

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JANE DOE

V.

JOHNSTON SCHOOL COMMITTEE

Decision

Held: The only issue presented in this hearing was pre-suspension due process. The student was provided with the requisite informal due process prior to the imposition of a 10-day suspension. Other issues may be raised on a full de novo review.

Date: September 25, 2003

Introduction

This matter concerns the procedure by which a special-needs student received a 10-day suspension from school.¹

Background

Jane Doe attends Johnston High School. She has an individualized education program (IEP) that provides her with resource assistance.

On September 15, 2003, an assistant principal at the High School learned that two female students were afraid that Jane was going to assault them. The assistant principal warned the three students of the disciplinary consequences of fighting and she asked each of them if they were willing to mediate their differences. The other girls agreed to mediation, but Jane declined.²

On September 17, 2003, Jane was involved in an altercation with one of the other female students. The police were called and the same assistant principal investigated the incident.³ In doing so, the assistant principal spoke to Jane, the other student in the altercation, and two teachers who arrived at the scene shortly after the altercation began.⁴ Based on her investigation, the assistant principal determined that Jane assaulted the other student. The assistant principal spoke to Jane's mother on the telephone, and then met with her at school. The assistant principal informed Jane's mother of the results of her investigation. Jane's mother provided the assistant principal with some information about ongoing issues between her daughter and the other two students. Jane's mother also drew attention to a cut on Jane's face, claiming that the other student had in fact hit Jane. The assistant principal looked into the matter further.

Before the end of the day, the assistant principal decided that Jane should be suspended from school for 10 days for assault. No disciplinary action was brought against the other student. The assistant principal sent a suspension letter to Jane's mother stating, in part, that "suspended students may make up missed work" by contacting the guidance office. The letter did not mention the manner in which the suspension could be appealed. [School Department Exhibit 3].

The Johnston school district does not provide educational services to special-needs students during the first 10 days of suspension in a school year nor does it stay short-term suspensions (10 days or less) pending appeal.

¹ The Commissioner of Education designated the undersigned hearing officer to hear and decide this matter. A hearing was held on September 22, 2003.

² The assistant principal also discussed the matter with Jane's mother.

³ The assistant principal admitted at the hearing that she has a picture of the other two students in her office.

⁴ Based on her conversations with the students and the teacher, the assistant principal determined that Jane "jumped" the other student, and that the other student did not hit or punch Jane during the incident. Jane did cooperate with the teachers' efforts to separate the students.

Positions of the Parties

Petitioner contends that it was not afforded due process because the assistant principal arrived at a decision before she had a complete picture of the circumstances surrounding the incident. It claims that the process was arbitrary and capricious because evidence of prior threats and the cut on Jane's face was ignored, and because the assistant principal is friendly with the other two students. Petitioner also argues that the failure to make mention of the right to appeal the suspension violates due process. Petitioner requests an interim protective order directing that the suspension be stayed pending a hearing on the merits. It asserts that a stay will protect Jane from irreparable academic harm and it will not prejudice the School Department.

The School Department maintains that Jane does not deny hitting the other student, that the school's disciplinary policy was followed, that minimum due process requirements were met, and that the Board of Regents' special-education regulations do not require schools to provide educational services to students during the first 10 days of suspension in a the school year.

Discussion

In the 1975 case of Goss v. Lopez,⁵ the United States Supreme Court held that rudimentary due process must be provided in the suspension of students for 10 days or less. In such cases, the student must be given oral or written notice of the charges and, if denied by the student, an explanation of the school's evidence and an opportunity to present his or her side of the story. Because of their informal nature, the notice and hearing generally should precede the student's removal from school, except where the student is a danger to others or is disruptive of the academic process. Where immediate removal is necessary because of danger or disruption, the required notice and hearing should follow as soon as practicable.

In 1976, the Board of Regents adopted regulations incorporating the provisions of Goss described above. As noted above, the Johnston High School disciplinary code also includes those provisions at the present time.

For suspensions of 10 days or less, Goss requires "an informal give-and-take between student and disciplinarian." This informal due process is designed to give the student the opportunity to present his or her version of the events so that "the disciplinarian will be alerted to the existence of disputes about facts and arguments about cause and effect." The disciplinarian can then exercise his or her discretion in a more informed manner in determining an appropriate sanction.

⁵ 419 U.S. 565.

In this case, the assistant principal previously spoke to the students about legitimate and prohibited ways to address their issues. Despite this intervention, an incident took place shortly thereafter. The assistant principal spoke to the necessary students, staff and parent. Effective notice and the opportunity to be heard were provided to Jane and her mother. The assistant principal followed up on information as she received it.

We find that the procedural handling of this matter was consistent with the requirements of Goss, the Regents' regulations, and the school's disciplinary code. The record does not establish bias or any other procedural defect.⁶ As requested, this review has examined only the issue of whether the process used was defective, i.e., failed to meet minimum due process standards. Further review of this incident can be obtained by way of appeal to the Commissioner of Education. We note that Petitioner will have a broader opportunity to inquire into the substantive due process aspect of this case, i.e., the merits of the suspension, in the de novo hearing before the Commissioner.⁷

Conclusion

Petitioner was provided with the requisite due process prior to the imposition of a 10-day suspension.⁸

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date: September 25, 2003

⁶ While information regarding the right to appeal a suspension to the Commissioner of Education under R.I.G.L. 16-2-17(c) is not listed in the procedural requirements, it nonetheless should be provided to parents.

⁷ With respect to the harm occasioned by any exclusion from school imposed on a special-needs student, §300.520(A)(b) of the Board of Regents Regulations Governing the Education of Children with Disabilities state that school districts "may, but are not required to," provide educational services to children with disabilities during the first 10 days of removal from school in the school year. School districts also have the discretion to decline to permit stays of suspensions pending appeal. Because this case arises solely under § 16-2-17, it would not qualify for interim protective relief under § 16-39-3.2.

⁸ We strongly urge Jane to reconsider her position regarding mediation and, if she has a change of heart prior to the end of the 10-day suspension period, so inform the assistant principal.