

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

Mr. and Mrs. John Doe

v.

Scituate School Committee

Held: Parents who removed their daughter from an elementary school in Scituate and enrolled her in private school because of racial harassment requested that the Commissioner make the following determination: whether or not school officials followed the district's anti-bullying policy and appropriately and adequately responded to their complaints that their daughter was being bullied.

The record demonstrates that school officials responded informally to address each incident that was reported and imposed age-appropriate consequences on the students who were involved in these incidents. However, the district's anti-bullying policy and protocols were not utilized. Had they been utilized, district officials and parents could have worked cooperatively to be proactive in ensuring that Student Doe felt protected and supported in her school environment.

DATE: April 5, 2012

Travel of the Case

On December 13, 2010 the parents of Jane Doe appealed to Commissioner Deborah A. Gist regarding the alleged failure of the Scituate School Committee to address racial harassment and bullying experienced by their daughter in her local elementary school. The Commissioner deferred scheduling the matter for hearing until the School Committee had opportunity to respond to a December 7, 2010 letter that the Appellants had filed with them. After the matter was heard by the Scituate School Committee on January 4, 2011, the Appellants notified the Commissioner that they were “dissatisfied with the outcome” of their meeting and wished a hearing to be scheduled as soon as possible.

The matter was assigned to the undersigned on January 15, 2011 and a letter of acknowledgement was sent with a request for the parties to select a mutually-convenient date for hearing. On February 11, 2011 the hearing officer followed up with a communication that if the parties were unable to agree upon a date for hearing, the hearing officer would do so. On April 6, 2011 a prehearing conference was held. The parties worked with the hearing officer to identify the relevant factual and legal issues in this case. On the May 18, 2011 control date, the parties requested additional time to work on a resolution of the issues. They updated the hearing officer periodically on the status of the matter over the course of the next several months. On August 23, 2011 the hearing officer wrote to the parties to schedule a hearing if the matter was not settled. A hearing date of November 9, 2011 was scheduled and the matter was heard at that time. The record in this matter closed on February 24, 2012 when legible copies of the exhibits were supplied by counsel for the School Committee.

Jurisdiction to hear this dispute is found under R.I.G.L. 16-39-1 and 16-39-2. Since the Appellants allege that the Scituate School Committee did not comply with the provisions of the anti-bullying policy that it was required to implement under R.I.G.L. 16-21-26,¹ this matter is in the nature of an enforcement action. The Commissioner is charged with the responsibility to enforce school law under R.I.G.L. 16-1-5 (9) and 16-60-6 (9) (vii).

¹ This law was repealed in the General Assembly’s 2011 session and replaced by section 16-21-33, “The Safe School Act”.

Issue

Did the Scituate School Department comply with “Scituate School Department Policy on School Response to Bullying, Teen Dating Violence, and Sexual Violence” (Policy #8210; November 26, 2008) when it received a series of complaints that the Appellants’ daughter had been the victim of racial harassment and bullying?

Findings of Relevant Facts:

- During the 2009-2010 school year Student Doe was in third grade in the Scituate, Rhode Island public schools.
- On May 18, 2010 her mother reported that Student Doe had been “harassed by other children at school”. Mrs. Doe indicated that “It is racial harassment”. She went on to say that she would like the school to take action and didn’t want “each incident to be swept under the rug”. Mrs. Doe attached to her email a letter that she planned to send to the parents of a female student involved in an incident that had happened that day in which the other child had teased Student Doe about her race in front of other students in the cafeteria. S.C. Ex. 1 pp. 39-40.
- On May 18, 2010 the Principal received another email from the parent of one of Student Doe’s classmates. The subject of the email was “help”. The parent related that his daughter had approached him to tell him that two students (named in the email) had been taunting Student Doe because of her race. He objected to “racist bullying” taking place at the school and requested that the principal “please deal with this situation and ensure that it does not occur again”. S.C. Ex.1 p.159.
- Upon speaking with the classroom teacher the next day, the Principal learned that there had been another incident in which a male student had teased Student Doe about her race. This incident had already been “worked out”. S.C. Ex.1 p.3.
- On May 19, 2010 the Principal investigated the incident that took place the day before at lunch in the cafeteria. When Student Doe described what had happened, the Principal stated that she “was sad to hear that someone made her feel badly”. S.C. Ex. 1 p.3.
- On that same day, the Principal questioned the female student who was accused of ridiculing Student Doe because of her race. She admitted this behavior. The Principal took away recess and called her parents to come in to school to discuss the incident. S.C.Ex.1 p.3.

