

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JOHN B.L. DOE  
V.  
A RHODE ISLAND SCHOOL COMMITTEE

DECISION ON INTERIM ORDER

Held: Penalty is reduced.

Date: June 13, 1995

## Introduction

The six year old student in this case, John Doe, lives in a DCYF sponsored group home. He comes from a family background of abuse and neglect. Before starting school he was evaluated by Bradley Hospital which found that he had ADHD (Attention Deficit Hyperactivity Disorder) and perhaps post traumatic stress syndrome. In kindergarten he has attained a "good" level of progress in the material, including conduct, which is covered there. The classification of "good" is next to the highest rating possible. His teacher comments on his progress report that: "John is usually well behaved and cooperative. His academic skills are progressing appropriately. At this time, John Doe often appears preoccupied and while he does get along with others, he prefers to play alone".

In his group home placement John was being taught how to use a knife and fork to eat his food. John asked his group home counselor if he could take a table knife with him to his afternoon kindergarten session so that he could cut up his snack of Fig Newton cookies. This request was denied. Somehow John brought a knife to school which came to his teacher's attention when it fell out of his pocket. John had not displayed the knife or threatened anyone with it. The principal of John's school, in accordance with school committee policy, imposed an automatic ten (10) day suspension for possession of a weapon and, again in accordance with policy, she called the police.

While on this occasion we find the possession of a table knife to be innocent enough we cannot completely ignore the fact that in one of John's psychological evaluations there is mention of acts of physical aggression against other children and also mention of John striking his mother with a sharp object. Since we do not know John's condition or his circumstances when these events happened it is difficult to argue their full import. While we find these antecedents

to be troubling, and something which bears watching, we are still of the opinion that John intended no harm when he brought the table knife to school.

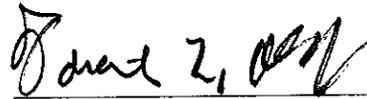
As noted above school committee policy calls for a minimum automatic suspension of 10 days for bringing a weapon to school and the referral of the matter to the Police Department. We note that the Attorney General's "Zero Tolerance Policy", which has been recommend to school systems in this state, specifies imposition of a suspension in such cases but it does not specify the duration of such suspensions.

The school committee argues that John's 10 day suspension is just and proportionate to his offense and that even if John were a special education student (he has not yet been so classified formally) the district could suspend him for 10 days without violating his rights under the Individuals with Disabilities Education Act. Honig v. Doe. It also argues that unless a case arises under something more than the school suspension law the commissioner lacks authority to issue an interim order staying a school suspension. We find these arguments to be interesting but it is unnecessary for us to rule on them. We elect to treat this petition for an interim order as a request for a hearing on the merits of the penalty of suspension which has been imposed. When a case is heard on the merits the commissioner has broad authority to use independent judgment in reviewing penalties which have been imposed. Pawtucket School Committee v. Board of Regents, 513 A.2d 13 (R.I. 1986).

In the present case we take notice of John's status as a kindergarten student from an abusive family who is now in the custody of DCYF. John's best, and perhaps only, chance to escape the difficulties surrounding him is to take advantage of the free appropriate public education which is available to him. While John must be held accountable for his acts his status as an abused

handicapped kindergarten student calls for more emphasis on remediation than upon cold handed exclusionary discipline.

It is our decision that John's suspension be "commuted" to time served. If John avoids serious trouble next year thought should give to expunging the suspension from his record. We instruct the district to reevaluate John for special education. We decline to overturn the district policy of imposing an automatic 10 day suspension for possession of a "weapon" but we do direct the school committee to consider the issue of whether more flexibility is needed when young students are involved.



Forrest L. Avila, Hearing Officer

Approved:



Peter McWalters

June 13, 1995

Date