

0007-10

State of Rhode Island and  
Providence Plantations

Commissioner of Education

Student D.A. Doe

v.

Pawtucket School Committee

## DECISION

Held: The Appellant has demonstrated by a preponderance of evidence that she has been the victim of bullying at her public elementary school in Pawtucket. Steps taken by school officials to date have not recognized this situation as bullying nor has the school's response been adequate to prevent Student Doe from continuing to be bullied.

DATE: March 5, 2010

## **Travel of the Case:**

On February 15, 2010 Student Doe's mother filed an appeal with Commissioner Deborah A. Gist. In her letter of appeal, Student Doe's mother asserted that she had met with both the Principal of the Agnes Little School and the Superintendent of the Pawtucket School Department in the Superintendent's office on February 11, 2010. At that time she described a situation that she viewed as making her daughter the "victim of bullying" at her school and requested a safety plan to protect her daughter from this behavior. Absent a plan to stop the bullying and protect her daughter, she sought the Commissioner's intervention through the appeal process.

The undersigned was designed to hear this matter on February 17, 2010 and an expedited hearing was convened on February 25, 2010. At that time testimony and documentary evidence was received by the hearing officer. In the course of the hearing, Mrs. Doe presented evidence that her daughter had been out of school since February 9, 2010 and documentation that this student was unable to attend because of the effects the bullying had on her health. Given this information, this appeal has been treated as an interim order in accordance with R.I.G.L. 16-39-3.2 and the hearing officer has based this decision on the documentation submitted and notes of testimony, rather than the transcript.

## **Factual Background:**

Student Doe is a sixth grader at the Agnes Little School in Pawtucket. For approximately the past two (2) months, Student Doe has experienced a succession of incidents from name calling<sup>1</sup>, graffiti about her written on the stalls of the girls' bathroom, threats and actual violence. The perpetrators are a group of three other sixth grade girls, but one girl in particular seems to have singled out Student Doe for this treatment. Most recently, the primary perpetrator started a "club" the purpose of which is to further ostracize Student Doe from her classmates by having members of the club agree not to talk to her or socialize with her at school.

The effects of this pattern of behavior have been to make Student Doe cry and become upset to the point of hysteria. She has become afraid to return to school. Her doctor expressed an opinion in a medical note dated February 12, 2010 that concerns for Student Doe's mental health are such that she recommends that the child remain out of school until this situation is resolved. Mrs. Doe has filled out the paperwork to have her daughter receive home tutoring provided by the school department, and the district is in agreement that her current medical status qualifies her to receive tutoring

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<sup>1</sup> The names include sexual insults and swear words.

at home. The principal testified that, based on the medical documentation submitted to her, the district is in the process of assigning a teacher to go to Student Doe's home to provide her with individual tutoring.

### **Positions of the Parties:**

#### **The Appellant:**

Mrs. Doe maintains that her daughter is the victim of bullying that is prohibited by state law (R.I.G.L. 16-21-26) as well as by the policy of the Pawtucket School Department. She argues that her daughter has been subjected to a pattern of behavior constituting harassment, intimidation and bullying and that the effect has made the school environment intolerable and unsafe for her daughter. Her daughter's health has also been adversely affected, as documented by the doctor's note she submitted into evidence.

She contends that the response of school officials to date has been insufficient to protect her daughter's safety. Instead of developing a plan to stop the bullying and to protect Student Doe from intimidation, harassment and further ill effects to her mental health, school officials have alternately sought to punish her,<sup>2</sup> to require her to participate in mediation sessions with the perpetrators, to change her seat in the classroom<sup>3</sup> and to suggest that she transfer to another school in the district. Mrs. Doe submits that the final straw occurred at a recent meeting with the Superintendent and other school officials when the statement was made to her that if she continued to keep her daughter home from school, she would be subject to truancy charges.