- On May 20, 2010 the Principal met with the student’s mother to discuss how she could work with her child to help her understand that the language used was inappropriate. A behavior report documented that the student had lost recess for her behavior, that the Principal had conferred with her and her parents and that the teacher had been notified of this incident. The behavior was described as “making fun of another child’s nationality in her classroom”. S.C. Ex.1 pp. 3 and 182.
- On May 21, 2010 Mrs. Doe told the Principal that her daughter felt that no one cared about her and that she did not want to come to school. She complained that the female student who had been involved in the cafeteria incident was “a bully” and that her daughter was afraid of her. Mrs. Doe expressed her dissatisfaction with the protocol used by the Principal and the consequences imposed on the student (she wanted her removed from the class) and asked for a meeting the following Monday. S. C. Ex. 1. p.3. In a letter to the Principal, Mrs. Doe also asked that the student be formally written up for the incident and that she write a letter of apology in which she promised never to use racial or any kind of hurtful words toward her classmate again. S.C. Ex.1 p.45.
- On May 21, 2010 the Principal checked on Student Doe throughout the day and spoke to the classroom teacher several times to make sure Student Doe was all right. S.C. Ex.1 p.3.
- Student Doe and the female student were brought together so that the girl could apologize under the Principal’s supervision. S.C. Ex.1 pp. 3 and 49.
- On May 24, 2010 the Principal met with the Appellants. They discussed Student Doe’s feelings and what the school could do to prevent bullying. Cultural diversity programs, preventative programs with the school psychologist, and school assemblies on preventing of bullying were discussed. The Appellants requested that Student Doe be separated from the girl they viewed as a bully, that they be provided with a copy of the bullying Policy and that the Principal give them a letter documenting the incident. S.C. Ex.1 p.3. They also submitted a written request that the Principal make a proposal on how the school would handle a “Diversity Workshop,” require the student to write a letter of apology and create a discipline report on the girl’s misconduct. S.C.Ex.1 p.45.
- On May 26, 2010 Mrs. Doe emailed the Principal, thanking her for meeting with them and expressing her hope that “something positive will come out of it and we can work together for (the) better”. In the same email, she notified the Principal that she was taking her daughter to a

therapist and pediatrician. She asked when her daughter would receive an apology letter. S.C.Ex.1 pp. 41-42.

- On June 1, 2010 the Principal wrote to the Appellants documenting the incident that had occurred in the cafeteria, the steps she had taken and the points on which she and the Appellants had disagreed, i.e., on her assessment of the situation and what the appropriate response should be. S.C. Ex.1 pp. 48-49. The letter confirmed that “no other action would be taken at this time”.
- On June 8, 2010 the school counselor went into Student Doe’s classroom to support issues of bullying, friendship, etc. Four students, including Student Doe, met with her. S.C. Ex.1 p.4. Student Doe reported that the female student involved in the prior incident was “doing better” but she (and another student) reported that an insulting gesture and related racial comments were ongoing. S.C. Ex.1 pp. 189-192.
- On June 11, 2010 the Principal received a report from Mrs. Doe (forwarded by Student Doe’s teacher) that the student who had been involved in the cafeteria incident had pushed Student Doe and cut in front of her. Student Doe was upset and crying when she got home and stated that she did not want to go to school anymore. The report indicated there was a witness to this as well as other bullying behaviors of this student. S.C.Ex.1 p.50.
- On September 23, 2010 Mrs. Doe reported to the fourth grade teacher that on the prior day a fifth grade boy made a gesture and statement that ridiculed Student Doe’s race. The mother reported that Student Doe was very discouraged because in the first three weeks of school she had already had “several uncomfortable race related incidents”. Mrs. Doe asked that the teacher bring this to the attention of the principal, but added that“(Student Doe) does not want to talk to (the student) nor the principal”. S.C.Ex.1 p. 169. In an email sent that next morning to Student Doe’s teacher, Mrs. Doe stated, “Please understand that her negative experience at (the school) has been going on for a long time and she is emotionally at her breaking point”. S.C.Ex.1 p.56.
- When the offending student was called down to the Principal’s office he admitted what he had done and said he was sorry. The Principal went to Student Doe’s classroom and spoke to her outside the door. The Principal explained that she was aware that Student Doe’s feelings were hurt, that the behavior was inappropriate and that the offending student was sorry for what he

had done. She asked if he could apologize to her and Student Doe agreed. The student apologized, lost recess, and wrote a reflection paper about what he had done. S.C.Ex.1 p.16.²

