

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

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In the Matter of Student A.R. Doe

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DECISION

HELD: This is an appeal from a school committee decision regarding a student's one-day suspension. In this case we find that the one-day suspension is proportionate to the misconduct at issue. The decision of the school committee in this case is, therefore, affirmed.

DATE: May 1, 2001

Travel of the Case

The petitioner in this case, the father of a kindergarten student, is appealing from a decision of a Rhode Island school committee to suspend his daughter for one day. Jurisdiction to hear this matter is present under R.I.G.L.16-39-1 and R.I.G.L.16-39-2.

Findings of Fact

The one-day suspension, which is the subject of this appeal, was imposed by the school principal when this student kicked her kindergarten teacher. In a prior incident this student threw a pair of plastic scissors at another student. The student in this case had also been the subject of several prior complaints from her classmates concerning rough behavior. We find that the student in this case was given an opportunity to explain her conduct to her teacher, and to the principal who imposed the suspension now at issue.¹ The principal in this case also asked other students about what they had witnessed about the incidents in question. The school committee conducted a full hearing in this matter. At the school committee hearing the petitioner had an opportunity to confront and cross-examine witnesses. He was also given the right to have counsel present.

Positions of the Parties

The petitioner argues that the suspension was invalid because:

1. It was made in violation of the principles of progressive discipline found in R.I.G.L.16-2-17
2. It was excessive punishment.
3. It was imposed in a procedurally defective manner.

The school committee submits that the one-day suspension was appropriate, that principles of progressive discipline were not violated by this suspension, and that the process used to impose this suspension met statutory and constitutional requirements.

Conclusions of Law

The General Assembly has authorized school suspensions:

¹ Transcript of School Committee Hearing, February 12, 2001, page 10.

16-2-17. Right to a safe school. – (a) Each student, staff member, teacher, and administrator has a right to attend and/or work at a school which is safe and secure, and 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 attendance², who exhibits persistent conduct which substantially impedes the ability of other students to learn or otherwise substantially interferes with the rights stated above, and who has failed to respond to corrective and rehabilitative measures presented by staff, teachers, or administrators.

(b) The school committee, or a school principal as designated by the school committee, may suspend all pupils found guilty of said conduct or of violation of those school regulations which relate to the rights set forth in subsection (a), or where a student represents a threat to those rights of students, teachers or administrators, as described in subsection (a). Nothing herein shall relieve the school committee or school principals from following all procedures required by state and federal law regarding discipline of students with disabilities.

(c) A student suspended under this section may appeal the action of the school committee, or a school principal as designee, to the commissioner of elementary and secondary education who, after notice to the parties interested of the time and place of hearing, shall examine and decide the appeal without cost to the parties involved. Any decision of the commissioner in these matters shall be subject to appeal by the student to the board of regents for elementary and secondary education and any decision of the board of regents may be appealed by the student to the family court for the county in which the school is located as provided in § 42-35-15.

The United States Supreme Court ruled in *Goss v. Lopez* that the due process clause of the United States Constitution applies to school suspensions.³ While this is so, this does not mean that a trial type hearing is required before a short school suspension can be imposed. In *Goss v. Lopez* the Court wrote:

We stop short of construing the Due Process Clause to require, countrywide, that hearings in connection with short suspensions must afford the student the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge, or to call his own witnesses to verify his version of the incident. Brief disciplinary

² The Compulsory Attendance Law applies to students under, and over, the age of 16 who are, in fact, enrolled in school. The Compulsory Attendance law states: "Nothing in this section shall be construed to allow the absence or irregular attendance of any child who is enrolled as a member of any school, or any child sent to school by the person having control of the child." R.I.G.L. 16-19-1

³ *Goss v. Lopez*, 419 U.S. 565 (1975). See: *Donovan v. Ritchie*, 68 F.3d 14 (1st Cir. 1995).

suspensions are almost countless. To impose in each such case even truncated trial-type procedures might well overwhelm administrative facilities in many places and, by diverting resources, cost more than it would save in educational effectiveness. Moreover, further formalizing the suspension process and escalating its formality and adversary nature may not only make it too costly as a regular disciplinary tool but also destroy its effectiveness as part of the teaching process.

For suspensions of fewer than 10 days the Regulations of the Rhode Island Board of Regents track the suspension procedures required by the Supreme Court in *Goss v. Lopez*.

For suspensions of ten (10) days or less:

- a. that the student be given oral or written notice of the charges against him/her;
- b. that if the student denies the charges, the student be given an explanation of the evidence the authorities possess;
- c. that the student be given the opportunity to present his/her version; and
- d. that notice and hearing generally should precede the student's removal from school since the hearing may almost immediately follow the incident but if prior notice and hearing are not feasible, as where the student's presence endangers persons or property or threatens disruption of the academic process, thus justifying immediate removal from school, the necessary notice or hearing shall follow as soon as practicable.
- e. That in the event a student has not attained the age of majority (18 years), notice containing the reason for suspension and the duration thereof be given to the parent or guardian. Such notice shall be given in the parent's spoken language, unless it is clearly not feasible to do so.

Every school committee must have a student discipline code:

16-21-21. Student Discipline Code. – Each school committee shall make, maintain, and enforce a student discipline code. The purpose of the code is to foster a positive environment which promotes learning. The department of elementary and secondary education shall provide necessary technical assistance in the development of the student discipline code. The school committee shall cause the student discipline code to be distributed to each student enrolled in the district. Each student and his or her parent, guardian, or custodian shall sign a statement verifying that they have been given a copy of the student discipline code of their respective school district.

It is not necessary or appropriate for a school discipline code to have the specificity of a penal law code. The United States Supreme Court observed: ⁴

We have recognized that “maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship.”⁵ Given the school’s need to be able to impose disciplinary sanctions for a wide range of unanticipated conduct disruptive of the educational process, the school disciplinary rules need not be as detailed as a criminal code which imposes criminal sanctions.

In fact the school disciplinary code in this case does contain a prohibition against assault or battery.⁶ In addition there is no dispute that the student committed the acts of misconduct now at issue.

Conclusion

The petitioner in this case is arguing, in our view, that the procedures in this case fell short of the procedures used in a court trial. He goes on to argue that the hearing notice he received from the school committee should not be considered to be technically correct. In fact, of course, the notice and hearing that his daughter was provided with in this case exceeded the notice and hearing requirements imposed by the Rhode Island Board of Regents, and by the United States Supreme Court.

The petitioner himself had more than adequate notice of his own hearing at the school committee level, since he himself had requested the hearing. He was therefore fully aware of the issues which the hearing would deal with. We therefore find that notice was adequate.

We can also find no procedural deficiencies in the hearing that the school committee conducted. The petitioner himself was given a full trial type hearing with witnesses, and with cross-examination, at both the school committee level, and at the commissioner level, to challenge his daughter’s one-day suspension for misconduct--misconduct which is not disputed.

We also find that the one-day suspension is proportionate to the “offense.” The suspension therefore comports with the principle of progressive discipline since it was a measured response to the misconduct at issue. This student did kick a teacher, and did throw a pair of plastic scissors at another

⁴ *Bethel School District v. Fraser*, 478 U.S.675 (1986),

⁵ Citing: *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

⁶ Warwick Discipline Code, File JGD, Revised 7/9/96

student. A brief time out, for the sake of this student, her classmates, and her teacher was quite appropriate to make sure that appropriate steps were taken at school, and at home, to address this student's misconduct. The decision of the school committee in this case is, therefore, affirmed.

Forrest L. Avila
Hearing Officer

APPROVED:

Peter McWalters
Commissioner

DATE: May 1, 2001