

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

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In the Matter of Student K.L. :
:
v. :
:
Providence :
:
.....

DECISION

Held: The student in this case has been suspended from school, and this matter is presently before the commissioner on a motion for summary judgement. Petitioners motion for summary judgement is denied, and this matter will be set down for a *de novo* hearing on the merits.

DATE: January 3, 2002

Travel of the Case

The student in this case has been suspended from school and, at the end of this suspension, he will be transferred to another school in the school district. This matter is presently before the commissioner on what amounts to a motion for summary judgment by the petitioner. The petitioner argues that, as a matter of law, judgment must be entered in his favor and that the school "exclusion" entered against him must be vacated. In most circumstances we would delay hearing such a motion until completion of an evidentiary hearing on the merits of the case. But, since school attendance is at issue, we have exercised our discretion to hear the petitioners "motion" on an expedited basis over the holiday recess period. For the reasons that follow we find that we must deny the petitioner's motion and set this matter down for a regular hearing on the merits.

"Suspension" v. "Exclusion"

The petitioning student argues that the suspension that has been imposed against him is not permitted under a strict reading of the applicable school discipline code. In essence his argument is that the Providence school discipline code uses the term "exclusion" for what should, technically, be called a school "suspension" and that this debatable solecism should, in some way, prevent the imposition of school discipline.¹ We, however, believe that the law discourages such a crabbed reading of school disciplinary codes. In pertinent part the statute requiring school disciplinary codes states:

16-21-21. Student Discipline Code. – Each school committee shall make, maintain, and enforce a 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.

We note, however, that 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:

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.”² 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.³

¹ In fact Rhode Island's **Compulsory Attendance Law** itself, at R.I.G.L.1619-6, does speak of a student becoming a "fit subject for *exclusion*." (emphasis added)

² Citing: *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

³ *Bethel School District v. Fraser*, 478 U.S.675 (1986),

The First Circuit Court of Appeals has said:

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.⁴

Furthermore, the Rhode Island law that requires teachers to "implant...the principles of morality and virtue" creates:

"[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. The standard of good cause is, of course constitutional."⁵

Given these authorities we cannot accept petitioner's argument that that the use of the term "exclusion" instead of the statutorily correct term "suspension" means that discipline cannot be imposed in this case.⁶ In fact, the United States Supreme Court has pointed out that as long as school committees act within statutory and constitutional limits they have broad authority to construe their own regulations.⁷

The Compulsory Attendance Law

The petitioner also contends that he cannot be suspended because he is subject to the compulsory attendance law. Since the compulsory attendance law allows for school suspensions petitioner is in plain error on this point.⁸

The School Transfer

The petitioner also seems to argue that the school committee has exceeded its authority by transferring him to a new school. However, the federal District Court for Rhode Island, in a case involving a regular education student, has found the transfer of a student to an alternative education program to be an acceptable disciplinary tool.⁹

⁴ *Richard v. Thurston*, 424 F.2d 1281, (1st Cir.1970); *Nicholas B. v. School Committee of Worcester*, 587 N.E.2d 211 (Mass. 1992)

⁵ *In the Matter of Student R.C. Doe, Commissioner of Education*, May 14, 2001.

⁶ R.I.G.L. 16-2-16. **Right to Safe School**

⁷ *Board of Education of Rogers, Arkansas v. McCluskey*, 102 S. Ct. 3469 (1982), 4 Ed. Law Rep. 136; *Wood v. Strickland*, 420 U.S. 308 (1975)

⁸ R.I.G.L.16-19-6

⁹ *Casey v. Newport School Committee*, 13 F. Supp. 242 (D.R.I. 1998)

Conclusion

Petitioners motion for summary judgement is denied and this matter will be set down for a de novo hearing on the merits.

Forrest L. Avila
Hearing Officer

APPROVED:

Peter McWalters, Commissioner

Date