

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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STUDENT JOHN C.M. DOE	:
	:
VS.	:
	:
COVENTRY SCHOOL COMMITTEE	:
	:

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DECISION AND INTERIM ORDER

Held: Student suspension invalid  
because of due process  
violations and excessive  
length.

Date: November 19, 1997

## Introduction

This case concerns an appeal by the parents of student Doe from the September 9, 1997 decision of the Coventry School Committee to suspend their son from school for the remainder of the first semester.<sup>1</sup>

For the reasons set forth below, we sustain the appeal.

## Background

Student Doe is 16 years old. He completed his sophomore year at Coventry High School in June 1997. He is an excellent student with no prior disciplinary record.<sup>2</sup>

School commenced for the 1997-98 school year on August 28, 1997. Student Doe did not report to Coventry High School on that date for the opening of school. Instead, he was driven to the front entrance of the High School by his older brother shortly before noon. At that time, student Doe stepped out of the car, removed all of his clothes except for his socks and shoes, put his undershirt and underpants on his head, covered his head with a see-through mesh bag he had retrieved from his parents' garage that morning, and entered the school. Student Doe then ran down the corridor and past the cafeteria which has full-length glass windows facing the hallway. Approximately 600 students were in

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1 The Commissioner of Education designated the undersigned to hear and decide this appeal. Hearings were conducted on October 3, 8, 14, 17 and 20, 1997.

2 There was some testimony concerning student Doe's involvement in a fight the last week of school in June 1997, but there is no record of any disciplinary action taken with regard to such an incident.

the cafeteria at first lunch when the hooded student Doe ran past naked from his neck to his ankles. After eluding several teachers in the hallway, student Doe was tackled and apprehended by a teacher. He was taken to an assistant principal's office, the mesh bag was removed, and the police were called.

A substantial number of students in the cafeteria had surged toward the hallway windows at the sight of the naked runner. There was a 5 to 10 minute period of commotion in the cafeteria during which students pounded on the windows and yelled. The commotion ended when the bell rang to end first lunch. No students in the cafeteria nor any of the approximately 30 students in the hallway were injured during the incident.

When the principal questioned student Doe as to the motives for his action, the latter replied that he was supporting Greece as the site of the 2004 Olympics, and that he was re-enacting the spirit of the ancient Greek Olympians who competed in the nude. Student Doe is of Greek ancestry.

The principal immediately suspended student Doe for 10 days and he recommended an "expulsion" hearing before the School Committee to consider a long-term suspension.

A hearing before the School Committee was held on September 9, 1997, with student Doe and his parents in attendance. At the conclusion of the hearing, the superintendent of schools recommended to the School Committee that student Doe be suspended from school "for a period of time in this school year not to

exceed the entire school year." [10/17/97 transcript, p. 123]. Then, according to the superintendent, "we recessed into executive session and discussed the matter." [10/17 tr., p. 122].

As set forth in its decision dated September 9, 1997, the School Committee, following its findings of fact, "voted to adopt the recommendation of the Superintendent of Schools to suspend [student Doe] for the remainder of the first semester of the 1997-98 school year, up to and including January 16, 1998." [School Committee Exhibit 8].<sup>3</sup> According to the superintendent's testimony, his recommendation that student Doe be suspended for the first semester was not made during the hearing before the School Committee, but "was discussed in executive session . . ." [10/17 tr., pp. 124-125]. Student Doe and his parents were not present at the executive session.

Extensive testimony was offered in this proceeding with regard to the application of the district's disciplinary policy at the High School. The testimony focused on the district's 1996-97 suspension report for the High School. [Appellant's Exhibit 2]. The report contains summary information regarding some 1200 suspensions at the High School that year. The

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3 The decision found student Doe's conduct was "deliberate and planned," "created a serious disturbance," and was "lewd." It also noted that student Doe "expressed no remorse during the hearing and did not even acknowledge that the act was inappropriate. The decision further stated that student Doe was eligible for the district's program for long-term suspended students, and that he may obtain up to two credits if he successfully completes the program. Student Doe was registered for 6 credits for the 1997-98 school year.

report includes the following entries, to which we have added relevant testimony from the hearing:

