

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

-----  
BONNIE S.

V.

NEWPORT SCHOOL COMMITTEE  
-----

**DECISION**

Held: School Committee did not act arbitrarily in denying request for out-of-district educational placements for two students due to safety concerns.

DATE: August 30, 2002

## **Introduction**

This matter concerns the Newport School Department's denial of Appellant's request for out-of-district placements for two of her children.<sup>1</sup>

For the reasons stated below, we deny the appeal.

## **Background**

Appellant's family resides in Newport. At the start of the 2001-2002 school year, her child C attended Thompson Middle School (7th grade), and R and M attended Carey Elementary School (5th grade and kindergarten, respectively).

On or about November 9, 2001, C was being transported to gym class with the rest of his class when the student sitting next to him on the bus took a knife from his jacket pocket. The student used the knife, which had at least a 3-inch blade, to slash the seat cushion. The incident was referred to the police and the student received a 5-day suspension from school.<sup>2</sup>

Appellant immediately asked the school administration to keep C off the bus until there was additional adult supervision. Within days of the incident, a monitor was assigned to the bus. On the day after the incident, prior to the assignment of the monitor, C managed to board the bus which took him to gym class.

In the wake of the knife incident, Appellant requested that C be moved to another school for safety reasons. The School Department granted Appellant's request and made arrangements for C to attend Joseph H. Gaudet School in Middletown. Newport has a longstanding reciprocity agreement with Portsmouth and Middletown that provides for inter-district educational placements on a space-available basis.<sup>3</sup> C finished the 2001-2002 school year at Gaudet, and he will remain there for the 2002-2003 school year.

C testified that in the 6th grade at Thompson he was punched in the head by a student while playing basketball in health class. He also told of students tripping other students, putting small sticks in students' ears, and using profanity. C testified that during the 7th grade, prior to moving to Gaudet, he was hit by a student in math class, that the

---

<sup>1</sup> The Commissioner of Education designated the undersigned hearing office to hear and decide the appeal. A hearing was held on August 7, 2002. The parties later supplemented the record and filed memoranda.

<sup>2</sup> The student was kept out of school by his family for an additional 5 days. The family also agreed to additional remedial measures, including counseling, in response to this incident.

<sup>3</sup> Like Newport, Portsmouth and Middletown have only one middle school and one high school. The reciprocity agreement has never been applied to an elementary school student.

tripping and sticks-in-the-ear activity continued, and that students would get behind other students and pretend to spit on them.

R testified that in the 5th grade a student punched him in the shoulder. The same student also shoved R in the library. He also pushed female students and placed his hands around another student's neck. R testified that the student was suspended for his misconduct.

R also testified that he observed kindergarten students yelling, punching, jumping off tables and desks and pulling each other's pants down. R testified that after an administrator spoke to the children involved in this activity there was some improvement in their behavior.

C's father testified that since the knife incident, C is afraid to be alone and not as independent as he used to be. On June 20, 2002, Appellant made a formal request of the Newport office of special needs to have R enrolled in the Middletown school system "because of recent events his brother has witnessed, heard about and he feels are true." [Appellant's Exhibit 4].

The superintendent testified that the district devotes substantial time and resources to establish a safe learning environment in its schools. She described the district's use of behavior specialists, mediation, prevention programs, and police support. The principal at Thompson testified that her school had two knife incidents last year and, according to student discipline data compiled by the Department of Education, Gaudet had three knife incidents.<sup>4</sup> The principal also elaborated on the discipline training and mediation program at Thompson, and she stated that the design of the new Thompson School building will enhance student safety.

The School Department denied Appellant's request with regard to R primarily because he was moving to a new school (Thompson) this year. The request regarding M was denied based on a report from the kindergarten teacher that M had a very good year and a report from the principal that she had received very few discipline referrals from that classroom. The School Department did not speak to R or M before denying Appellant's request.

---

<sup>4</sup> Evidence was presented regarding SALT ("School Accountability for Learning and Teaching") surveys and state discipline reports for the Thompson and Gaudet schools.

## **Positions of the Parties**

Appellant contends that R and M do not feel safe attending school in Newport and they are afraid to go to school there. It argues that R was the victim of violence last year and that M was in a classroom in which children were suspended for violence. According to Appellant, there is “a school environment that is not conducive to learning and threatens both the physical and psychological well being of R and M.” [Memorandum, p.1]. Appellant alleges that the record “reflects a large volume of school incidents as well as other incidents not reported to the state” as required by state and federal law. [Memorandum, p.2].<sup>5</sup> Appellant also asserts that the school district’s failure to interview R and M prior to making its decision herein violates due process.

