

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JOHN C.K. DOE

VS.

BRISTOL/WARREN REGIONAL SCHOOL COMMITTEE

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DECISION

Held: Exculsion of "disruptive" student from school solely for conduct he committed and was disciplined for in previous school year is invalid.

Introduction

This matter concerns a student's appeal from two suspensions from Mount Hope High School: a 10-day suspension on January 14, 1997, immediately followed by a suspension for the remainder of the 1996-97 school year.¹ At the conclusion of the School Committee's case, counsel for Appellant made a motion that the disciplinary proceedings be dismissed on legal grounds.²

For the reasons set forth below, we grant Appellant's motion to dismiss.

Background

Student Doe was the subject of a January 7, 1997 Commissioner's decision which held that the School Committee did not have valid grounds to refuse to readmit him to Mount Hope High School to complete his senior year.³ As set forth in that decision, student Doe was suspended from school from May 16 through May 29, 1996, for smoking in a school lavatory, third offense,⁴ and, given his cumulative disciplinary record for the 1995-96 school year, the matter was referred to the superintendent for further disciplinary

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- 1 The undersigned hearing officer was designated by the Commissioner to hear and decide the appeal. Hearings were held on March 11 and April 14, 1997.
 - 2 The parties subsequently filed legal memoranda.
 - 3 The School Committee appealed the Commissioner's decision to the Board of Regents. The appeal is pending as of this date.
 - 4 The decision reserved any ruling on whether the misconduct formed the basis of a valid exclusion from school. [Decision, footnote 7].

action and possible long-term exclusion from school.

Shortly after the conclusion of the 10-day suspension, student Doe's mother advised school officials that he would be going to Massachusetts to live with her and attend school there. Student Doe attempted to return to Mt. Hope High School after the May 1996 suspension, but he was not permitted to do so in light of the pending disciplinary review and the failure of his parent or guardian to accompany him to school. As of January 7, 1997, the School Committee had not yet been presented with a recommendation from the superintendent regarding further disciplinary action.

Student Doe turned 18 on September 23, 1996. In January 1997, he returned to Mt. Hope High School and completed a course schedule with his guidance counselor. By letter dated January 14, 1997, however, Superintendent Guy DiBiasio suspended student Doe from Mt. Hope High School for 10 days, effective that date, "as initial punishment for multiple smoking violations, twenty-nine (29) office referrals and your argumentative, disruptive, confrontational behavior and sexual harassment of aides, teachers and administrators." [School Committee Exhibit 5]. The letter advised student Doe of a School Committee hearing to consider Dr. DiBiasio's recommendation "for further disciplinary action which may include an additional period of suspension from school up to the balance of this school year." [Ibid.]. The letter also stated that "these actions were to have taken place last spring; however, you were not

available because you moved, forcing the hearings to be canceled at that time due to your residence being unknown and your related absence from school." [Ibid.]

Following a hearing on January 27, 1997, the School Committee suspended student Doe for the balance of the 1996-1997 school year. Based on its findings that student Doe had used profanity, been insubordinate, smoked throughout the building, made threats, disrupted classes, and refused to comply with the school's disciplinary policy, the School Committee concluded that student Doe

has a significant history of insubordination and disciplinary problems . . . has had a history of repeated suspensions . . . is a disruptive student who exhibits incorrigibly bad behavior and who has failed to respond to disciplinary, corrective and rehabilitative measures. The Committee finds that [student Doe's] presence in school is disruptive and that he presents an actual threat of physical harm to female teachers and staff members, and his presence is contrary to the obligation of the school system to provide a safe, secure and peaceful school conducive to learning. [School Committee Exhibit 6].

None of the conduct which formed the basis of student Doe's suspension and expulsion in January 1997 occurred during the 1996-97 school year.

Positions of the Parties

Noting that student Doe's suspension extends beyond the end of the school year in which the alleged offenses occurred, Appellant contends that the suspension for the 1996-97 school year is legally impermissible in light of (1) School Committee and School Department policy, (2) decades of Commissioner's decisions, and (3) and Rhode

Island General Law 16-2-17. Appellant argues that while the statute authorized the various suspensions imposed against student Doe during the 1995-96 school year, it "does not however provide an additional, independent basis to aggregate prior infractions for which penalties have already been imposed, and to, absent a new infraction, repunish those prior infractions with a longer penalty than that already served for each." [Memorandum, p. 12].

The School Committee interprets R.I.G.L. 16-2-17 as giving it the authority "to suspend a disruptive student at any time after a review of that student's record reveals that there has been a failure to respond to disciplinary measures . . . and irrespective of whether or not the student has committed any new infraction for which he has not been disciplined." [Memorandum, p. 2; emphasis in original]. The Committee argues that it has inherent authority to suspend students, which can be limited only by express statutory language. It adds that R.I.G.L. 16-2-17 does not contain any language prohibiting suspensions for more than the current school year or for infractions committed during the previous school year. The Committee maintains that the constitutional prohibition against double jeopardy does not apply to school discipline matters, that the long-term suspension is consistent with school policy because it does not extend beyond the school year in which it was imposed, that R.I.G.L. 16-2-17 prevails over local policy in the event of a conflict, and that the Commissioner's decisions in this area contain

an "historical but unfounded rationale for believing the statute prohibits such suspensions." [Memorandum, p. 9].

Discussion

R.I.G.L. 16-2-17, entitled "Right to a safe school," provides in pertinent part that

(a) Each student, staff member, teacher and administrator has a right to attend and/or work at a school which is safe, secure, and peaceful, which is conducive to learning, and which is free from the threat, actual or implied, of physical harm by a disruptive student. A disruptive student is a person who is subject to compulsory school attendance, who exhibits incorrigibly bad conduct, and who has failed to respond to corrective and rehabilitation measures presented by staff, teachers, or administrators.