- o Student 01463 suspended 1 day for "Fighting in auditorium" -- actually suspended for "Involvement in auditorium;" punched a student in the shoulder as students were entering or leaving the auditorium; had 7 previous suspensions at the time of the incident.
- o Student 01500 suspended 3 days for "Running in halls with fire extinguisher" -- occurred after school; several other students were involved in the same incident
- o Student 01503 suspended 10 days for "Possessing a weapon -- a knife" -- a pocket knife; student did not attempt to use the knife
- o Student 01522 suspended 3 days for "Fighting in the lunch room" -- 15-year-old student actually attended Coventry Middle School which has 850 students in attendance and 3 lunches
- o Student 01537 suspended 3 days for ""Fighting in halls"
- o Student 01541 suspended 10 days for "Use of marijuana"
- o Student 54531 suspended 3 days because "Urinated outside a classroom" -- auto shop student left his work station without permission and was observed urinating in the back parking lot by the auto shop teacher
- o Student 54615 suspended 3 days because "Threw ball through v.p. office window" -- there was no glass in the window which opened to the secretary's work area
- o Student 54640 suspended 3 days because "Threatened another student (2nd time)"
- o Student 54647 suspended 5 days for "Sexual harassment" -- a male student touched a female student's leg above the knee in class
- o Student 54647 suspended 7 days because "Lit a girl's hair on fire with a lighter"
- o Student 54659 suspended 3 days for "Running in halls with fire extinguisher"

- o Student 54697 suspended 7 days for "Stalking/attacking another student" -- a male student searched for, harassed and fought with another male student in a hallway
- o Student 54711 suspended 10 days for "Use of marijuana," 10 days for "Possession of marijuana," and 10 days because "Drank alcohol" -- 16-year-old student attended a party off school grounds and later appeared at school intoxicated
- o Student 54723 suspended 5 days for "Discharging mace in hall" -- student was in back hallway playing with mace; mace was discharged but no students were within range
- o Approximately 50 students suspended, most for 3 or 5 days, for fighting or assaulting another student or teacher

With regard to student Doe, the superintendent testified that the conduct that occurred on August 28, 1997 violated the dress code, the sexual harassment policy, and the "Dangerous/Illegal Matters of Misconduct" portion of the district's Student Conduct, Behavior & Discipline policy.

#### **Positions of the Parties**

Appellant contends that the semester-long suspension imposed against student Doe is unfair and excessive. Appellant describes student Doe's conduct as a foolish prank by a 16-year-old who acted on a belief based on his heritage. Appellant stresses that student Doe is an excellent student with no official record of prior discipline, and emphasizes that his conduct triggered 5-10 minutes of commotion during which there was no fighting and no injuries. Appellant argues that, based on the suspensions raised at the hearing, the School Committee has applied its disciplinary policy inconsistently to cases involving dangerous situations.

At the outset of the hearing, the School Committee disputed student Doe's right to a de novo hearing before the Commissioner. Counsel for the School Committee formally stated on the record that the school district was "being denied due process" by the granting of a de novo hearing. [10/3 tr., p. 24]. On the merits, the School Committee contends that student Doe's premeditated, lewd act in front of 600 students created a dangerous situation in the cafeteria. It argues that student Doe's misconduct was compounded by his concealment of his identity, his attempts to resist capture, and his lack of remorse. The School Committee maintains that the discipline it imposed was "within the parameters of the superintendent's recommendation," and that, compared with many other punishments imposed against students, this suspension "was actually lenient because it was only for one semester and not for the entire school year . . ." [10/20 tr., p. 46].

#### Discussion

In Rhode Island, a suspension of more than 10 days from a public school requires formal due process. Board of Regents Regulations for Governing Disciplinary Exclusions of Students From School, F-6.3. Due process includes specific notice of the proposed disciplinary measure. It also includes fair and regular procedures before an impartial tribunal.

As previously noted in our findings of fact, the superintendent of schools recommended at the conclusion of the hearing

before the School Committee that student Doe be suspended "for a period of time in this school year not to exceed the entire school year." The superintendent then accompanied the School Committee into executive session, participated in a discussion of the case, and made a recommendation that student Doe be suspended for the first semester.<sup>4</sup>

When we examine the recommendation made by the superintendent at the hearing, we find it not to be a recommendation at all.

