

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

AND

PROVIDENCE PLANTATIONS

\*\*\*\*\*

STUDENT DOE

V.

BRISTOL/WARREN REGIONAL SCHOOL DISTRICT

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DECISION

Held: Student Doe has not  
been shown to be  
ineligible to repeat  
his senior year at  
Mt. Hope High School.

DATE: JANUARY 6, 1997

### Travel of the Case

On November 7, 1996 Student Doe filed an appeal from the Superintendent's decision denying his request to attend Mt. Hope High School.<sup>1</sup> The matter was heard on November 20, 1996 and the transcript received on November 25, 1996.

At the hearing Student Doe appeared pro se, and the school district presented evidence and argument through counsel.

### Issue

Is Student Doe eligible to attend Mt. Hope High School?

### Position of the Parties

#### Student Doe

Student Doe's position is that there is presently no legal impediment to his attending Mt. Hope High School to complete the courses he needs to graduate. Student Doe admits he was suspended in May of school year 1995-96, but denies that he subsequently dropped out of school. He presses his eligibility to attend and repeat his senior year and asserts that he is a Bristol resident, and was only seventeen at the beginning of this school year. Although he admits to several acts of misconduct during school year 1995-96, he argues that he is not currently under suspension. At this point in time he claims he is more

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<sup>1</sup>Neither of the parties to this dispute raises the issue of the need for hearing by the regional school committee, perhaps because the dispute initially centered around whether or not the student was a resident of the district, and our residency law, 16-64-6, does not make hearing before the school committee a prerequisite to hearing before the Commissioner.

serious about his education and is intent on completing the four (4) courses he needs to graduate and receive his high school diploma.

Bristol-Warren Regional School Committee

Counsel for the School Committee asserts that Student Doe is not entitled to attend Mt. Hope High School for several reasons:

- a) he is not a resident of Bristol.<sup>2</sup>
- b) he dropped out in May of the prior school year.
- c) he was an adult when he sought to re-enter Mt. Hope High School, and his age disqualifies him from attending.
- d) if allowed to return to Mt. Hope High School he would be receiving a fifth year of high school.
- e) there is an outstanding disciplinary matter which has been referred to the Superintendent, but not yet acted upon by the School Committee.

Considering all of the above-listed reasons, the School Committee asserts that Student Doe is not entitled to attend Mt. Hope High School. The district has, nonetheless, offered to provide Student Doe with tutoring services in order for him to complete the necessary course work for graduation (Tr. pp. 35-52). In the alternative, the district states that it stands ready to pay Student Doe's tuition for the "Running Start" program at CCRI, which would

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<sup>2</sup>Counsel described the residency issue as a "non-issue", "in that Student Doe is an adult who has finished the 12th grade". (Tr. p. 34). We are not certain that the School District continues to raise the issue of residency within the district.

also enable him to obtain a high school diploma. (Tr. p. 51). In any event the school district is not prepared to voluntarily readmit Student Doe because he is an adult who dropped out and now wants to return for a fifth year of high school. The district's position is that under such circumstances it has no statutory obligation to educate Student Doe. (Tr. p. 36).

#### Findings of Relevant Facts

- Student Doe presently resides with another adult in Bristol, Rhode Island. He is presently eighteen years of age, which he attained on September 23, 1996. Tr. pp. 7-8.
- Until the end of school year 1995-1996 he resided with his legal guardians,<sup>3</sup> his aunt and his uncle in the Town of Bristol. He has resided with his aunt since he was thirteen years old. Tr. pp. 9-11, 33.
- Student Doe's mother lives in Massachusetts and his father is deceased. He has not lived with his mother since he was eight (8) years old. Tr. p. 10.
- On or about May 22, 1996 Student Doe was suspended for the period May 16 through May 29, 1996 for smoking in the school lavatory-- third offense. S.C. Ex. A.
- Given his cumulative disciplinary record for school year 1995-1996 at that point in time, the school principal referred the matter to the Superintendent for further disciplinary action and possible long-term exclusion from school. Tr. p. 52; pp. 64-66.
- In attempting to contact his aunt regarding a potential hearing on the issue of a long-term exclusion from school, school officials were advised by Student Doe's aunt that she was no longer his guardian.<sup>4</sup>

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<sup>3</sup>Student Doe testified that the Family Court in Pittsfield, Massachusetts appointed his aunt and uncle his legal guardians. The school district does not have any records regarding legal guardianship. Tr. pp. 37-38, 66-67.

<sup>4</sup>We interpret this to mean that she declined to function as his legal guardian.

