

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

In the Matter of Student C.V.
v.
North Providence

DECISION

Held: This is an appeal from a decision of the North Providence School Committee to suspend a student for five days for breaking into, and vandalizing, other students' lockers. Based upon the weight of the evidence, we find that the charge that this student vandalized lockers has been proven and that this student received the due process appropriate in a short-term suspension case. The appeal is therefore denied and dismissed.

DATE: May 30, 2003

Travel of the Case

In this case the parents of a 6th grade student are appealing from a decision of the North Providence School Committee to suspend the student for five days for breaking into, and vandalizing, other students' lockers. The school committee has stayed imposition of the suspension pending review by the commissioner.

Jurisdiction

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

Position of the Parties

The Parents

The parents contend that school authorities may not impose a short-term suspension against their son unless he is given an opportunity to confront and cross-examine the witnesses against him. They also argue that their son did not commit the misconduct at issue.

The School Committee

The school committee contends that in short-term suspension cases it is entitled to rely on anonymous information from numerous other students in reaching a conclusion that this student was a culpable party in the misconduct. It submits that the school's vice-principal conducted a thorough investigation of this incident by interviewing at least eight other students who had knowledge of the events at issue. The principal kept notes of these interviews. The interviews clearly identified the student who is the subject of this appeal as a participant in the misbehavior at issue. The student was advised of the evidence the school had against him and he was given an opportunity to explain his side of the story. The school committee submits that this was sufficient due process, and that the weight of the evidence supports the charge against the student.

Findings of Fact

1. The parents in this case are able and articulate advocates on behalf of their son. They have a strong commitment to education and wish to help

their son to succeed in school. This success includes adherence to the principles of honesty and integrity.

2. The vice-principal in this case conducted a three-day investigation of a series of incidents in which school lockers were broken into, and vandalized.
3. The principal kept notes of these interviews. [See: Exhibit 2] These interviews clearly identified the student who is the subject of this appeal as a participant in the misbehavior. Six students made this identification. [Tr. Page 6] One of the parties involved in the vandalism identified this student as a co-participant. [Tr. Page 18]
4. The student was advised of the evidence the school had against him and he was given an opportunity to explain his side of the story.
5. The student denied, and continues to deny, his involvement in the misconduct at issue.
6. The student was given a five-day suspension with the right to make up any academic work. [Tr. Page 22]
7. We are confident that this young student will, under the guidance of his parents and the school, soon form a character that will not countenance any departures from complete candor. Still, the present record does disclose at least two occasions involving disciplinary matters when this student was not immediately forthcoming in admitting his involvement. [Tr. Page 50]

Conclusions of Law

The United States Supreme Court has ruled that the due process clause of the United States Constitution applies to school suspensions. *Goss v. Lopez*, 419 U.S. 565 (1975). The Court wrote:

Students facing temporary suspension have interests qualifying for protection of the Due Process Clause, and due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story.

For suspensions of *fewer than 10 days* the Regulations of the Board of Regents track the suspension procedures required by the Supreme Court in *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 the 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 suspension and the duration thereof be given to the parent or guardian. Such notice shall be given in the parent's spoken language, unless it is clearly not feasible to do so.

The regulations of the Rhode Island Board of Regents give students *more rights* when a suspension of *more than ten days* is at issue:

For suspensions of more than ten (10) days and expulsions:

- a. Prior to suspension or expulsion, except for such time as 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, the student shall be afforded:
 - (1) a clear, written statement of the reason for suspension or expulsion;
 - (2) notice of the right to prompt public or private hearing, at the student's election, and the right to be represented by counsel at such hearing;
 - (3) and if a hearing is requested, the student shall be given a prompt notice setting the time and place of such hearing, said time and place to be reasonably set so as to allow sufficient time for preparation, without undue delay.
- b. In the event a student has not attained the age of majority (18 years), the parent or guardian shall be afforded the procedures stated in section 1, 2, & 3 above. Such notice shall be written in the parent's spoken language, unless it is clearly not feasible to do so.
- c. The student shall be afforded a hearing at which the student shall have the right to:
 - (1) Representation and participation by counsel; and
 - (2) Cross-examine witnesses and to present witnesses in his or her behalf.

