

0025-99

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER
OF
EDUCATION

.....

In Re Danny S.

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DECISION
and
INTERIM ORDER

Held: This student is entitled to attend The East Providence Area Career & Technical Center since he is eligible, has met the admissions criteria, and has not been shown to pose a threat to students or staff.

DATE: October 6, 1999

Travel of the Case

This matter was appealed to Commissioner Peter McWalters on September 15, 1999, by letter requesting an expedited hearing and decision on the issue of the entitlement of this student to attend the East Providence Area Career & Technical Center (hereinafter the Career and Technical Center). The Petitioner, the parent of Danny S. joined by his clinical social worker, alleged that without good reason he had been sent home after one day's attendance at the Career and Technical Center on September 9, 1999. His parent alleged that the sole basis for his exclusion from school was rumors that he was a danger to others.

The matter was assigned to a hearing officer for hearing and decision. Hearings were held on September 21, 1999 and September 27, 1999. At the hearing, the Principal of Mount Hope High School, where this student had previously been in attendance, advocated on his behalf. The East Providence School Department was represented by its legal counsel. Testimony and documentary evidence were presented by both sides, and at the close of the hearing, both parties gave brief closing arguments.

Jurisdiction to hear this matter arises under R.I.G.L. 16-39-1, as well as the Regulations promulgated under R.I.G.L. 16-45-1. The Regulations of the Board of Regents Governing the Management & Operation of Area Vocational-Technical Centers in Rhode Island (July 19,1990) provide in Section IV.H.5 (pages 46-47) that any student denied placement in any program at any area vocational technical center shall have the right to appeal such decision to the Commissioner of Education. This regulatory provision further requires that the decision in such cases be rendered within fifteen (15) days of receipt of the appeal. Given the time constraints on this appeal, the decision is based on the hearing officer's notes and the exhibits, but not the full transcript of the hearing.

Issue: Is Danny S. entitled to attend the East Providence Area Career and Technical Center?

Findings of Relevant Facts:

- Danny S. attended Mount Hope High School as a freshman during school year 1998-1999. He is currently fifteen (15) years of age and lives with his mother in the town of Warren, Rhode Island.
- In March of 1999 he submitted a timely application to the East Providence Area Career and Technical Center. He applied to enter the carpentry program in Grade 10 for school year 1999-2000.
- His guidance office at Mount Hope High School submitted the supporting documentation for his application; he was evaluated for the carpentry program, found to qualify and on May 10, 1999 received a letter of acceptance to the Construction

Program from Stephen J. Propatier, Director/Principal of the Career and Technical Center. Joint Ex.A.

- On Friday, May 21, 1999 administrators at Mount Hope High School became aware that Danny had participated in the creation of a web site under the name of “Psycho Dan”. The web site included a list of ten students names identified as the “top ten people for me to go psycho on”. At the beginning of the list appeared the notation “note(not a hit list)” Respondents Ex.E.; Joint Ex.B.
- Upon questioning by the principal and assistant principal, Danny admitted that he had created the web page and that he had done so at the Warren Public Library. He told school officials he had intended it to be a joke. Joint Ex.B.¹
- The principal and assistant principal proceeded to call Danny’s mother (who could not be reached at that time), local police and the parents of those students whose names appeared on the web page.
- Several of the parents contacted by the principal and assistant principal indicated that their sons had been guilty of teasing Danny in the past and asked that their own children be spoken to with regard to their behavior. A couple of the parents asked that their own children’s treatment of Danny be taken into account in any decisions on disciplinary action against him.
- Danny was referred to a counselor at the East Bay Mental Health Center, and beginning with the Monday morning following the incident and continuing to date he has had weekly counseling sessions.
- Danny was initially suspended from school for ten school days, beginning with May 24,1999 and ending on June 8, 1999; however, the principal testified that based on all the circumstances, he was not allowed to return to school on June 8, 1999; he was told to remain home and was provided with make-up work to be done at home. He returned to school at the end of the semester for a three-day period in which he took his final exams. He successfully completed all of his freshman-year courses.
- On or about June 16, 1999 Superintendent Guy N. DiBiasio notified Danny’s mother that he planned to recommend that her son be suspended from school for an additional period of up to 180 school days. The recommendation was based on “the aggressive behavior exhibited by (the student) in the incident which took place on Tuesday, May 25, 1999”.² He further notified her that he planned to present this recommendation to the Bristol-Warren Regional School Committee on June 23, 1999. Joint Ex.B.