The School Committee contends that the evidence in this matter does not establish that R and M are attending school in an unsafe setting. While isolated instances of unwanted behavior do occur, “no pattern of violence or unsafe environment was established by the evidence.” [Memorandum, p. 5]. The decision to deny Appellant’s request was not arbitrary or capricious. According to the Committee, “R and M should attend the Newport school system and will hopefully have a safe and enjoyable learning experience. Any variations from that should be dealt with based on the circumstances as they arise.” [Memorandum, p. 7].

## **Discussion**

Public school enrollment in Rhode Island is governed by the student’s residence.<sup>6</sup> Once enrolled in a school system, a student has a right to attend a school “which is safe, secure, and peaceful, which is conducive to learning, and which is free from the threat, actual or implied, of physical harm by a disruptive student.”<sup>7</sup>

Children such as R who reside in Newport and are in the sixth grade are assigned to Thompson Middle School. Ordinarily, children such as M who live in Appellant’s area

---

<sup>5</sup> Appellant asks that “all the other reports submitted by the Newport School Committee (sic) be taken out of evidence as I find the credibility of the reports may be quite compromised in their favor. Newport Public Schools have issued statements under oath and written letters are (sic) both inaccurate are (sic) hear say that should not be considered on their behalf as they did not have sworn statements or written affidavits from those parties.” [Appellant’s letter dated August 29, 2002].

<sup>6</sup> R.I.G.L. 16-64-1.

<sup>7</sup> R.I.G.L. 16-2-17.

attend Carey Elementary School.<sup>8</sup> R and M are therefore entitled to be in a safe educational environment in those schools.

We have previously dealt with this issue at Thompson Middle School. In the case of Jane A.K. Doe, March 6, 1996, a Thompson student was the victim of hostile and threatening behavior by other students at school and elsewhere. The student was seeking to enroll in the North Kingstown school system. We ordered Newport to make alternative educational arrangements for the student or develop a plan that “reasonably ensures student Doe’s safe return” to Thompson. [Decision, p. 4]. We stated our expectation that the School Department would involve family and/or school counselors and the police in the development of the plan. Finally, we retained jurisdiction of the matter in case the parties were unable to agree on a course of action consistent with our decision.

Our decision in Jane A.K. Doe is reflective of the efforts that must be taken before we will direct an enrollment that varies from the residency-based system of school enrollment. We issued a decision to similar effect in the case of Jane A.X. Doe, April 25, 1997. There, a student was threatened by classmates at West Warwick High School and assaulted by them in her neighborhood. The student sought to enroll in the Johnston school system. Based on the evidence presented at the hearing, we did not find a valid basis for an enrollment in Johnston. In doing so, we stated

While it would appear that a mental health concern became the primary motivating factor [for the enrollment] . . . we do not have appropriate documentation of this student’s psychological state at the time her mother sent her to live with her aunt in Johnston. Without documentation by a mental health professional, we are unable to find that this reason was substantial and superceded the school-related reasons. [emphasis in original, footnote omitted].<sup>9</sup>

Instead, we ordered West Warwick to evaluate the student to determine if she had a psychological disability that would interfere with her ability to attend school there. If no disability were found, we ordered West Warwick to develop a plan to ensure her safe return there.<sup>10</sup>

We do not doubt the sincerity of Appellant’s efforts in this matter. We do not find, however, that the evidence in this case establishes the type of school environment for R

---

<sup>8</sup> Provided there is available space.

<sup>9</sup> Decision, pp. 5-6.

<sup>10</sup> If a disability were to be found, the student would be entitled to an individualized education program in accordance with state and federal law.

and M that requires their removal from the Newport school system. Unfortunately, R was punched one time and shoved on another occasion last year by the same classmate. That student was punished for his misconduct. As acknowledged by the School Committee, other unwanted behavior occurred, behavior that must be addressed. But we do not find that the behavior described at the hearing warrants the type of remedy Appellant is seeking.

In so finding, we do not rely solely on the nature and scope of the behavior at issue, but also on the lack of any psychological evaluation or counseling that is occurring regarding this issue. As noted in the Jane A.X. Doe case, in the absence of this type of documentation of the children's psychological state, we are reluctant to grant an exception to the well-established principles of school enrollment.

If Appellant wishes to pursue her June 20th request to the special needs office, arrangements can be made to have R and M evaluated relative to the concerns Appellant has expressed in this proceeding. This approach will provide the most appropriate process for R and M to be heard by the school district. It also will provide Appellant with procedural rights to pursue any disagreement she may have with the outcome of that process.

### **Conclusion**

It has not been shown that the Newport School Committee acted arbitrarily in denying Appellant's request for out-of-district educational placements for two of her children. The appeal is therefore denied.

---

Paul E. Pontarelli  
Hearing Officer

Approved:

---

Peter McWalters  
Commissioner of Education

DATE: August 30, 2002