

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

.....

**In the Matter of Student D.R.**

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**DECISION**

Held: This is a school suspension case that is on appeal from a decision of the Cranston school committee to suspend the petitioner for five school days for fighting. The appeal is denied and dismissed.

DATE: June 5, 2002

## Travel of the Case

This is a school suspension case that is on appeal from a decision of the Cranston school committee to suspend the petitioner for five school days for fighting. In his appeal the petitioner is arguing three main points:

1. The Cranston School Committee, or the administrator imposing the suspension, should have taken testimony from witnesses to the fight before imposing the suspension.
2. The Cranston School Committee should have allowed the petitioning student to show that he did not provoke the fight, but instead that he was acting in self-defense.
3. Cranston's rule against fighting is invalid because it does not contain provisions for self-defense.

### 1. Witnesses in Short Term Suspensions

The petitioner argues that witnesses should have been called to prove that he was willfully participating in a fight. Presumably the petitioner would cite in support of his argument *Goldberg v. Kelly*, 397 U.S. 254 (1970) where the United States Supreme Court wrote:

In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.

The problem, of course, is determining when "important decisions" are at stake which merit a trial type hearing, and thus the examination and cross examination of witnesses. It is true, of course, that in *Goss v. Lopez*, 373 U.S. 683 (1963) the Supreme ruled that:

A 10-day school suspension from school is not *de minimis* in our view and may not be imposed in complete disregard of the Due Process Clause.

However, after reaching this conclusion, the Court stated that:

Once it is determined that due process applies, the question remains "what process is due."... We turn to that question, fully realizing as our cases regularly do that the interpretation and application of the Due Process Clause are intensely practical matters and that "[t]he very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." ...We are also mindful of our own admonition: "Judicial interposition in the operation of the public school system of the Nation raises problems

requiring care and restraint. . . . By and large, public education in our Nation is committed to the control of state and local authorities....".

The Court went on to decide that in suspensions of less than 10 days the due process clause did not require the examination and cross-examination of witnesses:

We stop short of construing the Due Process Clause to require, countrywide, that hearings in connection with short suspensions must afford the student the right 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 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.

With regard to suspensions of 10 days or less the regulations of the Board of Regents follow *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 an 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 the suspension and the duration thereof be given to the parent or guardian. Such notice shall be given the parent's spoken language, unless it is clearly not feasible to do so. <sup>1</sup>

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<sup>1</sup> While we hear most appeals *de novo* we have no doubt that the Board of Regents has authority to establish the procedural rules applicable to short term suspensions, and thus the rules the commissioner should use in reviewing such short-term suspensions. See: R.I.G.L. 16-39-1

Nowhere in the language just quoted is there any requirement that witnesses be called and cross-examined in suspensions of 10 days or less. In fact the Regents' regulations only provide for such a procedure when a suspension of more than 10 days is at issue. Only in such cases does the student, under the regulations, have the right to "cross-examine witnesses and to present witnesses in his or her behalf." (Regulations of the Board of Regents Governing Disciplinary Exclusions)

Given the Supreme Courts ruling in *Goss v. Lopez, supra*, and the regulations of the Board of Regents, we must conclude that the school district was not required to allow the testimony of witnesses in this short term suspension case.

## 2. Self Defense

In the present case the petitioner argues that he did not provoke the fight at issue and that, instead, he was defending himself. The school's response to this is that this argument is irrelevant since, when a school official did intervene to break-up the fight, the petitioner did not "break-clean" at the command of this official, but rather continued to fight. The petitioner argues that if witnesses were called they might disagree with this evaluation of the situation. But, as we have seen, in a short-term suspension case, a school district is not required to allow for confrontation and cross-examination of witnesses. *Goss v. Lopez, supra*. The Supreme Court in *Wood v. Strickland*, 420 U.S. 308 (1975), pointed out that:

As with executive officers faced with instances of civil disorder, school officials, confronted with student behavior causing or threatening disruption, also have an "obvious need for prompt action, and decisions must be made in reliance on factual information supplied by others."

## 3. The Validity of the "No Fighting" Rule

The petitioner also attacks Cranston's disciplinary rule that arguably prohibits "fighting" without mentioning such matters as self-defense. Now, in Rhode Island school committees have authority to establish their own local regulations, consistent with the law and the lawful authority of the department of education:

**16-2-16. Rules and Regulations—Curriculum.**—The school committee shall make and cause to be put up in each schoolhouse rules and regulations for the attendance and classification of the pupils, for the introduction and use of textbooks and works of

reference, and for the instruction, government, and discipline of the public schools, and shall prescribe the studies to be pursued therein, under the direction of the department of elementary and secondary education.

Furthermore, every Rhode Island 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.

Of course, it is not necessary or appropriate for this 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.”<sup>2</sup> 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.<sup>3</sup>

For this reason alone we have little doubt about the validity of Cranston's "no fighting," rule. Moreover, given the school committee’s argument that the petitioner was being disciplined, not for defending himself, but rather for continuing to fight after being ordered to stop, we do not have to reach the petitioner's argument that the school committee’s rule which prohibits "fighting", without allowing for the "self-defense", is defective. Still we feel that we should comment on this argument.

As the petitioner points out, some Rhode Island school districts explicitly allow a student "arraigned" for fighting to "plead" "self-defense." However, at least in short term suspension cases, we see nothing wrong in a school committee deciding not to invest too much staff time and taxpayer

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

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

money in sorting out all the moral dimensions of each case involving youthful fisticuffs, but instead opting to prohibit fighting in general.

School officials need some scope to decide whether they are dealing with what started (or ended) as a mutual affray between two sturdy youths, meriting the punishment of both combatants, or whether they are dealing with an assault directed by one youth against an unoffending other. Local officials, who have the appropriate background information about the disciplinary background and deportment of the students concerned, are the ones in the best position to make this call. We therefore see, at least in the context of this case, nothing invalid about Cranston's "no fighting" regulation.

### **Conclusion**

Petitioner's appeal must be denied and dismissed.

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Forrest L. Avila, Hearing Officer

APPROVED:

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Peter McWalters, Commissioner

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June 5, 2002

Date