

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

In the Matter of Jason G.

.....

DECISION

Held: The student in this case is appealing his suspension from bus riding privileges as the result of an unexcused failure to report to a Saturday detention, which was given as discipline for an incident occurring on a school bus. As we can find no violation of due process in this case, the appeal must be denied and dismissed.

DATE: May 31, 2002

Travel of the Case

The student who is the subject of this appeal was a passenger on a Chariho school bus when he struck another student on the head. For this offense he was given a Saturday detention—which he failed to attend. Under Chariho school bus discipline rules, failure to attend a Saturday detention results in an immediate suspension of a student's bus riding privileges.¹ After 10 days of this suspension had passed the student's father appealed this suspension to Chariho school officials. These officials refused to reinstate the student's bus riding privileges. The parent then appealed to the Chariho school committee. The Chariho school committee has now affirmed the decision that the student will not be allowed to ride the bus until he serves a Saturday detention. From this decision of the school committee the petitioner has now appealed to the commissioner of education.

Jurisdiction

Jurisdiction is present under R.I.G.L.16-38-1, and R.I.G.L. 16-38-2. The petitioner, who is the father of the student, has standing to file this appeal since he has joint custody with his former wife over the student in accordance with the applicable family court decree.²

Positions of the Parties

The Father's Position

The petitioning parent argues that:

1. He did not receive proper and timely notice of the Saturday detention or the bus suspension. He contends that the school has only sporadically complied with his request to receive copies of all material sent out by the school concerning his son.³
2. The school authorities should have more thoroughly investigated the incident. In the father's view a more thorough investigation would have shown that the blow his son struck was just youthful high jinx between long time friends.
3. The 10 days suspension of bus transportation that his son had already "served" is more than sufficient punishment for the

¹ Exhibit 11

² Tr. Page 6

³ Tr. Page 6

incident in question. The petitioner contends that under the Chariho school bus discipline policy most serious bus offenses are punished with no more than 10 days of bus suspension.⁴ He therefore suggests that failure to attend Saturday detention should not incur any penalty greater than 10 days.

4. His former wife's work schedule and his own prevent them from driving their son to a Saturday detention.

The School's Position

The Chariho school district argues that:

1. This student was properly assigned a Saturday suspension after a bus driver saw him strike another student on the bus.
2. This student was given more than sufficient due process in connection with this incident.
3. There is no dispute that the mother of these children received all appropriate notices and that she has demonstrated that she knows how to respond to them. For example, she arranged for an alternate Saturday detention when illness prevented one of her sons from attending a detention period that had been scheduled. Moreover the school district submits that when a timely request has been made it has arranged for alternate disciplinary sanctions in lieu of a Saturday detention when such a change has been warranted.

Findings of Fact

1. Jason, the student in this case, is 15. He lives with his father half of each week and with his mother the other half.⁵ Under the applicable Family Court decree the parents exercise joint custody—the same custody that married parents exercise over their children.⁶
2. On January 15, 2002 Jason was on a passenger on Chariho school bus. He went to the back of the bus and hit one of his close friends on the back of the head.⁷

⁴ Exhibit 11

⁵ Tr. Page 7

⁶ R.I.G.L. 33-15.1-1

⁷ Tr. Page 5

3. To the bus driver, who saw what had happened, this blow did not appear to be a friendly jostle. The bus driver testified:

He smacked him...He had to have a headache. I heard him slap him. He was just standing behind him. Andy sits here and Jay sits here and he just smacked him.⁸

4. When questioned by the bus driver about this incident Jason at first refused to give his name. The bus driver filled out a bus conduct report on this incident. This report resulted in Jason being assigned a Saturday detention.⁹
5. Jason failed to serve this detention, and no timely request was made for a postponement or alteration of the detention.¹⁰
6. Under the Chariho school bus disciplinary code an unexcused failure to attend a Saturday detention results in a suspension of bus riding privileges until the detention is served.¹¹
7. As a result of Jason's failure to serve the Saturday detention his bus riding privileges were automatically suspend in accordance with Chariho school rules.¹²
8. This suspension remained in effect for 10 days until an appeal was filed. The Chariho school committee has a policy of staying the imposition of school discipline penalties until all appeals are completed.¹³
9. In this case, both parents work on Saturday and live over 5 miles from Jason's school.¹⁴ Mr. G, the father of the student, now argues that under these circumstances a Saturday detention is an extreme inconvenience. This issue does not appear to have been raised at the various hearings which the school committee held in this case.¹⁵
10. Under Chariho rules postponement of Saturday detention can take place if the student is ill and a timely rescheduling of the detention is requested. Moreover alternate forms of discipline in lieu of a Saturday

