

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

T. DOE

V.

NORTH KINGSTOWN SCHOOL COMMITTEE

Decision

Held: Student was harassed, intimidated and bullied at school; school failed to follow state law and district policy; request for out-of-district placement is denied in light of suitable alternative in-district placement.

Date: August 29, 2008

Introduction

This matter concerns a claim that an out-of-district placement for a student is warranted because of the North Kingstown School Department's failure to disseminate and implement state law and district policy prohibiting harassment, intimidation and bullying at school.¹

Background

Student Doe began attending the North Kingstown school system in September 2006. Beginning that month, and continuing until March 2008, Doe was subjected to a continuous pattern of abuse, primarily verbal, by several students at the Wickford Middle School.² The abuse consisted of name-calling, insults, taunting, embarrassing nicknames, offensive sexual remarks, threats, the spreading of humiliating stories and rumors, and enticement into inappropriate activity. It occurred in classrooms, the gymnasium, the lunch room, on the bus and during field trips.³

From the outset, Doe's parents attempted to invoke district policies in an effort to help their son. The North Kingstown School Committee's "Prevention of Harassment, Intimidation or Bullying" policy, adopted in April 2004, states that the "Committee commits the staff to the implementation of a comprehensive and preventive approach that addresses the underlying reasons for this behavior and helps to create a better school community that supports learning and teaching for students and adults." [Appellant's Exhibit 2]. The policy prohibits harassment, intimidation and bullying in the public schools. It states that "[b]ullying occurs when a student intentionally assaults, batters, threatens, harasses, stalks, menaces, intimidates, extorts, humiliates, taunts another student, or damages or places a student in reasonable fear of damage to his or her property." [Ibid.].

¹ The Commissioner of Education designated the undersigned hearing officer to hear and decide the appeal. Hearings were held on June 5, 6, 20, 23, 26 and July 1 and 22, 2008.

² The abuse subsided somewhat from mid-October 2007 into the beginning of March 2008.

³ While some of the alleged physical bullying proved to be either the foreseeable consequence of athletic activity (flag football) or another student's aggressive behavior (intervening to help a classmate who was being held), other unwanted physical touching did occur (sticker placed on Doe's back, pushed onto the ground, repeatedly hit in the head with a "sticky hand").

The district policy further provides, in part, as follows:

Reporting Bullying: The principal of each school in the North Kingstown School District shall establish, and prominently publicize to students, staff, volunteers, and parents, how a report of bullying may be filed and how this report will be acted upon . . .

Investigation of Bullying: The principal, or his or her designee, shall investigate all allegations of bullying. If the allegation is found to be credible, appropriate disciplinary sanctions, subject to any appropriate due process procedures, will be imposed. The investigation will include an assessment of what effect the bullying has had on the victim.

Help for the Victim(s) of Bullying: If the victim's mental health has been placed at risk appropriate referrals will be made . . .

Prohibition against Retaliation: Retaliation or threats of retaliation in any form designed to intimidate the victim of bullying, those who are witnesses to bullying, or those investigating an incident of bullying shall not be tolerated. In most cases retaliation or a threat of retaliation will result in the imposition of a short or long-term school suspension . . .

Individualized School Safety Plan: If a student is the victim of serious or persistent bullying, the principal of the school, with input from the parents of the student and staff members, will prepare a written school safety plan outlining what steps will be taken to provide the student with a safe educational environment.

Instruction in the Prevention of Bullying: Students and staff will be given instruction in this district's Policy and Regulations against bullying . . .

Reports to the Superintendent and to the School Committee: School principals will provide the Superintendent of Schools and the School Committee with a semi-annual report on incidents of bullying which have taken place in the schools under their respective supervision. This report will include a statement describing what remedial action has been taken to address bullying.

Bullying Prevention Task Force: The principal of each school in this district shall establish a Bullying Prevention Task Force. This Task Force may include parents, school staff, and law enforcement officers, as well as community members and, if age allows, students. The purpose of this Task Force will be to develop

policies and programs to educate students and staff about the harm caused by bullying. The Task Force may also create programs to prevent or diminish bullying . . .

The School Committee’s “Sexual Harassment Involving Students” policy, also adopted in April 2004, prohibits

verbal or physical conduct or communication of a sexual nature when . . . [t]hat conduct or communication has the purpose or effect of substantially or unreasonably interfering with an individual’s educational pursuits, or creating an intimidating, hostile or offensive educational environment. [Appellant’s Exhibit 4].

The School Committee’s “Student Conduct, Behavior and Discipline” regulation, adopted in August 2004, classifies bullying as a “serious” offense. [Appellant’s Exhibit 10]. The School Department’s Parent Complaint Management System outlines a detailed complaint process. It requires school administrators to inform complaining parents that a “Complaint Record Form” is to be completed. [Appellant’s Exhibit 13]. While the 2006-07 Wickford Middle School Parent/Student Handbook briefly mentioned a “complaint procedure,” it did not contain any reference to the bullying policy. [Appellant’s Exhibit 12]. The 2007-08 Handbook repeated the “complaint procedure” provision and included a citation to the bullying policy. Early in the school year, a handbook insert containing the full “Prevention of Harassment, Intimidation or Bullying” policy was distributed [Appellant’s Exhibit 37].

