

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

Student Doe

v.

A Rhode Island Private School

INTERIM ORDER

Held: This is an appeal from a decision of a Rhode Island private school to require the withdrawal of a student. The parents of this student contend that this required withdrawal violates the rights of their son, who they allege suffers from a disability. We find that the respondent private school was making every effort to accommodate this student's alleged disability. In addition, we find that the student was not adhering to agreed-upon modifications to the school's disciplinary code. The petition for an interim order is therefore denied and dismissed.

DATE: March 31, 2006

Jurisdiction and Travel of the Case

Jurisdiction is present in this case under R.I.G.L.16-39-1, R.I.G.L.16-39-2, and R.I.G.L. 42-87-5 (c). This is an appeal from a decision of a Rhode Island private school to require the withdrawal of a student. The parents of this student contend that this required withdrawal violated their son's rights under the *Americans with Disabilities Act* (ADA), the *Rehabilitation Act* and the Rhode Island analogue to these federal statutes, the *Civil Rights of People with Disabilities Act* (R.I.G.L. 42-87-1.) A hearing was held in this matter, which resulted in some 600 pages of transcript and about 200 pages of exhibits.

Positions of the Parties

The Parents

The petitioners in this case alleged that their son suffers from posttraumatic stress disorder, and that as a result of this disorder his behavior at school caused incidents that resulted in the school's decision to require the student's withdrawal from school. The parents contend that their son was the victim of discrimination because the school did not take steps to accommodate their son's alleged disability. They further allege that the private school, in a retaliatory action, may require their other son, who attends the same school, to withdraw. The petitioners allege that the school itself, along with the principal of the school, and a teacher at the school, violated their son's right to be free from discrimination.

The Private School

The private school, on behalf of itself and its employees, contends that the student in this case is not, in fact, a student with a disability, as defined by law. The school also denies that it discriminated against this student in any way. The school further contends that the fundamental reason why it is requiring the withdrawal of the student is an irremediable difficulty in dealing with the student's parents. This difficulty is alleged to have included assaultive behavior by one of the parents against a school official.

Findings of Fact

1. The father of the student is retired, and his mother is a practicing physician. We refrain from further description to avoid making the student in this case more readily identifiable.
2. It is alleged that the petitioning student was assaulted at a school he used to attend. The assistant principal at the student's prior school testified that the school, after extensive investigation, was unable to verify that the student had ever been the victim of violence, or any sort of sexual assault, at the prior school. The assistant principal acknowledged some first grade roughhousing between the student and another student at the prior school, but nothing more physical than that. The prior school offered to transfer the student who is the subject of the present case to another class at the school, but the parents declined this option since they felt that it implied that their son might be at fault in the incidents that were alleged. The student in this case alleges that he suffers from posttraumatic stress disorder (PTSD) as a result of a series of assaults that allegedly took place at a school he used to attend.

3. The student's mother, who is qualified to make a diagnosis, concluded that her son suffers from PTSD, as defined in American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-IV). The student's treating psychologist concurred in this diagnosis. (Of course, as the DSM-IV itself states, "the clinical diagnosis of a DSM-IV mental disorder is not sufficient to establish the existence for legal purposes of a 'mental disorder,' 'mental disability,' or 'mental defect.' ... It is precisely because impairments, abilities, and disabilities vary widely within each diagnostic category that assignment of particular diagnosis does not imply a level of impairment or disability." [DSM-IV at xxiii] See: Note 18 in *Bercovitch v. Baldwin School, Inc.*, 133 F.3d 141 (1st Cir. 1998))
4. The school the student now attends is the respondent in the present petition. This school is an approved private school, and as far as the present record shows, it is not affiliated with any religious denomination. The school is not licensed as a special education school. Normally we would include the name of the school in this decision, but once again we refrain from doing so in an effort to protect the privacy of the petitioners.
5. The student in this case applied for admission to this private school in August of 2005. He was admitted to the fifth grade and he started school in September of 2005. The admission contract with the school specifies that the school may require the withdrawal of a student when this is in the best interest of the school. The student in this case has an older brother who attends the same private school. The mother believes that other students may have harassed this son, but the school does not agree with this assessment. [Tr. Vol. II, Page 265]
6. At the end of September of 2005 there was a parent teacher conference at which the teacher informed the student's mother that her son was, "doing very, very well in leadership qualities, [that he was] cooperative, [and that] everybody liked him." The teacher, however, also felt that he was a bit withdrawn. This student's mother informed the teacher that he, "had been the victim of violence [at his prior school] and that he was extremely happy to be [at his new school], but until he knew whether it was a safe environment and how – how he was going to be treated...."
7. At the school this student attended immediately before entering the respondent school, he obtained As, Bs, and Cs. He continued at about this achievement level at the respondent school. [Tr. Vol. I., Page 74, 82, 83 and 121] His mother observed no difficulties with his learning ability when filled out an admission application to the respondent school. [Tr. 79]
8. The parents allege that on two separate occasions two separate children assaulted their son on the playground of the respondent private school. The private school does not agree that this student was the victim of any assaults.
9. The mother of the student went to the classroom of her son's teacher to talk about what she saw as her son's increasing anxiety levels. The teacher did not wish to speak to her at that time. The mother continued to wait in the classroom for "quite some time because the class had not started." When she spoke to the teacher again she tried to explain the symptoms of PTSD. The teacher responded by suggesting they needed to have a meeting with the school's middle school director.

