

19-056K

STATE OF RHODE ISLAND
OF EDUCATION

COMMISSIONER

AND

PROVIDENCE PLANTATIONS

IN RE: V. DOE

v.

A RHODE ISLAND CHARTER SCHOOL

DECISION

Held: Student Doe's penalty for bringing an "edible" containing CBD to school and consuming it at school is modified. Evidence in the record at this level indicates that the penalty does not take into account the fact that Doe did not intentionally bring the edible to school and that at the time she consumed it, she was experiencing symptoms of a severe anxiety attack.

DATE: May 29, 2019

Travel of the Case:

Student Doe's mother filed an appeal with Commissioner Infante-Green on May 23, 2019 and requested an expedited hearing. She challenges part of a disciplinary sanction her daughter received for bringing an "edible" containing "CBD," a substance derived from cannabis, to school and consuming it at school. The Head of School found (on the same day as the incident, May 9, 2019) that Doe violated the school code of conduct by her "use of an illicit substance in school". See Ex. B. The penalty imposed at that time was an out-of-school suspension of one (1) school day and a thirty (30) day exclusion from all school activities, including the prom. Doe's mother appealed to the Chief Executive Officer who, after meeting with her and Student Doe on May 15, 2019 and reviewing the facts surrounding the incident, affirmed the penalty imposed. The Chief Executive Officer found that Doe had brought a CBD-oil product to school on May 9, 2019 and consumed it in school. He noted, both at the meeting and in his written decision, that all seniors had been notified in a class meeting that severe violations of the Code of Conduct would result in loss of privileges, including prom, senior banquet, senior trip and possibly graduation. See Ex. D. A subsequent appeal to the Board of Directors of the charter school was taken and the matter was heard on May 20, 2019. Although a written decision is not yet available, testimony of the Chief Executive Officer verified that the Board has affirmed his decision.

Doe's mother's appeal to the Commissioner does not challenge that part of the penalty imposing the one-day out of school suspension, but requests that, based on the facts of this case that the penalty be modified to permit her daughter to attend upcoming school activities, including the senior prom scheduled for June 1, 2019.

Jurisdiction to hear this appeal arises under R.I. Gen. Laws 16-2-17 and 16-39-2. This appeal also arises under 16-77-5.1, entitled "Oversight by commissioner" a provision that enables individuals or groups to submit complaints with respect to charter schools to the Commissioner and authorizes the Commissioner to "hear and decide the issue" pursuant to §§ 16-39-1 and 16-39-2. The case was heard on May 24, 2019 by the undersigned and the record closed that same day, upon receipt of a copy of Doe's Individualized Education Program.

Factual Background:¹

Student Doe is seventeen (17) years old and has been in attendance at the charter school (the "School") since grade five. She has no prior disciplinary history and is described by school officials as a "very kind and insightful young woman". Doe is a student with a disability, with diagnoses that include severe social anxiety disorder and attention deficit disorder. She has an Individualized Education Program ("IEP") that provides her with specialized instruction and supports, including the related service of counseling and access to the school social worker so that she can better manage her social anxiety in the school setting. According to her mother's

¹ All findings of fact are based on the hearing officer's notes, the exhibits submitted into evidence by the School (the exhibits offered by the Appellant at the time of hearing were found not to be admissible) and a copy of Doe's Individualized Education Program made available by Chief Executive Officer after the hearing concluded. The IEP has been marked as Joint Ex. 1 for purposes of the record.

testimony, Doe takes medication prescribed by her doctor and sees a counselor. Also according to her mother: "...unfortunately [Doe] needs to take CBD products and medication to help her function at school and to get through everyday tasks". Ex. C. Her mother observes that her daughter has made a lot of progress in the past two years and wants her to finish her senior year feeling proud of her accomplishments. School Ex. C. Members of Doe's IEP team (at school) have noted her "tremendous progress" over the past year and indicate that she has been more independent in being able to "work through anxious moments without having to depend on other adults". Joint Ex. 1 at pages 5 and 13. They also note, however, that Doe continues to struggle with managing her anxiety at times and does require more frequent check-ins (with the school social worker) during those times. Joint Ex. 1 at page 14.

According to the testimony in this case, Doe's mother gave her an edible containing CBD on the way to school on May 9, 2019. Doe was supposed to consume the edible in the car, but forgot to do so. In Spanish class that morning Doe felt the symptoms of a panic attack coming on and at that time consumed part of the edible her mother had given her. She began to feel ill soon thereafter and signaled to her Spanish teacher for assistance. She told her teacher she was having a panic attack.² As they were in the nurse's office for a period of time, Doe said that she was feeling a little better and then stated, as described by her teacher:

... she did not want to get in trouble, but she had to tell us, she ate an edible and then started feeling sick.

The teacher shared this information with the nurse and gave her a green plastic egg with a piece of a baked treat that she had found when she packed up Doe's belongings in the classroom. Doe's mother then came and picked her up. Doe returned to school later that afternoon for after-school extra help with her academics.