Although Mrs. Doe has requested that a tutor be provided so that her daughter can keep up with her school work<sup>4</sup> and be prepared to enter junior high school next year, Mrs. Doe would prefer (and she requests that the Commissioner direct) that an individualized safety plan be developed to stop the bullying her daughter has experienced at school. She sees this plan as essential to her daughter's ability to return to school so that she feels safe and is reasonably protected from mental and physical harm. She argues that her daughter is entitled to learn in an educational environment free from harassment and intimidation. She argues that it is the school's obligation to develop such a plan that will protect her daughter from this behavior.

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<sup>2</sup> When the primary perpetrator slapped Student Doe in the cafeteria, Student Doe slapped her back, she testified "instinctively" to protect herself.

<sup>3</sup> Rather than that of the perpetrator(s)

<sup>4</sup> Student Doe is a very good student, according to the record at this hearing.

## Pawtucket School Committee

Counsel for the district takes the position that school officials have appropriately addressed each of Mrs. Doe's complaints. When reports were made by Student Doe to her teacher that that she was being subjected to persistent name calling, the teacher moved Student Doe's seat further from the students engaged in this behavior and Student Doe was encouraged her to be a "bigger person than they are." When graffiti on the stall doors of the girls' bathroom was reported to the principal, she gave the students who were responsible for this detention and required them to clean up the derogatory comments they had written about Student Doe. When Student Doe's mother objected to her detention for slapping the primary perpetrator in "self defense," the principal did not insist that Student Doe serve detention, even though Student Doe had violated school rules. The other offending student was given, and served, a one-day detention. When Mrs. Doe insisted that her daughter was being retaliated against and ostracized by the formation of a club the purpose of which was to ostracize her, the principal referred the girls to the school social worker for mediation. Other efforts have been made to address the situation, including taking all of the sixth grade girls together for a lecture on subjects of tolerance, respect and kindness to others.

The district implicitly asserts that the principal has remained on top of this situation, responding appropriately on each and every occasion on which Student Doe, or her mother, has made her aware of a problem. Her suggestion that Student Doe finish out the remainder of this school year at her "district school"<sup>5</sup> rather than at Agnes Little School was made only because Mrs. Doe refused to let her daughter continue to participate in group mediation sessions with the school social worker.<sup>6</sup> Without such mediation, the principal does not foresee a successful resolution to this ongoing conflict.

The principal testified that when she received the February 12, 2010 doctor's note and Mrs. Doe's request for home tutoring, she set in motion the process for assigning a tutor to go to her home. Although the Principal testified that Student Doe is eligible for home tutoring services, she is concerned that this will further isolate Student Doe and undermine her socialization skills. The district implicitly argued that it has taken all appropriate steps to discourage the ongoing conflict that Student Doe has experienced at school.

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<sup>5</sup> It is unclear as to why Student Doe is currently attending a school outside of her attendance area, but she has evidently attended the Agnes Little School for two years.

<sup>6</sup> Or, as the principal explained, Mrs. Doe has placed an unreasonable condition on her daughter's continued participation in mediation sessions- that she be allowed to be present as well.

## DECISION

The Pawtucket School Department policy against Bullying, Teen Dating Violence and Sexual Violence defines bullying as follows:

*Bullying occurs when a student, while at school, intentionally assaults, batters, threatens, harasses, stalks, menaces, intimidates extorts, humiliates, or taunts another student. Bullying also occurs when a student or a group of students organize a campaign of shunning against another student or when a student or group of students maliciously spread rumors about another student. In most circumstances bullying does not include a mutual fight between two students of roughly equal strength who are angry with each other. Such fights are subject to discipline as a violation school rules prohibiting fighting. (School Committee Ex. A)*

The Pawtucket School Committee's definition of bullying is identical to that contained in a model policy against bullying created and provided to districts by the Department of Education in 2003 as required by R.I.G.L. 16-21-26 (d). It is also substantially similar to the definition of bullying contained in a more recent comprehensive model policy developed and issued by RIDE on April 1, 2008 to address the problems of bullying and teen dating violence.<sup>7</sup> Although the definition of bullying in policy differs from that set forth in statute, the policy translates statutory language into operational terms that can be applied in the school context. It is the Pawtucket School Committee's current definition of bullying that we apply to the facts in this case.