(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). . .

The student discipline policy of the School Committee and School Department provides for suspensions and expulsions from school for various offenses. A suspension is defined as an exclusion from school for not more than 10 consecutive days, not to extend beyond the end of the school year in which it is imposed, while an expulsion is an exclusion for more than 10 consecutive days, not to extend beyond the current school year.⁵

5 The expulsion provision merely states "the current school year," without limiting it to the "year in which it is imposed."

When the 10-day suspension was imposed against student Doe in May 1996, he was advised that the matter had been referred to the superintendent for further disciplinary review and possible long-term exclusion from school.⁶ A review of student Doe's disciplinary record at this time, i.e., simultaneous with his short-term suspension, clearly is consistent with the provisions of R.I.G.L. 16-2-17 and the district's student discipline policy. Under Rhode Island school law and district policy, however, a disciplinary review at this time could not have resulted in a suspension or expulsion which extended beyond the 1995-96 school year. Under district policy, a suspension cannot be imposed for more than 10 consecutive days, and an expulsion cannot extend beyond the current school year. R.I.G.L. 16-2-17 grants discretionary authority to school committees,⁷ and the School Committee exercised its discretion in this area by adopting a policy which limits expulsions to the end of the current school year. Given this action, the provisions of R.I.G.L. 16-2-17 cannot otherwise lengthen the term of an expulsion without compromising the notice to students that is required by due process. Moreover, putting aside the district's expulsion provision, it is well established under our decisions that student suspensions cannot

6 Given the juncture of this proceeding, we continue to reserve ruling on the issue of the validity of the 10-day suspension.

7 As noted above, R.I.G.L. 16-2-17(b) states that school committees "may" suspend pupils "during pleasure."

exceed the balance of the school year.

We need to emphasize that the crucial fact in our analysis is that the expulsion of student Doe for the balance of the 1996-97 school year is entirely based on alleged misconduct which took place in the 1995-96 school year and for which student Doe was disciplined. The School Committee attributes the lack of any further disciplinary action during the 1995-96 school year to student Doe's absence from school for the remainder of that year. The fact remains, however, that student Doe did not attend school from his 10-day suspension in May 1996 to the end of the school year. We find that this absence constitutes the equivalent of an expulsion from school as provided for in the district's disciplinary policy. It therefore follows that any further discipline for 1995-96 conduct amounts to multiple punishment for the same conduct, which we find violates the principle of fundamental fairness to which a student discipline policy must adhere.

In determining whether an exclusion is of permissible length, we find that it is the date of the alleged misconduct, not the date

8 John B.I. Doe vs. Chariho School Committee, January 20, 1995, See also, John A.M. Doe vs. Woonsocket School Committee, July 6, 1993; John M. Doe vs. Warwick School Committee, November 8, 1989; and Jane G. Doe, I vs. A Rhode Island School Committee, April 18, 1988. An exception to the this traditional limitation on student suspensions was created in 1995 with the passage of R.I.G.L. 16-21-18, which permits a one-year suspension for students who bring or possess firearms on school premises. R.I.G.L. 16-21-18 was enacted in furtherance of the federal Gun-Free Schools Act of 1994 (20 USC Sec. 3351).

the district proposes to discipline the student, that is controlling. Our prior decisions in this area have dealt with misconduct and suspensions occurring in the same school year. This accounts for our statement in the John B.I. Doe case that R.I.G.L. 16-2-17 "generally authorizes suspensions which run only for the balance of the school year in which the discipline is imposed." [Ibid., pp. 7-8, emphasis added]. We do not find that the factual distinction in this case changes the manner in which we approach this issue, nor do we find that the facts of this case warrant an exception to our well-established precedent.

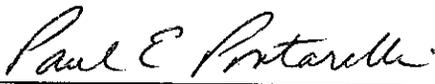
We therefore find, in light of Rhode Island school law and the district's disciplinary policy, that as of the end of the 1995-96 school year student Doe had "served his time" for the offenses he allegedly committed during the 1995-96 school year. While past offenses could be considered in determining sanctions for newly-committed infractions, student Doe otherwise was entitled to start the 1996-97 school year with his disciplinary bills paid. Accordingly, we hold that the School Committee's expulsion of student Doe for the remainder of the 1996-97 school year solely

⁹ Precedent, we might add, which may be historical, but certainly not unfounded given its balancing of the school community's right to a safe and orderly educational environment and the individual student's opportunity to correct his or her inappropriate conduct, to develop self-discipline, and to return to school at the start of the school year in order to effectively resume his or her education.

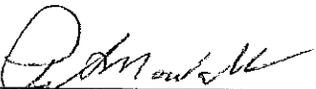
for conduct he committed and was disciplined for in the 1995-96
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school year is invalid.

Conclusion

The motion to dismiss the School Committee's disciplinary proceedings is granted. Student Doe's enrollment in Mt. Hope High School shall be deemed to have been continuous, and the Bristol/Warren School District shall, upon request, readmit student Doe to Mt. Hope High School to complete his senior year.


Paul E. Pontarelli
Hearing Officer

Approved:


Peter McWalters
Commissioner of Education

Date: August 25, 1997

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- 10 We note that, given the fact that student Doe did not commit any disciplinary infractions upon his brief return to school in January 1997, the School Committee is merely revisiting the same disciplinary history that existed at the time of student Doe's 10-day suspension in May 1996. Student Doe's subsequent absence from school did not preclude the completion of a disciplinary review and the bringing of charges at that time. In any event, as we previously observed, student Doe's absence for the remainder of the 1995-96 school year effectively rendered the issue of further exclusion from school moot under Rhode Island school law and the district's policy.