

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

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In the Matter of Student M.S.

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DECISION

Held: This is an appeal from a decision of a Rhode Island School committee to suspend a student for three-days for misconduct during a school field trip. The student, by and through his parents, is objecting not only to the suspension, but also to the investigation that proceeded the suspension. After a review of the facts in this matter, we find the appeal must be denied and dismissed.

Date: August 27, 2003

Travel of the Case

This is an appeal from a decision of a Rhode Island School committee to suspend a student for three-days for misconduct during a school field trip. The student, by and through his parents, is objecting not only to the suspension, but also to the investigation that proceeded it.¹

Position of the Parents

The parents have the following objections to how school authorities investigated this matter, and to the suspension that followed:

1. They object to the fact that that they were not given the opportunity to be present when their son was questioned about the misconduct. In the words of the student's mother: "If possible, I would make a suggestion that some sort of moral, sensitive, intellectual issue that involves no threat or force to another, that calling a parent be a first to help clarify the issue. I would also like to suggest using progressive punishment instead of immediate suspension."
2. They object to the fact that they were not given the identities of the students through whom information about this incident reached school authorities.
3. They object to the fact that school officials, in the course of questioning this student, informed the student that the police might become involved in this matter.
4. They object that the student was, in their view, made to feel not trusted and ashamed of conduct, which, although contrary to school rules, is not abnormal. They also object to the tone of the questioning used by school officials, which in their view, made the student feel guilty, scared, and humiliated.

¹ The parents also objected to having this suspension recorded in the student's "permanent record." The testimony indicated that at the end of the school year local school policy would require the removal and destruction any record of the suspension at issue and that no copy of the record of this suspension would be forwarded to the school the student will attend next year. [Transcript, pages 18-19] Issues relating to this record are therefore dismissed as moot.

Position of the School Committee

The school committee submits that its method of investigation was appropriate and that the suspension it imposed was proportionate and well warranted.

Findings of Fact

1. This case concerns a 12-year-old boy who was returning by bus from a school-sponsored field trip. The gravamen of the school offense at issue is best stated in the student's own considered words:
2. "After we left... I sat back on the bus. I sat down on the inside looking out the window. I looked over and the girl—...We both liked each other at the time. We talked for a while. After she asked if I would like to kiss her. I said I don't know. Then she started to kiss me. She touched my private parts over my pants. I touched her chest area over her shirt. After a few minutes, we stopped. We just talked for the rest of the time."²
3. All students on the fieldtrip were well aware that conduct of this nature was contrary to school policy and regulations.³
4. No teachers or chaperons witnessed this incident. At some point it seems that a teacher overheard two other students as they discussed this incident. (The school district is treating the names of these students as confidential information.) The teacher reported this conversation to an "assistant principal and she followed up in her investigation with the two students involved."⁴
5. The students directly involved in the incident were questioned separately by school authorities. They were required to write out separate statements describing what had taken place.
6. A school official, after the appellant student initially denied any involvement in the misconduct, told the student "...we can call the police and make this a police matter."⁵
7. The school principal testified: "When any of these types of situations are brought up, the first thing I'm concerned about, number one, was there any force involved. Was there active participation on both sides and who

² Transcript, pages 15

³ Transcript, page 26

⁴ Transcript, page 20

⁵ Transcript, page 16; Transcript, page 7

initiated the action? I don't know that in these types of situations, unless I have a statement from students, which I always have students write statements when they are involved in any type of inappropriate behavior or activity that is reported.⁶

8. When the student was brought in to write down his statement the principal told the student that this was a serious matter, and that he wanted the student to write down the truth.⁷
9. The principal testified to the way he approached this investigation: "I felt if I had the truth from both students, most likely we could handle this as a school matter, depending on what the facts were. I never excluded the police from being involved, because at the time I didn't have a statement, student statements."⁸ The principal also testified that:
10. "When I first opened up the investigation, I didn't look at the other student's statement at all. I wanted both students to independently write what happened on the trip. I instructed both students to tell me the truth. If a conflict in this information developed, then there would be further investigation needed, and possibly a police investigation. When both students had the statement written, I reviewed both statements. I felt both students were truthful in the statement. There was no conflicting information from either student."
11. The principal suspended both students. The facts of this case are not in material dispute.