Positions of the Parties:

Doe's Mother:

Doe's mother requests that her daughter be permitted to participate in the remaining school activities, including her senior prom. Although she understands that some penalty must be imposed for a violation of the School's Code of Conduct, this penalty is disproportionate and unnecessary. In light of her daughter's initially difficult decision to attend her senior prom,³ taking it away at this point would have a devastating effect on her. Doe's mother blames herself for what happened and indicated to the Head of School that this incident would not be repeated. She emphasizes that her daughter has always obeyed the rules and has apologized for what happened on May 9, 2019. The penalty imposed here is based on a mistake in judgment, not willful misconduct and is affected by Doe's disabilities. The Commissioner should overturn

² Doe's mother maintains that her daughter experienced a severe panic attack that day as a result of the delay in her consuming the edible. School officials concluded upon their review and continued to maintain at the time of the hearing that Doe had a reaction to the edible that caused her to need assistance from the teacher, the school nurse and her mother. School Ex. D.

³ Doe planned to attend with her boyfriend, one of the few friends she has made at the School.

that part of the penalty that would continue to exclude Doe from school activities and permit her to attend the senior prom.

The School:

The School's Code of Conduct lays out quite clearly the rule that students "may not use or possess any non-prescribed controlled substance, narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana, alcoholic beverage or intoxicant of any kind." School Ex. A page 24. If there were doubt as to the status of CBD as a prohibited substance under this language, the Code goes on to indicate explicitly that:

[p]rescribed and over-the-counter drugs must be delivered to the Nurse or Office Manager by a parent or guardian with a doctor-signed School Medication Form. [Students] may not be in possession of prescribed or non-prescribed or over-the-counter drugs.

Furthermore, an explicit protocol for the administration of medication during the school day has been developed and is included in the School Handbook at page 37. The reason for these rules and protocols should be obvious- to protect the health and safety of the entire school community. The seriousness of a violation of these rules and/or the medication administration protocol cannot be understated.

Student Doe, along with other members of the School's senior class, attended a meeting on February 27, 2019 at which time the Head of School emphasized to all seniors that any serious violation of the Code of Conduct would be met with equally serious consequences, e.g. the loss of privileges, including prom, senior banquet, senior trip and possibly even graduation.⁴ Doe has admitted to violating a rule that must be observed in order to keep students in a safe school environment. Doe's own allergic reaction to the edible proves just how important enforcement of this provision is to maintaining student safety. The penalty of a one day out-of-school suspension, coupled with a thirty-day exclusion from school activities, inclusive of prom, is totally supportable based on Doe's misconduct. In addition, the Commissioner should take into account that this penalty was specifically fashioned so as not to have a negative impact on Doe's ability to meet all graduation requirements by the end of the school year. A longer suspension was therefore not imposed. The disciplinary sanctions imposed by the School must be upheld and the appeal denied.

DECISION

As the Commissioner has observed in prior cases, charter public schools, like other public schools in Rhode Island, have the authority to establish rules governing student conduct, to provide penalties for infractions of school rules, and exercise the explicit authority to

⁴ The School's Executive Director clarified in his decision that Doe is permitted to participate in graduation and possibly Senior Awards Night (if all seniors are invited to this occasion or if Doe is invited as an award winner). See Ex. D.

“suspend or expel” a student for violations of such rules. The loss of school activities, school-sponsored events and celebrations is typically included in the arsenal of potential disciplinary consequences, especially as the end of the school year approaches. Where a suspension may not be an adequate deterrent late in the school year, the potential loss of such celebrations becomes an incentive to comply with school rules. Charter schools, like other public schools, exercise significant latitude in utilizing such disciplinary measures to ensure a safe and orderly school environment. On appeal, the Commissioner must review the merits of such discipline and make an independent judgment on whether the penalty which has been imposed is just and proportionate to the student’s offense. The student and his/her family are entitled to a de novo hearing and not merely a review of the school committee’s action.⁵ See *Alba v. Cranston School Committee*, 90 A. 3d 174, 184-185 (R.I. 2014); *Slattery v. School Committee of City of Cranston*, 116 R.I. 252, 262, 354 A.2d 741, 747; *School Committee of the City of Pawtucket v. State Bd. Of Ed.*, 103 R.I. 359, 364, 237 A. 2d 713, 716 (1968) *Pawtucket School Committee v. Board of Regents*, 513 A 2d 13 (R.I. 1986); *John B.L. Doe v. A Rhode Island School Committee*, decision of the Commissioner dated June 13, 1995 at page 3.

