

State of Rhode Island
and
Providence Plantations

Commissioner of Education

Student M. Doe

v.

Lincoln School Committee

Held: Student Doe's parent did not prove by a preponderance of evidence that the Lincoln School Department failed to adequately and appropriately respond to reports that Student Doe was being bullied at school. There was no evidence that Student Doe was subjected to peer harassment or the creation of a "hostile environment" on the basis of her race in violation of her civil rights. Although there may have been several incidents in which other students made negative comments to or about Student Doe, they were not based on her race (or her membership in some other protected class) and, when she reported such incidents to school staff, they investigated and responded adequately and appropriately. Because the parent withdrew Student Doe from Lincoln High School on December 6, 2013 and refused to provide consent for an evaluation, the School Department could not complete the process it initiated on October 25, 2013 to determine her eligibility for a 504 Plan or special education and related services.

Date: June 23, 2014

Travel of the Case:

On November 25, 2013 Mrs. M. Doe requested a hearing from Commissioner Deborah A. Gist to “discuss”¹ the abuse, racism and bullying that her daughter had allegedly experienced since seventh grade in the Lincoln school system. On November 26, 2013 this case was referred to the undersigned, with the directive that an expedited hearing be conducted. The matter was immediately scheduled for hearing. Although hearings under R.I.G.L. 16-39-1 and 16-39-2 are usually preceded by the local school committee’s decision in the matter, in this case the allegation was that bullying, racism, discrimination and harassment had not been addressed by school officials and that as a result, this student was unable to attend school. In such a situation, the Commissioner often exercises her authority to hear these matters as soon as possible and without prior school committee action.

On December 5, 2013 Mrs. Doe appeared pro se and the School Department was represented by its legal counsel. At the time of hearing, Mrs. Doe indicated that she intended to enroll her daughter in a private school, but had not yet made a final decision to do so. At the same time counsel for the School Department requested that the hearing be continued so that the district could reconvene a team to develop a 504 Plan for Student Doe. Mrs. Doe objected to the requested continuance. She indicated that she saw no benefit in the development of a 504 Plan because her daughter was a good student and did not have a “handicap”. Based on Mrs. Doe’s position that she did not wish to pursue the programming and protections that might be available to her daughter under a 504 Plan, the district’s request to defer the hearing was denied.

On the second day of hearing, February 12, 2014, counsel for the School Department inquired as to the purpose of continued hearing, since Mrs. Doe had withdrawn her daughter from Lincoln High School on December 6, 2013 and enrolled her in private school. Mrs. Doe indicated that the remedy she sought at that point was the district’s payment of tuition at her daughter’s new school. In light of this requested remedy, the

¹ Hearings under R.I.G.L. 16-39-1 and 16-39-2 are administrative hearings in which the Appellant has a burden of proof and must present evidence to support the allegations made. Parties are not required to be represented by an attorney, however in complex cases this is encouraged. We assume that at some point prior to assignment for a hearing, the distinction between a hearing and a less formal process of mediation/reconciliation of her complaints against the Lincoln School Department was explained to Mrs. Doe.

hearing went forward and continued on two additional dates, March 4, 2014 and April 9, 2014. The record in this case initially closed on April 24, 2014 upon receipt of the final transcript. However, on May 15, 2014 counsel for the district requested to supplement the record with a letter from the principal of the private school indicating that as of May 1, 2014, Student Doe was no longer enrolled there. Mrs. Doe did not object to the inclusion of this letter, and so the fact that Student Doe no longer attends private school is established in the record of this case. Although not raised by the parties, the question of whether the issues have become moot and the presence of a justiciable controversy exist. We do not believe that this case is moot because the issues raised are clearly capable of repetition should Student Doe re-enroll at Lincoln High School or should she encounter similar issues in a different school system.

ISSUES

- Did the Lincoln School Department, and in particular officials at Lincoln High School, fail to comply with the Safe Schools Act, R.I.G.L. 16-21-33 et seq. and the provisions of the Statewide Bullying Policy by failing to adequately respond to Student Doe’s complaints that she was bullied by her peers and staff members at Lincoln High School?
- Did the Lincoln School Department violate Student Doe’s civil rights by allowing the creation of a “hostile environment” in ignoring or failing to address harassment on the basis of her race?

Findings of Relevant Facts:

- Student Doe is a sixteen (16) year old student who, from November 14, 2012 until December 6, 2013 was enrolled at Lincoln High School. Student Doe is Hispanic and has family roots in Columbia. App. Ex.I; Tr. Vol. I, p.18.
- After first attending Davies Career and Technical High School for a little over two months, Student Doe transferred to Lincoln High School in mid-November of school

year 2012-2013. At the time of the hearing, she was in tenth grade. Tr. Vol. I, p. 62; Vol. II, pp. 7-8.