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4 These findings are based on questions the Hearing Officer asked the superintendent at the end of the October 17th hearing. The Hearing Officer's questions were prompted by the obvious inconsistency in the superintendent's testimony and the text of the School Committee's decision with regard to the superintendent's recommendation to the Committee in this case. The School Committee objected to the Hearing Officer's asking questions at the hearing. As stated by the Rhode Island Supreme Court in a case involving the renewal of a license for a solid-waste management facility:

An administrative hearing officer is not required to assume a wholly passive role and may participate in the proceeding whenever necessary to the end that the hearing proceed in an orderly, expeditious fashion. He is free to interrupt witnesses and should do so on those occasions when it is necessary to seek clarification of the testimony. But a hearing officer must be impartial and must not attempt to establish proof to support the position of any party to the controversy. Davis v. Wood, 427 A.2d 332, 337 (1981).

We believe that in cases involving students and significant educational deprivations, the right of a hearing officer to seek clarification of conflicting or confusing testimony becomes a responsibility. Decisions in cases such as this should be made on a clear and complete record. Thus, we find that the hearing officer's attempts to clarify the record in this matter were consistent with his role and in no way compromised his impartiality.

Student Doe already had been suspended 10 days. Under Rhode Island school law, students involved in misconduct unrelated to firearms may not be suspended beyond the school year.<sup>5</sup> Furthermore, indefinite suspensions are invalid.<sup>6</sup> Thus, the superintendent's "recommendation" at the hearing is nothing more than a statement of the possible length of time that student Doe could legally be suspended. To use the School Committee's term, it is a "parameter," and absent any specificity as to length, it is indefinite. Was the superintendent recommending that student Doe be suspended for 25 days? 50 days? 100 days? 150 days? the entire school year? It is impossible to tell from his "recommendation" at the hearing because each of those suspensions fits within his "parameter." The consequences of such a recommendation are that student Doe was denied his due process right of specific notice of the proposed discipline and deprived of his opportunity to respond to the proposed punishment in a meaningful way at an appropriate time.

The superintendent's joining the School Committee in executive session to discuss this matter in the absence of student Doe's parents presents a separate due process violation, particularly where the superintendent made his actual recommendation at this time. While this recommendation, i.e., a suspension for the

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5 John C.K. Doe vs. Bristol/Warren Regional School Committee, August 25, 1997, fn. 8.

6 John Roe vs. A Rhode Island School Committee, April 17, 1985, fn. 1.

remainder of the first semester, passes the specificity test, it was not made in the presence of student Doe's parents. Because they could not respond to this recommendation, it does not comport with the requirements of due process. In addition, it is a clear violation of due process for the superintendent to join the School Committee in executive session and discuss the disposition of the matter.<sup>7</sup>

Aside from these procedural violations, we find that the punishment in this case, compared to other suspensions of Coventry students, was excessive. We accept, and understand, the concerns of the School Committee in maintaining standards of decency and preserving order in the school system. We agree that student Doe's behavior was indecent, dangerous and illegal. We find, however, that conduct of other students in the record before us meeting these criteria was handled with grossly disproportionate disciplinary consequences. Moreover, even if we were to assume that student Doe's conduct is more serious than the incidents listed above, we still find that the suspension he has served to

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7 As for the School Committee's argument that student Doe is not entitled to a de novo hearing before the Commissioner, we refer the Committee to Slattery v. Cranston School Committee, 116 R.I. 252 (1976), in which the Rhode Island Supreme Court stated that "This court has held on several occasions that R.I.G.L. 16-39-2 . . . contemplates a de novo hearing by the commissioner." School Comm. v. State Bd. of Educ., 103 R.I. 359, 364, 237 A.2d 713, 716 (1968); see also Altman v. School Comm. 115 R.I. 399, 405-406 & n.8, 347 A.2d 37, 40 7 n.8 (1975). We also remind the School Committee that, as a public entity, it has due process obligations, not rights, with regard to students.

date constitutes an excessive punishment when compared with other suspensions in the record.

Given these procedural and substantive due process violations, we must invalidate that portion of student Doe's suspension which extends beyond 10 school days. We order that student Doe be returned to school immediately. We further order that any suspension beyond 10 days be expunged from his record, and that he be provided with any tutoring services he may need to enable him to become current in his classwork in all of the first-semester classes in which he registered.

**Conclusion**

The appeal is sustained. Based on the violation of student Doe's procedural and substantive due process rights, we find that the entry of an interim protective order under R.I.G.L. 16-39-3.2<sup>8</sup> is warranted in this matter.

  
Paul E. Pontarelli  
Hearing Officer

  
Peter McWalters  
Commissioner of Education

Date: NOVEMBER 19, 1997

<sup>8</sup> We find that this case does not arise solely under R.I.G.L. 16-2-17. See In Re Jane A.Z. Doe, November 5, 1997.