The Appellant has not sought to challenge the validity of her daughter’s one-day out of school suspension in this case.⁶ Thus, the Commissioner’s review here is limited to that part of the penalty that excludes Doe from school activities for thirty (30) days. The penalty Doe received was for the infraction of bringing a drug (CBD) to school and consuming it in school. There is no need to determine whether Doe’s possession of CBD was legal under state or federal law, as students at the School were prohibited from “being in possession of” any drug, prescription or over-the-counter, at school according to the clear provisions of the Code of Conduct. (See Ex. A at page 24) Although the exact penalty (or range of penalties) for this type of infraction was not specified, a graduated range of consequences, including “removal of school privileges,” was listed as consequences that could be imposed “based on the grade level of the [student], severity of the action, and frequency of the incident”. (See Ex. A at page 20) Doe acknowledges that she and other seniors were warned at a class meeting earlier in the semester that if they committed a “severe violation” of the Code of Conduct, the consequence would be loss of privileges, including prom, senior banquet, senior trip and possibly even graduation.

Staff at the School determined very swiftly on the same day of the incident, May 9, 2019, that Doe “used an illicit substance” in school. The full circumstances surrounding the incident were not yet known. On his review, the Chief Executive Officer, determined after receiving input from Doe and her mother that Doe “brought [the CBD product] to school and consumed it there. ” At the hearing before the undersigned, he emphasized the severity of Doe’s infraction, its potential harm to student safety, and the need for consistent imposition of extraordinary consequences as a deterrent to this type of incident happening again. He also explained that the decision to impose a one day, out-of-school suspension, rather than a more

⁵ If the hearing officer indicated a different standard of review applied in a student disciplinary appeal at some point during the hearing, she misspoke.

⁶ We therefore do not rule on the propriety of an out-of-school suspension in this case.

lengthy suspension, was a deliberate one so as to lessen the impact the penalty would have on Doe's ability to complete graduation requirements.

The obligation to conduct a de novo hearing requires the decision at this level to reflect facts in this record. These may or may not be the same facts upon which the decisions below were premised. The fact in this record is that Doe did not knowingly take the CBD product to school on May 9, 2019. As reported by her mother,⁷ Doe forgot to consume the edible after she gave it to her at home and Doe then forgot to consume it in the car on the way to school. This is the account reported by Doe to her mother who placed it on the record at the time of hearing. We find that this account is credible because Doe has been truthful and forthcoming at each point during and after this incident. She volunteered the truth about what she had done as she was being attended to by school staff in the nurse's office that day. She disclosed to the Executive Director that she had brought an edible to school (presumably under the same circumstances) on one or two other occasions during the school year. She corrected her mother's testimony that Doe had never brought an edible to school prior to May 9,th stating on the record that she had in fact done so "a couple of other times". We credit her honesty in this regard and find that it supports the assertion that she forgot to consume the edible as she usually did prior to leaving home for school. Thus, she did not intentionally bring a drug to school on May 9, 2019.

Doe cannot be punished for being in possession of a prohibited substance when she did not intend to have or possess this drug in school. The Commissioner has ruled that without a finding of knowing and intentional possession, even of an illegal drug, a student cannot be guilty of misconduct. See *Jane W. Doe v. Johnston School Committee*, decision of the Commissioner dated November 24, 1993. While student discipline does not necessarily rest on elements of a crime or the need to establish specific intent to commit a disciplinary infraction, the element of **general intent** is required. See *M. Doe v. Chariho Regional School Committee*, 020-16, decision of the Commissioner dated August 15, 2016. The facts here must be distinguished from those in which a student knowingly brings a drug or prohibited substance to school. If Doe had done so, even if her intent was to administer this drug to herself if she needed it during the school day, she would be guilty of bringing a drug to school.

The fact is that Doe realized that she was in possession of the edible containing CBD during her period three Spanish class, when she felt an anxiety attack coming on. Instead of coping with her increasing anxiety by going to the school social worker's office, as her IEP permitted her to do, she consumed all or part of the edible. This was an infraction of the School's Code of Conduct because a student's self-administration of medication is strictly regulated and must conform to school protocols. The School's rule is that medication may be administered during the school day **only** by a certified school nurse or parents/guardians (see Ex. A at page 37.) We recognize that this rule and such protocols are absolutely necessary to preserve a safe school environment. However, Doe's violation of this rule occurred when she was in the throes of a panic attack (caused by a documented disability) and she remembered at that time that she had not consumed the edible that she was supposed to take before going to

⁷ Other than making a very brief statement at the end of this case, Doe did not testify in this matter.

school. Not surprisingly, she tried to remedy her oversight. We find that these circumstances constitute a mitigating factor that, while not excusing Doe's conduct, warrant a modification of the penalty imposed by the School.⁸ The penalty is hereby modified to permit Doe to attend all remaining school activities, including the Senior Prom scheduled for June 1, 2019.

The appeal is sustained to the extent that we order the School to modify Doe's penalty as indicated in this decision.

For the Commissioner,

Kathleen S. Murray
Hearing Officer

Angélica Infante-Green,
Commissioner

Date: May 30, 2019

⁸ Particularly in light of her full disclosure, honesty and cooperation with school officials.