

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

-----  
JOHN S. H. DOE

vs.

WARWICK SCHOOL  
COMMITTEE  
-----

D E C I S I O N

December 27, 1989

This matter was heard on November 16, 1989 upon appeal to the Commissioner of Education of John S. H. Doe from a decision of the Warwick School Committee to suspend him from school for the remainder of the 1989-90 school year.

The Commissioner has jurisdiction to hear this appeal by virtue of the provisions of §16-39-2 of the General Laws of Rhode Island, 1956 as Amended. The matter was heard de novo by the undersigned Hearing Officer under authorization of the Commissioner of Education.

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

1. John S.H. Doe, a student at Toll Gate High School, was suspended from school by the Assistant to the Superintendent of Schools on October 12, 1989 for a period of ten (10) days.
2. On October 20, the Assistant to the Superintendent wrote a letter to Student Doe's parents, the text of which reads:

This is to inform you that your son John, a student at Toll Gate High School, is under suspension for a period of ten days. A recommendation has been made to the Warwick School Committee that this suspension be continued for the remainder of the school year.

The reason for your son's suspension is possession of two deadly weapons namely a

25mm automatic handgun and a 4" buck knife on Wednesday October 11, 1989.

You are entitled to a hearing before the Warwick School Committee before any additional disciplinary action, including suspension for the remainder of the school year, is imposed. A hearing has been established for you on October 24, 1989 at 8:00 p.m. in the School Committee Room of the Warwick Public Schools Administration Building, 34 Warwick Lake Avenue. Your son should be in attendance with you at this hearing. You are entitled to be represented by counsel. The hearing will be a private one before the School Committee unless you request otherwise.

If you have any questions regarding this matter, please telephone me at 737-3300.

3. The School Committee held a hearing on October 24 at which Student Doe and his father were present and participated in the hearing. They appeared pro se.
4. By letter dated October 26, the Assistant to the Superintendent informed the appellant of the School Committee's decision. The text of his letter reads:

The Warwick School Committee at the hearing conducted for your son on Tuesday, October 24, 1989 voted to suspend him from participation in formal educational and social activities at Toll Gate High School for the remainder of the 1989-90 school year.

This suspension is decided without depriving your son or his representatives of the right to appeal the decision of the School Committee in writing to Dr. Troy Earhart, Commissioner of Education, 22 Hayes Street, Providence, RI 02908.

If there are any changes in this matter, we will notify you immediately. Furthermore, if you have any questions regarding this matter, please contact me at 737-3300, ext. 2202.

5. At the hearing before the Commissioner the School Committee's attorney presented a copy of the transcript of the October 24th hearing before the School Committee including all exhibits presented at the hearing before the Committee and a copy of the letter of October 26th<sup>1</sup> to the appellants.
6. The charges concerning Student Doe's conduct (See Finding #2) were not in dispute at either the hearing before the School Committee on October 24 or the hearing before the Commissioner.

The appellant's attorney contends that the action of the Committee taken on October 24 suspending Student Doe from school for the remainder of the 1989-90 school year is "grossly disproportionate to the incident which occurred". He also contends that such a suspension will cause the appellant to suffer "substantial academic loss" as defined in previous decisions of the Commissioner of Education. He further contends that there might be a deprivation of due process rights in that the attorney for the School Committee acted as both prosecutor and advisor to the Committee at the hearing held on October 24th and that the School Committee when it went into Executive Session on that evening to arrive at its decision, including the Superintendent of Schools, Assistant to the Superintendent, Principal, Assistant Principal and attorney in its deliberations and discussions while arriving at its decision. Counsel for the appellant contends

---

<sup>1</sup>]The transcript of the hearing of October 24th together with the exhibits and the letter of October 26th are part of the record of the hearing before the Commissioner.

that the appellant was not afforded the opportunity to witness or to participate in those deliberations as were those mentioned above. Appellant requests that the Commissioner grant an Interim Order that Student Doe be "provided with absolutely comparable educational tutoring starting Monday, or to order him back to school and have the matter continued for purposes of a full blown evidentiary hearing over substantial academic loss". Let us address the two preliminary issues of "substantial academic loss" and due process denial prior to addressing the salient issue of "the punishment being too harsh to fit the crime".

Attorney for the appellant is in error when he attempts to use the standard of "substantial academic loss" to suspensions of greater than ten (10) days. The Commissioner in Jane A.H.Doe vs. Tiverton School Committee, June 27, 1989, and in The Parents of a Suspended Student and the Student, vs. The School Committee of the Town of Bristol, February 1, 1983, clearly states that "substantial academic loss" as a standard of review applies to only suspensions of ten (10) days or less and even then, only requires that school committees grant suspended students a hearing involving more of the standards of due process than are normally required in cases dealing with suspensions of ten (10) days or less. The case before us involves a suspension of greater than ten (10) days. Therefore, the "substantial academic loss" standard does not apply.

