

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

D

V.

CUMBERLAND SCHOOL COMMITTEE

DECISION

Held: School Committee acted within its authority in suspending a student for his home recording and Internet posting of a song that sexually harassed a teacher.

August 24, 2001

Introduction

This is an appeal of the Cumberland School Committee's decision to suspend student D from school for 10 days for sexual harassment of a teacher.¹

For the reasons set forth below, we deny the appeal.

Background

Student D was a 9th-grade student at Cumberland High School during the 2000-2001 school year. He has an avid interest in music and plays the guitar. In early February 2001 he recorded his performance of a popular song on his home computer and posted it on Napster, a music file sharing service on the Internet. D told some of his close friends at school about the recording and posting. According to D, the song "didn't go over so well." [5/1, p. 110]. Determined to demonstrate his musical ability, D decided to write "a joke song to prove to people that I could play music. . ." [5/1, p. 111]. D thought that a dirty song would be funny, and the dirtier it was, the funnier it would be.

D proceeded to write a song about his 8th-grade English teacher who was a member of the teaching staff at Cumberland High School for the 2000-2001 school year.² We will call the teacher "Mrs. Doe."

"The Mrs. Doe Song" begins with the following lines:

In the mornings as she walks through the door
I'll be the pimp, yeah, and you be the whore
[School Committee Exhibit 1].

The song goes on to relate D's sexual thoughts about Mrs. Doe: the lust that her appearance causes, their sexual intercourse in the classroom, his appreciation of her

¹ The Commissioner of Education designated the undersigned hearing office to hear and decide the appeal. Hearings were held on April 30, May 1, May 11 and June 21, 2001. The parties subsequently submitted memoranda and reply briefs.

² Mrs. Doe did not teach any of D's classes in the 2000-2001 school year.

genitalia, and several references to his desire that she perform oral sex on him. After one sexual encounter with Mrs. Doe, D declares “For this extra credit, I better get an A.”

While playing an acoustic guitar, D sang the four-minute song into the recording mechanism of his home computer. He then posted the song on Napster and instant-messaged a friend via the computer. The message informed the friend that D had created and posted the song. D asked his friend if he thought the song was funny. The friend downloaded the song and told D that, although the sound quality was not very good, the song was hilarious. D immediately recorded another version of the song, with clearer sound, and posted it on Napster.

At school the next day, D learned that other students had downloaded the song. He was uncomfortable with the attention the song was getting. He testified that he removed the song from his computer after school that day. Because the song was already in the files of other computers, however, it continued to be shared on Napster. D recorded another original song, unrelated to school, and posted it on the Internet that day.

On February 27, 2001, a student walked into Mrs. Doe’s classroom shortly before class and handed her a compact disc with the hand-written inscription “The Mrs. Doe Song” on the disc’s jacket. The student told Mrs. Doe that he found the disc on the floor outside her classroom.

Mrs. Doe took the disc home that evening and listened to it. She was horrified and sickened by what she heard. She was unable to work the next day and took sick leave. She returned to work on March 1st, determined to carry on as if she were unaffected by the song. On March 2nd the students in the homeroom she was covering were “absolutely buzzing” about the song. [4/30, p. 25]. A student informed Mrs. Doe

that D had written the song and posted it on Napster. Mrs. Doe notified the school administrators about the song and its posting. According to an assistant principal, Mrs. Doe was “very anxious, nervous . . . falling apart, you know, emotionally.” [4/30, p. 65]. Mrs. Doe’s husband brought the disc to school. School administrators listened to the song and questioned D about it. D admitted that he recorded and posted the song. D was not linked in any way to the compact disc that was given to Mrs. Doe. That same day, D was suspended from school for 10 days.³ D’s parents appealed the suspension which, under school policy, resulted in a stay of the suspension.