The efforts of Doe’s parents did not produce results. Awareness and understanding of the pertinent policies at school were minimal at best. Investigations were not conducted properly.⁴ Problem behaviors were not recognized.⁵ Discipline was not imposed. School-parent communication was ineffective. Doe was unable to establish a trusting relationship with staff. The abuse continued and intensified when Doe’s parents complained. Doe’s emotional state deteriorated. He developed stomach problems. The district did not provide for an assessment.

⁴ For instance, Doe’s parents were not informed of the complaint record form until the 2007-08 school year.

⁵ One particular incident concerned the manner in which a teacher treated an “I love you” note he received with Doe’s signature forged on the note. This teacher split his time between Wickford Middle School and Davisville Middle School during the 2007-08 school year. He testified at the hearing that he has been assigned to a different school on a full-time basis for the 2008-09 school year.

At the initiative of Doe's parents, a bullying prevention task force was created during the 2007-08 school year. Complaint record forms were eventually utilized in October 2007. An individualized school safety plan was developed for Doe. The district's former director of human resources was retained to investigate the complaints filed by Doe's parents. His November 5, 2007 report found problems with the district's interviewing practices, the absence of an assessment of Doe, the role of the school resource officer in alleged disciplinary infractions, and the timing and appropriateness of an administrator's remarks to student Doe concerning the possible bullying nature of Doe's tapping his friends on the head. Other issues raised in the complaints were not found to be problematic although the district actions relied upon by the investigator occurred after the filing of the complaints⁶. It also appears that the investigator did not have the total history of Doe's difficulties at Wickford Middle School when he reviewed the appropriateness of the student discipline that was imposed for the October 2007 incidents described in the complaint record forms.⁷

Doe's parents did not file any further complaints until the beginning of March 2008. At that time, Doe was subjected to threats and name-calling from boys in his literacy class, a class to which a substitute teacher had been assigned. On or about March 17th, these same boys tried to entice Doe and two other students to access a pornographic website during literacy class. Doe's parents alerted the school. The resulting investigation and removal of one of the boys from Doe's team of students unleashed a wave of hostility and harassment toward Doe. Doe became ill and was unable to return to school. His parents arranged for a mental health evaluation. Doe received homework and assignments from school.

On March 31st, Doe's family received the weekly homework folder. In addition to Doe's assignment, the folder contained a "Wickford Middle School PTO Volunteer Opportunities Checkoff Sheet" completed by the mother of the boy who had been removed from Doe's team. [Appellant's Exhibit 7]. For Doe's family, it was the final straw. In early April, Doe was enrolled in another public school, on a tuition basis. Later in April, Doe's family received an "Initial Evaluation Report" from the doctor who had

⁶ These issues concerned student and staff awareness of the bullying policy, and the development of the individualized school safety plan for Doe.

⁷ The "Student Conduct, Behavior and Discipline" regulation contains a progressive discipline policy.

examined Doe. The evaluation found Doe to be presenting “symptoms of anxiety presumably secondary to being bullied the last 2 years at school. He reports anxiety attacks, school avoidance and intrusive thoughts relative to being bullied. Sleep has been affected. Hopelessness has been high!” [Appellant’s Exhibit 30]. Doe’s “admitting (provisional)” diagnosis is “Anxiety D/O NOS 300.00 . . . R/O PTSD.” [*Ibid.*].⁸ The evaluation does not discuss a treatment plan.

Doe completed the 7th grade in June 2008. During the course of this proceeding, an interim superintendent was appointed by the School Committee. The interim superintendent testified that he had requested all district principals to inform him in detail of their plan to disseminate and implement all required school policies, including harassment, bullying and intimidation. Plans must address student notification and staff professional development. In addition, teacher orientation for the 2008-09 school year will include a district-wide assembly of teachers where training on the harassment, bullying and intimidation policy will be provided.

On August 12, 2008, Appellant brought its request for an out-of-district placement to the North Kingstown School Committee. The interim superintendent recommended that Appellant’s request be denied and that Doe be assigned to the Davisville Middle School for the 2008-09 school year. The Committee voted to accept the interim superintendent’s recommendation.