- At Lincoln High School a “Witness Report” is the form used to initiate a complaint of bullying. The form calls for a narrative that is signed by the victim or “witness”. The principal of Lincoln High School utilizes the “Witness Report” pursuant to the Safe Schools Act and the Statewide Bullying Policy. Typically, he refers reports to one of two assistant principals designated to investigate such allegations.² Tr. Vol. II pp. 89-92.
- Student Doe made three bullying reports during the 2012-2013 school year. Two reports were made on December 20, 2012 and one on January 9, 2013. The December 20th reports contained a broad allegation that Student Doe had experienced bullying and intimidation since seventh (7th) grade. Student Doe also reported that upon her transfer to Lincoln High School from Davies, several students who had “bothered and made fun of her” at Lincoln Middle School had started to do so again. For example, she overheard comments they made to each other that she “stared too much”, that she “was a stalker”, and that she was “annoying”. She alleged that these students would turn around in class and “wouldn’t stop looking” at her. She overheard one of the students comment “she creeps me out” and “she scares me”. Student Doe also reported that when she looks at someone “for more than a couple of seconds they start to whisper” and claim that she is harassing them. One day in the cafeteria she overheard a female classmate (with whom she had a poor relationship dating back to seventh grade) say “why is she staring” or “she keeps on staring”. Student Doe also complained that this same female student had referred to her using sexually-derogatory terms.³ S.C. Ex. 6.
- The January 9, 2013 report of bullying recounted an incident in English class in which one of these same students “murmured” about Student Doe and started to encourage another student to make fun of the way that Student Doe was looking at him. S.C.Ex. 6.

² A “Witness Report” is also used to record the statements of witnesses who may have observed bullying and for making complaints about faculty members.

³ It is not clear from the record if this conduct was persistent. In one report Student Doe implies that the sexually-derogatory names were said by this student to her directly and that this happened repeatedly. In another report, Student Doe states that this was a single incident of name calling that occurred in seventh grade and that the comment was made to a friend who then reported it to her. S.C. Ex. 6.

- In both of the bullying reports Student Doe filed on December 20, 2012, she stated that she was sad and suffered from anxiety and depression. She also reported that she had been physically ill and was being treated by a gastroenterologist. S.C. Ex.6.
- Assistant Principal Heidi Godowski testified that she met with Student Doe on December 20, 2012. It is not clear from the record if their meeting was prompted by her investigation of the two bullying reports that Student Doe filed on that same date. Ms. Godowski testified that they met because Student Doe’s mother had sent an email of concern about students bothering Student Doe in school. Mrs. Doe, who speaks only Spanish, sent the email to the Spanish teacher at Lincoln High School. The Spanish teacher referred it to the guidance counselor who in turn referred the matter to Mrs. Godowski. Mrs. Godowski testified that the guidance counselor “didn’t know where to go with it...didn’t know if there was an issue or not an issue...it didn’t rise to that level...” Tr. Vol. II, pp.8-9.⁴ App. Ex. BB.
- After looking into the allegations that Student Doe had made regarding bullying, Mrs. Godowski met with Student Doe, her mother, and a guidance counselor (along with a Spanish teacher to interpret) on January 25, 2013. The discussion centered on the circumstances in which incidents “may have happened” and how Student Doe may perceive other students and react to them. They also discussed “social navigating in the school.” Mrs. Godowski suggested that Student Doe might benefit from seeing the school psychologist. Tr. Vol. II. pp. 13-16.
- There were no other bullying reports filed by Student Doe, or her mother, during the remainder of the 2012-2013 school year. Mrs. Godowski continued to check in with

⁴ Although it is not clear that Mrs. Godowski was following up on the two reports of bullying that Student Doe filed on December 20, 2012 or that she proceeded to “investigate” the allegations made in these formal reports of bullying, it is clear that she obtained essentially the same details from Student Doe herself and looked into the allegations to determine if they were true. She spoke to Student Doe, both of the teachers involved and one of the students against whom accusations had been made. She instituted “check ins” with Student Doe and frequently checked to see if there were any additional problems. Mrs. Godowski testified that on nine dates between December 20th and January 18th she checked in with Student Doe and determined that there were “no issues” with other students. Mrs. Godowski evidently was not aware of the additional bullying report filed by Student Doe on January 9, 2013 in which she complained of a student “murmuring about her” in English class and trying to influence one of her friends to turn against her. Tr. Vol. II, pp.9-16.; S.C. Ex. 6.

Student Doe frequently and monitor for any recurring issues.⁵ There were none. Tr. Vol. II, pp.18-19.

