

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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WILLIAM H<sub>3</sub> :

vs. :

TIVERTON SCHOOL :

COMMITTEE :

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DE C I S I O N

May 16, 1988

This matter was heard upon the appeal to the Commissioner of Education of William H. from a decision of the Tiverton School Committee suspending his son, W, from school for a period of six (6) days.

The Commissioner has jurisdiction to hear the appeal by virtue of the provisions of §16-39-2 of the General Laws of Rhode Island, as Amended. The matter was heard by the undersigned Hearing Officer under authorization from the Commissioner.

Due notice was given to the interested parties of the time and place of the hearing. Both parties were represented by counsel. Testimony was taken, a transcript of which was made, and evidence was presented. Counsel for both parties have submitted written briefs, a process which was completed on April 12, 1988. Upon testimony taken and evidence presented, we find the following:

1. William H and his son, W are residents of the Town of Tiverton.
2. W is a freshman (9th grade student) in the Tiverton High School.
3. The School Committee, upon the recommendation of the Administration, adopted by a vote of the Committee in open session on August 18, 1987,<sup>1</sup> the High School Code of Conduct.
4. W was suspended from school for three (3)<sup>2</sup> days beginning October 26, 1987.

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1] Joint Exhibit 4.

2] Respondent's Exhibit A.

5. The appellant appealed the suspension to the principal who met with him to discuss the matter. As a consequence, the principal reduced the three (3) day suspension to one (1) day.
6. W was suspended from school for six (6) days<sup>3</sup> beginning on January 14, 1988.
7. The appellant appealed the six (6) day suspension to the principal who upheld the suspension.
8. By letter dated January 14, 1988, the appellant appealed the suspension and the decision of the principal to the School Committee and requested to be placed on the agenda for the next Committee meeting.<sup>4</sup>
9. The appellant was notified by letter dated January 28, 1988 from the Clerk of the School Committee that the Committee had placed him on the agenda for Thursday, February 4, 1988 at 7:30 p.m. in Executive Session.<sup>5</sup>
10. Five members of the School Committee met with Mr. H on February 4, at which meeting the principal and assistant principal of the High School were present. After a lengthy discussion, the Committee, in the presence of the appellant, voted to uphold the suspension<sup>6</sup> of his son, W

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3] Respondent's Exhibit B.

4] Joint Exhibit 5.

5] Joint Exhibit 6.

6] Respondent's Exhibit D.

Neither the appellant nor his son testified in this case. The only witnesses called by the appellant were the principal and the assistant principal of Tiverton High School. Further, the appellant submitted no evidence to support his contention that the policy is vague, lacks sufficient procedural safeguards to satisfy due process requirements as set forth in Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729 (1975) and in opinions of the Commissioner of Education and that §16-2-17 is vague and may not empower the local school board to delegate the authority to suspend students to school administrators. Mr. H seems to base his entire case on the Commissioner's decision in the matter of The Parents of a Suspended Student vs. Bristol School Committee, February 1, 1983.

The School Committee contends that the Hearing Officer's right to review the adoption of and application of disciplinary rules has been restricted by the Board of Regents and attention is directed to R.I.G.L. §16-39-6 and the Board of Regents Regulation S.F. 6.3 and Student Doe vs. Burrillville School Committee, April 20, 1987. The School Committee cites a number of cases of the Commissioner of Education to support its position: Viveiros vs. Newport School Committee, Board of Regents, May 23, 1985; Grilli vs. East Greenwich School Committee, February 11, 1986; Jane Doe vs. Johnston School Committee, March 11, 1987; Student Doe vs. Burrillville School Committee, April 20, 1987; Douglas Porter vs. North Smithfield School Committee, September 16, 1987; Jane T.S.Doe vs. South Kingstown School Committee, October 1, 1987; Timothy Beausoleil vs. North Smithfield School Committee, September 16, 1987; and The Parents of a Suspended Student vs. Bristol School Commit-

tee, February 1, 1983. In addition, the School Committee cites R.I.G.L. §§ 16-2-16 through 16-2-18; the decisions of the Rhode Island Supreme Court in the matter of Hebert v. Ventetuolo, 480 A.2d 403 (1984) citing Belanger v. Matteson, 346 A.2d 124, 136 (1975), and Hayes v. U. S. Dist. No. 377, 669 F.Supp. 1519 (Kansas, 1987) in support of its position with regard to the Standards for Application of Student Code of Conduct.

