

STATE OF RHODE ISLAND

COUNCIL ON ELEMENTARY
AND SECONDARY EDUCATION

E. DOE

vs.

BARRINGTON
SCHOOL DEPARTMENT

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DECISION

This is an appeal by The Barrington School Department (“Barrington”) from the decision of the Commissioner of Education (“Commissioner”) dated January 4, 2019 vacating a three-day out-of-school suspension of Student E. Doe (“E. Doe”) and ordering the removal of any documents referring to the suspension from E. Doe’s school record.

The pertinent facts were found by the Commissioner as follows. On February 28, 2018 E. Doe sat with six (6) other students in the Barrington Middle School cafeteria. The students were discussing the then recent school shooting in Parkland, Florida. After discussing what the students would do in the event a shooter came into the Barrington Middle School, four (4) of the seven (7) students began discussing what they would do if they were the shooter. The four (4) students frequently played a video game called *Fortnite* together, a game where players build forts and use weapons to try to eliminate other opponents. *Fortnite* specific grenades were mentioned in the conversation. E. Doe’s testified that his only participation was agreeing with everyone else that he would come through the front door, and then he ceased participating in the conversation. E. Doe didn’t consider the conversation to be a literal plan to hurt people, but rather “sort of a joke.”

A student in the cafeteria overheard the conversation and reported it to a parent. The parent made an anonymous tip to the Barrington Police Department. The Barrington Police interviewed the students involved that evening and communicated to the Barrington Superintendent the next morning that the students did not pose a threat and that no charges would be filed. Barrington searched the students' lockers that morning and found nothing out of the ordinary. Nonetheless the police presence caused concerns in the community and the Barrington Middle School Principal sent an email notifying parents, teachers, and administrators of the anonymous tip and that it was quickly determined that there was no threat to the community. Later that morning, E. Doe was interviewed by the Principal, Assistant Principal, and School Resource Officer, followed by a licensed social worker. The social worker concluded that E. Doe did not "pose imminent danger to himself or to others." Following the session with the social worker E. Doe was informed that the Principal decided to impose a three (3) day out-of-school suspension to begin immediately. E. Doe's mother was told that the suspension was for a violation of school policy, but, despite a request for a copy of the relevant policy, no policy was provided at that time. E. Doe's attorney wrote to the Barrington Superintendent to appeal the finding that E. Doe violated school policy and to demand that any record of discipline be removed from his school record. An "administrative team" consisting of the Superintendent, legal counsel, and the Barrington Middle School Principal and Assistant Principal heard the appeal on behalf of Barrington. On May 3, 2018 the Superintendent denied the appeal, noting that the School Department would not object if E. Doe wished to present the matter directly to the Commissioner.

On May 9, 2018, E. Doe wrote to the Commissioner and requested a hearing to appeal the decision of the administrative team upholding the three (3) day out-of-school suspension. An

evidentiary hearing was held on October 29, 2018. E. Doe argued that Barrington collected information illegally due to procedural deficiencies, that E. Doe never engaged in any threatening behavior, and that Barrington does not have a policy to measure these issues nor do they teach students what can and cannot be discussed in school about these matters. Barrington counters that the investigation was procedurally sound and that there is clear and overwhelming evidence that E. Doe participated in the conversation which amounted to violent or threatening speech. In the Decision and Order dated January 4, 2019, the Commissioner determined that the factual record makes clear that the suspension violated the Safe School Act, and that E. Doe was not provided necessary due process. Lastly, the Commissioner ordered all documents related to the suspension be removed from E. Doe's school record in accordance with the decision to overturn the suspension.

Barrington filed a timely appeal of the decision overturning the suspension. On appeal, Barrington contends that the Commissioner incorrectly applied a criminal standard for gauging a "true threat" instead of the standard in the Safe Schools Act, and that there was no due process error in either the notice of the suspension or in the interrogations conducted by Barrington. In response, E. Doe defends the decision on all grounds and asks the Council on Elementary and Secondary Education (the "Council") to affirm the Commissioner's decision.

The Council has reviewed the records, the briefs filed by the parties, and considered the arguments presented at oral argument. As noted by E. Doe, the Council's review is limited to a determination regarding whether the decision of the Commissioner is "patently arbitrary, discriminatory, or unfair." Altman v. School Committee of the Town of Scituate, 115 (R.I.) 399, 405 (1975). Further, the Commissioner found multiple grounds for vacating the suspension and

therefore each of the grounds relied upon must meet the standard for the Council to reverse the decision and reinstate the suspension.

