at Chariho High School are placed in jeopardy by Student Doe's presence in school. Tr. p. 65
- It is Principal Morgan's judgment that if this student returned to school (without an adjustment in his behavior) that an undue risk of harm would be posed to students and staff. Tr. Pp. 65-66.

²Although Student Doe's Father had signed a consent form to permit his son to participate in the Step Program, at the hearing Mrs. Doe testified that they and their son are opposed to his participation in this program. S.C. Ex. 8; Tr. p. 88.

³Jeannette Roof-Rothwell, Director of Special Education for the school district testified that Student Doe does not suffer from any type of mental illness which would qualify him for special education. His behavior, she testified, "is under his control and is a conscious choice". Tr. pp. 76-77.

Position of the Parties

School Committee

Counsel argues that the School Committee's vote to exclude Student Doe from school on June 14, 1994 is factually supported by the record in this case and valid under Rhode Island law. The many disciplinary incidents throughout the school year, especially those involving threatening and violent behavior, and the overall disruption caused by this student's refusal to conform his behavior to school rules warrants his exclusion from school. In voting to suspend Student Doe indefinitely, the Chariho School Committee was responding to Student Doe's incorrigible behavior and acting to maintain a safe and secure learning environment at the school. The School Committee sought at the same time to continue to assist Student Doe by providing him with home tutoring and counseling services. If at some future point he could demonstrate that his behavior had improved, and that he no longer posed a threat to the safety of students and staff, the School Committee would consider his request to return to school.

It is argued that an indefinite suspension is authorized under R.I.G.L. 16-2-17. Counsel notes that the statute contains no express limitation on the length of suspension which a School Committee may impose. He also argues that inherent in the right of school committees to "suspend during pleasure" is the right to expel (permanently exclude) a student when such sanction is a reasonable exercise of a school committee's discretion. Such interpretation of §16-2-17 would bring our statute into conformity with recent federal legislation. The Elementary and Secondary Education Act, amended on March 31, 1994 states that:

no assistance may be provided to any local educational agency under the Act unless such agency has in effect a policy requiring the expulsion from school for a period of not less than one year of any student who is

determined to have brought a weapon to a school under the jurisdiction of the agency.⁴

Thus, the School Committee argues that a construction of 16-2-17 which in general restricted the length of suspensions, or prohibited expulsion would prevent local educational agencies from complying with this specific requirement.⁵

Finally, the School Committee argues that this case is factually distinguishable from Gorman v. University of Rhode Island, 646 F.Supp. 799 (D.R.I. 1986) (aff'd in part and rev'd in part, 837 F 2d 7 (1st Cir. 1988)). In Gorman, Judge Pettine struck down as unconstitutional a requirement that a suspended student undergo a complete psychiatric evaluation and, if recommended, a course of psychiatric treatment. In this case, the School Committee is not requiring psychiatric examination or treatment, but merely counseling. Thus, it is argued, there is no unwarranted invasion of the student's privacy rights. Even if the situation factually presented such "intrusion", it is the School Committee's position that it is justified by a compelling state interest, i.e. the protection of students and staff at Chariho Regional High School.

Student Doe

On his behalf, Student Doe's mother argues that her son has been sufficiently punished by his exclusion from school since May 24, 1994. Mrs. Doe challenges the legal authority of conditioning her child's re-entry to highschool on his attendance at counseling sessions, even if they are procured and paid for by the Chariho school district. She strenuously objects to his participation in a program of counseling and presses for his readmission to school.⁶

⁴20 USC § 3351.

⁵And render Rhode Island school districts ineligible to receive federal funds under the Act.

⁶Mrs. Doe apparently bases her objection to counseling for her son on the fact it has proven ineffective in the past. Mrs. Doe also indicated that she disagreed with the determination that her son did not suffer from a behavioral disability entitling him to special education services. The record does not indicate whether she has appealed this determination and/or requested an independent evaluation of her son.

Decision

Student Doe and his parents have pressed their appeal to the Commissioner so that he may be readmitted to Chariho High School. Yet, in the record before us is evidence that to date Student Doe has rejected home tutoring in his academic subjects (a service school officials were under no obligation to provide). We note this fact at the outset to underscore the basic irony of Student Doe's request to be readmitted and resume his school program.

On the facts before us, it is clear that administrators and staff at Chariho High School utilized every resource they had available to deal with Student Doe's disruptive, defiant, and sometimes threatening school behavior. Numerous informal counseling sessions with Principal Edward Morgan, a modified school program, participation in the Step Program, and even the conditions attached to his suspension were all designed to assist Student Doe in conforming his behavior to the disciplinary rules applicable to students at Chariho. The record of fifty-one (51) disciplinary infractions provides ample basis for the action taken by the School Committee on June 14, 1994, especially in light of Student Doe's violent assault on another student on May 14, 1994.

Although the record before us clearly supports the imposition of severe disciplinary sanctions against Student Doe, we cannot uphold his indefinite suspension from Chariho High School. Under the facts of this case, i.e. Student Doe's refusal to participate in counseling and the requirement that he do so before he can be readmitted, his indefinite suspension is tantamount to expulsion. By "expulsion" we mean permanent exclusion from school.

