

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

In the Matter of Student T.W.

DECISION

Held: This case concerns a student who, as a result of being involved in a fight, has been removed from the Urban Collaborative Accelerated Program (UCAP) and reassigned to Providence public schools. Although the parent repeatedly requested a hearing by the UCAP Board at that time, the parent was erroneously told that a hearing by the UCAP Board was not available. The student in this particular case is therefore to be restored to UCAP until a hearing in this matter is provided by the UCAP Board, as a remedy for the Board's failure to schedule a hearing, and the Urban Collaborative and its Board are required to review and clarify in writing their rules governing disciplinary transfers of students back to their sending school districts.

DATE: April 29, 2005

Jurisdiction and Travel of the Case

This case concerns a student who has been removed from the rolls of the Urban Collaborative Accelerated Program (UCAP) who became involved in a fight and who, as a result of this fight, was reassigned to the regular public schools of Providence. Jurisdiction is present in this case under R.I.G.L. 16-39-1. The Board of UCAP has not yet heard this matter.

Position of the Parties

The Parent

The parent contends that returning her daughter (TW) to her sending school district as a result of a fight is too harsh a penalty in this case. She also has procedural objections to the discipline that was imposed here, and to the lack of clarity present in the UCAP appeals process.

Position of UCAP

UCAP contends that the procedures it used to transfer this student back to her sending district exceeded any applicable due process requirements. UCAP also contends that fighting is such a serious detriment to the school's ability to provide instruction to its at risk students that it must take firm action whenever students become involved in a fight.

Findings of Fact

1. Since August of 2004 TW had attended the 8th grade at Urban Collaborative Accelerated Program (UCAP). Before her enrollment at UCAP she attended the Nathaniel Greene Middle School in Providence.
2. UCAP is an alternative school operated by the Urban Collaborative, a statutory entity created to allow urban school districts to share resources. The Urban Collaborative is presently composed of three school districts—Providence, Pawtucket, and Central Falls.
3. UCAP has been in operation for about 16 years. It has about 136 students. Its chief function is to receive high school age at-risk students from Pawtucket, Providence and Central Falls and to prepare these students to return to their respective school districts with the enhanced academic background they will need to graduate from high school.
4. UCAP is operated by a Director who is supervised by a Board of Superintendents made up of the superintendents of schools of Providence, Pawtucket, and Central

¹ The Board of Superintendents draws its authority from R.I.G.L 16-3.1-11 which states:

R.I.G.L. 16-3.1-11 Urban collaborative. – Notwithstanding the provisions of any general or special law to the contrary, the school committees of the cities of Providence, Pawtucket, East Providence², Central Falls and other Rhode Island school districts as may be approved for inclusion by existing member districts in accordance with collaborative bylaws are authorized and empowered to continue and/or initiate cooperative efforts *to provide alternate education programs and/or diagnostic services required by law or regulation for students achieving limited success in traditional settings* and to do all things necessary including, but not limited to utilization of technology, including television, all on a collaborative basis. The various school committees may assign and delegate to their respective school committee chairs or designee or *superintendents of schools* or designee, *acting as a regional board* any duties, responsibilities, and powers that the committees may deem necessary for the conduct, administration, and management of the urban collaborative. (Emphasis Added)

5. Students apply to be admitted to UCAP. If they are admitted their original school records remain with their sending school district, and this district sends a copy of this school record to UCAP. “Students can remain at UCAP for only two years and are expected to complete three grade levels of work.”³ When students are brought up to grade they are transferred back to the high school of their sending district. It is from this sending district, and not from UCAP, that students receive their high school diplomas.
6. Concerning school discipline the Parent Student Handbook states in pertinent part:

In cases where a student’s behavior requires immediate attention, and a serious response from the school, a student may be suspended or expelled from the school. Serious behavior problems include such things as fighting; intimidation of or threats toward another person in school; possession of contraband that may be harmful or dangerous to another person in school; chronic disregard of school rules and policies; or other actions that may threaten the safety and security of persons in the school. Behaviors that may result in suspension or expulsion can occur at school or off school property, or at any event that is school sponsored or related. *This is especially true of situations in which students from the school have a problem and engage in a fight off school property during non-school hours. Such students can be suspended or expelled from the school because they have not taken advantage of opportunities at school to resolve the conflict and their fight, even if off campus during non-school hours, is likely to disrupt the educational process at the school. The*

¹ Exhibit 1. Urban Collaborative By-Laws.

² East Providence has withdrawn from the Urban Collaborative.