⁸ Tr. Page 27

⁹ Tr. Page 12 and Exhibit 1

¹⁰ Tr. Page 28

¹¹ Tr. Page 13 Exhibit 2

¹² Exhibit 11

¹³ Testimony of Parent

¹⁴ Tr. Page 18

¹⁵ Tr. Page 29, 29

detention can be arranged if a timely request is made.¹⁶ Mr. G's former wife, who has joint custody over Jason, was aware of the availability of these options—Mr. G. testified that he was not aware of these options.¹⁷

11. When school bus discipline is imposed in Chariho, the student is given a slip to bring home to his parents. A copy of this slip is also mailed to the parents.¹⁸ In this case a copy of the slip was mailed to Jason's mother, but a copy of the slip was not mailed to Jason's father.
12. Chariho has a school bus discipline policy based upon graduated steps. For most first offenses school bus privileges are not suspended—but the student is required to serve a Saturday detention. Further infractions incur increasing penalties all the way up to 10 days suspension and, in some cases, withdrawal of transportation for the rest of the year.¹⁹
13. Mr. G, in accordance with the Chariho appeal process, received a hearing before the school committee. At this hearing he was given the opportunity to present witnesses.²⁰ At his request the hearing was continued to give him more time to seek witnesses. When the hearing reconvened Mr. G. did not present any witnesses.
14. After completion of the hearing the school committee decided to maintain the suspension of Jason's school bus riding privileges until the Saturday detention has been served.
15. Mr. G. has appealed this decision of the school committee to the commissioner of education.

Conclusions of Law

1. The United States Supreme Court has ruled that there is no federal constitutional right to free school transportation.²¹
2. The First Circuit Court of Appeals has held that federal due process rights do not, as a rule, attach to suspension of school bus transportation even though a state may have created a statutory right to transportation.²²
3. Rhode Island has created a statutory right to transportation.²³

¹⁶ Tr. Page 31

¹⁷ Tr. Page 31

¹⁸ Tr. Page 33

¹⁹ Exhibit 11

²⁰ Exhibit 11

²¹ *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450 (1988)

²² *Rose v. Nashua Bd. Of Education*, 679 F.2d 279 (1982)

4. Staple school disciplinary measures such as detentions, loss of recess, or extra schoolwork do not require due process hearings.²⁴
5. For purposes of this case we will assume, without deciding, that Rhode Island law, or the supervisory authority of the commissioner, requires a measure of due process when it comes to the disciplinary action which can potentiate into suspension of bus riding privileges. In the case at hand the student was, in fact, given an explanation of the evidence and of the "charge" against him, along with an opportunity to explain his side of the story. This would comport with the set of due process rights a student would have when faced with a 10 day suspension from school.²⁵ We therefore believe that the same set of rights is more than sufficient to support the imposition of a Saturday detention for bus misconduct.
6. Under the regulations of the Board of Regents the only disciplinary measure that requires full procedural due process, including the right to confront and cross-examine witnesses, is a long-term suspension. Short-term suspensions carry with them no requirement for confrontation and cross-examination of witnesses.²⁶
7. In the case at hand, of course, the student has admittedly failed to serve the Saturday detention. As a result of this non-attendance and in accordance with school rules, he has been prohibited from riding the school bus until the detention is served. In effect this means that the student—metaphorically at least—carries the keys to the school bus in his own pocket. His bus riding privileges will be restored as soon as he chooses to serve his Saturday detention. We can see no violation of due process in a penalty of this nature. This is particularly the case when an alternate penalty for a Saturday detention is available when properly requested for good cause.
8. The Regulations of the Board of Regents and the Department of Transportation require that good order and discipline be maintained on school buses. Except for ordinary conversation school bus riders are expected to maintain normal classroom discipline:

5.1 – The bus operator is in full charge of the bus and all passengers must promptly obey the bus operator's directions and instructions.

