

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

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In the Matter of Student R.C. Doe

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DECISION

Held: This is an appeal from a school committee's decision to impose a 10-day suspension against a student which was to be imposed during the 2000-2001 school year. Based upon the facts and the law we find that the actions of the school district in this case must be sustained, and the appeal must be dismissed.

DATE: May 14, 2001

Travel of the Case

This is an appeal from a school committee's decision to impose a 10-day in-house suspension against a student. Jurisdiction is present under R.I.G.L. 16-39-1 and R.I.G.L.16-39-2. The school committee in this case, contrary to the practice of most school committees, has a policy of staying school suspensions until all appeals have been exhausted. In the case at hand an appeal was filed with the commissioner, but at the request of the parties, the appeal hearing was held in abeyance while they attempted to resolve this dispute. When their protracted efforts failed to result in a resolution, a conference with the hearing officer was held where the parties agreed that matter could be decided based upon briefs to be filed by the parties. The record in this case closed on May 3, 2001 when the school committee filed its brief. This matter is now in order for a decision.

Findings of Fact

During the 1999-2000 school year the petitioner, who is a special education student, was a high school freshman attending a public school. During the school year he participated in a school sponsored work-study program that brought him onto the premises of a government office in his town. This work-study program is part of the school district's special education program, and is required by the *Board of Regents Regulations Governing the Education of Children with Disabilities*.¹

The facts in this case are not in dispute. At some point during the 1999-2000 school year the petitioner stole a large sum of money from the government office in which he was working.² He also stole money from the school library. While at school he started handing out some of this money in the form of large bills to a number of friends. This came to the attention of school authorities. Town authorities then confirmed the theft of some \$10,000 from the government office. A search of the petitioner's school locker revealed the stolen money. We find that the theft at issue took place at a school related activity that was part of this student's education program.³

On June 14, 2000 a letter from school authorities informed the petitioner and his parents that, because of these thefts, he was being suspended for a period of 10 school days. The school year had ended on June 9, 2000. The school

¹ RISE 300.29

² The Family Court has dealt with the law enforcement aspects of this case.

³ See: *Howard v. Colonial School District*, 621 A.2d 362 (1992); *Pollnow v. Glennon*, 594 F. Supp. 220 (1984) affm'd 757 F.2d 496 (2nd Cir.1985)

suspension was therefore to be imposed during the 2000-2001 school year. The petitioner argues that his suspension is invalid because:

1. The school discipline code does not prohibit the misconduct at issue.
2. Suspensions for misconduct in one school year should not be allowed to carry over to the next school year.
3. The in-house suspension is not mentioned in the school discipline code

We will discuss these arguments in the order they have been presented.

1.Prohibited Misconduct

In Rhode Island 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.

However 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 has observed:

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.”⁴ 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.⁵

The First Circuit Court of Appeals has said:

⁴ Citing: *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

⁵ *Bethel School District v. Fraser*, 478 U.S.675 (1986)

We would not wish to see school officials unable to take appropriate action in facing a problem of discipline or distraction simply because there was no preexisting rule on the books.⁶

The Supreme Judicial Court of Massachusetts has written:

We reject [the student's] claim that, because it imposed discipline for conduct not described in its disciplinary rules, the school committee's conduct was arbitrary or capricious.⁷

The school districts disciplinary code, which is about 4 pages long, is contained in the district's *Student Handbook*. It is typical of most student disciplinary codes in this state, and probably any other state. It is not a criminal law code, either in length, or in hyper-technical drafting. Of course, it is not supposed to be a criminal law code, and it is not supposed to be interpreted in the way that a criminal code is interpreted.⁸ The United States Supreme Court has held that a school committee has wide latitude in reasonably construing its own disciplinary rules.⁹

In the present case the school district disciplinary rules concerning theft speak of:

Theft of school property or that of other students or staff members and/or possession of stolen goods.

The petitioner argues that since the property he stole was not school property, but rather town property, his misconduct is not covered by the literal terms of the school rule. [He forgets here that he also stole money from the school library.] He also seems to argue that the stolen *money* found on school property is not the equivalent of the stolen *goods* prohibited by the school discipline code.

