

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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JANE A.H. DOE

vs.

TIVERTON  
SCHOOL COMMITTEE  
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D E C I S I O N

JUNE 27, 1989

This matter was heard on September 22, 1988 upon appeal to the Commissioner of Education of Student Jane A.H. Doe from a decision of the Tiverton School Committee suspending her from school for a period of three (3) 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 briefs, a process which was completed by October 6, 1988.

The respondent moved to dismiss the appeal in that as a matter of law and regulation, the Hearing Officer's right to review the application of disciplinary rules has been restricted by the Board of Regents in its exercise of its administrative right to preempt this area. In support of its position, respondent cites R.I.G.L. §16-39-6, Board of Regents Reg. S.F.-6.3 and Student Doe II vs. Burrillville School Committee, Commissioner of Education, (April 20, 1987).

A reading of §16-39-6 reveals that the Board of Regents has the authority to prevent appeals for trifling and frivolous cases. And, Board of Regents Reg. S.F.-6.3 does prescribe definitive procedures to be utilized by school committees concerning suspensions of ten (10) days or less

and those of ten (10) days or more. However, neither of those citations address the question of academic loss.

On the other hand, Student Doe II, supra, does address the question of academic loss. In that decision, the Commissioner stated:

... We note that the School Committee's policy also would sanction the loss of academic credit for the days missed. (S.C.-A) We have pointed out elsewhere (John Grilli, et al vs. East Greenwich School Committee, Commissioner of Education, February 11, 1986) that we have not yet ruled on the legality of such a rule or on the procedural requirements which might have to be followed in such cases. We decline to rule on such issues in this case, when they have not been fully argued on the record.

It is our decision that the Hearing Officer is not restricted in his right to review the application of disciplinary rules and the motion to dismiss is denied.

Respondent also moved to dismiss the appeal on the basis that the Code of Conduct of the School Committee has already passed muster. William C. Hill, Sr. vs. Tiverton School Committee, Commissioner of Education, May 16, 1988; and, that in Jane T.S. Doe vs. South Kingstown School Committee, Commissioner of Education, October 1, 1987, the Commissioner found that a twenty (20) day suspension is in and of itself not an excessive impact upon a student's academic progress. In neither of the two cases cited was the issue of academic loss raised by the parties or addressed by the Commissioner. Accordingly, the motion to dismiss is denied.

Having set aside the two motions of the respondent to dismiss the

appeal, we proceed to address the merits of the case.

Issue to be Decided

Did the application of Tiverton's Code of Conduct in the case of Student Doe's three (3) day suspension in March 1988 cause Student Doe to suffer "substantial academic loss"?

Upon the testimony taken and the evidence presented, we find the following:

1. Student Doe is presently a 12th grade student at Tiverton High School.
2. Student Doe at the time of the suspension was an 11th grade student at Tiverton High School.
3. During the 1987-88 school year, Student Doe was suspended for a period of three (3) days between March 14-16, 1988.
4. Student Doe appealed the suspension in accordance with the established procedures in existence in the Tiverton School Department.
5. At its meeting of May 24, 1988, the Tiverton School Committee rendered a decision denying the appeal.
6. In accordance with established school committee policy Student Doe was denied the opportunity to make up tests and other work missed during the suspension and received a zero for the test and a zero for each of the days missed in homework and class participation.

The appellant testified that she was suspended from Tiverton High School for demerits for three (3) days -- March 14, 15, 16, 1988. She further testified that as a result of her suspension, she missed course-work in all her subjects as well as examinations (tests) in French and English. She also missed classwork and homework in all subjects receiving a zero for each of the three (3) days in homework and class participation as well as a zero in each of the tests she missed during her suspension, although she made a request to make up the missed tests in English and French.<sup>1</sup> She testified that she was told by each of the teachers that she could not make up any of the work she missed during her suspension because "school policy prevents such makeups during suspensions.". She contends that her grades for the quarter and year dropped as a result of the zeroes she received and not being allowed to make up the missed work. The appellant also testified that had she been suspended for three (3) different days, she would not have missed the tests in English and French and would not have received zeroes as a result of her suspension. She further testified that when she and other students are absent for reasons other than suspension, such as illness, they are allowed to make up all work missed.

The French teacher and Guidance Counselor were called as adverse witnesses by the appellant. Their testimony supported the testimony of the appellant with regard to (1) that she was suspended for three (3) days,

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<sup>1</sup>The appellant was allowed to make-up work she missed in Art class during the suspension according to her testimony.

(2) that she missed a test in both English and French classes, (3) that she missed homework and classwork in both subjects, (4) that in accordance with school policy, she was denied the opportunity to make-up the tests, homework and classwork missed and received zeroes in each category, (5) that she, as any other student, would suffer some academic loss as a result of not being allowed to make-up the tests and other work missed during the suspension<sup>2</sup> and (6) that the policy as written and applied discriminates against those students who happen to miss a test during the period of their suspension.<sup>3</sup>

Respondent argues that Student Doe had no failures in any of her courses at the end of the third term, when her suspension took place, nor did she have any failures for the 1987-88 school year. In support of its argument, respondent introduced Student Doe's report card for the 1987-88 school year.<sup>4</sup> The School Committee argues further that ten (10) day suspensions or less are not significant enough to require due process safeguards. Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729 (1975). Respondent also argues that the appellant failed to prove "significant" academic loss and only established the "typical academic loss occasioned by missing any class". It also renews its notice that the Hearing Officer take administrative notice of the decision in the matter of William C. Hill, Sr. vs. Tiverton School Committee, supra. Respondent argues that in that case the Commissioner established the standard of "substantial academic loss" (i.e., loss of graduation, loss of right to make-up final examinations, automatic failure in

2]See Transcript, pp. 55-57.

