

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

AND

PROVIDENCE PLANTATIONS

 JOHN C.J. DOE *
 *
 V. *
 *
 EAST PROVIDENCE *
 SCHOOL COMMITTEE *

DECISION

Held: The ninety-day suspension of Student Doe, for striking another student, is upheld.

Travel of the Case

Student Doe registered an appeal with Commissioner Peter McWalters following the November 14, 1996 vote of the East Providence School Committee to suspend him from school for the remainder of the 1996-1997 school year. The decision actually permitted his reentry to school on a probationary status at the start of the second semester (January 27, 1997). The school committee also listed four conditions to be fulfilled by Student Doe prior to his return. The undersigned was designated by the Commissioner to hear the matter on March 17, 1997, the parties appeared for hearing, evidence was taken and argument was received. Two other hearings took place on April 21, 1997 and June 20, 1997. The record was closed on July 3, 1997.

Issues

- Are the issues raised by this appeal moot because Student Doe has already served the suspension issued by the East Providence School Committee and did not return to school?
- Was the suspension by the School Committee permissible under Rhode Island law and under the Discipline Policy of the East Providence School Department?
- Was suspension by the School Committee excessive and an abuse of their discretion given the relevant facts of this case?

Findings of Relevant Facts

Transcript 1 = March 17, 1997
Transcript 2 = April 21, 1997
Transcript 3 = June 20, 1997

- Student Doe lives with his family in the City of East Providence. Until his suspension he was a junior at East Providence High School and attended the East Providence Career Center (Vocational School)
- Until the incident on October 11, 1996, Student Doe had no disciplinary problems
Tr. 1, pg. 16, 63

- On October 11, 1996 Student Doe was involved in a physical altercation with another student in class (hereafter "Student A"). Tr. 1, pg. 5
- Prior to the altercation the teacher had to ask Student A to be quiet two or three times because he was being disruptive. Tr. 3, pg. 7, 16-18, 23-26
- Student Doe and Student A were sitting side by side with nothing between them. Tr. 3, pg. 8, 18, 26 / S.C. Ex. 5
- Student Doe told Student A to be quiet and then Student Doe used his right hand to flick Student A's ear. Tr. 3, pg. 18, 19, 21, 26, 27
- Student A responded by telling Student Doe to "make me be quiet" and attempting to push Student Doe with his left hand. In attempting to push Student Doe, Student A struck Student Doe in the face. Tr. 3, pg. 7, 22, 28, 33
- Student Doe then struck Student A in the face and then struck him again in the face from a standing position. Tr. 3, pg. 7, 28, 29
- The teacher, who was approximately fifteen feet away, told Student Doe to stop. He stopped immediately and sat down. Tr. 3, pg. 7, 29
- The two blows from Student Doe to Student A resulted in serious injury to his face. Approximately \$13,000.00 in medical bills also resulted. Student A missed six and one half to seven weeks of school. Tr. 2, pg. 12, 13, 15
- After the altercation on October 11, 1996 the Principal of East Providence High School issued a ten-day suspension from October 11, 1996 through October 25, 1996. Tr. 1, pg. 5
- On October 16, 1996 the Director of the East Providence Career Center sent a letter to Superintendent Daniel recommending the expulsion of Student Doe. Tr. 1, pg. 32-33 / S.C. Ex. 3
- A hearing was requested and held before the School Committee on November 14, 1996. Student Doe and his parents, along with their counsel, were present. Tr. 1, pg. 6, 7
- After receiving evidence and arguments, the committee decided that Student Doe should be excluded from school for the rest of the year but this exclusion would be "suspended" and he could return to school on January 27, 1997 if he: performed twenty hours of community service, attended tutoring sessions on Saturdays, wrote a letter of apology to Student A and made up all lost time in his educational program. Tr. 1, pg. 8, 9 / S.C. Ex. 1

- Student Doe served his suspension from October 11, 1996 through January 27, 1997. He received home tutoring during this time to make up his course work.¹ Tr. 1, pg. 11
- Student Doe returned to school on January 27, 1997 but subsequently left because of a disagreement over the community service component of the penalty, among other issues. He is currently not in school. Tr. 1, pg. 74-77

Positions of the Parties

Student Doe

Student Doe's attorney argues that the lengthy suspension imposed by the school committee is excessive. He argues that the school manual specifies a ten-day suspension for fighting and this is the penalty the high school principal assigned. Student Doe's attorney claims that the "extra" suspension by the school committee was issued not for fighting, but for the effect of the fighting - the injury. His position is that in an incident like this, involving children, one must look only to the intent and conduct of the child, and not the unintended result.

Student Doe's attorney points out that Student A was being disruptive to the entire class, but in particular to Student Doe who was seated next to him. Even though it was Student Doe who initiated physical contact by flicking Student A's ear, Student A also struck Student Doe. Both students were at fault. Student Doe's attorney questions the East Providence School Committee's zero tolerance policy with regard to violence because Student A received no punishment. He also objects to the community service imposed by the school committee. He claims that the School Committee's range of penalties is limited, and this is the equivalent of labor and the school committee has no right to impose this.