Since its inception, the language of R.I.G.L. 16-2-17 authorizing student suspensions has been interpreted to permit long-term suspension, but not permanent exclusion from school. Student Doe's indefinite suspension is probably invalid on another ground as well. The word "suspend" in Section 16-2-17

generally authorizes suspensions which run only for the balance of the school year in which the discipline is imposed. As far back as 1918, Charles Carroll observed in his treatise entitled Public Education in Rhode Island that: incorrigibly bad conduct permits the School Committee to suspend a pupil, but not to expel him (p. 458). In 1948, a manual of Rhode Island School Law compiled by the R.I. Department of Education noted that:

it is generally held to be the law that a school committee may not exclude a pupil for a period longer than the current school year. (p. 20), Laws of Rhode Island Relating to Education. Oxford Press 1948

Then, as now, the statutory authorization given to Rhode Island school committees,⁷ rested on the following language:

(b) the school committee, or a school principal as designated by the school committee may suspend during pleasure all pupils found guilty of incorrigibly bad conduct or of violation of the school regulations, or where a student represents a threat to those rights of students, teachers or administrators, as described in subsection (a) above . (emphasis added)
R.I.G.L. 16-2-17.

When our state legislature acted to transform this statute from one entitled "suspension of pupils" to "right to a safe school" in 1992 it left intact the suspension language cited. We must interpret such action, in the context of the major revisions made at that time, as indicative of the legislature's intent to continue to authorize student suspensions, but not expulsions, as a disciplinary measure.

Decisions of the Commissioner of Education also reinforce this interpretation of the word "suspend" as it is used in R.I.G.L. 16-2-17. Note the

⁷And extended to school principals by a 1992 amendment to the law.

observation contained in footnote 1, page 2 of John Roe v. a Rhode Island School Committee (April 17, 1985). This decision noted that prior to the hearing and in response to the School Committee's request for advice:

the Commissioner, noting that the suspensions imposed were indefinite, took the extra step of informing the School Committee that indefinite suspensions were not allowed under Rhode Island Law ... and that the suspensions imposed would have to be changed to suspensions for some definite term.

In the April 18, 1988 decision entitled Jane G. Doe I vs. A Rhode Island School Committee, it was again noted that under Rhode Island school law a student may not be permanently expelled from school. (page 1). In 1989 and as recently as 1993 we again noted this limitation on the disciplinary authority of local school officials. See John M. Doe v. Warwick School Committee, Nov. 8, 1989 (footnote 10) and John A.M. Doe v. Woonsocket School Committee, July 6, 1993 (footnote 1). In Rhode Island, the word "expulsion" is oftentimes used to describe a suspension for the balance of the school term, rather than a permanent exclusion from school, which as we've noted, is not authorized under state law.

Given the restrictions imposed by the language of §16-2-17,⁸ the indefinite suspension of Student Doe from Chariho High School is invalid. His appeal is sustained.

We are not unmindful of the evidence placed on the record with regard to the potential threat to the safety of others posed by Student Doe's return to school. While we are not certain that the evidence submitted with regard to the potential of

⁸The limitations on school suspensions imposed by state law in Rhode Island and we would observe in some other states, poses a potential conflict with 20 USC § 3351 and the Gun Free Schools Act, as counsel for the school committee has pointed out. Recent federal legislation addresses this issue and provides for a one year grace period for states to conform state law to the requirement that gun-toting students be expelled from school "for a period of not less than one year". See Title XIV Part F of the Improving America's Schools Act signed by President Clinton on October 20, 1994.

danger is sufficient to support Student Doe's continued exclusion from school,⁹ the mechanism of suspension is not available, given the technical restrictions on suspension we have already discussed. Evidence of this nature would be properly placed before the Superior Court in a request for injunctive relief made by the Chariho School Committee, if school officials feel his return to school would pose a danger to the safety of other students and staff at the present time. School officials must proceed to take any steps appropriate to protect students and staff at Chariho High School.¹⁰

Since the case is resolved on the issue of invalidity of the suspension, we need not reach the issue of whether the School Committee could condition his return to school on participation in a counseling program. We see no practical difference, however, between mandatory counseling and the mandatory psychiatric treatment involved in Gorman. See Gorman v. University of Rhode Island, 646 F. Supp. 799 (D.R.I. 1986) (aff'd in part and rev'd in part, 837 F2d 7 (1st Cir. 1988)). As stated in Gorman, the issue is whether such invasion of protected privacy would survive constitutional scrutiny by furthering a compelling state interest. We also do not address the issue of whether school officials could take into account the failure of this student and his parents to participate in counseling in imposing an otherwise valid suspension from school.

The appeal is sustained, Student Doe is to be readmitted to school, absent a Court order enjoining his return.

⁹Although Principal Morgan expressed his opinion as to the threat posed by Student Doe's return, the Director of Special Education, who has a masters degree in counseling and is knowledgeable about the results of his psychological evaluation, was not asked whether Student Doe was a danger to students and staff. The absence of her opinion on this issue is significant. See the recent case of M.P. v. Governing Board of the Grossmont Union High School District, 858 F.Supp. 1044 at page 1050 where the school psychologist expressed an opinion on eligibility for special education, but expressed no opinion on the dangerousness of the student.

¹⁰Chariho officials concede that his continued exclusion from school is not to punish Student Doe, but rather to protect other students and staff from harm.

Kathleen S. Murray
Kathleen S. Murray, Hearing Officer

Approved:

Peter McWalters
Peter McWalters, Commissioner

January 20, 1995
Date