The unrefuted testimony of the principal and the assistant principal is that sometime during the summer of 1986, a group called the Faculty Concerns Committee, which was comprised of four (4) teachers, two (2) administrators and a school board member, met and discussed discipline at Tiverton High School and proposed, developed and drafted some rules to be considered for implementation the following school year. This Committee met periodically during the 1986-87 school year to revise their draft and on July 22, 1987, after having been reviewed by the faculty, the report, together with its recommendations for a Code of Conduct, was submitted to the full School Committee for its consideration at a duly publicized Open Meeting. After considerable discussion, the School Committee made some suggestions for modification to the proposed policy and requested that the Faculty Concerns Committee take the suggested changes into consideration and bring the proposed Code of Conduct as might be modified back to the School Committee at its August 1987 meeting for consideration and action. At its regular meeting held on August 18, 1987, the School Committee voted unanimously to approve the High School Code of Conduct. (Joint Exhibit 4).

The principal further testified that by letter dated August 18, 1987, (Joint Exhibit 3), he sent a copy of the Code of Conduct to all parents and students of Tiverton High School. He also testified that he discussed the new policy with all students in grades 10, 11 and 12 during orientation sessions prior to the opening of school in September 1987.

The assistant principal testified that he distributed copies of the Code of Conduct to all incoming freshmen at their orientation prior to the opening of school in September 1987. He further testified that he spent considerable time discussing the document with the freshmen students because they were new to the High School and unfamiliar as to what would be expected of them.

Both principals testified that they conscientiously follow the procedure as outlined in the Code of Conduct which requires that prior to awarding a demerit, a face-to-face meeting is held with the student and when the student accumulates six (6) demerits, the parents of the student are so informed. The assistant principal testified that he informed Mr. H when his son had accumulated six (6) demerits. The appellant did not contradict that testimony.

Both principals also testified that the Code of Conduct, as well as the Board of Regents Regulations for Governing Disciplinary Exclusions of Students from School, are posted in conspicuous places throughout the school (i. e., cafeteria, homerooms, main office).

#### Conclusions of Law

The Rhode Island General Laws, as Amended, grant to school com-

mittees broad authority to determine standards for schools and students under their jurisdiction;

16-2-16. Rules and Regulations -Curriculum- The school committee shall make and cause to be put in each schoolhouse, rules and regulations for the attendance and classification of the pupils, for the introduction and use of textbooks and works of reference, and for the instruction, government and discipline of the public schools, and shall prescribe the studies to be pursued therein, under the direction of the department of education.

16-2-17. Suspension of pupils.- The school committee may suspend during pleasure all pupils found guilty of incorrigibly bad conduct or of violation of the school regulations.

16-2-18. Selection of teachers and superintendent - General Control of schools - Expenses. - The selection of teachers and election of superintendent, in such towns as do not unite for the employment of a superintendent, and the entire care, control, and management of all the public school interests of the several towns, shall be vested in the school committee of the several towns, and they shall also draw all orders for the payment of their expenses.

Goss v. Lopez, supra, states:

We do not believe that school authorities must be totally free from notice and hearing requirements if their schools are to operate with acceptable efficiency. Students facing temporary suspension have interests qualifying for protection of the Due Process Clause, and due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story. The clause requires at least these rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary exclusion from school.

We stop short of construing the Due Process Clause to require, countrywide, that hearings in connection with short suspensions must afford the student the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge or call his own witnesses to verify his version of the incident. Brief disciplinary suspensions are almost countless. To impose in each such case even truncated trial type procedures

might well overwhelm administrative facilities in many places and, by diverting resources, cost more than it would save in educational effectiveness. Moreover, further formalizing the suspension process and escalating its formality and adversary nature may not only make it too costly as a regular disciplinary tool but also destroy its effectiveness as part of the teaching process.

On the other hand, requiring effective notice and informal hearing permitting the student to give his version of the events will provide a meaningful hedge against erroneous action. At least the disciplinarian will be alerted to the existence of disputes about facts and arguments about cause and effect. He may then determine himself to summon the accuser, permit cross-examination and allow the student to present his own witnesses. In more difficult cases, he may permit counsel. In any event, his discretion will be more informed and we think the risk of error substantially reduced.

