

STATE OF RHODE ISLAND
COMMISSIONER OF EDUCATION

STUDENT E. Doe,	:	
By his mother,	:	
<i>Petitioner</i>	:	
	:	
v.	:	RIDE No. 24-007K
	:	
EAST PROVIDENCE SCHOOL	:	
DEPARTMENT,	:	
<i>Respondent</i>	:	

DECISION AND ORDER

Held: Petitioner’s appeal of school district’s decision to suspend student for five days was granted by the Commissioner because: (1) insufficient evidence was introduced demonstrating that the student was either a “disruptive student” or represented a “demonstrable threat” as required under R.I. Gen. Laws §§ 16-2-17(a) and 16-2-17.1; and (2) the school district’s code of student conduct mandating an out of school suspension for all acts of vandalism was in violation of Rhode Island law both as written and as applied.

Date: May 15, 2024

I. INTRODUCTION

On or about February 9, 2024, Petitioner, Ms. Doe, on behalf of her minor son, Student E. Doe (“Doe”), filed a petition with the Commissioner of the Department of Elementary and Secondary Education (“Commissioner” and “RIDE,” respectively) appealing a decision by the East Providence School Department (“EPSD”) to suspend her son for five days. Petitioner seeks an order from the Commissioner finding that the disciplinary action imposed was excessive and requests that the out of school suspension be expunged from Doe’s school record and that her son be exempted from all schoolwork that was assigned during his suspension.

II. JURISDICTION AND STANDARD OF REVIEW

The Commissioner has jurisdiction over this appeal pursuant to R.I. Gen. Laws §§ 16-39-1 and 16-2-17(c), and as the Commissioner has noted on many occasions, the applicable standard of review is *de novo*. See *Alba v. Cranston School Committee*, 90 A.3d 174, 185-85 (R.I. 2014) (citing *Slattery v. School Committee of Cranston*, 116 R.I. 252, 262 (1976)).

III. MATERIAL FACTS

The material facts are not in dispute, and the following recitation was deduced from the testimony and documentary evidence submitted at the hearing before the undersigned Hearing Officer on March 27, 2024.

1. This matter arises out of an act of vandalism that occurred at East Providence High School on February 2, 2024. The parties do not dispute that Doe was responsible for the vandalism.
2. On the date of the incident, the East Providence High School Career and Technical Center Director (“CTC Director”) was monitoring the student lunch periods when he was called over to a table of senior high school students. Hr.’g Tr. 25:18-25.

3. The students reported that they had observed another male student writing on the wall of the bathroom adjacent to the lunchroom with a black Magic Marker and asked the CTC Director to investigate the act. *Id.* 26:6-10.
4. While the students did not report being threatened by either the message or the act of vandalism, they did report being upset about the fact that another student was defacing school property. *See id.* at 26:10-11; 55:16.
5. The CTC Director entered the lunchroom bathroom and observed the phrase “Vandal Only” written on the bathroom wall in black marker. *Id.* at 26:17-20. He took a photo of the graffiti using his cell phone. *See id.* at 26: 20-22; Rep’t Ex. H.
6. As required by school protocol, the CTC Director called the East Providence High School Dean of Students (“Dean”) over the radio requesting that he fully investigate the vandalism. Hr’g Tr. 26:25-27:3.
7. Once the Dean observed Doe entering and exiting the lunchroom bathroom during the time in question via school security cameras, he called Doe to his office and explained that some other students had observed Doe writing on the bathroom wall. *Id.* at 34:2-9, 32:15-21.
8. Doe admitted to the Dean that he committed the vandalism and, when asked, handed over the marker he had used. *Id.* at 34:10-13; Resp’t Ex. C. He also explained that the phrase was in reference to a video game that he occasionally played at home. Hr’g Tr. 34:17-19.
9. Upon Doe’s admission, the Dean informed him that there would be consequences and contacted the East Providence High School Principal (“Principal”) to discuss what disciplinary action would be imposed. *Id.* at 35:11-15.
10. The Principal testified that, under the EPSD Code of Student Conduct (“Code of Conduct”) and the 2023-2024 East Providence High School Student Handbook (“Student Handbook”),

all acts of vandalism resulted in an out of school suspension, which he understands to be compliant with relevant Rhode Island law. *Id.* at 56:11-25. A list of all incidents of vandalism at the high school from October 2021 through February 2024 documents that all students found responsible for vandalism or destruction of school property were issued an out of school suspension for a minimum of two days. Resp't Ex. E.