- On October 17, 2010 Mrs. Doe wrote to the school psychologist who had asked for permission to speak to Student Doe about her negative school experiences. Mrs. Doe stated that her perception was that the school had not supported her daughter by “making a stand in (her) defense in incidents where she has been bullied and racially demeaned by other students”. Student Doe’s mother indicated that she and her husband were providing Student Doe with professional counseling to counter the damaging effects of bullying at school. S.C.Ex.1 p.14.
- On October 20, 2010 the Principal wrote to the Appellants to respond to their assertion that there was “an absence of school support” for Student Doe. The Principal described the classroom activities and school-wide programs aimed at prevention of bullying as well as the specific interactions she had had with Student Doe. S.C. Ex.1 pp.12-13.
- On October 21, 2010 the Appellants responded to the Principal’s letter indicating that despite multiculturalism initiatives taking place at the school, the Principal was “clearly missing the point when it comes to addressing the behaviors that (Student Doe) has been experiencing at school”. They went on to allege that “We believe that (Student Doe) has been subjected to relentless bullying over the course of this school year and which began sometime during (her) first grade . . . We have no doubt that (she) has experienced systematic racist bullying”. S.C. Ex.1 p.11.
- On October 21, 2010 Student Doe’s fourth-grade teacher circulated a letter to parents of her students notifying them of “National Bullying Prevention Month” and describing activities designed to prevent bullying. The letter noted that “several recent incidents in the classroom have caused me to ask for your help in reminding students that bullying behavior, racial or cultural disrespect is not acceptable. I appreciate that families will have conversations with their children to reinforce the concepts in our class pledge and the objectives of our bully prevention program”. S.C. Ex. 1 p.15.

² It is not clear on the record whether an incident described in the Principal’s timeline as occurring on September 27, 2010 refers to the September 22, 2010 incident. The same male student appears to have been involved but there are two versions of this incident.

- On October 21, 2010 a fourth grade student insulted Student Doe with an action and words, thereby making fun of her race. The student apologized to Student Doe, lost recess and wrote a reflection paper. The Principal notified his parents and Student Doe’s parents of what had happened. S.C.Ex.1 p.33.
- In mid-November Mrs. Doe wrote to thank her child’s teacher for providing extra help with make-up work. She indicated that Student Doe had been absent from school because of the impact on her mental health³ caused by her “unhappy school environment”. This information was referred to the school psychologist, who immediately emailed Mrs. Doe offering to provide her with “wraparound” services to supplement those provided by her own counselor. Mr. Doe responded with an email thanking the school psychologist and noting that the family had already addressed her needs. S.C. Ex.1 pp. 112-114.
- On or about November 16, 2010 the school received notice that Student Doe was a candidate for admission to a private school and received a Recommendation Form for her teacher to complete. S.C.Ex.1 pp.230-234. On December 3, 2010 Student Doe’s teacher forwarded the recommendation form to the private school. S.C. Ex.1 pp. 101-103.
- On November 19, 2010 Student Doe’s treating psychologist contacted her teacher to set up a classroom visit so she could work effectively with Student Doe on coping with distress and managing bullying and other peer conflict. A release authorizing school officials to provide educational information and documentation relating to Student Doe was also forwarded by her psychologist. S.C. Ex.1 pp. 115-116.
- On December 13, 2010 the Superintendent received a letter from Mr. and Mrs. Doe indicating their intent to home school their daughter for the remainder of the year and to transfer her to private school in January of 2011. S.C. Ex.1 pp. 79, 140.
- During the period of time in which the school received reports that Student Doe had been the victim of racial harassment and bullying (May 18, 2010 -- December 13, 2010), the Scituate School Committee had in place “Scituate School Department Policy on School Response to Bullying, Teen Dating Violence, and Sexual Violence” (November 26, 2008). S.C.Ex.3 Tr. p. 54.

³ Mrs. Doe cited the specific mental health issues her daughter was experiencing at that time.

Positions of the Parties

Mr. and Mrs. Doe:

The position of the Appellants is that the incidents they reported to school officials fit within the definition of bullying and yet the provisions of the bullying policy were not followed. When the Appellants reached out for help and notified school staff of their daughter's specific health issues resulting from the school climate, the response of school officials was inadequate. Student Doe did not feel safe and comfortable in the environment of her elementary school. Since she is now attending a private school, there is no individual remedy they seek in this administrative proceeding other than an acknowledgement from the district that it "let this student and her parents down". They request that Scituate take steps to ensure that what happened to Student Doe will not be repeated by revising its bullying policy, if necessary.