¹ At the hearing at the commissioner’s level, Danny affirmed that he intended the creation of the web page as a joke, but at the same time indicated that some of the students on the list had in the past called him names or teased him by flicking his ear during class.

² The parties agree and the record reflects that the existence of the web page came to light on Friday, May 21, 1999.

- The issue of Danny’s suspension was rescheduled for School Committee hearing to June 29, 1999. On that evening a three-member subcommittee of the school committee considered a modified recommendation on disciplinary action to be taken. Principal Denise Boule, after describing the details and sequelae of the incident, including her discussions with Danny’s counselor, proposed that the School Committee “file this matter for 180 days- as a juvenile court would file a matter- retaining jurisdiction, so that if there are any other behaviors they can revive the matter and proceed from this point”. She added, “So, in essence, what I’m asking for is I’m asking for the 180 day exclusion to be suspended, contingent on Dan be in (sic) counseling for the entire year and him receiving vocational education.” Joint Ex. B.
- In appearing before the subcommittee that same evening Superintendent DiBiasio indicated his concurrence with the Principal’s modified recommendation, affirming the statement of counsel that “this matter be handled by the Sub-committee with the equivalent of a filing that if this young man goes for 180 days, participating fully in what the Principal has set forth, that the Committee merely retain jurisdiction with the capability of imposing the rest of the suspension if and when he fails to participate in counseling or participates in other episodes such as this”. Joint Ex. B.
- The student disciplinary subcommittee voted unanimously to accept the recommendation of the Superintendent. Joint Ex. B.
- On or about July 12,1999 the Chairperson of the disciplinary subcommittee signed a written decision a copy of which was mailed to Danny’s mother. The written decision, which is not dated, made certain findings regarding the creation of “disruption” among other students by a threatening Web page that required police involvement. The subcommittee also found that the student’s actions were “contrary to the obligation of the school system to provide a safe, secure and peaceful school environment conducive to learning”. It further found that his actions violated the school code and school department policy. See the undated decision of the Subcommittee submitted by agreement of the parties after conclusion of the hearing.
- The decision also indicates that the subcommittee found “the Superintendent’s recommendation of suspension with tutoring for 180 days commencing as of May 26,1999, appropriate”. It goes on to state that the subcommittee “orders that (the student) be suspended if he ceases counseling, fails academically at the East Providence Vocational Technical facility or is involved in a new disciplinary episode”. The decision concludes with the statement “This matter is presently ‘Filed’ for activation within the 180 school day period should a violation of the terms of the filing take place”. Undated decision of the Subcommittee for Student Discipline.
- After his first day of attendance at the Career and Technical Center on September 9,1999 and after some initial confusion as to whether he had been enrolled,³ Danny

³ Danny’s identification number and schedule of classes were retrieved from the computer at the end of the school day under the name of a student whose last name was similarly spelled.

was told not to return to the Career and Technical Center because there was a “problem” with his enrollment. He was referred to the principal at Mount Hope High School for an explanation.

- Other than the incident involving the creation of the web page, Danny had no prior disciplinary history at Mount Hope High School. Joint Ex. B.
- After three months of counseling on a weekly basis, Danny’s counselor has not observed anything that would indicate that he is susceptible of violence or poses a threat to the safety of others; She testified she is available to work on any problems that may arise in the school setting and to consult with school officials, in East Providence or Bristol/Warren as they deem appropriate.
- At the time of hearing of this appeal, the Petitioner had not received written communication from the administration of the Career and Technical Center providing a reason for his exclusion from the school.

Positions of the Parties

The Petitioner

On Danny’s behalf, the principal of Mount Hope High School argues that he has an immediate right to attend the East Providence Career and Technical Center. He was accepted into the program prior to the incident involving creation of the web page; all subsequent conditions attached to his enrollment (such as successful completion of his ninth grade courses) have been met. The incident which occurred on May 21, 1999, and the Bristol-Warren School Committee’s disciplinary response, have not rendered Danny ineligible to attend the Career and Technical Center.

Ms. Boule points out that after reviewing all of the circumstances surrounding the incident, she concluded that Danny had been guilty of making a bad decision. She changed her initial recommendation that he be expelled, i.e. excluded for a period of one hundred and eighty (180) days, because of this assessment. When her modified recommendation was presented to the Disciplinary Subcommittee on June 29, 1999 it was accepted by both the Superintendent and the Subcommittee. The vote of the committee was clearly to defer any further exclusion of this student from school if he continued to attend counseling sessions and remained in good behavior. The Principal argues that any expulsion of Danny was “suspended” with conditions for his ongoing school attendance attached as described in the record. Implicitly she argues that Danny’s “bad decision” is not misconduct which should be punished by further exclusion from school.