On the basis of the record created at the expedited hearing held on February 25, 2010 we find that Student Doe has been the victim of bullying at her school. One could debate the extent to which the "mean girls" phenomenon is a normal part of the adolescent girl's experience, but the conduct to which Student Doe has been subjected at school since mid-December is not tolerable. It is clear on this record that persistent name-calling started in mid-December of the school year, evidently without any provocation or rationale and that it has continued. It was and continues to be offensive and very upsetting to Student Doe. It has created an "intimidating, threatening and abusive educational environment" for this student.

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<sup>7</sup> The 2008 model policy was designed to comprehensively address the problems of bullying, teen dating violence and sexual violence in schools, and to fulfill the directive of the General Assembly that the department should develop a model dating violence policy to assist school districts in developing their own policies.

There is no evidence that Student Doe has provoked these other students, or that she has been an “aggressor” at any time. Although she should not have struck back at the primary perpetrator during the incident in the school cafeteria, her response becomes understandable when placed in the context of the pattern of harassment she testified she had experienced since mid-December of the school year. The recent formation of the club to further isolate her from other students at Agnes Little School is behavior falling squarely within the definition of “bullying” under Pawtucket’s policy, as it clearly is an organized “campaign of shunning.”

The record does not indicate if the school has ever formally received Student Doe’s and her mother’s complaints as a “report of bullying” under the School Committee’s policy. Pawtucket has a policy prohibiting “Bullying, Teen Dating Violence, and Sexual Violence.” Evidently several verbal complaints were made to Student Doe’s teacher and to the principal. There is no evidence that a written report was taken, even though the policy states that “the victim...or anyone with credible information that an act of bullying has taken place may **file a report** of bullying” (emphasis added). Although the principal did investigate the situation, it is not clear whether she verified that bullying had occurred or that it did not. As indicated, based on the record, we find that Student Doe has been the victim of bullying.

We find that the steps taken to date by the principal are not adequate to protect Student Doe from continued bullying at her school. The mother’s request for an individual safety plan to protect her daughter is a reasonable one, and a response that is typically part of the “victim rights and protection” efforts referenced in the model policy disseminated by the Department of Education on April 1, 2008. We would point out that the policy adopted by the Pawtucket School Committee to comprehensively address the issues of bullying, teen dating violence, and sexual violence deviates from the model policy in that it omits entirely any discussion of “Victim Rights and Protection.” This may be an oversight, the effect of which is to deprive school administrators with a full array of strategies to prevent bullying, teen dating violence and sexual violence. The absence of a discussion of victim protection in the School Committee’s policy may also explain why the response to Student Doe’s plight has emphasized mediation and education-even her transfer out of her current school- rather than any immediate measures to protect Student Doe in school. The principal’s lack of familiarity with an individualized safety plan is understandable given that the policy itself does not address rights of the victim or provide the Principal with any specific guidelines in this area.

For the foregoing reasons, the appeal is sustained. Student Doe is to be provided with home tutoring until school officials can develop, in conjunction with Student Doe's mother and other appropriate individuals, an individualized safety plan so that she can return to Agnes Little School without being bullied. Such plan should be in place no later than March 17, 2010. This decision is entered as both an interim and final order<sup>8</sup> in this matter and the Commissioner retains jurisdiction until Student Doe is safely returned to Agnes Little School.

For the Commissioner,

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Kathleen S. Murray

APPROVED:

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Deborah A. Gist, Commissioner

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Date

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<sup>8</sup> We also direct that the Pawtucket School Committee review its existing policy to ensure that its responses to Bullying, Teen Dating Violence and Sexual Violence in Pawtucket schools include appropriate protections to the victims of such behaviors. The document entitled "A Guide To Preventing Bullying, Teen Dating Violence, And Sexual Violence In Rhode Island Schools (April 1, 2008)" may be of assistance in this regard.