Mrs. Doe was unable to work the next two school days. Upon her return, she missed time from class to speak with school administrators about the song.⁴ During her absences from the classroom, Mrs. Doe’s classes were assigned to study hall or supervised by substitute teachers. Mrs. Doe found it “extremely difficult” to teach following the school’s exposure to D’s song. [4/30, p. 42]. Numerous teachers complained about the song to school administrators and the superintendent. Faculty meetings were held to discuss D’s song.

On March 22, 2001, the School Committee upheld D’s suspension for 10 days for sexual harassment. The High School’s policy regarding sexual harassment includes the following:

Sexual harassment is any unwelcome conduct or communication of a sexual nature and may be considered a major offense. It includes flashing, obscene phone calls, sexual comments, and

³ D, a good student, had no prior disciplinary record.

⁴ The assistant principal in charge of the 10th and 12th grades testified that Mrs. Doe did not miss class time for meetings except for possibly on March 2nd when she and Mrs. Doe left the building to discuss the matter over lunch. Mrs. Doe testified that she cancelled her 5th period class on March 2nd to go to lunch with the assistant principal, and that she was “called out of my classes on many occasions to meet with the administration to discuss the situation.” [4/30, p. 41]. Because the assistant principal did not oversee the 9th grade and given Mrs. Doe’s more specific recollection of this time period, we credit Mrs. Doe’s testimony that she missed class time to meet with administrators.

sexual advances.

In the workplace or at school sexual harassment includes any sexual behavior or communication that adversely affects a person's employment relationship, ability to do one's work, or working environment. [School Committee Exhibit 4].

According to the student handbook, harassment of staff or other students, first offense, is punishable by a suspension for 3 to 10 days.

Positions of the Parties

Appellant initially asserts that the Internet is a public forum and its users are entitled to the highest level of First Amendment protection. The song, while a crude farce, is not the type of threat that falls outside the scope of the First Amendment. Because the evidence fails to establish that the song caused substantial disruption at school, D's conduct remained within the First Amendment. Appellant contends that D's posting of the song on his home computer is outside the boundaries of school disciplinary authority, and that the express provisions of the Cumberland High School handbook do not reach computer activity by a student at home. Appellant argues that the High School sexual harassment policy is unconstitutional on its face because it is both overbroad and vague. Also, given the respective ages of D and Mrs. Doe and his lack of authority over her, D's single act of expression, while offensive, does not meet the legal standard for sexual harassment. Finally, an affirmation of D's suspension would unwisely extend the school's responsibility for students' conduct and expose it to potential liability.

The School Committee contends that D's song is a vulgar attack on a teacher that was posted in a forum calculated to gain the attention of a broad segment of the student body. Given the song's content and effect, it clearly constituted sexual harassment and is the type of conduct that can be punished consistent with First Amendment law. The

Committee stresses its duty to maintain a civilized learning environment that is free of harassment. D's disrespectful act disrupted the educational atmosphere of the school. It resulted in the demoralization of Mrs. Doe, the loss of instructional time for her students, and a reduction of deference to teachers. Given the student access that the Internet posting provided, D's conduct cannot truly be labeled "off-campus." Moreover, the terms of the High School sexual harassment policy do not limit it to purely in-school conduct. Given the circumstances, the Committee argues that it exercised its discretion properly.

Discussion

This appeal has given us cause to examine some very basic principles regarding the educational process, the culture of a school, and student discipline.

We start by focusing on the most important element of the educational process -- the relationship between students and teachers. We view this to be a relationship of mutual commitment and respect. Teachers are expected to perform their duties in a professional manner and to conduct themselves as role models for students at all times. By doing so, teachers establish themselves as credible and effective educators. In performing their duties and exercising their authority over students, teachers must treat students with respect. Teachers who do not treat students respectfully or who fail to act as role models must be held accountable so that the educational process can work as intended.

Students must treat teachers with respect as well. Students are expected to behave in accordance with school rules and to show proper deference to authority. They must be

diligent in their studies and be receptive to instruction from their teachers. Students also must be held accountable when their conduct interferes with the educational process.