- d. There shall be a complete and accurate (stenographic or electronic) record of the hearing including all exhibits. The record shall be preserved for transmission to the Commissioner of Education as soon as possible in the event of an appeal.
- e. The student shall be furnished a copy of the record without cost.
- f. A written decision shall be rendered, within a reasonable time, based exclusively on the record detailing the reasons and factual basis therefor.
- (g) The student shall promptly be provided with a copy of said decision.
- (h) A copy of the decision, together with the record, shall be promptly forwarded to the Commissioner of Education if there is an appeal. ¹

Under these regulations, as can be seen, a student facing a suspension of more than ten days has a right to cross-examine witnesses. The commissioner has ruled that, in most cases, this means that direct testimony, rather than hearsay testimony, must be used to prove student misconduct in long-term suspension cases.²

Discussion

We take the position that when the Board of Regents enacted its present regulations governing suspensions of fewer than 10 days it inferentially used its authority under R.I.G.L. 16-39-6³ to narrow the scope of review which the commissioner should use, in most cases, in hearing appeals from such short-term suspensions. It would have made little sense to allow schools to use an abbreviated due process procedure for short-term suspensions while at the same time requiring the commissioner, on review, to accord the student a full trial type hearing in the same case.

In saying this we do not mean to suggest that the commissioner can never use a trial type hearing in a short-term suspension case. We believe that the intent of the Board of Regents in adopting regulations for short-term suspensions that track the Supreme Courts holding in *Goss v. Lopez* was to establish the holding of *Goss* as the procedural standard to be used in short term suspension cases. The holding of *Goss* gives the fact finder discretion in short-term suspension cases to "summon the accuser, permit cross-examination and allow the student to present his own witnesses." *Goss v. Lopez*, 419 U.S. 565 (1975) The first question we must decided in this case is

¹ See: *In Re Roberts*, 563 S.E.2d 37 (N.C.App. 2002), holding that such due process rights are required by the constitution in long-term suspension cases.

² *Parents of a Suspended Student vs. School Committee of Bristol*, Commissioner of Education, February 1, 1983. See: *In the Matter of Student D.R.*, Commissioner of Education, June 5, 2002

³ **R.I.G.L. 16-39-6.—Rules for Appeals**

whether the commissioner should exercise discretion to require confrontation and cross-examination of witnesses in this matter. In *Goss* the Supreme Court wrote:

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

When the Supreme Court struck the procedural balance in short-term suspension cases it reached the conclusion that in most situations an abbreviated hearing mechanism would suffice, but it did suggest that, as a discretionary matter, a disciplinarian could allow for cross examination of witnesses. The issue before us is, therefore, whether this short-term suspension case has any extraordinary features to it that might cause us to depart from normal practice and require a full trial type hearing in its adjudication. We conclude that such features do not exist. This case appears to be a normal short-term suspension case that should be decided under the regular rules for short-term suspensions. Indeed the school turbulence which this matter seems to be causing may well counsel against further expanding adversarial procedures to involve more students and more parents—especially when such procedures are not apt to result in more exact fact finding.

In reviewing the evidence in this case it appears that at least six other students, including a co-participant in the misconduct, identified the student in this case as having participated in the misconduct. While the student in this case denies his involvement in the locker vandalism there have been at least two other disciplinary occasions when his denials have turned out not to be true. Based upon the weight of the evidence we therefore find that the "charge" against this student has been proved.

Conclusion

We find that the charge that this student vandalized lockers has been proven and that this student received the due process appropriate in a short-term suspension case. The appeal is therefore denied and dismissed.

APPROVED:

Forrest L. Avila, Hearing Officer

Peter McWalters, Commissioner

Date May 30, 2003