- At the outset of the 2013-2014 school year, the Principal of Lincoln High School, Kevin McNamara, received an email dated September 2, 2013 from Mrs. Doe. The email alleged that during a telephone conversation with Student Doe, the volleyball coach had called her a “quitter”. The email also accused the coach of failing to take appropriate action to address the “unacceptable behavior” of other girls on the team. Principal McNamara responded immediately with an email to Mrs. Doe indicating that the Athletic Director would be in touch to set up a meeting with him, Mrs. Doe, and the coach. App. Ex. Z.
- Two days later, on September 4, 2013, Mrs. Doe went to the central office of the Lincoln School Department where she met with the district technology director and told him that her daughter was being bullied at Lincoln High School and “no one was doing anything about it.” Tr. Vol. II pp. 19-20.
- Later on that same day, Student Doe sent the technology director a detailed email in which she described “problems of bullying” and stated that at Lincoln High School they did not discipline the students who were responsible. Instead (she told the technology director), the assistant principal had recommended that Student Doe see a psychologist⁶ and her mother “was terrified of what she said instead of helping me.” Student Doe also related that she had recently withdrawn from the volleyball team because she “felt sad, avoid (ed) and ignored by” her teammates. Student Doe stated that when she called the coach to explain why she wasn’t going to continue on the team, the coach called her a “quitter”, told her that she didn’t deserve to be on the team and then immediately hung up. Tr. Vol. II, pp. 20-21. App. Ex. AA.

⁵ There was an incident on February 12, 2013 in which Student M. was suspended from school for three (3) days for striking a boy on the head. Student M. had come to Mrs. Godowski right after the incident and claimed that she was defending herself, but after interviewing the boy who was struck and viewing a videotape of the incident, Mrs. Godowski determined that Student M. was the aggressor. Tr. Vol. II, pp. 16-18.

⁶ Student Doe’s email mistakenly states that her mother was encouraged to take her to a “physiologist”. App. Ex. AA.

- In response to the emails sent to Mr. McNamara and to the technology director (which were then referred to Assistant Principal Heidi Godowski), Mrs. Godowski “got a statement” (from Student Doe)⁷ and “interviewed everybody that (she) was having an issue with” including the volleyball coach and junior varsity coach. Tr. Vol. II, pp. 21-23.
- Student Doe provided two “Witness Reports,” one dated September 6, 2013 and the second dated September 9, 2013. She reported that the coach called her a “quitter” and then hung up on her before she could explain that the reason she was leaving the team was that girls on the team were essentially shunning her and that she felt isolated and ignored. S.C. Ex. 5.
- After speaking with Student Doe, reviewing her two “Witness Reports,” and interviewing students, the coach and the junior varsity coach, Mrs. Godowski determined that Student Doe had not been shunned or isolated during activities with her volleyball teammates. It was reported to her, by the coach, that Student Doe felt “uncomfortable” joining in small groups with her teammates, but that she nonetheless actively participated in these groups. Mrs. Godowski determined that the coach had not called Student Doe a “quitter”. She did learn that Student Doe had been absent and late for practices, issues that her coaches had raised with her. On September 2, 2013 Student Doe was again absent from practice. During this practice, the varsity coach received a text from the coach of a recreational volleyball team, inquiring about Student Doe’s level of play so that she could properly place her on one of two teams. Student Doe had indicated to the coach of the recreational league that she would not be playing for Lincoln High School. It was in this context that the coach contacted Student Doe and raised the issue of quitting the team without notice. The coach denied calling Student Doe a “quitter” and stated that she did express frustration at the fact that Student Doe had quit the team without notice. At a meeting on September 11, 2013 the coach and athletic director met with Student Doe and her mother and tried to “settle any

⁷ As noted above, a witness statement is the form the district uses to record a bullying complaint. The victim provides a narrative which the person following up must analyze and interpret. The form is also used to record actual witness’s statements.

issues” Student Doe had about participation on the team. She was offered an opportunity to return to the team, but declined to do so. Tr. Vol. II, pp.20-27; App. Ex. P.