When students and teachers treat one another with respect and fulfill their respective responsibilities, a secure and nurturing school culture is created. The educational aspirations of both students and teachers can be fulfilled in this culture. It is a powerful yet fragile environment that must be protected from conduct that threatens to undermine or destroy it. When necessary, a school must have the ability to impose discipline on educators and students to address conduct that is harmful to its culture.

Students enjoy many rights in the pursuit of an education, including the right of freedom of expression. We recently decided an appeal from a high school student who was prohibited from wearing a t-shirt that offended many students and teachers.⁵ Looking at the shirt, its message and the circumstances in which it was worn, we held that the student had the right to wear the shirt to school. Although the student's wearing of the shirt clearly caused conflict within the school, we did not find it to be of such magnitude so as to override his First Amendment rights.

Student D's conduct is different -- both in its nature and its effect . In our opinion, the song that D has made available to the entire Cumberland High School community is not only a degrading personal assault against Mrs. Doe, it is a vile subversion of her role as a teacher. The student-teacher relationship is at the center of the song. The song's lyrics transform that relationship into one in which Mrs. Doe is a mere sex object subject to D's domination. This new relationship is described by D in graphic, humiliating detail. To quote the song, the "English teacher" becomes "the whore." The

⁵ Robert P. v. Westerly School Committee, July 5, 2000. Robert wore a t-shirt to school promoting the rock band White Zombie. The number "666" was printed in red on the back of the shirt.

song comments on Mrs. Doe's genitalia and relates various sexual acts that D wishes her to perform. The song never loses sight of Mrs. Doe's role as a teacher. As the song nears its conclusion, D considers their sexual activity and sings "For this extra credit, I better get an A."

Mrs. Doe testified about her reaction to the song and its posting on the Internet. Her testimony was sincere. Her reaction was not unreasonable. Despite the dedication she displayed in trying to perform her duties after hearing the song, she was unable to report to work on three of the six school days immediately afterward. She also missed class time on days she worked to meet with school administrators. On the dates and times Mrs. Doe was unable to be in the classroom, her students were assigned to study hall or supervised by substitute teachers. At work, Mrs. Doe heard students talking about the song, and she was approached by students wanting to discuss the song and its distribution. All in all, she has found it "extremely difficult" to teach since the song was introduced to the school community.

We believe that the time students spend in the classroom receiving instruction from their assigned teacher is a valuable commodity. D's song deprived many students of instructional time. We further believe that it adversely affected the quality of instruction that Mrs. Doe was able to deliver in the classroom. From an instructional standpoint, we find that there was a substantial disruption in the educational process as a result of D's song.

We have broader concerns about D's song, however. By graphically recasting Mrs. Doe as a sex object that is subject to D's bidding, the song totally subverts the student-teacher relationship. D's lyrics go far beyond the type of criticism and ridicule of

teachers that has previously received First Amendment protection.⁶ Instead, with its often-repeated refrain that D wants Mrs. Doe to perform oral sex on him, the song works a degrading role reversal in which the student becomes the sexual superior to the teacher. D never steps outside the student-teacher relationship as he alters the role of the teacher to that of a servant who is to provide him, the student, with sexual pleasure. In doing so, the song poisons the student-teacher relationship and strikes at the heart of the educational process and culture at Cumberland High School.

We remain cognizant of the fact that D created the song on his own time and off school property. In addition, there is no evidence that he had any direct involvement in the delivery of the song via compact disc to Mrs. Doe at school. But the song was not a private communication. D posted it on the Internet. By doing so, D extended the ramifications of his conduct far beyond the computer at his home. The song became accessible throughout the entire school community, including Cumberland High School itself. Not only can the song be heard in its original format at the listener's convenience and computer location, it can be copied and delivered to virtually anyone anywhere. In reasonably foreseeable fashion, a copy was delivered to Mrs. Doe in her classroom during the school day at Cumberland High School.