Also implicit in her testimony and arguments at the hearing is the position that Danny’s presence in the school community does not pose a threat to the safety or welfare of other students. He remains eligible to reenroll at Mount Hope High School; however,

his long-term goal has been and continues to be successful completion of the construction program at the Career and Technical Center. No legitimate reason for his exclusion from the Career and Technical Center has been established on the record, nor was it offered at any time prior to the hearing, as due process would have required.

The School Committee:

Counsel observed that the issues surrounding this student's enrollment at the Career and Technical Center are not of the "garden variety". They are, he argues, complex and serious, especially given the climate created by this past year's outbreak of school violence. The situation has demanded that school officials be vigilant and approach the enrollment of a potentially dangerous student with extreme caution. The consequences of mistakes are such that administrators must make difficult decisions and do so only after review of accurate facts. In this case, counsel argues, East Providence school administrators received no information regarding the incident or the disciplinary action which occurred from those in the Bristol-Warren school district – information which would have warranted a second look at this student's eligibility to attend the Career and Technical Center.

The record and the facts in this case demonstrate, counsel argues, that Danny is ineligible to attend school because he was expelled for a one hundred and eighty-day period beginning with the date of the incident. Although the principal of Mount Hope High School argues that his expulsion was "suspended" because of an assessment that he was guilty of poor decision making and posed no threat to others, counsel for East Providence takes the position that the record does not support this. The accurate facts are that officials of the Bristol Warren school district had sufficient concern about the nature of the incident to effectively remove this student from their own high school for a one hundred and eighty (180) day period. Given this student's expressed intent to attend, and acceptance into, the vocational program at the Career and Technical School, these same officials facilitated his attendance in East Providence by withholding information on his disciplinary status from the administrators of the Career and Technical Center.⁴ Now that East Providence school administrators have before them the official record of disciplinary action taken, it is their position that the record confirms his status as a student "expelled" from school- a status which renders him ineligible to attend any public school in Rhode Island, including the Career and Technical Center, for a 180 day period. There is no precedent in Rhode Island school law for "suspending" an expulsion or "filing" of a serious disciplinary charge against a student. Bristol-Warren's attempt to do so in this matter is, therefore, invalid and he remains under expulsion.

A second argument made by the East Providence School Committee is that in making decisions on enrollment and attendance at its Career and Technical Center, school

⁴ The inference created on the record is that the terminology describing the "suspended" expulsion, "filing" of the disciplinary charge, "retention of jurisdiction" was fashioned so as to preserve this student's eligibility to attend the Career and Technical Center (a factor which was explicitly discussed before the Disciplinary Subcommittee)

officials are given discretion to reject or exclude students found to be inappropriate. In this case and, given the information it has on this student, administrators are reasonable in concluding that Danny should not attend the Career and Technical Center and should be referred back to his home district. Although counsel acknowledges that traditionally districts and schools have a burden to establish a reason for rejection or exclusion from school, he argues that this is not a traditional enrollment issue.⁵ In this case, counsel takes the position that school officials have no information on which to conclude that this student does not pose a threat to the safety of others. Without such demonstration, referral to his home district is clearly in order.

DECISION

This is a complex and serious case which has received thorough review and deliberation despite the fifteen-day regulatory deadline imposed on the decision by the Regulations of the Board of Regents.⁶ In matters of school safety, particularly where there is the development of what has been referred to as a “hit list” by a student, those involved in the response must act with a great deal of caution and prudence. As might be expected, school officials in both districts involved here have approached this student’s exclusion from school with a keen awareness of their responsibility to protect other students and staff from potentially dangerous situations. Our task is a legal review of the decision making of those on the “front line” in such situations. One must be careful to distinguish between criticism of the protective measures taken in good faith by such administrators, and a reevaluation of the rights of the parties in a context which permits a more deliberative response on the basis of a record created at a hearing. This is, however, the obligation of a state-level hearing officer in such matters under Rhode Island law.

If it were our conclusion that Danny S. was expelled by vote and decision of the Disciplinary Subcommittee of the Bristol Warren Regional School Committee, it would be necessary to address the validity of such action. This would involve consideration of issues such as the legality of action of a subcommittee with no involvement of the full school committee, whether expulsion was supported by cause established in the record made at the subcommittee hearing, and whether other than in cases involving firearms, a school committee may impose a disciplinary exclusion which exceeds the balance of the school year.⁷ Fortunately we need not consider these issues because we conclude that the Subcommittee did not in fact vote to expel, suspend, or otherwise remove this student from school beyond the end of the 1998-1999 school year. Using sentencing terminology more akin to that found in a criminal court, and employing a different description of what it was trying to do with each restatement, the Subcommittee effectively took no clear disciplinary

⁵ Although counsel did not fully explain this point, we assume that the case is not traditional in the sense that it involves a vocational center as well as serious issues of school safety.