11. When determining how many days to suspend a student who commits an act of vandalism, the Principal explained that he makes a wholistic observation considering the time and place, where the vandalism occurs, what the vandalism says or what is written or destroyed, and if there is a monetary value to the damage. Hr'g Tr. at 42:10-17.
12. Thus, as Doe's act of vandalism took place during lunchtime in front of approximately 400 students, in a bathroom that approximately 1,600 students had access to, was identified by other students, and in consideration of the picture of the graffiti and prior disciplinary actions imposed for other student acts of vandalism, the Dean and Principal determined that Doe would be suspended for five school days. *Id.* at 36:16-37:1, 48:3-10.
13. Both an Accident/Incident Report Form and a police report were generated by the Dean and East Providence Police Department, respectively, detailing the incident and resulting disciplinary action.¹ *Id.* at 37:24-38:5; Resp't. Exs. C, D.
14. Once the disciplinary decision was made, the Dean informed Doe of the consequences and explained both the situation and resulting disciplinary action to Doe's father over the phone. Hr'g Tr. 37:9-23. A letter dated February 2, 2024 from the Principal and Dean was also sent

¹ As vandalism is a crime, the Principal testified that the East Providence Police Department was contacted as a matter of protocol. Hr'g Tr. 44:2-7.

to Doe's parents advising that Doe would be suspended for five days, for the period of February 2, 2024 through and including February 9, 2024, for vandalism.² Pet'r Ex. 10.

15. On the same day as the incident, Ms. Doe contacted the Principal via email requesting to appeal Doe's suspension. Resp't Ex. F.
16. On February 7, 2024, the EPSD Assistant Superintendent held the suspension appeal hearing. Hr'g Tr. 61:17-19.
17. In her letter dated February 13, 2024, the Assistant Superintendent upheld "the decision of a five day suspension by the high school administration and keeping the suspension as part of [Doe's] high school record." Pet'r Ex. 2; Resp't Ex. G. The letter explained that, while "this was [Doe's] first offense and that the graffiti was not threatening,"

three issues emerged from the review of all information associated with this appeal and were factors in my decision regarding your request. First, [Doe] violated the district's Code of Conduct which references students respecting the rights of property and refraining from vandalism. It also refers to destruction or mutilation of property as a suspendable [sic] offense. Second, the EPHS Student Handbook references that graffiti [sic]/destruction of school property is subject to consequences. Third, [Doe] elected to vandalize a wall in a heavily utilized bathroom and was observed and reported to administration by students. [Doe] admitted to writing the graffiti and gave the marker used to create the graffiti to administration.

Id.

18. During the hearing, District counsel admitted evidence suggesting that the term "vandal," as used in Doe's graffiti, referenced an assault rifle used in the video game *Valorant*. See Resp't Exs. I, K.

² There is some dispute as to when this letter was actually sent, as the envelope attached to the letter is clearly postmarked February 28, 2024. See Pet'r Ex. 10. This date is immaterial however given that Ms. Doe received actual notice of Doe's suspension via email on February 2, 2024 and had the opportunity to timely appeal the imposed disciplinary action. Hr'g Tr. 22:14-25; Resp't Ex. F.

