

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

IN RE JANE A.Z. DOE

DECISION AND INTERIM ORDER

Held: The reason for this student's permanent exclusion from Classical High School as part of the penalty imposed on her for fighting in the school cafeteria was not substantiated in the record. Therefore, such measure deprives her of substantive due process and is invalid.

DATE: November 5, 1997

Travel of the Case

On June 25, 1997 Student Doe's aunt was notified that Student Doe's suspension from Classical High School was extended from its original date (May 13, 1997) up through October 15, 1997. The sixty day suspension was the mandatory minimum penalty imposed on a secondary student for the offense of assault on another student or staff member pursuant to Providence School Board Policy 5144. The June 25, 1997 notice from Superintendent also stated "[this student] will be transferred to another high school in the City of Providence at the end of the exclusion period". A hearing was requested before Commissioner Peter McWalters on July 31, 1997. Hearing took place with the designated hearing officer on August 18, 1997. The record closed on or about August 25, 1997 when counsel for the School Board supplied the hearing officer with a copy of Policy 5144, and the Classical High School Student Handbook, as requested at the time of the hearing.

Issue:

Is Student Doe's unilateral transfer to another public high school in the City of Providence valid?

Positions of the Parties

Student Doe

In stating her case, Student Doe does not contest, in any substantial way, the administration's account of the incident which took place on May 12, 1997 in the cafeteria of the high school. She does challenge the interpretation of what happened as an "assault", especially as to assistant principal Charlotte Tavarex¹. She claims that her striking of Mrs. Tavarex was unintentional, and occurred in the course of what she admits

¹ The school handbook lists Mrs. Tavarex last name as Tavares.

was an out-of-control fight with another student. While she fully admits she was wrong in engaging in the fight, she points out that she has no prior disciplinary record and, prior to freshman year at Classical had always been an “A” student. She does not contest that part of the penalty imposed on her which excluded her from school and placed her in an alternative program (The Bridge School) for sixty (60) school days. She does contest her transfer out of Classical. She argues that one isolated incident should not result in her transfer to another of the city’s public high schools. She notes that she has not been provided with the reason for her transfer, nor does she know at what level of the process this recommendation was made. In addition to her long-term exclusion and attendance in an alternative program for sixty-days, she will at the end of her suspension on October 15, 1997 be transferred out of Classical High School despite the fact that she has already paid full penalty for her misconduct.

Providence School Board

Given the nature of the incident that took place in the school cafeteria on May 13, 1997, counsel argues that a substantial basis has been established for the discipline imposed on this student. Despite repeated requests by Mrs. Tavarex to stop and separate, both students engaged in a serious exchange of blows, hair pulling, etc. for several minutes before being forcibly restrained by several staff members. In her attempts to intervene, the assistant principal was struck three times and fell to the floor. Such a serious offense, coupled with Student Doe’s refusal to follow repeated requests to leave the cafeteria, warrant both the exclusion and transfer.

Counsel references Policy 5144 as providing the framework for the disciplinary response here. The policy provides a sixty (60) days minimum exclusion for

fighting/assault. Counsel argues that the policy also provides for an automatic transfer to a different high school after a student has been excluded from school for a serious offense. Although on its face the policy may provide for the exercise of discretion on the issue of transfer to another school, the policy as applied in all serious cases is that, with the finding that a long-term suspension should take place, an automatic transfer follows. Tr. pp. 14, 67, 71. The purpose for the automatic transfer is to maintain discipline. Tr. p. 71. The argument is made that the transfer takes away the “guarantee” that a student can commit a serious offense and then ultimately return to school. (Tr. P. 74).

Findings of Relevant Facts

- Student Doe was a freshman at Classical High School on May 13, 1997.
- She and another female student engaged in a fight for approximately ten (10) minutes, despite early attempts to intervene by the assistant principal, and efforts of staff to restrain both girls. Several staff members were ultimately needed to end the fight. Tr. pp. 6-9, S.C. Ex. A tape of hearing before assistant superintendent Paul Vorro.
- The Assistant Principal was struck three times by Student Doe in the course of trying to break up the fight. Tr. p. 17. She received minor injuries as a result.
- The record does not disclose any permanent injury to either the participants in the fight or to the staff members who finally separated the girls.
- The Providence police were not called. Tr. p. 18.²
- The cafeteria was filled with approximately 500-600 students at the time of the incident, with resulting disruption and potential for injury to other students caused by this fight. Tr. p. 6.
- Neither the Student Handbook nor Policy 5144 state that students committing serious offenses will, in addition to other penalties, automatically be transferred to a different high school in the City of Providence. See Classical High School Student Handbook; Policy 5144 of the Providence School Board.