Whatever merit the petitioner's arguments might have in a court of criminal law we find that they have little merit in the present school discipline case. Still, as a technical matter, we point out that the petitioner did steal school property in the form of cash from the school library. Furthermore, the term *goods*

⁶ *Richard v. Thurston*, 424 F.2d 1281, (1st Cir.1970) Horace Mann would have agreed with these rulings. In his 9th Report to the Massachusetts Board of Education wrote: "No code every framed by the ingenuity of man, however voluminous or detailed it may have been, every enumerated a tithe of the acts which an enlightened conscience will condemn; and no language was ever so exact and perspicuous, as to be proof against sophistry and tergiversation. The jurisdiction of the conscience is infinitely more comprehensive than that of the statute book. *Is it right* and not *Is it written*, is the question to be propounded in the forum of conscience. (Quoted in *Rhode Island Institute of Instruction*, 1845, p. 82)

⁷ *Nicholas B. v. School Committee of Worcester*, 587 N.E.2d 211 (Mass. 1992)

⁸ *Wiemerslage v. Maine TP. High School Dist.* 207, 29 F.3d 1149 (7th Cir. 1994)

⁹ *Board of Education of Rogers v. McCluskey*, 102 S.Ct. 3469 (1982)

is a *nomen generalissimum* which is capacious enough to include cash, notes, and bonds.¹⁰ The petitioner therefore did steal school property and he was in possession of stolen goods.

By saying this, we do not mean to indicate that this case is to be decided on such technical grounds. We find, instead, that the words of the school code were quite sufficient to put the student on notice, if any notice were needed, that school authorities would punish an act of theft occurring in the course of a school related program. Schools are not prohibited from imposing discipline because the school disciplinary code, if it were a criminal code, would be found to be less than artfully drafted.¹¹

However, even if a specific school rule did not exist to prohibit the school-related conduct at issue, the school would not be powerless to take action. School discipline is not a watered down version of criminal law for children. School discipline functions not only to maintain minimal standards of "law and order" but also to teach students the principles of civic virtue. Rhode Island law is explicit on this point:

16-12-3. Duty to cultivate principles of morality.---Every teacher shall aim to implant and cultivate in the minds of all children committed to his care the principles of morality and virtue.

This law was passed in 1856. The Rhode Island School Manual for 1857, authored by Commissioner Elisha Potter, refers to Massachusetts's statute of 1789 to explain how teachers are to provide the moral instruction required by Rhode Island's law:

Moral instruction should by all means be inculcated by the teacher, but yet so as to avoid all sectarian comments or bias. The rule as laid down in the law of the State of Massachusetts, while it points out and inculcates the duty of the teacher to give moral instruction, is carefully drawn to avoid giving countenance to any attempt to impart sectarian instruction, and may well be followed in this commonwealth.

The 1789 Massachusetts' statute referred to by Potter was a product of a post revolutionary decision to reform public education in Massachusetts in a way that would promote the characteristics which a citizen would need to be part of a free democratic republic. This statute is still on the books in Massachusetts and Maine. Its purpose is the promotion of civic virtue. The United States Supreme Court, in language that echoes the Massachusetts' statute, has stated:

¹⁰ Black's Law Dictionary, 4th Edition (1968) See: "Goods."

¹¹ *Nicholas B. v. School Committee of Worcester*, 587 N.E.2d 211 (Mass. 1992)

The role and purpose of the American public school system was well described by two historians, saying "public education must prepare pupils for citizenship in the Republic... It must inculcate the habits and manners of civility as values in themselves conducive to happiness and as indispensable to the practice of self government in the community and the nation." ¹²

The actions of the petitioner in this case are certainly contrary to the most basic rules of civility, and they have a very direct impact on the operations of the school. The school, and any employer recruited by the school, are certainly entitled to expect good behavior from a student placed in a school sponsored work study program. After all, the guidelines of the work study program state:

Employers should acknowledge that they are mentors to the student and therefore, we are requesting that they be good role models for our young and sometimes first time workers.¹³

Good behavior is therefore an implicit part of the work-study program. It was, therefore, quite appropriate for school officials to impose discipline in an effort to help this student learn civil behavior, and to assure present and prospective employers that students participating in work-study programs would behave themselves.

