

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

Student E. Doe

v.

Burrillville School Committee

.....

DECISION

Held: The School Committee’s suspension of Student Doe did not conform to Regulations of the Board of Regents and violated Student Doe’s right to due process. Student Doe is nonetheless prohibited from attending graduation ceremonies because he engaged in serious misconduct that created a substantial risk of serious physical harm to other students and school staff at Burrillville High School.

DATE: June 12, 2008

Travel of the Case

This matter was appealed to Commissioner Peter McWalters on June 5, 2008. On June 3, 2004 the Burrillville School Committee had suspended Student Doe from Burrillville High School for the remainder of the school year and prohibited him from participating in extra-curricular activities, including graduation ceremonies scheduled for June 13, 2008. The appeal was assigned to the undersigned on June 5th for purposes of hearing and decision.

An expedited hearing was held on June 9, 2008 at which time both parties were represented by counsel. Neither Student Doe, nor his parents, were in attendance. The record in this matter consists of the exhibits submitted into evidence and the notes of testimony and argument taken by the hearing officer. Decision has been expedited because the primary issue is whether Student Doe should be allowed to attend the graduation ceremony scheduled for June 13, 2008.

ISSUE

Did the Burrillville School Committee violate the Board of Regents Regulations Governing Disciplinary Exclusions of Students from School and/or fail to provide Student Doe with due process in suspending him and prohibiting him from attending extra-curricular activities for the remainder of the school year, including the graduation ceremony scheduled for June 13, 2008?

Findings of Facts:

- ◆ Student Doe is an eighteen year old student enrolled as a senior at Burrillville High School.¹
- ◆ On April 30, 2008 he and another student lit two small fires in the boys' gym locker room at the High School. S.C.Ex.A. Student Doe ignited a roll of toilet paper in a holder in a bathroom stall and the other student ignited a tee shirt on top of a locker. They then left the locker room.
- ◆ The school janitor went into the locker room a short time later and came to find both the tee shirt and toilet paper roll that had already "burned themselves out". He then used a large fan to clear smoke out of the area.
- ◆ The other student involved in setting the fire, who had reached the second floor of the building, became concerned that the fire would cause a catastrophe and activated the fire alarm.

¹ Unless otherwise specified the source of the findings of fact is the notes made at time of hearing and the five exhibits received into evidence.

- ♦ The Burrillville Fire Department responded, the school was immediately evacuated and, fortunately, no one was injured.
- ♦ An immediate investigation of the fire was conducted by the School Resource Officer. He received several leads, one of which led to Student Doe. Upon being questioned by the School Resource Officer, Student Doe admitted to him that he had lit the toilet paper roll on fire and that the other student had ignited the tee shirt.
- ♦ Student Doe has been excluded from school since that time, has been charged with first degree arson, and placed on home confinement. He has been receiving tutoring services provided by the school department at the local library and, if he completes his coursework in a satisfactory manner which he is expected to do this week, he will be eligible to receive a diploma from Burrillville High School.
- ♦ On or about May 1, 2008 Student Doe met with the Principal and was given an opportunity to present his version of the incident and/or correct any details that had been communicated to the Principal by the School Resource Officer. Student Doe admitted his involvement in setting the fire.²
- ♦ On May 2, 2008 Student Doe received a written notice³ from the Principal and Assistant Principal of Burrillville High School notifying him that he was suspended from school for a ten (10) day period, beginning May 2, 2008. The notice included a “Return Date” of May 16, 2008 and directed his parent to appear on May 16, 2008 at 8:00 a.m. for a conference which was required prior to Student Doe’s “return to his regular school schedule”. Appellant’s Ex.1.
- ♦ When his mother appeared for the conference on May 16, 2008 the principal advised her that her son’s suspension was being extended to the end of the school year and that he would not be allowed to attend graduation. He also told her of arrangements for tutoring so that Student Doe could complete his academic requirements for his diploma.
- ♦ On May 31, 2008 Student Doe received a letter dated May 30, 2008 which notified him of the Superintendent’s decision to recommend a “suspension of you for 22 days, commencing on the 16th day of May until the end off (sic) the current school year due to the charge of arson”. S.C.Ex.B. The letter also notified him that this recommendation would be presented to the School Committee on June 3, 2008 and informed him of certain procedural rights attendant to the hearing⁴. The final sentence of the May 30, 2008 letter from Superintendent Steven Welford reads:

PLEASE BE ADVISED THAT THE SCHOOL COMMITTEE
HAS THE RIGHT TO ACCEPT, REJECT, INCREASE OR
DECREASE MY RECOMMENDATION. S.C.Ex.B

² It is not clear whether this meeting took place on May 1 or May 2, 2008.

³ Directed to his “Parent/Guardian”

⁴ The May 30, 2008 notice appears to be missing a sentence between the first and second page, but the hearing officer confirmed with counsel after the close of the hearing that S.C.Ex. B is an accurate copy of the notice sent to Student Doe.