First, the Commissioner determined that the suspension violated the Safe School Act. The Safe School Act prohibits out-of-school suspensions “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.” R.I.G.L. §16-2-17.1. The Commissioner found that the facts of this matter support the conclusion that E. Doe was not considered a demonstrable threat as evidenced by the Barrington Middle School Principal’s own email to the parents, teachers, and administrators. *Commissioner’s Decision at page 12*. Therefore, in order to issue an out-of-school suspension Barrington would need to meet the “standards set forth in § 16-2-17(a).” R.I.G.L. §16-2-17.1. Students, teachers, staff members, and administrators are guaranteed a school “which is free from the threat, actual or implied, of physical harm by a disruptive student.” R.I.G.L. § 16-2-17(a). In addition to the presence of a threat, the student making the threat must meet the standard as a disruptive student. “A disruptive student is a person who is subject to compulsory school attendance, who exhibits persistent conduct which substantially impedes the ability of other students to learn, or otherwise substantially interferes with the rights stated above, and who has failed to respond to corrective and rehabilitative measures presented by staff, teachers, or administrators.” *Id.* To overturn the suspension the Commissioner only needed to find that the factual record did not support findings that there was a threat of physical harm, or that the threat was not made by a disruptive student. The Commissioner went one step further and found that the factual record makes clear that E. Doe was not a disruptive student, nor that E. Doe posed a threat of physical harm. *Commissioner’s Decision at page 12*.

Noting the lengthy findings of fact, we agree with the Commissioner's determination that Barrington failed to meet the requirements of the Safe School Act, the standard of which was correctly applied. There are no grounds for reversible error in reaching that conclusion that meet the Council's standard of review. While upholding the Commissioner's decision based upon the Safe School Act is enough to leave the decision undisturbed, we look briefly at the other grounds for vacating the suspension.

The Commissioner outlined two (2) due process failures allegedly sufficient to overturn the suspension. The first was a lack of effective notice of the reason for the out-of-school suspension. *Commissioner's Decision at Page 13 (citing Mathews v. Eldridge, 424 U.S. 319 (1976))*. When E. Doe did finally receive notification of the policy allegedly violated it was stated that the behavior was a breach a school policy against "[t]hreat/intimidation." However, the Commissioner found that the Barrington Middle School Student Handbook contained no such reference. Giving Barrington the benefit of the doubt the Commissioner reviewed the specifics of the closest sections of the Student Handbook ("Disruptive Behavior" and "Safety") and determined that neither could be met under the facts of this case, specifically that Barrington determined that there was no threat to the school community.

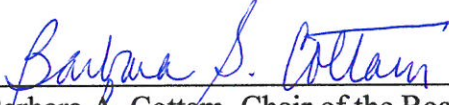
Finally, the Commissioner found that Barrington violated state law when it had a School Resource Officer present and participating in questioning E. Doe without first obtaining the oral consent of the parent or guardian. *See R.I.G.L. § 16-21.5-2*. Similar to the analysis regarding the School Safety Act above, we again note the lengthy findings of fact by the Commissioner in this matter. We find no error in the Commissioner's conclusion that two separate due process deficiencies provide grounds to vacate the out-of-school suspension that rise to the Council's standard of review.

Having considered all the arguments presented by Barrington, we find no error in the Commissioner's decision that requires the Council to reverse the decision in its entirety and reinstate the out-of-school suspension. No part of the Commissioner's decision is "patently arbitrary, discriminatory, or unfair", the standard of review in appeals to the Council. Altman v. School Committee of the Town of Scituate, 115 (R.I.) 399, 405 (1975). However, we do note the many fact specific findings required to reach this conclusion, and accordingly the limited precedential value of this decision in other matters.

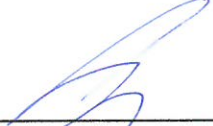
For the reasons stated herein, the decision of the Commissioner is affirmed.

The above is the decision recommended by the Appeals Committee after due consideration of the record, memoranda filed on behalf of the parties and oral arguments made at the hearing of the appeal on July 16, 2019.

Council on Elementary and Secondary Education


Barbara A. Cottam, Chair of the Board of Education

August 20, 2019


Amy Beretta, Appeals Committee Chair

August 14, 2019