Scituate School Committee

Counsel for the School Committee noted at the outset of the hearing that the Appellants have failed to exhaust their administrative remedies in that when they appeared before the School Committee in executive session on January 4, 2011, they did not request that the School Committee take any specific action. The Appellants were asked several times during the course of the meeting what remedy or relief they were seeking; however, they declined to make any specific demands for themselves or on behalf of their daughter. Despite this, the School Committee was fully prepared to address the substance of the Appellants' claim that the district failed to follow the provisions of its anti-bullying policy in responding to the Appellants' complaints.

Scituate takes the position that at no time did it allow bullying to go unchecked or unaddressed. Even though the behavior of which the Appellants complained did not meet the statutory definition of bullying, the Principal responded to each incident as though bullying had occurred. In each situation the Principal made a determination as to what had happened and imposed age-appropriate consequences. While the district acknowledges that the incidents confirmed by the Principal were not positive experiences for Student Doe, the manner in which each incident was handled was entirely consistent with the district's policies.

Counsel notes that the district is a leader in anti-bullying policies and that it has developed a curriculum that teaches about racial, ethnic and cultural differences. Furthermore, the school that Student Doe attended conducts numerous bullying-prevention programs and activities that heighten student awareness of the need to be respectful to others. When inappropriate behaviors occur, they are dealt with quickly and appropriately. The additional steps that Mr. and Mrs. Doe requested when their daughter experienced negative interactions with her peers were simply not necessary or age-appropriate.

Student Doe testified at the hearing that she was the victim of a pattern of racial comments and teasing that started in first grade and continued through fourth grade. She testified that she experienced racial bullying during some of these years on a weekly basis. The veracity of Student Doe's testimony as to the duration, frequency and number of incidents in which children teased and taunted her is not doubted by the district; however, counsel points out that what was actually reported to the district was limited to a very few incidents – isolated incidents- over a period of three (3) academic years. Even if Student Doe's testimony at the hearing indicates a pattern of racial remarks and teasing about her race by classmates, this was not the situation to which the district responded because it received reports of only a few isolated incidents.

The documentation of all reports received and investigated, follow up by the Principal in terms of consequences and conferencing with offending children and their parents, and details of the anti-bullying programs and activities at the school were submitted in School Committee Exhibit 1. The Principal's entire file was submitted into evidence to demonstrate the record of communications, incident reports, and the steps she took to address the situation. A review of Exhibit 1 should confirm that Scituate's response was adequate, appropriate, and consistent with district policy. Implicitly the district argues that the request that the Commissioner enter an order requiring Scituate to acknowledge that it "failed" Student Doe and her family or to amend its policy should be denied.

DECISION

The Appellants pursued this matter to the Commissioner's level in order to ensure that what they perceive as flaws in Scituate's anti-bullying policy would be addressed and a "forward-looking" policy adopted in its place. The Appellants argued, implicitly, that the policy failed to define "bullying" in such a way as to allow Student Doe to receive the policy's protections. The Principal

and the Scituate School Committee clearly viewed the behaviors of these young children as unacceptable and in need of appropriate response. The members of the School Committee endorsed the investigation, age-appropriate consequences, parent conferencing and other measures that the Principal had instituted. Minutes of the January 4, 2011 meeting confirm that while the district did not condone the conduct Student Doe experienced and regretted the distress that it caused her, there was firm resistance to the notion that these incidents, taken in isolation or together, constituted “bullying” as defined by Scituate’s policy. It is unclear whether the School Committee viewed the reports of specific incidents and repeated general assertions of bullying to be “allegations of bullying” under district policy.

Scituate’s policy states that bullying occurs “when a student intentionally assaults . . . harasses . . . or taunts another student”. The statutory definition of “bullying” (during this time) required that the harassment be “sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening or abusive educational environment for a student” (R.I.G.L. 16-21-26). We infer Scituate’s position to be that its policy must be read in conjunction with the statute to support its position that the behaviors complained of did not rise to the level of “bullying” because they were not “sufficiently severe, persistent, or pervasive” to create a harmful environment for Student Doe.