- ♦ On June 3, 2008 the School Committee met for a formal hearing on the issue of Student Doe’s proposed suspension. Student Doe was represented by counsel who cross examined witnesses and made arguments on his behalf. After consideration of all the evidence, the School Committee voted unanimously to approve the Superintendent’s recommendation.⁵ S.C. Ex. D.
- ♦ The written decision of the Burrillville School Committee was issued on June 4, 2008 and a copy was sent to Student Doe. S.C. Ex. D. The written decision states that his suspension is based on his “actions (which) endangered persons and property and disrupted the academic process...” S.C. Ex. D.

Positions of the Parties

Student Doe

Student Doe’s counsel argues that Student Doe was suspended not once, but twice for the incident of April 30, 2008 in which he was admittedly involved. When the Principal of the high school notified him of the disciplinary action to be taken he indicated, both verbally and then in writing, that Student Doe would serve a ten (10) day suspension and could return to school to resume his regular schedule on May 16, 2008. When Student Doe and his mother appeared at the high school on May 16, 2008 anticipating that he would be resuming his academic program at that time, they were notified of a second suspension, this one for the balance of the school year. Although Student Doe would receive tutoring to permit him to complete the coursework required for him to graduate on time, he would not be allowed to attend graduation. The imposition of this second suspension essentially places Student Doe in “double jeopardy” and punishes him twice for the same offense.

The procedures accompanying the second suspension did not comply with Regents Regulations and the due process rights that accompany a lengthy exclusion from public school were not observed. There was no communication with Student Doe or his mother concerning his status from May 16-May 31, 2008. It was not until May 31, 2008 (over two weeks later) that a written notice of the second suspension was provided to Student Doe. It makes no mention of his first ten-day suspension by the principal. It inaccurately describes the suspension as a “22 day” suspension, when Student Doe would actually be excluded for a total of thirty-two (32) days. A hearing on June 3, 2008 does not comply with the requirement that if a student is excluded from school for more than ten days, a formal hearing by the school committee must occur “as soon as practicable”. This hearing occurred over two weeks after the second suspension was imposed and over a full month after Student Doe’s initial exclusion from school.

⁵ The written decision refers to Student Doe’s suspension “for the remainder of the 2007-2008 school year” and does not specifically describe it as a “22 day” suspension, as the Superintendent had in his written notice and recommendation of May 30, 2008.

In light of these substantial defects in the procedure followed by the Burrillville School Committee in suspending Student Doe, his counsel argues that his suspension should be set aside and he should be permitted to attend graduation, assuming he meets the academic requirements and the conditions of his home confinement allow for his attendance at the graduation ceremony. The School Committee policy that restricts participation in graduation ceremonies to students in “good standing” should not be applied because it is vague in that it does not define what is meant by “in good standing”.

Burrillville School Committee

Counsel for the School Committee recognizes that the written notice of May 30, 2008 and the hearing of June 3, 2008 are procedural steps the Committee should have taken sooner. She points out, however, that even if the Burrillville had heard this matter closer in time to May 16th (or even closer to May 2, 2008) there would have been no different outcome, given the undisputed evidence of the serious misconduct involved in this case. Once the new Superintendent became aware of the formal procedures required by Regulations of the Board of Regents for a suspension exceeding ten (10) days, the appropriate notice was sent, formal hearing was held, and a written decision was promptly provided to Student Doe.

As to the claim that there have been two separate suspensions imposed on Student Doe for his single offense, counsel submits that only one suspension is involved here and it began on May 16, 2008, the date indicated in the May 30, 2008 notice from Superintendent Welford. Counsel submits that in cases of serious misconduct in which it is determined that a student should not be allowed to attend school pending formal disciplinary procedures, there is of necessity a brief period of exclusion while the notice is prepared and sent and hearing before the school committee is scheduled. The period of exclusion pending such notice and hearing does not constitute a separate suspension. If it does, then most students excluded from school while the formal procedures are carefully and deliberately followed would be deemed to have served two suspensions for the same misconduct.

Assuming, arguendo, that Student Doe’s suspension is invalidated by a technical deficiency in disciplinary procedure, it would violate policy of the Burrillville School Committee to permit him to attend graduation exercises. Policy 3851 “Participation In Graduation” restricts participation in graduation to those who have fully completed graduation requirements and who are “in good standing” at the time of graduation. Student Doe has admitted his participation in a serious incident. He stands charged with the crime of arson, a felony. His conduct clearly indicates that he is not “in good standing” at this time. He should be barred from graduation because he is suspended and if his suspension is invalidated because of flaws in the process, he is still ineligible based on his lack of “good standing” at Burrillville High School.