³ Exhibit 2. Urban Collaborative Parent Student Handbook, page 2.

decision about whether to suspend a student will rest with the director. In his/her absence, this decision can be made by the person in charge in the office. Suspensions will last no longer than ten days, and before a student is suspended, the student will have a chance to present his/her side of whatever problem has occurred. Whenever a student is suspended, his/her parent or guardian will be notified of the reason for the suspension, the date on which the student will be allowed back to school, and any other conditions relating to the student's suspension. *In cases where suspension is not deemed to be an adequate punishment, or when it is deemed that a student and/or UCAP will be best served by the departure of a student, that student will be asked to leave the Urban Collaborative, and will return to a school in his/her district.* In the most serious cases, when the director deems that the student must leave UCAP, but may have committed an offense for which the student might be excluded from his/her local school for a period longer than ten days, the student will be given a hearing to determine if such an offense has occurred, and if this offense merits an exclusion from school, *rather than simply being removed from UCAP.* This hearing will be conducted in accordance with all rules and regulations of the RI Department of Education and the student's local school district. (Emphasis added)

7. In essence, as the above provision shows, UCAP seems to have two mechanisms for dealing with students who violate its prohibition against student fighting. The first mechanism is simply to transfer the student back to the student's sending district. The second method involves an extended disciplinary suspension that is enforced by the student's sending district upon the student's return to the sending district. Somewhat confusingly the UCAP disciplinary policy applies the terms "suspension or expulsion" to both of these mechanisms.
8. In fact, however, the testimony of the UCAP Director indicates that not much thought has been given to the question of whether the sending district or UCAP would decide whether a long-term suspension would be added to a disciplinary reassignment. The UCAP director indicated that in his opinion his role in the disciplinary process was simply to decide, after appropriate consultation, whether or not a student was to be reassigned back to the student's sending district. He believed that the question of whether a long-term suspension was in order was for the sending district to decide. If the sending district decided to impose a suspension it would be the sending district, not UCAP, which would conduct the requisite due process hearing.
9. As noted above (Paragraph 4) the Urban Collaborative has a very strict policy against fighting and this policy is communicated to all students at the beginning of the year and it is emphasized throughout the school year.⁴
10. On Monday, January 10, 2005, at about 3 pm, TW became involved in a fight with two other fellow students at an address about a mile from the Collaborative.⁵

⁴ Testimony of Director.

In essence TW was the “third person in” in the fight. There is dispute about who started the fight and about reasons this student had for deciding to participate in the fight.

11. On Tuesday, January 11, 2005, the Director of the Collaborative met with the students involved in the fight and heard what they had to say about it. The students were informed that they were now suspended from school and that the duration of this suspension would be determined after a staff meeting.
12. On Wednesday, January 12, 2005, after a staff meeting, all the students involved in the fight were dismissed from the school and were reassigned to their respective sending school districts.
13. On Thursday January 13, 2005, UCAP sent a letter to the Student Registration Office of the Providence school system. This letter contained student contact information, the reason for the transfer (fighting), a copy of the student’s transcript, and other data needed to effectuate the placement of the student back into the sending district of Providence.⁶
14. The student’s parent was advised by a letter dated January 21, 2005 of her right to appeal this decision to the Board of the Urban Collaborative. The letter from the Director of UCAP stated:

I am writing to inform you that your daughter TW will not be allowed to return to the UCAP program, as a result of a fight that took place on Monday, January 10th.

As you were previously advised, in order to be assigned to a school in Providence, you should contact the Student Intake Center of the Providence School Department at 456-1702 or 456-9297. I have sent the Student Intake Center the records that they will need in order to provide a proper placement for TW. The address of the Intake Center is 650 Prairie Avenue in Providence.

You should know that you have the right to appeal our decision regarding your daughter. This appeal can be made to the Board of Superintendents of the Urban Collaborative. This appeal should be made to Melody Johnson, President of the UCAP Board. Dr. Johnson is also the Superintendent of schools in Providence. At this appeal, you have the right to bring a lawyer, to call examined (sic) witnesses, to prerecord (sic) own witnesses, and have a stenographer present. If you need translation (sic), services for this will be provided.⁷ You will be furnished with a written decision and copy of the record, at no cost to you. Finally, should you need any other assistance with the appeal, please let me know.

On behalf of the staff at UCAP, I wish TW the best for her continued school career.

⁵ Testimony of the Parent.

⁶ Exhibit 3. Letter to Maria Pertucci, Student Registration Center.

⁷ We presume the intent here was to restate the hearing requirements of the *Board of Regents Regulations Governing Disciplinary Exclusions of Students from School*. (F-6.3) as these requirements relate to hearings concerning suspensions for more than 10 days.

15. In the light of the testimony of the UCAP Director this letter is even more confusing than its typographical errors would suggest. UCAP now takes the position that no suspension was imposed in this case and that nothing more had happened than the mere reassignment of the student to her sending district.
16. To us this latter appears to have been written in haste, perhaps as an afterthought to deal with the controversy at hand, after further advice had been obtained concerning the legal issues involved in this case. As they used to say in the academic world, “*redolet lucernum.*” We also note that this letter was dispatched well after the Commissioner had scheduled a hearing in this matter.
17. Before she received this letter TW’s parent had been verbally informed by Director that she had the right to appeal TW’s separation from UCAP to the Board of Superintendents.
18. The parent tried to do this on January 13th, 2005 by giving an appeal letter to the secretary of the superintendent of schools of Providence. When the parent called the superintendents office on January 14th she was told that the superintendent of Providence had no authority over UCAP and that the Director operated the UCAP. The parent then tried to obtain the hearing she had been promised by contacting the superintendents of Pawtucket and of Central Falls. One of these officials did not return the parents call, and the other one indicated that he had no authority in the matter.⁸ Faced with this inaction by the members of the UCAP Board the parent filed the present appeal with the Commissioner of Education.
19. UCAP, in its motion to dismiss this case, argues that parent has not yet appealed her daughter’s dismissal to the UCAP Board. In fact, of course, the parent tried to appeal this dismissal on the very day that the dismissal was imposed. The Director of UCAP knew the parent wanted to appeal this matter, but he did not schedule a hearing. The office of the superintendent of Providence knew that the parent wanted a hearing, but the superintendent’s office informed the parent that a hearing by the UCAP Board was not available. The superintendent’s office in Central Falls took the same position. The superintendent’s office Pawtucket never returned the parent’s call. The fact that the UCAP Board has not heard this matter is hardly the parent’s fault.

