

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

Student A.Z.

v.

Chariho School Committee

.....

DECISION

Held: This is an appeal from a decision of the Chariho school committee to suspend the petitioning senior student for one school year for possession of marijuana. The facts of this matter are not in dispute; the only issue before the commissioner is the duration of this suspension. In this case it has been established that the school committee considered the student's entire record in making its determination. Given the fact that this case involves a second drug possession offense, along with a string of other offenses, it is our independent decision that a one-year school suspension is appropriate in this case. Therefore the decision of the school committee is affirmed, and the appeal is denied and dismissed.

DATE: January 28, 2004

Travel of the Case and Jurisdiction

This is an appeal from a decision of the Chariho school committee to suspend the petitioning senior student for one school year. Jurisdiction is present under R.I.G.L. 16-39-1 and R.I.G.L. 16-39-2. The relevant facts of this case are not in material dispute.

Findings of Fact

1. On September 23, 2003 the petitioner was, in effect, caught smoking marijuana in a lavatory located in the Chariho High School. [Transcript, page 2] The matter was referred to the Richmond Police Department. [Transcript, page 3]
2. This was not the first time the petitioner was involved in marijuana possession at school. In 2001 the petitioning student had handed a bag of marijuana to another student. The petitioner was disciplined for this incident and he was required to undergo substance abuse counseling. [Transcript, page 3]
3. The petitioner has candidly admitted to all these incidents. [Transcript, page 5]
4. The petitioner also has a string of what we regard as serious school offenses on his disciplinary record. These offenses include fighting, using extremely abusive language against other students, disrupting class, skipping detention, throwing objects, showing disrespect for teachers, arguing with teachers, refusing to do home work or take notes, and tardiness. [Student Disciplinary Log]
5. The Chariho school committee, along with the other school committees of Rhode Island, is vigilant to prevent drug use or possession on school grounds. [Transcript, page 6]
6. At the hearing in this matter the Chariho superintendent noted that: "Although the behavior code has not changed significantly over the past half a dozen years, what has changed is the administration that has arrived at school. It is a more proactive enforcement of the code, a more uniform and consistent, aggressive attempt to deal with the issue of substance abuse." [Transcript, page 7]
7. The school committee, as policy, regards a second drug offense as a serious matter, potentially involving a long-term suspension. [Transcript, page 7]

8. At the school committee hearing of the matter the superintendent recommended that the petitioner be excluded from school for the remainder of the school year. [Transcript, page 6] After protracted deliberation the school committee elected to follow this recommendation and suspended the petitioner for the 2003-2004 school year.
9. The parties have stipulated that the facts of this case are not in material dispute and that the only issue before the commissioner is the duration of the suspension that has been imposed in this case. [Transcript, page 1]

Position of the Petitioners

The petitioners do not dispute the facts of this case. They argue rather that the penalty imposed is too harsh and that the commissioner should reduce it. They submit that this student has candidly admitted his mistake and that he is prepared to accept a disciplinary penalty. He has enrolled in a counseling program and several of his teachers have recommended that he be readmitted to school. [Transcript, pages 13 and 15] The petitioning parents testified that they worry that the petitioning student might not stay in school if he is not permitted to graduate with his class.

Position of the School Committee

The school committee contends that it gave this matter thorough consideration and that it properly reached a conclusion that a full year suspension was warranted in this case. It notes that this matter is the student's second offense involving the possession of illegal drugs. The committee therefore submits that the penalty it imposed should be sustained.

Standard of Review

The Rhode Island Supreme Court has held that the commissioner of education exercises *de novo* review authority over the decisions and doings of local school committees.¹ This means that the commissioner independently re-decides matters which are appealed from school committees and makes a new, independent decision, of the case. However, this does not mean that a school committee's decision of a case is without weight. In fact the Rhode Island Supreme Court has opined that "a commissioner would seldom reverse a decision of a committee unless he was satisfied that the public good or justice to individuals required it."²

¹ *Jacob v. Board of Regents*, 117 R.I. 164 (1976); *Slattery v. School Comm.*, 116 R.I. 252, 354 A.2d 741 (1976); *Altman v. Schol Comm.*, 115 R.I. 399, 347 A.2d 37 (1975).

² *Appeal of Cottrell*, 10 R.I. 615. Justice Potter, who was Rhode Island's second commissioner of commissioner of education, authored this decision. Potter, was an associate of Henry Barnard, Rhode Island's first commissioner of education during the time when Barnard was

Discussion

In Rhode Island school officials must always exercise discretion when serious school penalties are imposed.³ In one school discipline case the commissioner wrote:

The Commissioner accords great weight to the reasoned discretion of school officials when they exercise this discretion in the cases that come before them. Unfortunately when school officials abdicate their discretion and take shelter behind inflexible rules they deprive the Commissioner of the opportunity to show proper respect for discretion they have failed to exercise.⁴

In the case at hand the record shows that the school committee did not take shelter behind some pre-established penalty. Instead it considered the penalty it imposed on an individual basis. It considered the student's entire record in making its determination.

Given the fact that this case involves a second drug possession offense, along with a string of other offenses indicating this student's unwillingness to conform with the rules of civil behavior, it is our independent decision that a one-year school suspension is appropriate in this case.

While we sustain the suspension imposed in this case, we urge the school committee and school authorities to make every effort to encourage this student to complete high school. Such efforts will support the goal of the Rhode Island Board of Regents and the *No Child Left Behind Act* [NCLB] that all students graduate from high school. Indeed high school graduation rates are part of the data tracked to gauge Rhode Island's success in reaching its annual progress goals under the NCLB. We recognize that a school district does not have to provide tutoring or an alternative education program to a regular education student during a suspension.⁵ However the Commissioner in this case, as in other suspensions cases of this nature, recommends that an alternative education program, if possible, be provided to this student to allow him to graduate from high school on schedule.⁶

drafting the Barnard Law of 1845 which established the appellate authority of the commissioner. Potter's view of the scope of this authority is, therefore, entitled to substantial consideration.

³ *John B. Doe v. a Rhode Island School Committee*, Commissioner of Education, June 13, 1995: *In the Matter of A.L.*, Commissioner of Education, October 15, 1999

⁴ *In the Matter of A.B.*, Commissioner of Education, June 2, 2000

⁵ *Jane S. Doe vs. Coventry School Committee*, Commissioner of Education, May 1995.

⁶ *Parents of John A.S. Doe vs. Scituate School Committee*, Commissioner of Education, January 1994.

Conclusion

The decision of the school committee is affirmed and the appeal is denied and dismissed.

APPROVED:

Forrest L. Avila, Hearing Officer

Peter McWalters, Commissioner

January 28, 2004
Date