With regard to the second procedural violation which counsel for the appellant contends, that the School Committee involved the

Superintendent of Schools, Assistant to the Superintendent, Principal, Assistant Principal and Attorney in its deliberations in executive session while arriving at its decision, we find that the testimony does not support that the deliberations were tainted by their involvement. According to Mr. Tarlian's testimony, they were in attendance in executive session only to provide back-up information, if requested. From the testimony, it has not been shown that they provided any such information. Therefore, the procedural objection raised by appellant is denied. However, we wish to make it clear that our position is that when school committees are deliberating in executive session to arrive at decisions involving the suspension of students and are subject to due process constraints only school committee members and possibly their secretary who is responsible for record keeping should be present in the executive session. School committees place their decisions in jeopardy if they include others in their deliberations and consider information outside that contained in the record made at the hearing. Such procedures raise an inference that the resulting decision is not in conformance with due process. Such inference has, however, been rebutted in the case before us.

The facts in this case are not in dispute. On October 11, 1989, Student Doe brought to school a non-functioning 25mm automatic handgun which he claims that he intended to trade with another student for a "splat master", a pistol which shoots paint pellets and is used in survival type games usually played by adults. The gun contained no firing pin nor did it contain any ammunition. In addition, Student Doe took with him

<sup>2</sup>  
2] See Appellant's Exhibit D which is a report from the Warwick Police Department

to school on the day in question a hunting knife with an illegal size blade of four (4) inches. According to the testimony of Student Doe, he was to trade the gun with the other student before school began. However, the other student was late on that day, and as a result, the trade did not take place. Appellant testified that he did not show the gun to anyone nor did he flash it around. Because he was going on a field trip to the Alton Jones Campus of the University of Rhode Island, he decided to take the gun with him rather than to leave it in his locker. So, he discreetly placed the gun in his pocket. Appellant also testified that he took the knife with him to the field trip in order to "take moss samples" or to pick up bugs off trees. He testified that he took that particular knife with him instead of a smaller Swiss Army knife by mistake. Appellant states that he had no malicious intent and that his actions on that day were only "stupid errors in judgment".

Mr. Julius J. Breit, the Assistant Principal, testified that he was informed by a student that Student Doe had taken a gun to school. As a result, he searched Student Doe's locker but found only an empty holster. He proceeded to the Alton Jones Campus where he confronted Student Doe and directed him to empty his pockets because he denied having a gun in his possession. Student Doe took a knife and a gun out of his pocket. Mr. Breit confiscated the gun and the knife and returned to Toll Gate High School together with Student Doe. They appeared before the Principal, Robert J. Shapiro, who told Student Doe that he was being suspended from school for a period of five (5) days and then proceeded to call Student Doe's

father and the Warwick Police. The Assistant to the Superintendent, Principal and Assistant Principal all testified that Student Doe is a "good student" who has never been disciplined in school before for any reason. They also testified that they do not consider him to be a threat to himself or anyone else. Mr. Henry S. Tarlian testified that he was directed by the School Committee to verbally inform Student Doe's parents following their action of October 24, 1989, suspending him for the remainder of the 1989-90 school year, that if Student Doe would undergo psychiatric evaluation and counselling, he could apply to the School Committee for re-<sup>3</sup>consideration of the suspension. Student Doe has undergone a psychiatric evaluation by Dr. David W. Pearson, Medical Director, Associates for Adolescent and Family Psychotherapy, on November 9, 1989, (See Appellant's Ex.E) and Dr. Pearson has found Student Doe is not a potential danger to others, and that he considers him to be one of the least likelier boys that he has seen to commit violent acts.

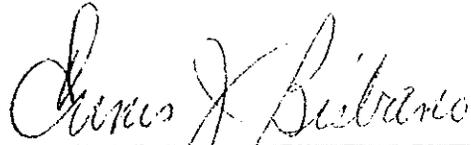
Although this is a de novo hearing, the Commissioner of Education has authority to direct a remand when circumstances so warrant. Since the School Committee has conveyed to the parents of Student Doe that if he underwent psychiatric evaluation he could apply for reconsideration of their action suspending him for the remainder of the school year, and because Student Doe's parents complied with that directive and have presented to the School Committee through this hearing the findings of Dr. Pearson<sup>4</sup> as a result of his psychiatric evaluation, this matter is remanded to

---

3] See School Committee Executive Session minutes of October 24, 1989.

4] Dr. Pearson states that he "sees no reason why he should not be permitted to return to school and participate as a full student".

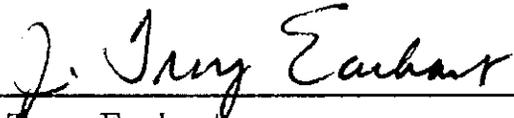
the School Committee for a reconsideration in accordance with its stated directive within thirty (30) days of the date of this decision. Should the parties be unable to reach a satisfactory resolution within the thirty (30) days as prescribed above, the matter shall be immediately referred to this Hearing Officer for a determination based on the record as submitted.



---

Ennis J. Bisbano  
Hearing Officer

Approved:



---

J. Troy Earhart  
Commissioner of Education

December 27, 1989