Conclusions of Law

1. The Federal District Court for Rhode Island has found the transfer of a student to an alternative education program is an acceptable disciplinary tool and that such a transfer does not have to be preceded by a due process hearing.⁹ In the case at hand the student was, in fact, given a hearing before she was transferred back to

⁸ Testimony of Parent, Page 10.

⁹ *Casey v. Newport School Committee*, 13 F. Supp. 242 (D.R.I. 1998) See: *Marner ex rel. Marner v. Eufaula City School Bd.*, 204 F. Supp. 2d 1318 (M.D.Ala. 2002); *Nevares v. San Marcos Consolidated Independent School District*, 111 F.3d 25 (5th Cir. 1997)

- her sending school district. Furthermore, of course, in her sending school district she would be able to receive a full range of curriculum choices and educational services. She was therefore not deprived of the opportunity to receive a full compliment of public education instruction and services.
2. The Commissioner has ruled that school districts can discipline students for fighting without making too great an inquiry as to “who started it” or why the fight was “justified.”¹⁰
 3. This matter is not appropriate for the issuance of an interim protective order (R.I.G.L.16-39-3.2) because a transfer to the public schools of Providence cannot provide a basis for the requisite finding that an interim order is “needed to ensure that [this student] receives education in accordance with applicable state and federal laws and regulations during the pendency of...” an appeal.
 4. Even if this matter were before the Commissioner as a school suspension matter, an interim protective order would not be an available remedy because the authority to issue interim protective orders does not extend to “cases arising solely under R.I.G.L. 16-2-17 [i.e. school suspensions].”
 5. This matter is properly before the Commissioner as an expedited appeal.
 6. The Regulations of the Board of Regents Regulations Governing Disciplinary Exclusions of Students From School (F-6.3) states in pertinent part: “[A]ll suspensions of more than ten (10) days shall occur only after formal action by the school committee...”
 7. If this matter were deemed to involve a school suspension for more than 10 days a violation of the Board of Regents Regulations would be present because the UCAP Board has not yet authorized a long-term suspension in this case.
 8. However what UCAP did in this case did not amount to a long-term disciplinary suspension. In fact no suspension was ever imposed in this case. Instead UCAP transferred this student back to the student’s sending district.

Discussion

In the end, however, all UCAP did in this case was to transfer this student back to her sending school district. Such a transfer does not require a due process hearing.¹¹ Furthermore, since no long-term disciplinary suspension was imposed, there was no need for the UCAP Board to approve this transfer before it took place. The Board of Regents long-term suspension regulations are applicable to long-term suspensions—not to school transfers.

¹⁰ In Re Christopher D., Commissioner of Education, November 15, 1999

¹¹ *Casey v. Newport School Committee*, 13 F. Supp. 242 (D.R.I. 1998)

This of course does not mean that this matter was not appealable to the UCAP Board under state law.¹² The failure of the UCAP Board through its various agents to accept the parent's request for a hearing have confused this matter greatly. When the parent requested the Superintendent of Providence, as Chair of the UCAP Board, to schedule a hearing this should have been done forthwith. Instead, the parent was erroneously told that the Board did not handle matters concerning individual students. This matter has been greatly delayed as a result of this failure of coordination between UCAP and its Board. Indeed the better practice would be to allow the Director of UCAP to schedule the appeal hearing for the Board. If Board meetings are not frequent enough to make such a procedure possible, perhaps the Board could form an appeals committee or appoint a hearing officer to review matters of this nature. In any event the procedures applicable to cases of this nature must be clarified.

Conclusion

The Urban Collaborative and its Board are required to review and clarify in writing their rules governing disciplinary transfers of students back to their sending school districts. While under normal circumstances we would not intervene in a transfer of this nature, we conclude that the only equitable way to handle this matter, given the difficulties that were placed in this parent's path in her efforts to obtain a hearing, is to restore the student to UCAP until the UCAP Board hears this matter. By ordering this we are not suggesting that in every case Board action is required before a student can be transferred back to the student's sending district. The student in this particular case is being restored to UCAP as a remedy for the Board's failure to schedule a hearing, and for their failure to have clear appeal rules for cases of this nature.

APPROVED:

Forrest L. Avila, Hearing Officer

Peter McWalters, Commissioner

April 29, 2005
Date

¹² *Casey v. Newport School Committee*, 13 F. Supp. 242 (D.R.I. 1998)