19. At the time of the incident, the Dean testified that he was not personally familiar with the video game but later came to learn that the video game involves shooting and assault rifles. Hr'g Tr. at 34:20-35:6.
20. Similarly, the Principal testified that he did not have any personal knowledge as to what "Vandal Only" referenced on the date of the incident but did express that, while concerned that the phrase could have had either a negative or positive meaning, he was more concerned that the graffiti was written on the bathroom wall in front of so many students. *Id.* at 49:20-50:6:17. The Principal also testified that he was unfamiliar with the video game *Valorant* at the time of the incident, but became aware of the game and the possible meaning of "Vandal Only" after imposing Doe's out of school suspension. *Id.* at 54:7-11.
21. The Assistant Superintendent further testified that, at the time of affirming Doe's suspension, she was unaware of the possible meaning of "Vandal Only." *Id.* at 64:11. After writing the February 13, 2024 letter, however, she testified to becoming aware that phrase could have been in reference to an assault rifle used in a video game. *Id.* at 64:15-65:1.
22. Ms. Doe admitted at the hearing that her son plays video games, and that she monitors the video games he plays, but testified that she was unfamiliar with the video game *Valorant*. *Id.* at 17:17-23. She further testified that she had no knowledge of her son playing this video game and had never heard him talk about this game or the "vandal" assault rifle. *Id.* at 18:7-8. Ms. Doe also explained that Doe "doesn't speak about guns, he doesn't have guns, [and] guns are not part of his culture." *Id.* at 68:9-11.
23. Ms. Doe testified that, upon seeing the term "vandal" as used in the graffiti, she believed the reference was short for vandalism. *Id.* at 18:18-22. She also stated that, when asked, Doe

explained to her that the phrase “Vandal Only” was “a take on” the “Member Only” clothing brand. *Id.* at 68:12-13.

24. Doe fully served his five day out of school suspension.

25. As evidenced in Skyward, Doe was unable to complete many class assignments and key lessons during the term of his suspension and, as a result, his grades in all these classes dropped. Pet’r Ex. 8; Hr’g Tr. p.16:3-13.

IV. POSITIONS OF THE PARTIES

1. Petitioner

Petitioner does not dispute that Doe did, in fact, vandalize school property by writing “Vandal Only” on the school bathroom wall, but instead claims that the disciplinary action imposed was excessive and unwarranted. Specifically, Petitioner avers that this incident was Doe’s first school offense and that the misconduct was not threatening. Thus, Doe’s out of school suspension was not warranted under R.I. Gen. Laws §§ 16-2-17(a) or 16-2-17.1.

Petitioner also argues that the imposition of an out of school suspension under these circumstances, i.e. when the student’s conduct was not threatening and it was the student’s first offense, is in contradiction to current state law and policy, and that EPSD’s policy providing for the suspension of all students who commit vandalism is in violation of the standards set forth in § 16-2-17(a) and § 16-2-17.1.

2. EPSD

The District argues that the decision to suspend Doe was warranted and reasonable pursuant to the Code of Conduct and Student Handbook as well as Rhode Island law. While EPSD concedes that Doe is not a “disruptive student” under § 16-2-17(a), the District does argue that Doe’s conduct sufficiently represented a “demonstrable threat” warranting an out of school

suspension under § 16-2-17.1. Specifically, EPSD contends that not only was Doe’s conduct “bold and brazen, done in an area where 1600 students had access,” but also that the only potential definition or explanation for the phrase “Vandal Only” is in reference to a video game assault rifle. Though not explicitly threatening, Doe’s reference to this weapon was implicitly threatening especially when viewed in light of current school climate. EPSD maintains that this reference, standing alone, represents a demonstrable threat even though students and staff did not specifically express concern of a threat.

V. DECISION

- 1. Doe’s five day out of school suspension was not warranted under either § 16-2-17(a) or § 16-2-17.1 because Doe was neither a “disruptive student” nor represented a “demonstrable threat.”**

Recently, the Rhode Island General Assembly amended § 16-2-17.1 to limit the reasons for which districts may properly impose out of school suspensions. In full, this statute provides:

Suspensions issued shall not be served out of school unless the student’s conduct meets the standards set forth in § 16-2-17(a) or the student represents a demonstrable threat to students, teachers, or administrators.

In turn, § 16-2-17(a) provides, in pertinent part: “Each student, staff member, teacher, and administrator has a right to attend and/or work at a school . . . which is free from the threat, actual or implied, of physical harm by a disruptive student.” The Commissioner recently found that, in reading these two statutes together, a school district may properly impose an out of school suspension after finding that the student: (1) is a “disruptive student” as defined in § 16-2-17(a); or (2) represents a “demonstrable threat” as provided for in § 16-2-17.1. *See Student N. Doe v. Bristol-Warren Regional School District*, RIDE No. 21-044J (July 7, 2022); *Student E. Doe v. North Kingstown School Dept.*, RIDE No. 19-93K (Dec. 10, 2021); *Student E. Doe v. Barrington School Department*, RIDE No. 18-051A (Jan. 4, 2019).