DECISION

This is the first occasion of which we are aware in which a Student seeks to invalidate his suspension on a purely procedural basis so that he can join his classmates at graduation ceremonies. He takes no issue with the seriousness of the misconduct described by those who testified at the hearing held on Monday, June 9, 2008. He presents no argument that the punishment imposed, be it a single or a double suspension, is disproportionate to the offense he committed with his classmate on April 30th. The Commissioner is not asked to consider extenuating circumstances such as the absence of any disciplinary record or an exemplary academic record. The straightforward proposition is that defects in the procedure followed by the Burrillville School Committee should invalidate the suspension and restore Student Doe's eligibility to attend the graduation ceremony.⁶

Our instinctive response is that to the extent his appeal seeks relief that is equitable in nature, Student Doe comes before the Commissioner with "unclean hands", so to speak.

He has, however, demonstrated that the Burrillville School Committee did not follow Board of Regents' Regulations Governing Disciplinary Exclusions of Students from School. Under these Regulations, formal action by a school committee is required for all suspensions of more than ten (10) days. Student Doe was effectively suspended for a full month before the Burrillville School Committee acted to suspend him. When a student is excluded from school pending school committee action, the matter must be presented to the committee "as soon as practicable". Notice of the hearing and the hearing itself must be "prompt". The May 30, 2008 notice and June 3, 2008 hearing did not provide Student Doe with prompt notice and hearing and were not "as soon as practicable" after a disciplinary exclusion which began on May 2, 2008. Although there is no evidence that the Principal or Superintendent willfully violated Student Doe's procedural rights in this regard, their lack of awareness of these procedural requirements does not excuse the failure to comply with Regents' Regulations. These regulations codify basic elements of procedural due process which are required when excluding students from public school in Rhode Island. They also implement state policy that only local school committees have authority to subject students to long-term exclusions from school.

The May 30, 2008 notice (S.C.Ex.B) is not only untimely, but it also does not accurately describe the nature of the penalty the Superintendent was recommending to the School Committee. It describes a "22 day" suspension rather than the thirty two (32) day⁷ suspension which would actually be imposed on Student Doe⁸. The last sentence of the

⁶ Assuming he is academically eligible and has the permission of the court having jurisdiction of the pending criminal matter.

⁷ We understand the reference to mean school days, which would bring Student Doe's suspension beyond the date of graduation on June 13, 2008.

⁸ We infer that at some point during the hearing, members of the School Committee became aware that Student Doe had been out of school since May 1, 2008.

notice from Superintendent Welford indicates that the penalty he was recommending could be accepted, rejected, increased or decreased by the School Committee. This language deprived Student Doe of a clear notice of the nature of the discipline he faced in the formal proceedings. This language also implies (although it may not have been intended to do so) that a student who invokes his or her right to a hearing before the School Committee risked an increased penalty, while a student who did not request a hearing did not incur such risk.

The Appellant's contention that Student Doe was suspended twice for the same offense is a fact supported by a review restricted to the documentation which accompanied Student Doe's suspension(s). The Principal's suspension notice of May 2, 2008 describes a ten-day term of suspension and advises Student Doe of his "return date" on which he will resume his regular school schedule. The notice does not mention the contemplation of future additional disciplinary action. Similarly, the second suspension notice makes no mention of the fact that Student Doe had been suspended by the Principal on May 2nd. The notice from the Superintendent describes a "22-day" suspension "commencing on the 16th day of May" and extending for the balance of the school year.

The link between these two periods of suspension is established only by the testimony of the Principal and the Superintendent. The principal testified that his initial ten-day suspension notice was not intended to describe the full extent of Student Doe's punishment. The consensus he reached with the Superintendent soon after the incident was that Student Doe's suspension should be "extended" beyond May 16, 2008. Superintendent Welford testified that after receiving input from the Principal, he determined that the misconduct warranted a recommendation to the School Committee for a suspension for the balance of the school year. As described above, notice of this decision was not forthcoming in a timely manner, and when it finally was provided to Student Doe on May 31, 2008, it did not accurately describe the total length of his suspension. The evidence shows that Student Doe was not unfairly subjected to multiple suspension decisions. The record establishes, however, that he was not provided with timely and effective notice of what those decisions were. We can envision a situation in which multiple decisions in a student discipline context deprive a student of fundamental fairness, but the situation which existed in Student Doe's case is not one of them. In any event, as to the Appellant's claim that his rights against "double jeopardy" were violated, we would note that the "double jeopardy" protection of the Fifth Amendment to the Constitution applies only in criminal cases. See Rapp on Education Law, Section 9.09 (7)(c).

Our review of this matter indicates that procedural violations occurred in the course of Student Doe's suspension by the Burrillville School Committee. The remedy for such procedural violations is a matter which the Commissioner has approached on a case by case basis. In this case, there is no dispute as to the factual support for the penalty imposed by the School Committee and Student Doe has not shown, or even argued, that the penalty is disproportionate to the offense. He has not demonstrated that he was prejudiced by these procedural violations. To provide him the remedy he seeks-

attendance at graduation- would seriously undermine the disciplinary authority of school officials at a most-important and highly-visible school event. For this reason, we decline to impose a remedy for the procedural violations the Appellant has proven.

His appeal is denied and dismissed.

APPROVED:

Kathleen S. Murray, Hearing Officer

Peter McWalters, Commissioner

June 12, 2008
Date