- On September 16, 2013 Mrs. Doe went to the Lincoln police department to report that Student Doe was being bullied by certain named students. After a statement was taken by the chief of police, it was referred to Lincoln High School for investigation and follow up. Tr. Vol. II, p.28.
- On September 16, 2013, Student Doe filed two “Witness Reports” asserting that certain named students were “bothering” her. Specifically, she alleged that whenever they saw her, several named students would smirk and laugh in a teasing way and just look (at) each other. The boys would “continue to look until I turned around.” Student Doe stated that she felt “horrified that something might happen.” Student Doe went on to say that “all of the boys I named have been bothering me since 7th grade and nothing has been done.” S.C. Ex.5.⁸ She requested that she be allowed to switch into honors classes because she was afraid and no longer wanted to be in the same classes as the “bullies”. She also related that she felt sad and afraid. S.C. Ex. 5.
- Mrs. Godowski and Principal McNamara investigated allegations that seven named boys were staring at Student Doe and calling her a “stalker”.⁹ A meeting was held with each of the boys and his parents. Although two of the boys admitted that there had been “issues” with Student Doe during middle school, they all denied that anything had happened at the High School. They accused Student Doe of staring at them. Tr. Vol. II, pp. 28-31. Mrs. Godowski and Mr. McNamara warned each of the boys that “there would be no looking at (Student Doe), no discussion” and to “stay clear” of her. Tr. Vol. II, p. 29. The boys were warned that if either Mrs. Godowski or Mr. McNamara found out about “anything going on” with Student Doe, there would be a consequence. Tr. Vol. II, p.32, 70.

⁸ Student Doe’s report of bullying is unclear in that although she claims to having endured bullying since Grade 7 she also states “This year I’ve been checking in with Mrs. Godowski, to talk about if anything has happened. So far, everything in our check ins have been alright outside of volleyball.” (S.C. Ex. 5)

⁹ The two Witness Reports filed by Student Doe on September 16, 2013 did not mention specifically that any of the boys called her a “stalker”, (as they allegedly had done during the prior school year), but do mention “rude comments” being made.

- Mrs. Godowski and Mr. McNamara interviewed and obtained statements from all of Student Doe’s teachers regarding her interactions with other students in the classroom. None of them reported observing any “bullying issues” with Student Doe. At a meeting assembled with all of Student Doe’s teachers, the principal requested that they be “exceptionally aware of any issues that might be taking place in the classroom,” including the comments and looks that Student Doe had reported. Tr. Vol. II, pp. 32-33; 71-72.
- A follow up meeting was held with Mrs. Doe, Mrs. Godowski, Mr. McNamara and an interpreter on September 18, 2013. At the meeting, Mrs. Doe requested that Student Doe be moved into honors classes. School officials agreed to this and on the next day all of her classes, except Geometry, were changed.¹⁰ Upon learning that Student Doe was being treated by a psychologist, Mrs. Godowski and Mr. McNamara requested that Mrs. Doe sign a release so that the school psychologist could communicate with him, but Mrs. Doe declined to do so. Mr. McNamara offered the services of the school social worker and school psychologist, but Mrs. Doe indicated that she preferred to have her daughter continue to work exclusively with her outside psychologist. The principal gave Student Doe a “permanent pass” so that she could go to his office at any time if there were a problem. Tr. Vol. II, pp. 32-34; 70-73.¹¹
- On October 3, 2013 Student Doe filed a “Witness Report” because a student in health class was “bothering” her, interfering with her participation in class activities conducted in small groups, going into her backpack to search for a pencil and making fun of her

¹⁰ On September 26, 2013 Mrs. Doe requested that her daughter be moved out of honors classes, citing stress and depression. Her classes were switched back to college preparatory. Tr. Vol. I, pp. 34-36. On October 7, 2013 Student Doe filed a “Witness Report” complaining that in two of her honors classes the teachers had made comments to her to the effect that she did not belong in honors classes and that it “was not fair to the other students that you’re here”. S.C. Ex. 5. The record includes a memorandum from the Honors English teacher dated October 8, 2013 describing an incident in which Student Doe came to class unprepared and was reminded that in an honors class, when absent she is still required to complete homework and come to class prepared. Student Doe became agitated and left in the middle of the class. App. Ex. W. There is no record of a statement from the teacher of the other honors class.

¹¹ Although there was no specific testimony on this point, the response of school officials to the September 16, 2013 bullying complaints would indicate that they found Student Doe’s allegations to be unsubstantiated. This finding is implicit given the absence of any discipline imposed on the alleged perpetrators and Mrs. Godowski’s testimony that it was her opinion that Student Doe’s “perceptions” of other students was inaccurate and that she had difficulty navigating social situations. Mrs. Godowski testified that she did not believe that Student Doe had been bullied at Lincoln High School. Tr. Vol. II, pp. 43-44; 60-66.

cell phone. When this student held up the phone and called it a “sidekick swag” other students in the class laughed. Another student commented “this shit is so old.” Student Doe stated that this type of behavior had occurred more than once and that it made her so sad that one day she had to leave class. S.C. Ex. 5.