Positions of the Parties

Appellant contends that the district’s comprehensive failure to comply with state law and its own policies regarding bullying and harassment resulted in grave emotional harm to student Doe. Despite the clear language of the policy, district staff did not recognize the bullying activity at Wickford Middle School and therefore could not prevent it, investigate it, or assess it. As a result, Doe was left unprotected. His medical evaluation speaks of the damage to Doe. He has learned not to trust adults in the North Kingstown school system. While the interim superintendent’s efforts are admirable, they are just a beginning and there is much work to do. If Doe were to attend Davisville

⁸ We translate the diagnosis as follows: “Anxiety disorder not otherwise specified, DSM (Diagnostic and Statistical Manual of Mental Disorders) 300.00 . . . rule out post-traumatic stress disorder.”

Middle School in 2008-09, he will re-unite with the same bullies in one year at the high school. The district's refusal to acknowledge that Doe was bullied and harassed compounds the hostility and danger that exists for Doe in the North Kingstown educational environment. Appellant seeks a funded out-of-district placement for Doe commencing with the 2008-09 school year.

The School Committee takes issue with several of the alleged bullying incidents, claiming that they do not meet the definition of bullying under state law. It also questions the persistent nature of the activity in light of the absence of complaints from mid-October 2007 until March 2008. While the district did not provide formal training in this area, there was testimony from administrators at Wickford Middle School that the prohibition against bullying was discussed informally with students and staff. The medical documentation in evidence does not clearly link Doe's anxiety with school bullying. The totality of conduct that can be defined as bullying does not warrant an out-of-district placement. In fact, given the interim superintendent's new initiatives in this area and the lack of evidence that Doe would be bullied at Davisville Middle School, the reasonable solution to this matter is a placement at Davisville.

Discussion

Rhode Island General Law 16-21-26(b) requires school committees to have a policy prohibiting harassment, intimidation, or bullying at school. The statute also requires that the policy address the prevention of such behavior, and that school districts train staff about the policy, discuss it with students and publish the policy in student discipline codes and pupil handbooks.⁹

As previously noted, the North Kingstown School Committee has adopted a harassment, intimidation and bullying policy that complies with the statute. Unfortunately, as the facts of this case demonstrate, very little has been done at Wickford Middle School to implement the district's policy. In fact, when it comes to the implementation of §16-21-26 and district policy adopted thereunder, the Wickford Middle School needs to start from scratch. Beginning in the fall of 2006 and culminating

⁹ It is a requirement under R.I.G.L. 16-21-21 that students, parents and guardians sign a statement verifying that they have received a copy of the student discipline code.

with this proceeding, Appellant has provided the school district with a catalogue of failures in the dissemination and application of the district's bullying policy. Thanks to Appellant, the record in this case can serve as a repair manual to fix what is broken in the harassment, intimidation and bullying department at Wickford Middle School. What is broken must be promptly fixed. The practice at Wickford Middle School with regard to harassment, intimidation and bullying must become consistent with the requirements of state law and district policy.

The remaining question concerns student Doe's education for the 2008-09 school year. The parties are in agreement that Doe cannot return to Wickford Middle School. In the particular circumstances of this case, we agree with the School Committee's decision to permit Doe to enroll in the Davisville Middle School.

Rhode Island General Law 16-2-17 states that students have the right to attend "a school which is safe and secure, and which is conducive to learning . . ." R.I.G.L. 16-21-26 is aimed at avoiding "an intimidating, threatening or abusive educational environment for a student." We find that the educational environment at Davisville Middle School, subject to the provisions of this decision, meets the statutory criteria.

In making this finding, we place particular reliance on the heightened awareness and prioritized initiatives that the new interim superintendent has brought to this subject. We believe that this case is being treated as a defining moment in the North Kingstown school system. We now know the work that needs to be done at Wickford Middle School. To the extent that work needs to be done with regard to the harassment, intimidation and bullying of students at other North Kingstown schools, including Davisville Middle School, we expect it to be done promptly. To that end, we shall appoint a special visitor to oversee this remedial action and measure the district's compliance with state law and its own policy. The special visitor also will monitor student Doe's integration into the Davisville Middle School environment.

The medical evidence placed into the record does not establish that Doe is unable to attend school in North Kingstown. If Doe is receiving treatment for school-bullying issues, that treatment can be coordinated with appropriate personnel in the North Kingstown school system. Finally, we see Doe's attendance at Davisville for the eighth grade as an opportunity to establish relationships with local students which will be

supportive and enriching when he enters the much larger and diverse educational environment at North Kingstown High School the following year.

Conclusion

While we find merit in the appeal to the extent that student Doe cannot return to Wickford Middle School because of the School's failure to comply with state law and district policy concerning the harassment, intimidation and bullying of students, we deny that portion of the appeal which requests an out-of-district placement for Doe. We appoint a special visitor to the North Kingstown School Department for the purpose of overseeing its efforts to bring its practices into compliance with state law and district policy governing the harassment, intimidation and bullying of students. The special visitor also will monitor student Doe's integration into the educational environment at Davisville Middle School.

Paul E. Pontarelli
Hearing Officer

Approved:



Peter McWalters
Commissioner of Education

Date: August 29, 2008