Discussion

Issue 1-Parental Involvement in the Investigation

The parents in this case argue that they should have been called in immediately to the school so that they could be present when their son was questioned. Of course, the short answer to this argument is that there is nothing in the law that requires parental presence when a student is questioned by teachers about alleged misconduct.⁹ This legal rule is supported by sound policy. Making parents part of school disciplinary investigations would so encumber these investigations that the safety and

⁶ Transcript, pages 35-36

⁷ Transcript, page 41

⁸ Transcript, page 41

⁹ *Boynnton v. Casey*, 543 F.Supp. 995 (1982); *In Re D.E.M.*, 727 A.2d 570 (Pa.Super. 1999); *Brian A. Ex Rel. Arthur A. v. Stroudsburg Area SC*, 141 F. Supp. 2d 502 (M.D.Pa. 2001)

discipline of the schools would be diminished rather than advanced. The Supreme Court itself has recognized that "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."¹⁰

Issue 2—Identities of "Informants"

The parents also argue that they have the right to know the identities of the students who were overheard discussing this incident. The direct answer to this argument is that the United States Supreme Court has ruled that when a suspension of 10 or fewer days is at issue a student has no right to cross-examine witnesses.¹¹ Of course, we could exercise our discretion in this matter and allow witnesses to be called and questioned.¹² In this case, however, the facts are not disputed, so it is hard to see any purpose in calling witnesses to resolve a non-existent factual dispute.¹³

Issue 3—The Suggestion that the Police might be Called

When school officials told the student that there was a possibility that the police might become involved in this matter they were simply stating the truth. The testimony in this case shows that that school officials—at the time they began this investigation—did not know what the two students directly involved in the case would say about the incident. If one or both of the students had written statements in which they claimed that they had been assaulted or sexually harassed this matter might well have been handed over to the police. Under Rhode Island law none of this would have converted

¹⁰ *Goss v. Lopez*, 419 U.S. 565 (1975)

¹¹ *Goss v. Lopez*, 419 U.S. 565 (1975).

¹² *In the Matter of Student C.V. v. North Providence*, Commissioner of Education, May 30, 2003.

¹³ Even if this were a suspension for more than 10-days it might be argued that cross-examination is unnecessary to a fair hearing. This is because there are situations where cross-examination may not contribute to a fair resolution of a school discipline case. This can occur when the facts of a case are not in dispute or because other factors (e.g. the ability of school officials themselves, in appropriate cases, to reliably evaluate credibility and guard against erroneous or malicious accusations) tip the balance against the utility of cross-examination. See: *Newsome v. Batavia Local School District*, 842 F.2d 920, 925 (6th Cir., 1988); *Schneider v. Bd. of Education*, 255 F.Supp.2d 891 (N.D.nd. 2003) *Thompson v. Carthage School District*, 87 F.3d 979 (8th Cir. 1996).The commissioner has held, of course, that when cross-examination of a percipient witness is necessary to resolve a substantial and material factual dispute in a more than 10 day suspension case then cross-examination must, under Board of Regents regulations, be allowed. *Parents of a Suspended Student vs. School Committee of Bristol*, Commissioner of Education, February 1, 1983.

school officials into agents of the police or invalidated the actions of the school officials.¹⁴

Of course, we are not so naïve as to believe that the mention of the police was not also intended, at least to some extent, to place pressure on the student to tell the truth. We think the better practice would be to avoid using the suggestion that the police might be called as a tool to encourage students to tell the truth. If the evidence indicates that the police should be called, they should be called. If there is no evidence suggesting the need for police involvement it would be better not to mention the police at all.

Still, we find nothing in what school administrators did here that would invalidate the suspension that was imposed. Matters of this nature are almost inherently ambiguous and unclear at the outset of an investigation. We are therefore reluctant to attempt to state any rule about when it would be appropriate to mention the possibility of a police referral. For example, if the statements in this case had indicated that a sexual assault had taken place, a police referral would then certainly have been made. The school officials might then be faulted by some for not making it clear to all involved early on that a police referral was a possibility. As one court has stated:

A school official must have leeway to question students regarding activities that constitute either a violation of the law or a violation of school rules. This latitude is necessary to maintain discipline, to determine whether a student should be excluded from the school, and to decide whether further protection is needed for the student being questioned or for others.¹⁵

In sum, we see no reason why the mention of possible police involvement should have any effect on the suspension that was imposed in this case.

Issue 4—The Tone of the Questioning and the Discipline Imposed

In our view there is no way the issues involved in this case could have been investigated and discussed without causing a measure of distress and embarrassment to the students and to the parents concerned. In our view school officials did the best job they could to resolve this matter correctly, and with as little trauma as possible. We therefore find no error in the tone of questioning used in this case. We, of course, do recognize that the parents

¹⁴ *In Re Harold S.*, 731 A.2d 265 (R.I. 1999)

¹⁵ *State v. Biancamano*, 666 A.2d 199 (N.J. 1995).

and the students concerned would be distressed by the questions that were asked. The simple fact, however, is that school officials were duty bound to ask these questions and to provide appropriate discipline. Finally we note that we find that the three-day suspension imposed in this case was not excessive in any way.

Conclusion

The appeal must be denied and dismissed.

APPROVED:

Forrest L. Avila, Hearing Officer

Peter McWalters, Commissioner

August 27, 2003
Date