Although this may have been correct when the first incident was reported to the Principal on May 18, 2010, as other reports were made and additional incidents occurred, the totality of circumstances indicated that peer harassment had become persistent. This, together with the fact that Student Doe’s mother reported that her child was experiencing emotional and mental distress, would have warranted treating her complaints as allegations of bullying. The situation in the fall of 2010 warranted the formal investigation and implementation of protocols called for by Scituate’s policy prohibiting bullying, teen dating violence, and sexual violence (Policy # 8210).

There are some important differences between the steps Scituate’s policy required and the steps the Principal took to address each of the incidents according to “her protocol”.⁴ Upon her receipt of each report, the Principal acted immediately, albeit informally, to find out what had happened and to impose age-appropriate consequences to the offending students. She also immediately “conferenced” with the offending students and their parents to engage them in the

⁴ The Principal’s protocol was “investigate, contact parents, loss of recess”. S.C.Ex.1 p.3.

process of changing behaviors and making their young children more aware of how hurtful racial teasing can be. The district's policy is formal. Its provisions focus more on strategies to protect the victim and prevent the behavior from recurring than it does on consequences for the bully. Although the school conducted many educational programs and activities that addressed racial and cultural differences and tolerance, there was no specific planning or strategizing to ensure that incidents would not reoccur. Student Doe was not directed to report any and all future incidents to a designated person. Scituate's policy requires that there be "an assessment of what effect the bullying...has had on the victim". Although a referral was ultimately made to the school psychologist, this came after Student Doe's parents sought counseling for her on their own.

The district's policy enables victims and witnesses of bullying to "file a report". There is no evidence that written reports, or bullying complaints, were filled out with respect to any of the specific incidents or generalized bullying complaints documented in our Findings of Fact.⁵ The Principal's record in this matter consists of emails and handwritten notes. Scituate's policy clearly envisions a formal process utilizing a written complaint with follow up documentation of investigation and intervention. The absence of a formal process was clearly troubling to Mr. and Mrs. Doe. They interpreted this as a refusal to acknowledge the incident(s) and a failure to treat the matter seriously. What they perceived as an incident of racial harassment involving their daughter was viewed by the administration as a "parent concern". Use of a bullying complaint form would, at the very least, have conveyed to them that their concern was viewed as serious.⁶ The record documents the good faith efforts that the Principal took to address each of the incidents of which she was made aware. However, her approach did not reflect the use of all of the intervention protocols described in the district's policy.

A formal complaint, with a listing of dates and witnesses to incidents, could also have been more effective in uncovering a clearer picture of the behaviors that Student Doe had been experiencing with her classmates. If the Principal's process was aligned to the formal steps in the policy, a collaborative plan (principal and school staff working together with parents) could have been developed for ensuring that the behavior complained of would not be repeated. The school's

⁵ In fact, when the Appellants requested a copy of the Bullying Policy, the record shows that they were sent a prior bullying policy and a reporting form, but were not instructed that they could fill out this form. S.C.Ex.1 pp. 5-9.

⁶ Mr. and Mrs. Doe persisted with a request that the Principal formally "document the incident," which she did in a letter to them dated June 1, 2010.

response clearly prevented the parties from working together to address the issues at hand as best they could.

We decline to require the district to apologize for any shortcomings in its processing of complaints of bullying and racial harassment, but it may certainly do so if the School Committee deems it appropriate.

Scituate will be adopting a new statewide anti-bullying policy as part of a statewide effort to clarify and strengthen bullying prevention measures. In 2011, the Rhode Island General Assembly enacted S 732, the “Safe School Act”. This law requires the Rhode Island Department of Education to prescribe by regulation a statewide bullying policy, ensuring a consistent and unified statewide approach to the prohibition of bullying at school. All school districts⁷ must adopt this statewide policy. The law contains an expanded definition of bullying and cyber-bullying and, presumably, the statewide policy will be broad enough to encompass within the definition of bullying incidents and behavior before they become so persistent and pervasive that the victim is in a harmful educational environment. Since the General Assembly has directed RIDE to take the initiative to develop and prescribe a statewide bullying policy and procedures, the Appellants’ request that the Commissioner direct Scituate to put in place a more “forward-looking policy” on bullying is not necessary.

The Appellants’ appeal is sustained in part and denied in part, pursuant to this decision.

For the Commissioner:

Kathleen S. Murray

Deborah A. Gist, Commissioner

April 5, 2012
Date

⁷ All school districts, charter schools, career and technical schools, approved private day or residential schools and collaborative schools will be required to adopt the statewide bullying policy no later than June 30 2012.