- On making contact with Student Doe's mother, school officials were advised that Student Doe would be going to Massachusetts to live with her and attend school there. Student Doe's mother verified this information in a June 5, 1996 letter. Tr. p. 53.
- The principal testified that Student Doe "tried to return to school" after the suspension ended on May 29th, but that it was clear (to the Student) that he could not come to school until the hearing took place and until a parent or guardian came into the school (Tr. p. 68). But for the pending disciplinary action and the district's need to contact a legal representative for a minor student, Student Doe would have returned to school. Tr. pp. 68-69.
- The principal testified she did not know on what date Student Doe first requested to return to Mount Hope High School for school year 1996-97, and her records did not indicate whether his request to be readmitted was made before or after the date on which he turned eighteen (18) i.e. September 23, 1996. Tr. pp. 72-73.
- Student Doe testified that he requested to be readmitted prior to attaining age eighteen (18), with his initial request being made to the Superintendent prior to the beginning of school year 1996-1997. Tr. p. 74.
- Student Doe passed only two of his courses in school year 1995-96 (S.C. Ex. B.) and needs to pass four (4) additional courses in order to graduate. Tr. p. 26.
- There was disciplinary action pending against Student Doe for his cumulative record of misconduct during school year 1995-96. The School Committee has not yet been presented with a recommendation from the Superintendent regarding further exclusion of Student Doe from the high school. Tr. pp. 64-65.

#### Decision

The Regional School Committee advances five grounds on which Student Doe is ineligible to attend the high school. Three of the five grounds are based on facts which are not supported in the record before us. (See (a) through (c) of Positions of the Parties, page 3.) First, Student Doe clearly resides in Bristol, where he has resided

consistently for the past several years. The record confirms that as of the start of this school year, he lived on his own as an emancipated minor, residing with an adult roommate in the Town of Bristol. As of the beginning of the school year 1996-97, the information received by school officials that Student Doe would be moving to Massachusetts to reside with his mother and attend school there had clearly proved to be incorrect.

The record does not show, nor did the principal so testify, that Student Doe "dropped out" of school. What is demonstrated on the record are the facts that in May of 1996 school officials made attempts to proceed with a long-term disciplinary sanction, but were frustrated in doing so by the disclaimer of legal responsibility by his aunt, and the statement of his biological mother that he would be going to live with her in Massachusetts. Student Doe tried to return to school after his suspension for smoking ended, but given the circumstances at that time, he was not allowed to return.

It is true that Student Doe turned eighteen on September 23, 1996. However, he clearly asserted his intent to continue in attendance at Mt. Hope High School prior to attaining the age of majority. In fact, unrebutted testimony showed that he asserted his entitlement to attend before the start of the current school year. But for the refusal of school officials to admit him, he would have been in attendance at the time of his eighteenth birthday. We

are aware of no statutory disqualification for students who attain age eighteen in the regular course of their high school attendance. We would suspect that many seniors reach age eighteen prior to graduation from high school. The existence of an adult education system does not preclude ongoing attendance in high school by those students who attain age eighteen in the course of their continuing enrollment. Therefore, the exclusion of a student continuously enrolled in high school because he/she attains eighteen years of age is not supported by state law or regulation.

Similarly, we are unaware of any statute, rule or regulation which would prevent seniors who do not meet graduation requirements from completing the necessary credits in the subsequent school year. While the normal expectation is that four (4) years of high school should be sufficient to meet the minimum requirements set by the state through the Basic Education Program, as well as any additional requirements imposed by a school district, this is not always the case. Student Doe's failure to obtain the necessary credits within four (4) years does not render him ineligible to attend for what would be his fifth year at the high school.

Lastly, the pendency of disciplinary action for misconduct occurring in school year 1995-1996 does not disqualify Student Doe from attendance. As of the date of the hearing there had been no formal action on any

outstanding disciplinary matters, and formal action is a prerequisite to long-term exclusion from school for disciplinary reasons. Regulations of the Board of Regents Governing Disciplinary Exclusions of Students from school<sup>5</sup> require substantial procedural due process prior to any long-term exclusion for disciplinary reasons.<sup>6</sup> If the exclusion precedes formal hearing before the School Committee, the necessary notice and hearing are required "as soon as practicable". Given that the only supportable basis<sup>7</sup> for Student Doe's ongoing exclusion was the alleged misconduct, we are constrained to find that there has to date, been no notice or hearing before the School Committee as required by Regents' Regulations. We must assume that the School Committee has not proceeded with timely notice and hearing over the course of an entire semester, because of Student Doe's purported ineligibility to attend. Nonetheless, it is incumbent on the School Committee to follow Regents' regulations with regard to disciplinary exclusions.

We find that the grounds asserted contain no support, either factually or legally, to exclude him from school. Absent further valid action of the regional school committee, Student Doe is entitled to be readmitted

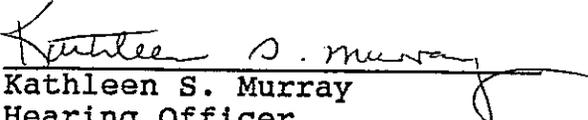
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<sup>5</sup>Regulations adopted July 8, 1976.

<sup>6</sup>Unless the student's presence endangers persons or property or threatens disruption of the academic process.

<sup>7</sup>We make no ruling on whether the misconduct described in the record can, at this point in time, form the basis of a valid exclusion from school.

immediately. We would hope that if appeal is taken from this decision, pending any further review and absent a valid exclusion of Student Doe for disciplinary reasons, Student Doe would be assisted in his efforts to complete requirements for graduation.

  
Kathleen S. Murray  
Hearing Officer

Approved:

  
Peter McWalters  
Commissioner

DATE: JANUARY 6, 1997