² The Classical High School Handbook provides that a student guilty of assault...will be automatically referred to the Providence Police Department for appropriate court action. The Policy statement of the School Board also notes, at page 2, that the principal will refer those who commit an assault to the police.

- Classical High School, founded in 1843 has a long tradition of academic excellence. It is exclusively a college-preparatory high school, admission to which is limited to resident students who achieve qualifying scores on an entrance exam and meet other screening requirements. See Handbook pages 5-8.
- Student Doe has no prior disciplinary record (Tr. p. 51) and, prior to her freshman year, was an A student. (Tr. p. 52).

Decision

The facts in this case are not substantially in issue. Student Doe also takes no issue with the lengthy suspension in which she was excluded from high school and placed in an alternative program for sixty (60) days. The only issue is the legitimacy of her permanent exclusion from Classical High School³.

The record in this case is unclear as to the reason for Student Doe's anticipated transfer to another high school at the end of her suspension. The letter notifying her of this action simply states:

[The student] will be transferred to another high school in the City of Providence at the end of the exclusion period.
Letter of Superintendent Arthur M. Zarrella dated
June 25, 1997.

At the hearing, Student Doe was still uninformed as to the reason for her anticipated transfer to another high school. Although the reason for her transfer was identified by counsel for the School Board as Policy 5144, a copy of that policy submitted after the close of the hearing does not establish a reason for her transfer. Policy 5144 provides that:

³ We have not been asked to determine if this case presents an exception to the well-established rule in Rhode Island that suspensions cannot exceed the balance of any school year. See footnote 8 page 7 John C.K. Doe v. Bristol/Warren Regional School Committee, August 25, 1997 decision of the Commissioner.

When a student is readmitted to the Providence Public School System,⁴ the School Department retains the rights (sic) to make specific conditions for his/her return, i.e. on trial, assignment to a particular school, or alternate program assignment. Policy 5144. Page 5.

Thus , there is no policy of the School Board which would automatically require the transfer of any student, even those who had, as in this case, committed a serious offense and breach of school rules. Rather, the policy promulgated by the School Board, and disseminated to students, provides for a possibility of reassignment as a “specific condition” of return to school for previously excluded students. The record contains no finding with regard to Student Doe or this incident specifically which would provide the basis for her transfer- the only part of her penalty she challenges.

Without such finding and substantiation, her permanent exclusion from Classical remains ungrounded in a reason. Her constitutional rights to due process are directly implicated. The authority vested in school boards and officials to maintain order and discipline in schools is broad. However, the exercise of such authority must comply with the constitutional requirement that the disciplinary action be directed to a legitimate purpose and be rationally related to achieving that purpose. Where as here, the record does not explain the specific reason for Student Doe’s transfer, such action is presumably arbitrary and therefore invalid. Substantive as well as procedural due process required that a reason be established and that notice of the reason be provided to this student.

Throughout the record there is evidence of a de facto policy of automatic transfer of all students returning to the Providence Public Schools after exclusion for a serious offense (Tr. pp. 14, 59, 67 and 71). Counsel for the School Board argued that the

⁴ After a disciplinary exclusion.

“automatic transfer” policy had been in place for a number of years. While such a policy may very well be supportable and valid it is not the written policy disseminated to students. Such an automatic transfer policy is not described in Policy 5144 nor is it mentioned in the Student Handbook. From a procedural due process standpoint, it cannot be relied upon to substantiate Student Doe’s permanent exclusion from Classical High School.

Her appeal is sustained in part and denied in part; only that part of the penalty which imposed a disciplinary transfer from Classical High School is invalidated. We also do not address the issue of whether this student has fulfilled the academic requirements to remain enrolled at Classical. Given the substantive and procedural due process violations⁵, Student Doe shall be permitted to return to Classical if she meets all academic requirements. Our order is entered as an final and interim order under R.I.G.L. 16-39-3.2.

Kathleen S. Murray
Hearing Officer

Approved:

Peter McWalters, Commissioner

DATE: November 5, 1997

⁵ Thus this case does not arise solely under R.I.G.L. 16-2-17.