Here, the District concedes that Doe was not a “disruptive student” as defined in § 16-2-17(a) and, therefore, this decision solely discusses whether Doe represented a “demonstrable threat” under § 16-2-17.1. For the reasons detailed *infra*, Doe’s conduct fails to meet the standards set forth in § 16-2-17.1 such that the District’s decision to suspend Doe for five days was not warranted or proper, regardless of whether such disciplinary action was imposed pursuant to school policy.

a. Doe’s conduct was not threatening to students, teachers, or administrators as contemplated in § 16-2-17.1.

While § 16-2-17.1 does not define “demonstrable threat,” the Commissioner has noted:

[T]he word ‘threat’ is defined as: ‘[a] communicated intent to inflict harm or loss on another or on another’s property, esp. one that might diminish a person’s freedom to act voluntarily or with lawful consent; a declaration, express or implied, of an intent to inflict loss or pain on another.’

See Student E. Doe, RIDE No. 19-93K (citing *Black’s Law Dictionary* (11th ed. 2019)). To date, the Commissioner has interpreted this statutory language as permitting out of school suspensions in instances where a student sent explicitly threatening text messages and social media messages to another student both on and off school grounds and where students engaged in a physical altercation during school hours. *See id.*; *see also Student N. Doe*, RIDE No. 21-044J.

Here, Doe’s vandalism, while certainly wrongful, cannot be found threatening in and of itself so as to justify an out of school suspension under § 16-2-17.1. Doe did not offer any testimony at the hearing, but both parties introduced conflicting testimony as to the alleged meaning of the phrase “Vandal Only,” with Petitioner asserting that Doe was referencing a clothing brand and the District asserting that Doe was referencing a video game assault rifle. Neither party offered any conclusive evidence as to Doe’s subjective meaning or intent in writing

“Vandal Only” on the bathroom wall so as to lead to any inference that the phrase may have been intended as threatening.

Moreover, neither party offered sufficient evidence as to the objective meaning or intent of this phrase. While district administrators testified as to the significance of other students reporting the action and the “brazen” nature of Doe’s misconduct, there is no evidence suggesting that district staff, teachers, administrators, students, or even the students who reported the graffiti perceived or understood the phrase “Vandal Only” to be threatening. Indeed, neither the police report nor the school incident report make any reference to the vandalism being threatening or otherwise potentially posing any risk of harm to other students. *See* Resp’t Exs. C, D. In her letter affirming Doe’s suspension, the Assistant Superintendent even confirmed that “the graffiti was not threatening.” Pet’r Ex. 2, Resp’t Ex. G. Instead, it is evident from the district administrators’ collective testimony that they were unaware of any possible negative meaning or reference for the phrase “Vandal Only” at the time they imposed, and upheld, Doe’s suspension.³ Such insufficient evidence simply does not support a finding that Doe “represent[ed] a demonstrable threat to students, teachers, or administrators” by communicating an intent to inflict harm so as to justify the issuance of a five day out of school suspension under § 16-2-17.1

Even if one were to assume that the phrase “Vandal Only” was in reference to a video game weapon, and that Doe intended to reference this weapon, such evidence would still be insufficient, in the present circumstances, to find that Doe “communicated intent to inflict harm [or] an intent to inflict loss or pain on another.” *See Student E. Doe*, RIDE No. 19-93K (citing

³ While the District argues that the administrators’ after-the-fact understanding that “Vandal Only” may have been in reference to a video game assault rifle justifies a finding that Doe’s graffiti was implicitly threatening, this argument cannot stand given the lack of evidence suggesting the graffiti represented a real or perceived threat.

Black's Law Dictionary (11th ed. 2019)). Students are known to play video games, some of which are violent, and to both discuss and write about these various video games and associated weapons during school hours. To date, this seemingly mundane conduct amongst students has not, without any additional negative or threatening factors, been deemed sufficient to justify an out of school suspension. *See E. Doe*, RIDE No. 18-051A.

