

Travel of the Case

The extended travel in this matter was documented in the October 23, 2006 Commissioner's ruling on the Providence School Board's Motion to Dismiss this appeal. We will not reiterate the travel, but simply incorporate the October 23, 2006 decision as Attachment A. After issuance of the ruling on the Motion to Dismiss, the parties were afforded the opportunity to submit written memoranda. The memo of the School Board was submitted on May 15, 2007 and the record in this case closed on May 29, 2007.

The jurisdiction of the Commissioner to hear this dispute arises under R.I.G.L. 16-13-5¹ and more generally under R.I.G.L. 16-39-2.

ISSUE

Did the Providence School Board have good and just cause for its suspension of Leo Diggins for a period of thirty (30) days and for requiring him to attend anger management counseling?

Findings of Relevant Facts:

- ♦ On March 17, 2003, Leo Diggins, a fifth-grade teacher at the Robert L. Bailey IV Elementary School in Providence, Rhode Island, grabbed one of his students by the collar of his sweater and, using his forearm, pushed the student down the hallway of the second floor, down the steps to the first-floor office of the principal. Tr. Vol. I, pp.16-26, 48-66; 71-73.
- ♦ As Mr. Diggins was grabbing the student's collar and pushing him forward, the student was resisting his grip, swinging his arms in an attempt to strike Mr. Diggins to get free. As the student was forcefully pushed down the hallway by Mr. Diggins, he cursed and said to Mr. Diggins "You're choking me" "Get off me". Tr.Vol.I., p.20. Mr. Diggins, in an elevated, angry voice kept repeating "Moe foe, moe, foe" ("move forward, move forward") through clenched teeth. Tr. Vol. I.pp. 17- 27, 71-73.
- ♦ Hearing a commotion in the main office adjacent to her own office, the principal of the school went out to see a "very upset" Mr. Diggins with the student, who at this point was crying. Mr. Diggins kept repeating "he's going to tell you that I choked him, but I did not". Tr. Vol.I. pp.96-98. The principal then directed Mr. Diggins to go back to his classroom. Tr. Vol. I.p.98.
- ♦ The principal took the student into her office, and asked him what happened. The student stated "He choked me. He choked me." The principal asked him "What do you mean he choked you" and the student said "Look, look at my neck". Tr. Vol. I p.101.

¹ Which incorporates a suspended teacher's right to appeal to the department of elementary and secondary education under R.I.G.L. 16-13-4

- ♦ The student involved in the incident had an abrasion and red marks on his neck. Tr. Vol.I,pp.101-102; PSB Ex.2. He was immediately seen by the school nurse and picked up by his mother, after the principal called her and told her what had happened. Tr.Vol.I p.106.
- ♦ At the beginning of the school year, Mr. Diggins attended a teacher orientation at which he received a packet containing Discipline Procedures developed by the principal at the Bailey Elementary School and physical restraint procedures² developed by the Rhode Island Department of Education. He, along with other members of the school staff,³ also viewed a video on physical restraint procedures. Tr. Vol.I pp. 110-128;Vol.II pp. 10-12, 29-30, 35-36; PSB Ex. 3-6.
- ♦ At the time of this incident the principal and approximately sixteen (16) of the fifty-two (52) faculty members at Bailey had been trained in how to administer physical restraints pursuant to the Board of Regents Regulations on Physical Restraints. Mr. Diggins had not yet received this training. Tr. Vol.II pp.44-46.
- ♦ Earlier in the morning on the day of the incident, the student had been misbehaving and acting in a disruptive manner. Tr. Vol.II pp.157-176.

Position of the Appellant

Although counsel for Mr. Diggins did not submit a memorandum in this case, in his opening statement he argued that Mr. Diggins had no prior disciplinary record, that he acted prudently in a volatile situation, and that a thirty (30) day suspension without pay was an excessive sanction for any infraction that may have occurred.

Position of the Providence School Board

In a closing memorandum, counsel for the Board submits that the facts supporting the suspension imposed in this case have been proven. Clear and uncontradicted evidence establishes that Mr. Diggins had inappropriate physical contact with this fifth-grade student. The testimony of two witnesses⁴ was that Mr. Diggins, in a visibly angry state, pushed the resisting student for a considerable distance by holding him at the collar of his sweater and pushing him from the back with his forearm. Upon examination by the principal, the student had abrasions and red marks on his neck which were indicative of the amount of force that had been used in restraining him by grabbing his collar. There is no evidence that there was a situation which warranted any physical contact, much less of the type which occurred here.

If there had been a situation in which the student was misbehaving, school disciplinary procedures required the teacher to keep the student in the classroom and, if necessary, call the office for intervention or assistance. If there had been a more serious situation, such that

² The title of the document is “Procedures Regarding Prevention and Crisis Intervention/Physical Restraint For Safety Promotion”.