- This report was investigated and students submitted written statements describing an incident with Student Doe’s cell phone.¹² As a result, Mrs. Godowski met with the two students involved and their parents to prevent any further issues. The students involved were disciplined. Tr. Vol. II, pp. 37-38.
- Student Doe’s psychologist set up a meeting with school officials for October 4, 2013 so that he could meet with Mr. McNamara, Mrs. Godowski, the school psychologist, Student Doe’s guidance counselor, Mrs. Doe and Student Doe. When he arrived at school for the meeting, it had to be cancelled because Mrs. Doe was not able to be present and had not signed a release permitting the sharing of information about her daughter. Tr. Vol. II, p. 38.
- On October 10, 2013 Mrs. Doe and Student Doe went to the Lincoln School Department’s central office where they met with Superintendent Georgia Fortunato. Mr. McNamara happened to be present in the building and joined the meeting. On October 15, 2013 a follow-up meeting was convened by the Principal with Mrs. Doe, Student Doe, and all of Student Doe’s teachers. Mrs. Godowski and an interpreter were also present. Mr. McNamara requested the teachers to be observant and report immediately any issues that arose (with respect to Student Doe’s interactions with other students.) Weekly progress reports were to be sent to the Principal and then forwarded to Mrs. Doe. Tr. Vol. II, pp. 41-42.
- On October 15, 2013 Student Doe filed a “Witness Report” in which she alleged that two students were teasing her by “looking at her” in the cafeteria during lunch. She stated that she could not eat her lunch because she was getting afraid. S.C. Ex. 5.

¹² One witness stated that it was not taken as an offensive comment, but rather “an act of immaturity and stupidity.” Another described Student Doe laughing along with the other students involved at the time the comment was made. App. Ex. S and V.

- On October 17, 2013 Student Doe’s psychologist attended a meeting with her, her mother and school staff. Her psychologist described Student Doe’s discussions with him and accounts provided by Student Doe of being bullied since seventh grade. The discussion at the meeting turned to an incident between Student Doe and her English teacher on October 4, 2013. Student Doe had received detention for swearing at her teacher. Student Doe gave her account of what happened and the English teacher was called in to the meeting to provide her version of the incident. Student Doe disagreed with her teacher’s account and insisted that her perception of what had happened was accurate. She had described being “mistreated” by her English teacher in a “Witness Report” dated October 4, 2013. Tr. Vol. II, pp. 43-44.S.C. Ex. 5.¹³
- On October 21, 2013 Student Doe was admitted to a partial hospitalization program because of mental health issues. She reported to those who treated her at the hospital that she had become increasingly sad because she had been bullied at her school over the course of the last three years. One of her treatment providers at the Gateway ARTS Program (Acute Residential Treatment Services) recommended that she be transferred to a different high school. A psychiatrist who evaluated her recommended that a 504 Plan be developed before she could safely return to a school setting. App. Ex. C, D and I.
- Upon learning that Student Doe had been admitted to the ARTS Program and being informed on October 24, 2013 that her clinicians had suggested that she go to another school, Mrs. Godowski suggested that a referral for an evaluation for special education or a 504 Plan be made. She had a translation of the referral provided to Mrs. Doe. Mrs. Doe declined to sign the referral form, indicating that she first wanted to get input from the specialists at the ARTS Program. Mrs. Doe also declined to sign a release so that school staff could speak to the treatment providers at the ARTS Program. Tr. Vol. II, pp. 45-46; 48-49.

¹³ The record does not indicate whether or not Student Doe’s psychologist agreed with school officials that there was an issue of Student Doe’s “perception” of other students or what they viewed as difficulties she had in navigating social situations. Discussions with her psychologist were not ongoing as Mrs. Doe declined to sign a release for further discussions with the psychologist. Tr. Vol. II, p. 43.