Similar to the facts presented here, in *E. Doe* the Commissioner reversed the three day out of school suspension of a student who had discussed a school shooting with his peers, and what they would have done if they were the shooter, during lunch after crediting the principal and police department's findings that the student "posed no credible threat to school safety" regardless of the subject of his conversation. *See id.* Less egregious than the references made by the student in *E. Doe*, here Doe allegedly only made reference to a fictional video game weapon that was not directed at any individual or otherwise presented in a threatening manner; just as the school climate surrounding gun violence did not, standing alone, justify the imposition of an out of school suspension in *E. Doe*, neither does this same climate, standing alone, justify the imposition of such disciplinary action here. *See id.* Absent any additional aggravating factors or evidence of threatening intent, the simple alleged reference to a video game weapon does not warrant an out of school suspension under § 16-2-17.1.⁴

2. EPSD's Code of Conduct requiring suspensions for all acts of vandalism regardless of whether the student is "disruptive" or a "demonstrable threat" is in violation of § 16-2-17 and § 16-2-17.1, both on its face and in its application.

R.I. Gen. Laws § 16-21-21 requires:

Each school committee shall make, maintain, and enforce a student discipline code. The purpose of the code is to foster a positive environment that promotes learning. The department of elementary and secondary education shall provide necessary technical

⁴ Having found that Doe's out of school suspension was imposed contrary to law, the Commissioner finds that the disciplinary action was per se disproportionate and unreasonable.

assistance in the development of the student discipline code. The school committee shall cause the school discipline code to be distributed to each student enrolled in the district. Each student and his or her parent, guardian, or custodian shall sign a statement verifying that they have been given a copy of the student discipline code of their respective school district.

LEAs are granted broad discretion in drafting and implementing this student discipline code. *See* R.I. Gen. Laws § 16-2-9(a)(16) (“School committees shall have, in addition to those enumerated in this title, the following powers and duties: . . . (16) To establish standards for conduct in the schools and for disciplinary actions.”). Thus, it is the policy of this Commissioner to refrain from intervention in a local policy unless the policy is inequitable, exclusionary, “arbitrary, [or] contrary to state-wide academic policy.” *See R. Doe v. Warwick School Committee*, RIDE. No. 22-059K (May 8, 2024). However, by enacting the two instant controlling suspension statutes within the same chapter as § 16-2-9(a)(16), the Legislature made clear that the school committee’s power and discretion over student conduct and disciplinary policies is not absolute. Instead, this statutory scheme requires that the student discipline code enacted by all school committees comply with § 16-2-17(a) and § 16-2-17.1.

Pursuant to the Code of Conduct:

In all but the most extraordinary circumstances, it is expected that student discipline problems will be corrected by teachers and school administrators using corrective in-school measures. . . . However, in accordance with R.I. Gen. Laws § 16-2-17, a student may be suspended from school if the student commits serious infractions of school rules and/or exhibits persistent conduct that substantially impedes the ability of other students to learn and who has failed to respond to corrective rehabilitative measures presented by staff, teachers, administrators.

Pet’r Ex. 3, p.2; Resp’t Ex. A, p.2. In relevant part, the Code of Conduct provides: “The following **will** be grounds for suspension or expulsion: . . . 7. Destruction of or mutilation of

property[.]” *Id.* at p.3 (emphasis added). The District undisputedly relied on this provision in justifying Doe’s five day out of school suspension.

The term “suspension” is broadly defined in the Code of Conduct as “the denial of school privileges by the principal or his/her designee for no more than ten consecutive school days.” *Id.* Suspensions may be served in school or out of school; only if a suspension is being served out of school do the requirements of § 16-2-17(a) and § 16-2-17.1 become relevant. Thus, there is an important distinction between these two types of disciplinary actions that is not clarified by the Code of Conduct’s plain language definition. However, a full review of the Code of Conduct reveals that EPSD contemplated the term “suspension” to exclusively mean an out of school suspension, as contextually evidenced by the fact that the Code of Conduct uses the term “in school intervention” to reference in-school suspensions and “suspension” to reference out of school suspensions. *See generally id.*