²³ R.I.G.L.16-21-1

²⁴ ²⁴ *Rose v. Nashua Bd. Of Education*, 679 F.2d 279 (1982)

²⁵ *Goss v. Lopez*, 419 U.S. 565 (1975)

²⁶ *Goss v. Lopez*, 419 U.S. 565 (1975)

The regulations of the Board of Regents and the Department of Transportation allow for the suspension of a student's bus riding privileges for acts of misconduct:

6.1—Disciplinary Rules

All school committees shall adopt written rules designating the disciplinary action to be taken against students engaged in misconduct on school buses. No disciplinary action related to bus riding privileges or suspension thereof shall be taken unless in compliance with the school committee's written policies on the matter.

9. In Rhode Island both parents have *joint custody* of their minor children except as otherwise decreed by a court of competent jurisdiction. In pertinent part the law states:

33-15.1-1 Parents as joint natural guardians—Releases. —(a) The father and mother shall be the joint natural guardians of their minor children and shall be *equally charged* with their care, nurture, welfare and *education*;...Provided, however, this section...shall not effect the right of any court...to make any order...regarding the care, custody, education, estate or otherwise of any minor child....²⁷

10. State and federal law require that both parents be given *access* to school records concerning their child unless a court decree bars one of them from access.²⁸ However these statutes are silent about what documents and notices a school must *send* to parents in the normal course of school operations.

11. We certainly believe that in a joint custody situation, when parents are living separate and apart, sound policy requires that a school send all notices to both parents when it has been requested to do so. Still, we can see no reason why an otherwise valid school penalty should be voided simply because a school has failed to send notice to both parents. We are confident that under the law, in a joint custody situation, absent extraordinary circumstances, notice to one parent is notice to both parents. After all, the law states that: "The father and mother shall be the joint natural guardians of their minor children and shall be equally charged with their care, nurture, welfare and education...."²⁹ In any event school discipline is not a subcategory of the criminal law where the failure

²⁷ A New York Court has defined joint custody in these terms: "Join custody is most often defined as meaning only that both parents will share in the decisions concerning the child's care, education, religion, medical treatment and general welfare, but nothing is defined as to what occurs when there is a disagreement." *Hight v. McKinney*, 627 N.Y.S2d (Fam.Ct. 1995)

²⁸ 34 CFR 99.1

²⁹ R.I.G.L. 33-15.1-1

to adhere precise, or even precision, notice and pleading requirements can defeat the imposition of an otherwise valid penalty.³⁰

Discussion

Based upon our conclusions of law we can find no violation of due process in this case. We also must find that the sufficient investigation of the charge took place here. This is particularly the case since the disciplinarian witnessed the events at issue. While we believe that both parents should have received notice of the school discipline imposed in this case we can find no reason why failure to give this notice should nullify the imposition of discipline. In any event the failure of notice in this case amounts to harmless error.

We also must reject the contention that the discipline in this case is excessive. While the suspension from school bus transportation imposed in this case has now exceeded ten days, this is only the result of the student's failure to attend a Saturday detention which would have guaranteed him continuing riding privileges. As soon as this detention is served the student will again be able to ride the bus. The bus suspension here is, at this stage, a self-imposed penalty that the student can end at any time by simply attending Saturday detention or, perhaps by completing some alternative penalty, if this alternative is properly arranged for.

Conclusion

The appeal must be denied and dismissed.

Forrest L. Avila, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

May 31, 2002

Date

³⁰ *New Jersey v. T.L.O.*, 469 U.S. 325 (1985); *Bethel School District v. Fraser*, 478 U.S. 675 (1986); *Richard v. Thurston*, 424 F.2d 1281, (1st Cir.1970); *Nicholas B. v. School Committee of Worcester*, 587 N.E.2d 211 (Mass. 1992); *In the Matter of Student R.C. Doe, Commissioner of Education*, May 14, 2001.