⁶ Regulations of the Board of Regents Governing the Management & Operation of Area Vocational-Technical Centers in Rhode Island (July 19,1990)

⁷ See John C.K. Doe vs. Bristol/Warren Regional School Committee, decision of the Commissioner dated August 25,1997, particularly footnote 8.

action against this student. Even in its undated decision signed by the chairperson of the Subcommittee (a copy of which was submitted after the hearing and which was therefore not addressed by the parties) the action of the Subcommittee is unclear. In the second paragraph the decision notes that the Subcommittee finds the Superintendent's recommendation of "suspension with tutoring for 180 school days commencing as of May 26, 1999 appropriate". Neither the superintendent nor the principal had made such recommendation, according to the record. The decision goes on to state that this student "be suspended if he ceases counseling, fails academically at the East Providence Vocational Technical facility or is involved in a new disciplinary episode." It concludes, "This matter is presently "Filed" for activation within the 180 school day period should a violation of the terms of the filing take place." The concept of "suspension with tutoring"(not even mentioned in the record previously) is inconsistent with the later-expressed intent to "file" the matter. Both of these concepts are inconsistent with actual imposition of an expulsion and then "suspending" that expulsion on certain conditions, which is what the Principal testified was her (modified) recommendation eventually accepted by the Superintendent and the Subcommittee at its meeting.

What is clear is that the Committee found the matter warranting a serious response on their part, but not further exclusion of this student from school. Accepting the assessment of the Principal that the student had made a poor decision, the Subcommittee clearly wanted to ensure that he remained in counseling for an extended period and refrained from misconduct. It attached both conditions⁸ to a one hundred and eighty-day period in which the matter was "filed" and any further action on his misconduct deferred. Since he was not expelled or suspended by the Bristol Warren School Committee, the Committee's action cannot justify his exclusion from the East Providence Vocational Facility.

We turn now to the argument that East Providence officials have discretion to reject students they deem inappropriate. Our review of state education law indicates that enrollment at regional vocational schools is a property right that cannot be taken away without sufficient reason or application of objective standards. Danny has a statutory entitlement to education at the area vocational technical center which services students who reside in Warren. R.I.G.L. 16-45-1.1(d)(1) states:

All youth and adults who choose vocational education shall have access to those programs.

This statutory entitlement is affirmed by the Board of Regents in its policy statement on vocational-technical education in Rhode Island, adopted by the Board on July 23, 1987 (contained at page 3 of the Regulations). The regulations note at page 35 that when a particular program chosen by a student has no openings, the student has a right to attend that program at another site, with his sending district obligated to provide tuition and transportation expenses. Thus our state law provides vocational students with a property interest which is protected by due process and cannot be taken away arbitrarily. See Goss

⁸ As well as academic success at the vocational center, a condition not contained in either the principal's or superintendent's recommendation.

v. Lopez, 419 U.S.565, 95 S.Ct.729, 42 L.Ed.2d 725 (1975). Contrary to the argument of the East Providence School Committee, its administrators do not have the ability to exercise unrestrained discretion in determining which students are appropriate to attend the vocational facility.

Here, East Providence officials have imposed an exclusion of indefinite duration. At the hearing conducted on September 21 and 27, 1999 the district representatives had opportunity to place on the record any information which would provide a reasonable basis for his exclusion from the Career and Technical Center. The only information contained in the record is that Danny is not a danger to others and would not pose a threat to members of the school community. Given the status of the record, and given the uncontradicted nature of this evidence, we find the district has not substantiated its position that this student poses a threat to the safety of others. It has established no supportable reason to exclude this student from immediate attendance at the Career and Technical Center. If at any time East Providence officials, or administrators in the Bristol – Warren system, become aware of facts that would warrant reconsideration of these factual conclusions, through psychiatric evaluation or otherwise, then we would expect a request to reconvene this hearing as well as other measures they deem appropriate to ensure safety of students and staff.

We order that Danny be permitted to attend the Career and Technical Center immediately. This decision is entered as a final order and interim order in this matter, so that pending any appeal, Danny will be able to enforce his right to be in attendance at the school.

Kathleen S. Murray, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

DATE: October 6, 1999