Because of D's posting on the Internet, the song took on a life of its own. As word of its existence spread through Cumberland High School, students could listen to

⁶ We cannot equate D's song with "distasteful" subject matter found in a student underground newspaper (*Thomas v. Board of Education*, 607 F.2d 1043 (2nd Cir. 1979)), "childish and boorish" ridicule of a teacher (*Killion v. Franklin Regional School District*, 136 F.Supp 2d 446 (W.D. Pa 2001)), or "giving the finger" to a teacher at a restaurant parking lot (*Klein v. Smith*, 635 F.Supp. 1440 (D.Me. 1986)). Contrary to the court's observation in the *Klein* case, the School Committee is not merely trying to force-feed good manners to D. We find that this case most closely parallels *J.S. v. Bethlehem Area School District*, 757 A.2d 412 (Pa.Cmmwlth. 2000), which upheld the suspension of a student when a female teacher became physically and emotionally disturbed after viewing the student's web-site that contained a picture of her

the song exactly as D recorded it. The theme and details of D's song were not spread by word-of-mouth. They were heard on demand straight from D's mouth. D's Internet posting ensured the availability and accuracy of his prurient portrait of Mrs. Doe to anyone interested in hearing it. Given these circumstances, we are unable to characterize D's song as exclusively out-of-school conduct.

Returning to our broader concern regarding the importance of the student-teacher relationship, we believe that schools must be concerned with any conduct by students or teachers, regardless of where it occurred, that has a direct and significant adverse impact on that critical relationship. Educators who engage in out-of-school conduct that adversely affects the student-teacher relationship are not immune from employment and certification-related consequences. Likewise, if the educational process is to remain credible and effective, schools cannot be powerless to address out-of-school student conduct that corrupts the student-teacher relationship. Having heard D's song, we are at a loss to understand how the song's message can remain outside the school's environment as the song's author walks the hallways and sits in the classrooms. Nor can we conceive how Cumberland High School can conduct "business as usual" in the aftermath of D's vulgar recharacterization of Mrs. Doe. To the contrary, if a school is to preserve a healthy and viable educational environment, it must be able to respond to a student's declaration that a teacher is his whore.

We therefore find that D's conduct comes within the disciplinary jurisdiction of school authorities. We further agree with the School Committee that D's song constitutes sexual harassment of Mrs. Doe. The High School's sexual harassment policy makes

severed head dripping with blood, a picture of her face morphing into Adolph Hitler, and a solicitation, whether serious or otherwise, for \$20.00 to help pay the cost of a hit man.

specific reference to unwelcome sexual comments. We find that the policy provides clear notice that behavior such as D's is prohibited. While the policy does not expressly address out-of-school conduct, it clearly states that sexual harassment is forbidden and subject to discipline.⁷ As explained above, we find that schools have inherent authority to address the type of conduct that occurred in this case.⁸

Conclusion

The School Committee acted within its authority by suspending student D for 10 days for sexual harassment of a teacher.

The appeal is denied.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date: August 24, 2001

⁷ It is well established that school disciplinary rules need not be as detailed as criminal codes. Mr. and Mrs. John Doe v. Coventry School Committee, April 3, 1995.

⁸ In Jane T.S. Doe v. South Kingstown School Committee, October 1, 1987, the Commissioner upheld the school district's authority to suspend a student for making harassing telephone calls to the principal's home. The telephone calls were not made on school premises or during a school activity. The school suspension policy addressed "conduct on school property, school transportation, or at any school sponsored activity," but it also noted that "other situations may develop." In finding that disciplinary authority existed, the Commissioner stated that "school personnel certainly have an expectation to be secure in their persons when they act in a professional capacity with students and to protect themselves and family from harrassing and threatening situations." [pp. 3-4]. In this vein, we note that the Cumberland High School sexual harassment policy explicitly applies to "obscene phone calls." Because we do not ordinarily associate the making of obscene phone calls with in-school conduct, the policy does not appear to be exclusively limited to activity occurring at school.