Would teachers who failed to discipline a student for stealing \$10,000 during the course of a school-related activity be viewed as complying with their duty to cultivate the principles of morality and virtue in their student? To ask the question is to answer it. In effect, R.I.G.L.16-12-3 provides a *good cause* standard for disciplining a student whose misconduct violates the fundamental rules of decent behavior in a context which impacts the school program, but which does not fall within the exact domain of a specific item in a general school discipline code. ¹⁴ The standard of *good cause* is, of course, constitutional.¹⁵

2. The In-house Suspension

In the present case school authorities have converted the petitioner's suspension to an *in-house* suspension. The student, perhaps a bit ungraciously, now objects to this penalty reduction because he cannot find authority for it in

¹² *Bethel School District Number 403 v. Fraser*, 478 U.S.675 (1986)

¹³ Exhibit: Training & Learning Channels, A school-to-work Employment and Training Opportunity.

¹⁴ *J.S. v. Bethlehem Area School District*, 757 A.2d 412 (Pa.Cmwlt. 2000). *Donovan v. Ritchie*, 68 F.3d 14 (1st Cir.1995)

¹⁵ *Arnett v. Kennedy*, 416 U.S. 134 (1974) See: *Wishart v. McDonald*, 500 F.2d 1110, 1116 (1st Cir. 1974)

the school committee's disciplinary code.¹⁶ We think this argument is without merit. As we have already pointed out school disciplinary codes are not criminal codes---they do not serve the purpose of a criminal code, and they are not, nor should they be, designed in the likeness of a criminal code, or construed in a way that criminal codes are construed.¹⁷ School discipline does not have to follow the same rules that are followed in criminal sentencing procedures. In sum, we find nothing improper about the conversion of this suspension to an in-house suspension.

3. Carry Over of Suspension

From the start Rhode Island school law has only allowed students to be suspended, not permanently excluded, from school attendance. One Rhode Island authority wrote: "Incorrigibly bad conduct permits the school committee to suspend a pupil, but not to expel him."¹⁸ Another Rhode Island authority says: "It is *generally* held to be the law that a school committee may not exclude a pupil for a period longer than the current school year."¹⁹ All these comments buttress the rule that in Rhode Island only suspension, not expulsion, is allowed. It is true that in the case of *John C.K. Doe v. Bristol/Warren* the commissioner held that:

The School Committee's expulsion of student Doe for the remainder of the 1996-97 school year solely for conduct he committed and *was disciplined for* in the 1995-96 school year is invalid. (*Emphasis added*)

However we do not read *John C.K. Doe* to amount to a holding that a student cannot be disciplined for conduct in a proceeding school year even though this conduct has never been the subject of discipline. We think that, as a rule, discipline should not carry over to a following school year. In most cases it is good policy to begin the school year with a clean slate. While this is a general rule, we see nothing in the school suspension law that forbids the punishment of misconduct that happens to take place on the last few days of the school year.²⁰ Such a rule would defy common sense by creating a vernal Saturnalia at the end of each school year during which misconduct would go unpunished simply because there was not enough time to punish it. In sum, we see nothing in the school suspension statute that prevents serious misconduct happening at the end of the school year from resulting in a penalty that must be completed during the following school year.

¹⁶ R.I.G.L.16-2-32

¹⁷ The Supreme Court has pointed out the school authorities have wide latitude in construing their own regulations---this is not a latitude which is available when criminal codes are being construed.

¹⁸ *Public Education in Rhode Island*, Charles Carroll, State Board of Education, 1918, page 458

¹⁹ *Laws of Rhode Island Relating to Public Education*, E.M. McEntee, RIDE, 1948

²⁰ R.I.G.L.16-2-17

Conclusion

Based upon the facts and the law we must find that the actions of the school district in this case must be sustained, and the appeal must be dismissed.

Forrest L. Avila
Hearing Officer

APPROVED:

Peter McWalters, Commissioner

May 14, 2001
Date