- On October 25, 2013 Mrs. Godowski herself referred Student Doe for an Evaluation. S.C. Ex. 1; Tr. Vol. II, p. 49. On this same date, Mrs. Doe advised school officials that her daughter would not be returning to school at that time.¹⁴ Tr. Vol. II, p. 49.
- On November 1, 2013 a team of professionals met at Lincoln High School to set up a safety plan for Student Doe. A therapist from the Gateway ARTS Program who had treated Student Doe also was in attendance, however, the team did not meet as a Section 504 team because they “did not have documentation of a diagnosis for Student Doe.” Tr. Vol. II, pp. 51-52; 63; 80. A “safety plan” was developed at that time. It consisted of “Accommodations” including a pass for Student Doe to go to guidance, the social worker, and nurse, as needed; counseling with the school psychologist, weekly progress reports and weekly check-ins with an administrator. The plan was to be revisited as a “504” Plan in two weeks. S.C. Ex. 1.
- A 504 meeting set up for November 13, 2013 was cancelled by Mrs. Doe. Tr. Vol. II, pp.54; 80-81. The meeting was rescheduled for December 5, 2013, the same date that Mrs. Doe’s appeal to the Commissioner was heard. (S.C. Ex. 3) At the hearing, Mrs. Doe indicated that she did not wish to utilize her daughter’s potential eligibility under Section 504 for her to receive special programming. She stated that she already was aware of the details of a proposed 504 Plan and she did not wish her daughter to receive services because she “doesn’t have a handicap” and “is a good student and has no problems.” Tr. Vol. I, pp. 9-14. Mrs. Doe took the position that the solution for the issues presented was her daughter’s enrollment at another school. Tr. Vol. I, p.10, 16-19, 91; Vol. II, pp. 5-6.
- Officials at Lincoln Middle School have no records indicating that Student Doe ever alleged that she was the victim of bullying or that a report of bullying was made at any time. Tr. Vol. IV, pp. 65-67. The principal of Lincoln Middle School testified that Student Doe was crying when she came to see him one day in eighth grade and “asked why other kids don’t like her.” He immediately referred her to the school social worker. He denied that Student Doe gave him any information (about being bullied)

¹⁴ Student Doe did not return to school until November 14, 2013 and evidently was absent off and on after that date up through December 6, 2013 when she withdrew to attend a private high school. Tr. Vol. II, pp. 54-59.

and testified that if she had done so, he would have started the process to investigate such a report. Tr. Vol. IV, pp. 74-75.

- Student Doe was diagnosed with Major Depressive Disorder, Single Episode, Dysthymic Disorder, and Posttraumatic Stress Disorder on October 23, 2013. App. Ex. I. At the time of hearing, a comprehensive treatment plan had been developed for her (Joint Ex. 1) and she was receiving outpatient therapy from a therapist provided by Gateway. App. Ex. K. Her therapist has not spoken to any of the staff at Lincoln High School. She also had not communicated with staff at the private high school Student Doe was attending. The therapist testified that she would normally contact the (patient's) school only "if there's an issue regarding the school and the family gives us permission." Tr. Vol.IV, pp. 24-25.
- As of May 1, 2014 Student Doe was no longer enrolled in private school. (Letter dated May 12, 2014).

Positions of the Parties:

The Appellant:

Mrs. Doe (through an interpreter) and Student Doe made closing statements in this matter. Mrs. Doe stated that that school officials repeatedly tolerated bullying even though she brought it to their attention. Neither the principal of Lincoln Middle School nor the principal of Lincoln High School took the disciplinary action that was necessary to protect her daughter from relentless bullying. As a result, her daughter has been tormented and become seriously ill. For her daughter's health and safety, she took her out of Lincoln High School and placed her in another school. Implicit in her argument is that because school officials failed to respond adequately to prevent bullying and her daughter can no longer tolerate the environment at Lincoln High School, the district is legally obligated to pay her tuition at another school.

Student Doe stated that she became increasingly sad when both the principal and assistant principal at Lincoln High School failed to come to her assistance when she

reported bullying and harassment by her classmates, her teachers and her coach. It is her position that school officials came to the defense of the bullies in not believing her or protecting her. She often didn't bother to report bullying to them because nothing was done to punish the students who were involved. Students who have harassed her and ostracized her have caused her to become isolated and have no friends. She can no longer tolerate the environment at Lincoln High School.

School officials have lied in claiming that discipline was imposed on offending students and that the services of the school psychologist were offered to her in January of 2013 when her initial bullying reports were made. In focusing on her "perceptions" and identifying the issue as her "problem navigating social situations," school officials have ignored the underlying problem that she is the victim of bullying. The principal of the middle school lied when he testified that he never received verbal reports that she was the victim of bullying. She asserts that at no time has she fabricated incidents or mischaracterized what other students have said or done to her. Her perceptions of what happened are accurate and she has testified truthfully at the hearing. Others have not testified truthfully.

Lincoln School Committee

Counsel for the School Committee submits that Student Doe has serious mental health issues that cause her to misunderstand or misinterpret incidents that have occurred at the high school. Whenever a report of bullying was made (even if the complaint was technically outside the scope of the Statewide Bullying Policy) Principal Kevin McNamara and Assistant Principal Heidi Godowski investigated. They called in the students implicated in the reports as well as their parents. They interviewed Student Doe's teachers individually and convened meetings of the entire group to impress upon them the need to be vigilant to ensure that Student Doe was not being harassed. When bullying or misconduct of any nature was substantiated, appropriate discipline was imposed. In most cases, the reports Student Doe filed were not substantiated. In such instances, students were nonetheless warned not to "get involved" with Student Doe to avoid interactions that could be misinterpreted.