3]See Transcript, p. 49.

4]See Joint Exhibit 1.

courses). It directs the Hearing Officer's attention to that decision as well as Goss, supra; Viveiros vs. Newport School Committee, Board of Regents, May 23, 1985; Student Doe II vs. Burrillville School Committee, Commissioner of Education, April 20, 1987; Douglas Porter vs. North Smithfield School Committee, Commissioner of Education, September 16, 1987; and Hayes v. U.S. District No. 377, 669 F.Supp. 1519 (Kansas, 1987). Respondent also argues that the Commissioner has already found that a twenty (20) day suspension does not negatively impact upon academics. Jane T.S. Doe vs. South Kingstown School Committee, Commissioner of Education, October 1, 1987.

In conclusion, respondent argues that the suspension of Student Doe was proper because there was no evidence of "substantial academic loss" and secondly, that the Committee should be entitled to apply brief disciplinary suspensions as effective teaching tools without being dissuaded from doing so by the Commissioner's absence of appellate standard for "substantial academic loss", causing not merely truncated trial-type procedures but full-blown, formalized administrative appeals of a disruptive and costly nature.

Appellant argues that in William C. Hill, Sr., supra, and The Parents of a Suspended Student and the Student vs. The School Committee of the Town of Bristol, Commissioner of Education, February 1, 1983, the Commissioner chose to use the generalized term, "substantial academic loss" instead of a clear and single statement of the three instances in which

substantial academic loss occurs. Appellant further argues that the phrase "substantial academic loss" is not meant to be restrictive but rather it was meant to be expansive and the examples stated are just that, examples of clear-cut cases of "substantial academic loss".

Appellant also argues that for suspensions of ten (10) days or less, school committees have broad discretionary authority under law, regulations and decisions of the United States Supreme Court, especially Goss, supra, and, the Commissioner may be restricted in his authority to review such actions of the School Committee except when the student has suffered substantial academic loss or when the School Committee has acted arbitrarily, capriciously, or in bad faith. In support of its position, appellant cites Student Jane T.S. Doe, supra; Student Doe II, supra; Bogart vs. Middletown School Committee, Commissioner of Education, June 2, 1988, and Margaret A. Bogart vs. Middletown School Committee, Commissioner of Education, July 29, 1988. Appellant directs the Hearing Officer's attention to p.5 of Student Doe, II, supra, where the Commissioner ruled that the five (5) day suspension should be upheld but that the student should be allowed to make-up any missed assignments.

A review of the Commissioner's decision in William C. Hill, Sr. supra, reveals that the Commissioner did not address the issue of academic loss because the issue was not raised or argued by the parties. However, the Commissioner did caution the School Committee to carefully consider academic loss when dealing with any future suspensions of students for ten (10) days or less. The Commissioner stated:

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.

Clearly, the Commissioner of Education only considered the application of the Code of Conduct to the specific case in question and found that in that particular case, the Code of Conduct passed muster.

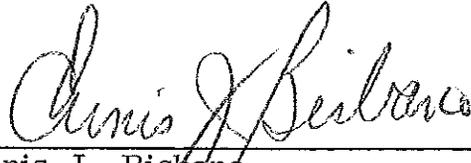
Respondent cites Jane T.S. Doe, supra, in arguing that the Commissioner has ruled that suspensions of twenty (20) days are not significant and as a result do not cause "substantial academic loss" and do not negatively impact upon academics. A review of that decision reveals no reference to academic loss or significance of twenty (20) day suspensions. The only thing that the Commissioner did was to reduce the forty-five (45) day suspension, because he considered it too harsh, to the number of days that the appellant had already served suspension, which happened to be twenty (20) days.

Respondent argued that "substantial academic loss" is restricted to only "loss of graduation, loss of the right to take final examinations, automatic failure in courses", citing William C. Hill, Sr., supra; Goss, supra; and The Parents of a Suspended Student and the Suspended Student, supra.

Appellant contends that the three (3) criteria stated as "substantial academic loss" are only examples of such loss and are not all inclusive.

This Hearing Officer is persuaded by Respondent's argument in this regard and has determined that "substantial academic loss" is restricted to only "loss of graduation, loss of the right to take final examinations, automatic failure in courses".

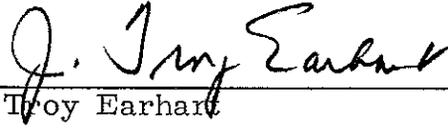
Accordingly, we find that the application of the Code of Conduct in the case of Student Doe's three (3) day suspension did not cause Student Doe to suffer "substantial academic loss" and, it is our decision to deny the appeal.



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Ennis J. Bispano  
Hearing Officer

Approved:



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J. Troy Earhart  
Commissioner of Education