In light of the Code of Conduct’s definition of “suspension,” as well as the use of the phrase “**will** be grounds for suspension,” it is clear that EPSD policy requires the school principal to issue an out of school suspension for all students found responsible for the “destruction or mutilation of school property,” including graffiti or other vandalism. *See id.* at p.3 (emphasis added). The Code of Conduct does not grant the principal any discretion to determine whether the student is a “disruptive student” or whether the student represents a “demonstrable threat” prior to imposing such disciplinary action, even though the policy does reference applicable Rhode Island statutory standards. *See id.* at p.2. To be clear, there are student actions that are inherently disruptive or threatening and therefore warrant the automatic imposition of an out of school suspension under school policy. However, it cannot be fairly said that all acts of vandalism, standing alone, will rise to the level of an out of school suspension and, therefore, the

Code of Conduct must allow the school principal discretion to consider whether any individual act of vandalism supports the imposition of an out of school suspension under § 16-2-17(a) and/or §16-2-17.1.

In addition, the District is in violation of § 16-2-17(a) and § 16-2-17.1 in its application of the Code of Conduct. In relying on the Code of Conduct to impose Doe's suspension, the District administrators' collective testimony made clear that they did not consider or confirm whether Doe's graffiti was threatening or otherwise harmful prior to imposing a five day out of school suspension. Moreover, the District introduced evidence and testimony confirming that all instances of school property destruction from October 2021 through February 2024 resulted in at least a two day out of school suspension, without regard to whether the student was disruptive or threatening. *See* Resp't Ex. E. A review of the student conduct resulting in such out of school suspensions ranged from "put[ting] potatoes in toilet," "dr[awing] a long line on the wall in the hall with a marker," and "wr[it]ing on classroom wall." *Id.* While these actions may have warranted an out of school suspension under either § 16-2-17(a), if the student was deemed disruptive, or § 16-2-17.1, if the action was threatening, the District's apparent repeated failure to consider these statutory standards renders it equally possible that the student conduct did not warrant the imposition of an of school suspension. This rigid application is inappropriate under § 16-2-17 and § 16-2-17.1.⁵

As the Code of Conduct represents a violation of Rhode Island law both as written and as applied, the District is required to amend the relevant provisions to allow for an individualized

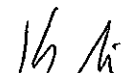
⁵ The Student Handbook incorporates the same Code of Conduct suspension provisions detailed *supra*. *See* Pet'r Ex. 4; Resp't Ex. B. For the same reasons discussed herein, this section of the Student Handbook must also be amended to ensure full compliance with § 16-2-17 and § 16-2-17.1.

determination when issuing out of school suspensions in order to ensure compliance with § 16-2-17 and § 16-2-17.1.⁶

VI. ORDER

For all of the above reasons:

1. Petitioner's Appeal is hereby granted; and
2. EPSD shall expunge the five day out of school suspension from Student E. Doe's disciplinary record; and
3. Any classroom assignments that Student E. Doe missed or was otherwise unable to complete while serving his suspension, for the time period of February 2, 2024 through February 9, 2024, shall not count towards calculating his final grade in those classes. EPSD shall convene a meeting involving Petitioner and knowledgeable district educators to determine whether additional tutoring is needed to assist Student E. Doe in any classes he continues to struggle with as a result of his suspension; and
4. EPSD shall amend its Code of Student Conduct, as well as the corresponding provisions in the Student Handbook, effective for the 2024-2025 school year, to comply with R.I. Gen. Laws §§ 16-2-17 and 16-2-17.1.



KAELYN R. PHELPS PRIGGE, ESQ.,
as Hearing Officer for the Commissioner


ANGÉLICA INFANTE-GREEN,
Commissioner

Date: May 15, 2024

⁶ Petitioner also impliedly raises a due process claim. However, her claims are without merit as the evidence undisputedly shows that Petitioner had the opportunity present her side of the issues before the District and “[her] post-deprivation hearing *de novo* before the Commissioner remedies any procedural inadequacy.” *Student E. Doe*, RIDE No. 19-93K; *Student M.G. Doe v. Coventry School Committee*, RIDE No. 0003-08 (Jan. 15, 2008); *Slattery*, 354 A.2d at 747.