10. On October 25, 2005 this student was being silly and disruptive during a test. He was sent to the Office to finish his test. The parent was e-mailed concerning this disruption. [Ex. 94] The student's mother then went to the teacher again to discuss PTSD. The mother suggested that the teacher should discuss the matter with the student's treating PhD clinical psychologist. The teacher reiterated that they needed to meet with the director of the middle school about the matter. The teacher brought this matter to the attention of the director of the middle school and a meeting with the parents was scheduled for December 5, 2005 [Tr. Vol.II, page 267.]
11. On December 5, 2005 a meeting was held between the student's parents, the student's teacher, and the director of the middle school. Before this meeting the director of the middle school had a meeting with the student's treating psychologist. At this meeting the school recommended that the student enroll in the school's school help program. This offer was declined. The school stressed the importance of getting this student to school on time.
12. On January 6, of 2006, a Friday, (a half day at the respondent school) this student became disruptive in class and later got into an incident with another student on the playground. Interviews with other students seemed to place the petitioning student in the wrong. The parents were summoned to school to take their son home until a meeting could be held on Monday, when the meeting could include the student's teacher. The parents refused to wait till Monday to discuss the matter. The middle school director decided to leave his office to end the confrontation and the student's father followed him and used his hand to physically thrust papers onto the chest of the middle school director. [Tr. Vol. II. Page 289] The Principal of the school, the immediate superior of the director, initially required the withdrawal of the student at this point. After an appeal by the parents she relented and allowed the student to stay in school. As part of this appeal the student and the parent agreed to have the student enter into a behavior contract with the school.
13. On February 3 of 2006 there were further classroom incidents. Under the disciplinary contract the teacher was to give the student a non-verbal signal when his behavior was disruptive. The student paid no attention to this signal. He was disruptive in class. When his teacher tried to discipline him he defied her authority and said, "I pay your salary." At a later point he called his teacher, "stupid." Later the student drew a picture of a hand making what is well recognized to be an inappropriate gesture.¹ He was directed to go to the office. The student said, "You did not give me a verbal warning." At this point the teacher concluded that the student was gaming the system.
14. The middle school director saw some students congregating in an area where they were not supposed to be. He went to move them along. The petitioning student was in this group. As the director approached, one of the fifth graders said to the petitioning student, "Did you try the medical thing?" The students laughed and moved on. [Tr. Vol. II. Page 293.]

¹ The mother of this student denies that the picture carries any such import.

15. It was at this point that the Principal of the school directed the withdrawal of the student.

Conclusions of Law

The student in this case alleges that he suffers from posttraumatic stress disorder (PTSD) as a result of a series of assaults that allegedly took place at a school he used to attend. He also alleges that his PTSD causes him to misbehave at the private school he now attends. He contends that the school he now attends has failed to accommodate his disability, and that the school has required him to withdraw from the school because of his disability. In *Bercovitch v. Baldwin School, Inc.*, 133 F.3d 141 (1st Cir. 1998) the First Circuit Court of Appeals stated in a case construing the ADA that :

“Disability” has a specific legal meaning. The statutory terms require that there be “a physical or mental impairment that substantially limits one or more of the major life activities.” ... On the facts of a specific case, a plaintiff diagnosed with ADHD may have a mental impairment within the meaning of the statute. But that impairment must also limit a major life activity to a substantial degree.

In *Bercovitch v. Baldwin School, Inc.*, 133 F.3d 141 (1st Cir. 1998) the First Circuit Court of Appeals also cautioned that private schools covered by the ADA, unlike public schools covered by the IDEA, do not have a duty to make substantial modifications to their academic programs in order to accommodate students with disabilities. Private schools only have a duty to make reasonable accommodations that do not “substantially alter the program or lower academic standards.” The Court wrote:

[I]f more than reasonable modifications [are required of an institution in order to accommodate an individual, then that individual is not qualified for the program.

The Court also stated that: “A school’s code of conduct is not superfluous to its proper operation; it is an integral aspect of a productive learning environment.” The Court ruled that, “It was beyond the power of the district court to order a [private] school to suspend its normal codes of conduct in order to tolerate disruptive and disrespectful conduct when that behavior impaired the educational experience of the other students and significantly taxed the resources of the faculty and administration.” *Bercovitch v. Baldwin School, Inc.*, 133 F.3d 141 (1st Cir. 1998)

In this petition for an interim protective order we find that the respondent private school was making every effort to accommodate this student’s alleged disability. The problem was that the student was not responding to the reasonable modifications to the school’s disciplinary code that had been agreed to. Perhaps this lack of response may have

partially resulted from the evident fact that the parents of the student only grudgingly acquiesced to the notion that their son might be causing disciplinary problems. Indeed, we think it probable that the parents in this matter were convinced that the other students at this private school, along with their son's teacher, the director of the middle school, and the principal of the school were better candidates for discipline than was their son. Under these circumstances, lack of parental support for the disciplinary modifications agreed to make it unlikely that these modifications would be effective to improve this student's behavior.

We believe that the school's decision to require this student to withdraw from school was prompted by the meeting held on January 6, 2006 when the parents refused to take their son home until the matter could be considered at a later date. Difficulties were compounded at this meeting when the father of this student acted out physically to enforce consideration of his position. [Tr. Page 147] At this point school officials reasonably concluded that with this level of lack of parental support for their son's disciplinary program, no further progress could be made to deal with the student's disciplinary problems. [Tr. Page 154] The school did not discriminate against this student because of his PTSD.

Furthermore, in this petition for an interim protective order we also find that there has been no showing that this student's PTSD reaches a level where it limits a major life activity, in this case learning, to a substantial degree. While this student's PTSD, assuming it exists, "may affect his capacity to achieve his absolute maximum learning and working potential, there is practically no evidence that it has substantially impaired his basic learning abilities." See: *Bercovitch v. Baldwin School, Inc.*, 133 F.3d 141 (1st Cir. 1998)

Conclusion

The petition for an interim order must be denied and dismissed.

APPROVED:

Forrest L. Avila, Hearing Officer

Peter McWalters, Commissioner

March 31, 2006
Date