Although Student Doe has asserted that she has been the victim of bullying since seventh grade, the principal of Lincoln Middle School, who has a personal history of vigorous enforcement of anti-bullying policies, testified that not a single complaint of bullying was made while Student Doe attended middle school. He did recollect one incident in which she was upset because other students “didn’t like her” and he made an appropriate referral to the school social worker so that this issue could be addressed. Yet, Student Doe insists that she has been bullied since seventh grade.

Counsel argues that from the perspective of professional staff at Lincoln High School, Student Doe’s “perceptions” of other students are inaccurate and she has difficulty with situations in school and in particular with people looking at her, interpreting their looks and in navigating social situations. Supporting this premise is the staff’s findings that her multiple bullying reports are generally not substantiated after a thorough investigation. It is for this reason that the school’s response has not been focused on discipline of the alleged perpetrators. For the most part, their response has focused on providing Student Doe with services (the school psychologist and social worker) and a plan for making sure that she feels safe in school (the “permanent pass”). Whenever she felt threatened, the strategy was that she could go to the Principal’s office, but Student Doe chose not to follow this plan. Communication between her therapist and the school psychologist was proposed. Weekly sessions with the school psychologist were offered. None of these interventions has been accepted by Student Doe or her mother.

When specific information regarding the diagnosis of Student Doe’s mental health issues was shared with school staff, the assistant principal made an immediate referral for an evaluation. Upon receipt of the necessary documentation, special education staff attempted to schedule and reschedule a 504 meeting, efforts with which Student Doe’s parent did not cooperate. In summary, the Lincoln School Department has done everything that it could to help Student Doe, but their interventions have been rejected thus far.

Implicit in the district’s argument is that Lincoln is in full compliance with the Safe Schools Act and the Statewide Bullying Policy adopted by the Lincoln School Committee. Also implicit is the argument that since Student Doe has been withdrawn from the Lincoln public schools and her parent has not requested an evaluation to determine her eligibility for

special education and related services, the district has no current unfulfilled obligations under federal and state laws governing the education of students with disabilities.

DECISION

At both the federal and state level, efforts to reduce bullying in schools have resulted in strengthened laws and regulations, as well as follow up guidance clarifying the specific responsibilities that these measures place upon staff in our public schools.¹⁵ The emphasis that our laws have placed on this issue recognizes the serious effects that unaddressed bullying can have - impairing the physical and psychological health of its victims and creating conditions that negatively affect learning for all involved. These efforts have been a focus in our state. In 2011 the General Assembly adopted the “Safe Schools Act,”¹⁶ with its broad definition of “bullying,” its expansion of the meaning of “at school” and its specific directives to Rhode Island schools to adopt and enforce a Statewide Bullying Policy. The Statewide Bullying Policy has been in effect since June 30, 2012. Effective enforcement of this policy requires the time and dedication of staff at the school level and when an appeal is taken to the Commissioner claiming that this has not happened, a thorough examination of all of the facts presented and an assessment of the steps taken by school officials must take place. At the state level where the objective is to ensure compliance with anti-bullying laws and policies, a comprehensive review of the evidence must be conducted to ensure that those charged with implementation of these measures have investigated bullying reports, made the necessary findings, and developed adequate and appropriate interventions.

The Appellant alleges that the Lincoln School Department has not complied with the Statewide Bullying Policy. Student Doe claims that staff at both Lincoln Middle School and Lincoln High School failed to take adequate steps to protect her from bullying, with a resulting serious impact on her mental and physical health. She alleges that from 7th Grade up to the time that her mother withdrew her from Lincoln High School on December 6,

¹⁵ Even private schools fall within the scope of Rhode Island’s Safe Schools Act.

¹⁶ R.I.G.L. 16-21-33 et seq.

2013, she was the victim of harassment, bullying and racism from her peers and members of the school staff. In her letter of appeal, she describes students swearing at her, calling her derogatory sexual terms and disparaging her Hispanic heritage. She described in her testimony that in the school hallways, students walk around her, laughing and making sounds as if they were going to vomit. In both her letter of appeal and in her testimony, Student Doe recounts several incidents over the last couple of years in which she has been “bullied”¹⁷ by her classmates and even certain teachers at Lincoln High School.

