

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....
:
:
In the Matter of Amanda C. :
:
:
.....

DECISION

Held: This is an appeal from a decision of the Chariho School Committee to suspend a regular education student for the rest of the school year. The decision of the school committee to suspend this student for the rest of the school year is affirmed. An expedited special education evaluation of this student shall take place.

Date: March 25, 2003

Travel of the Case

This is an appeal from a decision of the Chariho School Committee to suspend a regular education student for the rest of the school year.

Jurisdiction

Jurisdiction is present under R.I.G.L. 16-2-17, R.I.G.L. 16-39-1 and R.I.G.L. 16-39-2.

Positions of the Parties

The Parents

The parents in this case contend that the suspension the school committee imposed in this case is too harsh, and that their daughter should have a special education evaluation.

The School Committee

The school committee argues that the suspension it imposed was proportionate to the offense, and that there is nothing in this student's records or actions to indicate that she might be in need of special education. Now that the parents have requested an evaluation, the district seems not to have any objection to performing it.

Findings of Fact

1. The student in this case is in her first year of high school. Her disciplinary record shows that she has been disciplined over twenty times for various acts of misconduct including defiance of teachers, smoking, swearing, skipping class and skipping detention. On one occasion she brought vodka to school in a water bottle and "she offered [it] to suspecting and unsuspecting students...." [Student Disciplinary Record]
2. Most recently, this student brought marijuana to school and shared this marijuana with another student. [Admission contained in a statement given to Richmond Police.]

3. This student's academic record consists of mostly B's and C's, with a few higher or lower grades. Her record shows that 2 teachers have described her as a "good student" and another described her as a "conscientious student." One teacher noted that this student "participates well in class." Still, her language arts teacher felt that "more effort is needed" but, on the other hand, her English teacher noted that she was "showing academic improvement."

Conclusions of Law

1. If a school, in fact, knows or should know that a student is in need of special education, the school must use special education disciplinary procedures in disciplining the student, even though the student has not yet been formally identified as needing special education. See: 20 U.S.C. 1415(k)(8), 34 CFR § 300.527 [Protection for children not yet eligible for special education and related services.]
2. If a special education evaluation is requested during the pendency of a disciplinary proceeding, this evaluation must be conducted on an expedited basis but, if the school is not chargeable with knowledge that the student is in need of special education, the applicable federal regulation state states that:

Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. 34 CFR §300.527 (2)(ii)
3. Rhode Island school law does not allow expulsion or indefinite suspensions. Rhode Island school law does allow school suspensions for a definite period of time.
4. This student was accorded appropriate due process rights. (Hearing Notice, December 19, 2002)

Discussion

Given this student's prior disciplinary record we can find nothing excessive in the length of the suspension that was imposed. It should also be noted that the misconduct involved here goes beyond the simple possession of alcohol and marijuana, and extends to include sharing these substances with other students.

There is nothing in record before us that might lead us to believe that the school district was in error when it decided to treat this student as a regular education student. Her grades, while not outstanding, were, for the most part, within an acceptable range of performance. The teacher comments contained in her record do not indicate that any of them thought that this student might have a disability that was undermining her level of academic achievement. None of them referred her for a special education evaluation.

Conclusion

The decision of the school committee to suspend this student for the rest of the school year is affirmed. An expedited special education evaluation of this student shall take place.

Forrest L. Avila
Hearing Officer

APPROVED:

Peter McWalters, Commissioner

March 25, 2003

Date