Requiring that there be at least an informal give-and-take between student and disciplinarian, preferably prior to the suspension, will add little to the fact-finding function where the disciplinarian has himself witnessed the conduct forming the basis for the charge. But things are not always as they seem to be, and the student will at least have the opportunity to characterize his conduct and put it in what he deems the proper context.

We should also make it clear that we have addressed ourselves solely to the short suspension, not exceeding 10 days. Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures. Nor do we put aside the possibility that in unusual situations, although involving only a short suspension, something more than the rudimentary procedures will be required.

The standard for short suspensions was further explicated by the United States Supreme Court in Board of Curators of the University of Missouri v. Horowitz, 435 U.S. 78 (1978), where the Court stated:

All that Goss requires was an informal give and take between the student and the administrative body dismissing him that would at least, give the student the opportunity to characterize his conduct and put it in what he deems the proper context.

There is thus no doubt that students may be suspended for ten (10) days or less on the basis of hearsay evidence without violating the Constitution.

The regulations of the Rhode Island Board of Regents (S.F.-6.3) are in accord:

Regulations for Governing Disciplinary Exclusion of Students from School:

1. That each school committee, in accordance with Section 16-2-16 of the Rhode Island General Laws, establish and post rules and regulations for the government and discipline of the public schools, such student discipline rules shall be distributed to students and their parents at the beginning of each school year and become effective only after they are widely distributed to students and parents;
2. that the student discipline code and all other rules governing student discipline shall be posted in conspicuous places within the school throughout the school year;
3. that each student discipline code and rules for governing student discipline shall clearly state the types of punishable offenses together with the penalty for the offenses;
4. that such student discipline code and rules for governing student discipline shall identify which administrative positions are authorized to suspend a student for ten (10) days or less, provided that all suspensions of more than ten (10) days shall occur only after formal action by the school committee;
5. that such student discipline code and rules for governing student discipline shall prescribe the procedure to be employed in excluding any student from school; and
6. that the prescribed procedure to be employed in the exclusion of any student shall provide as a minimum the following:

FOR SUSPENSIONS OF TEN (10) DAYS OR LESS

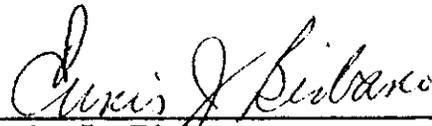
- a. that the student be given oral or written notice of the charges against him/her;

- b. that if the student denies the charges, the student be given an explanation of the evidence the authorities possess;
- c. that the student be given the opportunity to present his/her version; and
- d. that notice and hearing generally should precede the student's removal from school since the hearing may almost immediately follow the incident but if prior notice and hearing are not feasible, as when the student's presence endangers persons or property or threatens disruption of the academic process, thus justifying immediate removal from school, the necessary notice or hearing shall follow as soon as possible;
- e. that in the event a student has not attained the age of majority (18 years), notice containing the reason for suspension and the duration thereof be given to the parent or guardian. Such notice shall be given in the parent's spoken language, unless it is clearly not feasible to do so.

We have put the Code of Conduct of Tiverton High School (Joint Exhibit 4) and the actions taken by the Administration of the Tiverton School System in the suspension of the appellant's son, according to the unrefuted testimony of the principal and of the assistant principal, to the test of §16-2-16, §16-2-17 and §16-2-18 of the General Laws of Rhode Island, as Amended, as well as Goss v. Lopez, supra, and the Board of Regents Regulations for Governing Disciplinary Exclusions of Students from School (S.F.-6.3). We find that the Code of Conduct and the actions of the Administration in this case pass the test of the cited statutes, Regulations and Court Decisions. Since no testimony or evidence was presented with regard to any "substantial academic loss" of the suspended student (i.e., loss of graduation, loss of right to take final exam-

inations, automatic failure in courses), the Hearing Officer is not required to address this question. However, we would caution the School Committee to carefully consider these criteria when dealing with any future suspensions of students.

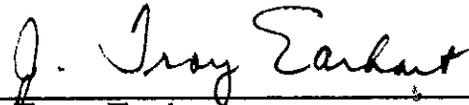
Accordingly, the appeal is denied.



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Ennis J. Bisbano  
Hearing Officer

Approved:



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J. Troy Earhart  
Commissioner of Education

May 16, 1988