Student Doe had no prior disciplinary problems in school and his attorney argues that this is one isolated, unfortunate incident with both parties at fault. He notes that Student Doe's parents fully accepted the ten days suspension, which is specified in the student manual. Any additional penalty is unwarranted, excessive, and clearly beyond the penalty that school authorities have specified in the manual.

It is Student Doe's position that his record should be amended to reflect only a ten-day suspension.

School Committee

The position of the school committee is that the East Providence Discipline Code 204-1 clearly identifies that striking or assaulting another student or faculty member is grounds for suspension or expulsion. It is their position that this is a "zero tolerance policy". The school committee articulates that under this policy they may suspend initially for ten days and then they can also suspend beyond ten days after there is a hearing. This is what occurred in this case. They contend that there was a physical assault by Student Doe on Student A and under their zero tolerance policy Student Doe was first suspended for ten days. Then, after a full hearing, he was effectively suspended for the remainder of the semester. The school committee acknowledges that the significance of the injury was taken into consideration, and properly so. The committee's position is that it is within their discretion to lengthen the original ten days suspension based on the severity of the injuries.

In response to counsel's assertion that fairness would have required a penalty to be given to Student A, the school committee answers that the only issue before the hearing officer is the suspension of Student Doe, not what discipline should have been given to the

¹ Student Doe's home tutoring was held from 5:45 A.M. to 6:45 A.M. by agreement with his tutor. This

other student involved. Counsel notes that the first physical touching occurred when Student Doe flicked Student A's ear. Thus he initiated contact, committed an assault, and this action triggered the zero tolerance policy.

The school committee also notes that in light of this appeal, it has informally amended the penalty imposed to remove the community service requirement as well as the letter of apology. The school committee does point out, however, that these measures are within the ambit of reasonable discipline customarily used in East Providence and school districts throughout Rhode Island.

The school committee also argues that this appeal is moot. Their contention is that the period of suspension has been served and because the student has chosen not to return to school the other conditions for his return are moot. They claim that Student Doe's only effective remedy would have been to seek an injunction to prevent the school committee from imposing the discipline.

Decision

The first issue, which was raised by the school committee, is whether this appeal is moot because Student Doe has already served his suspension and is not currently enrolled in school. This issue has been addressed in previous decisions of the Commissioner. The commissioner has the right to expunge a student's record and/or decrease the length of a suspension or expulsion.² Therefore, there is a legitimate remedy sought by Student Doe and the issues are not moot.

was to facilitate Student Doe's work schedule.

² see John M. Doe v Warwick School Committee, Nov. 8, 1989, and John A.K. Doe v Woonsocket School Committee, April 8, 1993

The second issue raised in this case is whether the additional “suspension” handed down by the school committee was authorized. The Discipline Policy of the East Providence School Department 204-3, (IV)(A-D), sets out the procedure for a principal to seek “expulsion” of a student.³ It states:

- IV. A. A principal may request expulsion of a pupil in a case where the principal has cause to believe the student’s conduct endangers persons or property, is seriously disruptive to the educational process, or is violative of the publicized School Committee policy.
 - B. Requests for expulsion are to be directed to the Superintendent of Schools.
 - C. Upon receipt of an expulsion request, the Superintendent shall conduct an inquiry within two (2) school days of the request.
 - D. If after the inquiry the Superintendent determines that the student ought to be expelled, he or she shall forward such request to the School Committee within five (5) days of the request from the principal.
- 204-3 / 1996-1997

Student Doe argued that the word “principal” in 204-3 (IV)(A) referred to the principal of the East Providence High School, not the Director of the Career Center. In this case the principal of the high school recommended only a ten-day suspension. The recommendation for a longer exclusion from school originated with the Director of the Career Center and not the “principal” and therefore the procedure stated in this section was not properly followed because it was the Director of the Career Center who recommended to the Superintendent that Student Doe be expelled.

R.I. General Law 16-45-1 gives the Board of Regents power to ‘... make all rules and regulations necessary for the control, management, and operation of the schools.’”

³ We interpret “expulsion” as used in the School Committee’s policy as a long-term suspension. Rhode Island law does not authorize permanent disciplinary exclusion from school.

(referring to regional schools for vocational and technological training) Regulations enacted by the board provide “ the Director of the Area Vocational - Technical Center shall be responsible for the operation and direction of the center and report directly to the superintendent of schools of the administrating school district.”⁴ This provision gives the Director of the Vocational Center the same authority as a principal (within the vocational school).⁵ Therefore we find that the Director does come within the meaning of the word “principal” as that word is found in the East Providence Disciplinary Code.

