

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

In the Matter of Timothy G.

.....

DECISION

Held: The student in this case, Timothy G., who is 13 years old, has been disciplined five times during this school year for various acts of misconduct that took place while he was riding a school bus operated by the Chariho school district. This pattern of misconduct has now resulted in a ten-day suspension of his school bus riding privileges. Based upon our findings of fact and conclusions of law we can find no violation of due process in this case, either as to the procedure used in imposing bus discipline or in the notice given. The appeal must be denied and dismissed.

DATE: May 31, 2002

Travel of the Case

The student in this case, Timothy G., who is 13 years old, has been disciplined five times during this school year for various acts of misconduct that took place while he was riding a school bus operated by the Chariho school district. This pattern of misconduct has now resulted in a ten-day suspension of his school bus riding privileges. The father of this student appealed this matter to the Chariho school committee. At the same time, the father appealed an unrelated bus disciplinary action relating to his other son to the school committee. After the school committee denied both his appeals, he appealed these matters to the commissioner of education. The father has moved that these matters be addressed in separate opinions and this motion was granted.¹

Jurisdiction

Jurisdiction is present under R.I.G.L. 16-39-1 and R.I.G.L.16-39-1

The Positions of the Parties

The Father

The father argues that:

1. He should have been directly notified of these incidents. Since he was not, and since only his former wife received direct notice, this fact should prevent the imposition of school discipline against his son.
2. School authorities should made much more thorough investigations of these disciplinary incidents This investigation should have included consist of locating witnesses, questioning them, and making a careful inquiry into what factors motivated the misconduct so that all circumstances might be taken into account in making a disciplinary decision.

Position of the School

The school argues that:

1. The only reason this appeal was taken was to take advantage of the school district's policy to stay disciplinary actions until all appeals are heard.
2. A more than sufficient investigation took place concerning these incidents.

¹ Tr. Page 1

3. That appropriate notice of the resulting discipline was provided.

Findings of Fact

1. On September 17th of 2001 Timothy received a Saturday detention for standing while the bus was in motion. This detention was rescheduled once, and then it was served.²
2. On November 19th of 2001 Timothy was cited for refusing to sit in the front row and exhibiting verbal defiance to the bus driver.³ This incident resulted in five-day suspension of bus riding privileges.
3. On January 9th of 2002 Timothy was cited for being disrespectful to the bus driver and to the bus monitor. His actions that day also included shaking birdseed on the bus seat and on the floor, and not identifying himself to the driver.⁴ This incident resulted in five-day suspension of bus riding privileges.
4. On January 23rd of 2002 Timothy was cited for antagonizing the boy in front of him and for being disrespectful to the bus driver. This incident resulted in a five-day suspension of bus riding privileges.
5. On January 28th of 2002 Timothy was cited for riding the school bus while his bus riding privileges were suspended. This incident was referred to the superintendent for additional review and discipline. The superintendent imposed a 10-day suspension of bus riding privileges and advised the parents by letter of Timothy's continued bad behavior on the bus.⁵
6. When this matter was appealed to the school committee the father was given a chance for a full evidentiary hearing.⁶ When he requested to have the bus driver present at the hearing, the matter was continued so the school district could produce the bus driver. When the matter was heard again the driver was present, but the father had no questions for her.⁷
7. The parents in this case are divorced. They have joint custody over Timothy G. Timothy G. lives with his father for part of the week and with

² Tr. Page 41 See: Exhibit 5

³ Tr. Page 42

⁴ Tr. Page 42

⁵ Tr. Page

⁶ Exhibit 11

⁷ Tr. Page 50

his mother the other part. The father has requested that all school notices relating to his son should be sent not only to his former wife but also to himself. The school has not always sent all notices to this father.

8. In the present case the disciplinarian saw and heard the acts of misconduct committed by Timothy G. Timothy G. had an opportunity to explain his side of the story to the disciplinarian before any penalty was imposed. Timothy G. seems to have used this opportunity to insult and be disrespectful toward the disciplinarian.⁸ Timothy G. was given the opportunity to have a full trial type hearing before the school committee.⁹
9. The Chariho school committee has a written bus discipline policy.¹⁰

Conclusions of Law

1. For purposes of the present matter we will assume, without deciding, that a 10 day suspension of bus riding privileges must be accompanied by the same level of due process that is required in cases involving a 10 day suspension from school.¹¹
2. 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.

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

⁸ Exhibits 5, 6 and Tr. Page 42

⁹ Exhibit 11

¹⁰ Exhibit 2

¹¹ As a matter of federal law the First Circuit Court of Appeals has ruled that this is not the case. *Rose v. Nashua Bd. Of Education*, 679 F.2d 279 (1982). In *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450 (1988), the United States Supreme Court ruled that there was no constitutional right to public school transportation.

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.

3. 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....¹²

4. 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.¹³ However these statutes are silent about what documents and notices a school must *send* to parents in the normal course of school operations.
5. 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...."¹⁴ In any event school discipline is not a subcategory of the criminal law where the failure to adhere precise, or even precisian, notice and pleading requirements can defeat the imposition of an otherwise valid penalty.¹⁵

¹² A New York Court has defined joint custody in these terms: "Joint 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)

¹³ 34 CFR 99.1

¹⁴ R.I.G.L. 33-15.1-1

¹⁵ *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.

Discussion

Based upon our findings of fact and conclusions of law we can find no violation of due process in this case, either as to the procedure used in imposing bus discipline or in the notice given.

Conclusion

The appeal must be denied and dismissed.

APPROVED:

Forrest L. Avila, Hearing Officer

Peter McWalters, Commissioner

May 31, 2002
Date