³ The video is *about* the physical restraint procedures and protocols. It is not a demonstration or training video on how to administer physical restraints. Both the video and the physical restraint procedures were developed as part of the implementation of the Board of Regents Physical Restraint Regulations, effective September 1, 2002.

⁴ One of whom reported the incident to the principal

imminent danger of injury to the student or others existed, then and only then was a physical restraint permitted, and only by those at the school who had been trained in proper restraint techniques. Since Mr. Diggins was not one of the sixteen staff members at the Bailey Elementary School who had received such training, he was not authorized to administer physical restraints at all.

In conclusion, given that Mr. Diggins' grabbing and pushing of this student was unnecessary, unjustified and unauthorized, there was clearly good and just cause for his thirty (30) day suspension and the Board's order that he undergo and provide evidence that he completed anger management counseling.

DECISION

The effect of our prior ruling on the Board's Motion to Dismiss was to foreclose the opportunity for Mr. Diggins to testify and thereby present his account of the events which transpired on March 17, 2003. The rationale for that ruling, set forth at length in Attachment A, was that given evidence of his failure to pursue this appeal and of his misrepresentation of an illness to further delay hearing in this matter, his testimony should be precluded. It was determined that the testimony of a person entitled to little or no credibility would not be received into evidence. There apparently were no other witnesses favorable to the Appellant's case⁵ to describe what preceded Mr. Diggins' grabbing of this student. The result of this factual void is the absence of any evidence which would place in context, explain, justify, or excuse the misconduct for which the Appellant received a thirty-day suspension: his inappropriate physical conduct with the student in his fifth-grade class on March 17, 2003.

The evidence in this record is that Mr. Diggins grabbed a student by the collar and forcibly pushed him down the hallway on the second floor of the Bailey Elementary School, down the stairs and to the main office on the first floor. Although the student did not testify, evidence that he was resisting and yelling that he was being "choked", and that there were marks and abrasions on his neck create the inference that Mr. Diggins' intentional action caused him pain and trauma. Fortunately, there is no evidence that the student received a serious physical injury. The evidence does not establish that Mr. Diggins' contact with this student was for the purpose of protecting the student or others from injury. Evidence that Mr. Diggins was angry and upset as he held the student forcefully by pulling on his collar creates an inference that his intent was not protective in nature. Even recognizing that there are certain limited situations that arise in school in which there is a need to physically restrain students, there is no evidence of such a situation in this case. This is also not a situation in which a teacher is mistaken or exercises "poor judgment" as to whether physical intervention is necessary.⁶

The School Board's suspension was based on Mr. Diggins' inappropriate physical contact with this student and, as stated above, there is no evidence of facts which might be argued to legitimize the contact he had with the student on March 17, 2003. Mr. Diggins has

⁵ At the time of hearing on the motion to dismiss, his counsel indicated that the only additional witness he intended to call was Mr. Diggins. See Tr. Vol.III.

⁶ See Proto v. Providence School Board, decision of the Commissioner dated January 27, 2006.

presented no arguments on his own behalf, save for those placed on the record in the opening statement of his counsel. Counsel stated that Mr. Diggins had no prior disciplinary record, that he acted prudently in a volatile situation and that the sanction he received was excessive. He has submitted no evidence in support of these statements.

Additionally, there is evidence in this case of the School Board's policy and procedures on student discipline and of procedures on the use of physical restraints. Notification was given at the beginning of the school year to all teachers at the school, including Mr. Diggins, that these policies and procedures must be followed. Although Mr. Diggins' suspension was not based on the violation of a specific policy or procedure of the school district⁷, the district's dissemination of these policies and procedures at the teacher orientation in August of 2002 conveyed the clear expectation that teachers would not, except in very limited situations described in the documentation distributed, use physical interventions with students. This constitutes sufficient warning that a serious penalty would be imposed when a teacher makes unauthorized physical contact with a student. Thus, the thirty day suspension imposed here has been substantiated.

For the foregoing reasons, the thirty day suspension of Mr. Diggins is upheld. Given the absence in this record of any explanation for his conduct, the requirement of anger management counseling is upheld as well.⁸ The decision of the Providence School Board is affirmed and the appeal of the Appellant is denied and dismissed.

For the Commissioner,

Kathleen S. Murray, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

December 5, 2007
Date

⁷ See the undated decision of the Providence School Board notifying Mr. Diggins that his suspension had been upheld by a vote of the Board on December 6, 2004. PSB Ex.7.

⁸ Reference has been made to an injunction obtained by Mr. Diggins with respect to his completion of anger management counseling and production of evidence of that this evaluation/counseling has been completed to the district. We are unaware of the status of such an injunction, or any proceedings related thereto. The Commissioner's authority, and this decision upholding the Providence School Board's decision with respect to anger management counseling, may be affected by proceedings in the Superior Court. Resolution of any proceedings in that forum is up to the parties in this case, and it is not our intent to interfere with the authority of that tribunal.