The East Providence Discipline Code allows for the principal to recommend additional discipline for a student after an initial suspension has been set forth.⁶ Because the East Providence Discipline Code sufficiently outlines this procedure and because this type of procedure is widely accepted,⁷ we find that it was within the School Committee’s power to hand down the subsequent, additional discipline. We are aware of no case which would indicate such procedure violates due process rights of a student.

The third and most vigorously argued issue is whether the suspension imposed by the school committee constitutes excessive punishment. To put our decision on this issue in context, we must first explain our understanding of the incident and explain what we find as the basis for this student’s discipline. We do this in accordance with our responsibility

⁴ Regulations of the Board of Regents Governing the Management and Operation of Area Vocational - Technical Centers in Rhode Island, July 19, 1990. Section IV, Operation of Area Vocational - Technical Centers, subsection A - Staffing, pg. 24

⁵ We find that the Regents regulations have made the Director of the Career and Technical schools the equivalent of a principal.

⁶ Following this procedure, the initial suspension may act as an interim suspension until the principal can review the situation in its entirety and make a conclusive decision.

⁷ Education Law, James A. Rapp Vol. 2, sec. 9.05[3] [D] [iii]

to conduct a de novo review.⁸ We find that the flick on Student A's ear by Student Doe, and the resulting push by Student A, amount to what we consider inappropriate horseplay. Webster's New Collegiate Dictionary (1979) defines horseplay as "rough or boisterous play". This horseplay was prompted by Student A's ongoing disruptive behavior in class. Had the incident ended there we feel that both parties would have been equally at fault.⁹

The gravamen of this incident is the two blows from Student Doe to the face of Student A. While it is clear that Student A taunted Student Doe, this action substantially escalated the incident and Student Doe's punching was not necessary for his self-defense. Student Doe's attorney argued that only Student Doe's intent, and not the injury should be taken into account. On the record before us we find no intent by Student Doe to inflict serious bodily harm on Student A. Unintentional as it may have been, Student Doe was old enough to reasonably anticipate that such physical harm could result from his actions. We are of the opinion that in student discipline cases both the intent of the student and the effects of his actions are relevant factors.¹⁰

The East Providence High School Disciplinary Code, 204-1(II)(A)(2) states that "willfully striking or assaulting a student or any member of the school or Central

⁸ See The Parents of a Suspended Student, and Student, John A.P. Doe v East Greenwich School Committee, Sept. 1, 1988.

⁹ We make this finding even though we recognize that Student Doe initiated the first physical contact. We find that neither the flick to the ear or the shove, while seated, amount to an intent to injure or instigate a physical assault.

¹⁰ Seriousness of bodily injury is one factor in determining whether an aggravated assault has been committed according to the recommendations in: Attorney General's Task Force to Prevent Violence in Schools, Recommendations of the Policy and Law Enforcement subcommittee's, Sept. 14, 1993 (see definitions)

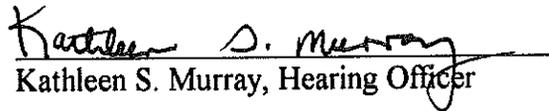
Administration staff ... may lead to consideration of suspension or expulsion."¹¹ A long-term suspension, such as that received by Student Doe, was thus authorized under the Student Handbook and within the parameters available to the School Committee. On the facts before us we cannot say that the three months suspension for this conduct was excessive, even though it is clear that an otherwise peaceable, good student lost control for a brief moment in his high school career.¹²

After resuming his instruction in September of the upcoming school year, Student Doe will hopefully attain his diploma. School officials have expressed their firm commitment to help him accomplish this goal. He is a good student who, during part of his suspension, received tutoring at 5:45 A.M. at his own request so that he could continue his coursework while working. It is our understanding that no other conditions are presently attached to his return to East Providence High School. We would request that school officials ensure that, in so far as possible he not be placed in class with Student A, not because we feel that there is any reason to fear for further incident, but that this will ensure that both students are not placed in a difficult situation.

The appeal is denied.

¹¹ We are somewhat confused by the school committees reference to this as a zero tolerance policy as it contains the word "may". But even if this was a zero tolerance policy, other mitigating factors may affect what the discipline will be. see John B.L. Doe v Rhode Island Department of Education, June 13, 1995

¹² Attorney for Student Doe argues that the suspension was unfair because of Student Doe's previously clean record and the fact that "other student" received no punishment. While the commissioner has recognized that it is appropriate to consider mitigating factors, see John A.K. Doe v Woonsocket School Committee, April 8, 1993. We also have considered that "other student" missed six and one half to seven weeks due to the injuries inflicted by Student Doe. We also cite Education Law, James A. Rapp, Vol. 2, sec. 9.06[2], which says "courts generally rejected such claims stating that the fact that some offenders escape punishment does not deny equal protection to those punished, at least absent purposeful selection


Kathleen S. Murray, Hearing Officer

Approved:


Peter McWalters, Commissioner

Date: August 25, 1997

based on unjustifiable standards." So, even if Student A should have been suspended as well, it does not invalidate the disciplinary action against Student Doe.