We have methodically reviewed the entire record in this matter and, while it is impossible to say with certainty that Student Doe has never been the victim of bullying,¹⁸ the record demonstrates that on each occasion that she reported an incident of “bullying” to school administrators, they responded adequately and appropriately. Some of the testimony involved incidents and patterns of behavior which were never brought to the attention of school officials. There is no reason to conclude that officials knew or should have known of misconduct not brought to their attention. While Student Doe testified credibly, the testimony of Mrs. Godowski and Mr. McNamara was equally credible. Although Student Doe was aware that she could file a complaint if she were the victim of bullying, some of the harassing behaviors she testified about and incidents she described in her letter of appeal were never the subject of a written or verbal report. The evidence showed not a single report during two years at Lincoln Middle School- a period of time in which Student Doe insists that she was bullied and harassed.

Outside of the bullying context, Student Doe also claims harassment and discrimination on the basis of her race, a civil rights issue that requires an equally vigilant response in the school setting. We have examined whether the Lincoln School Department fulfilled its obligations under federal and state anti-discrimination laws. These laws are designed to protect students from discrimination, including the creation of a hostile environment from harassment – whether by school employees, other students, and third parties- on the basis of race, color, national origin, sex or disability. There is absolutely no evidence that a hostile environment was created on the basis of Student Doe’s race. If

¹⁷ Technically, under Rhode Island’s Safe School Act, “bullying” is limited to student misconduct involving another student. See R.I.G.L. 16-21-33 (a) definition of “bullying”.

¹⁸ Bullying is often difficult to prove, especially when it takes the form of “looks” and “shunning”.

Student Doe was in fact harassed on the basis of her race (as she claimed in her letter of appeal) there is no evidence that she, or her mother, made school officials aware of this or facts indicating that they should otherwise have been aware of such harassment. The derogatory remark about her Hispanic heritage (by another student) is mentioned only in the letter of appeal and not verified at any point in Student Doe’s lengthy testimony.

Most of the critical comments and incidents of which Student Doe complained were evidently based on her classmates’ reaction to the fact that she “stares a lot.”¹⁹ If it is true that Student Doe stares a lot (and this was not an observation made by the hearing officer during four days of hearing), in hurtful adolescent fashion her classmates may have made comments about this and may have called her a “stalker”, although this behavior was not confirmed by Mrs. Godowski when she investigated specific reports of this conduct. The record indicates that Mrs. Godowski nonetheless attempted to address any issue with respect to what may have been a “distinguishing characteristic”²⁰ – a habit of staring- that caused Student Doe to be singled out by her peers. The advice Mrs. Godowski gave her on this was not well received. Student Doe understandably became even more disconcerted when other students claimed that she was “harassing” them by staring at them. Perhaps in the future this sensitive issue could be addressed in a different and effective way so that Student Doe does not have to deal with unnecessary criticism from her peers.

Principal Kevin McNamara and Assistant Principal Heidi Godowski testified as to their efforts to determine “if anything was going on” and to put in place appropriate interventions and protective measures even on those occasions when Student Doe’s accusations were not substantiated. Our findings of fact detail their responses to each report. Based on the facts they determined after investigation, and the limited information they had with respect to the mental health issues that Student Doe was facing, their responses and interventions were adequate and appropriate. If they had been provided with more information from Student Doe’s treating therapist, or the school psychologist had been

¹⁹ If these students had called Student Doe a “stalker” and remarked that “she stares too much,” “she creeps me out,” etc., it clearly could have caused Student Doe physical and emotional harm under the Statewide Bullying Policy. Her vulnerability was clearly not at issue in this case.

²⁰ Our bullying statute (16-21-33(a)(1)(v)) notes that verbal expressions, physical acts or gestures or any combination thereof...that cause physical or emotional harm to a student may include, but is not limited to, an incident or incidents that may be reasonably perceived as being motivated by characteristics such as race, ...or by any other “distinguishing characteristic.”

given Mrs. Doe's permission to work with her in school, a different approach would have been warranted and more comprehensive measures expected.

The record indicates that Student Doe has a disability. It has not yet been determined that she is eligible for special education and related services or that she is eligible for a plan under Section 504 of the Rehabilitation Act of 1973. In whatever educational setting she should be at this time, she may to be eligible for services under federal and state law²¹ so that she can receive a free appropriate public education. Student Doe is a lovely, articulate young woman who has great academic potential. Her parent's consent for the necessary evaluations and her permission for sharing of information by and with her treatment providers will be essential so that school staff can work with her on developing an appropriate educational program for Student Doe. We are confident that if she and her mother can trust and rely on the expertise of school staff and work with them (with an advocate, if necessary) a successful program can be put in place.

Mrs. Doe's appeal is denied and dismissed.

For the Commissioner,

Kathleen S. Murray, Hearing Officer

Deborah A. Gist, Commissioner

June 23, 2014
Date

²¹ R.I.G.L. 16-24-1 provides that even students with disabilities enrolled by their parents in private school are entitled to a free appropriate public education pursuant to an Individualized Education Program.