

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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MATTHEW F.

V.

JOHNSTON SCHOOL COMMITTEE  
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**Decision**

Held: School Committee's decision to suspend student for remainder of first semester for fighting was reasonable. Committee's subsequent decision to continue social suspension for 6 additional weeks was arbitrary.

Date: February 5, 2004

## **Introduction**

This matter concerns two appeals from two decisions of the Johnston School Committee suspending Matthew F from school and social and athletic activities.<sup>1</sup>

## **Background**

Matthew F is a senior at Johnston High School. On November 12, 2003, in a crowded school hallway, Matthew confronted another student who called a female student a derogatory name.<sup>2</sup> A fight ensued and the other student sustained serious injuries.<sup>3</sup>

After the incident, Matthew spoke to the school resource officer, the assistant principal and the assistant superintendent. He also submitted a written description of the incident. Each of the school officials testified that Matthew admitted striking the other student first. The other student involved in the incident also testified that Matthew punched him first.

Matthew testified that upon speaking to the other student about the derogatory name, the other student stated “what are you going to do about it, faggot,” threw down his books and charged at him. According to Matthew, he grabbed the other student in self-defense and they fell to the floor. Once on the floor, the students began punching each other.

The written description of the incident provided by Matthew does not refer to the other student calling him a “faggot,” throwing down his books, or charging at him.

Appellant presented a student witness who, while continually commenting on the unfairness of Matthew’s discipline and the injustice of Matthew missing the basketball season, testified that the incident occurred essentially the way that Matthew had described it in his testimony. The female student who was the subject of the derogatory comment testified that Matthew passed her as she walked away from the other student,

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<sup>1</sup> The Commissioner of Education designated the undersigned hearing officer to hear and decide the appeals of January 5, 2004 and January 30, 2004. The appeals were consolidated and hearings were held on January 14, January 22 and February 2, 2004.

<sup>2</sup> The other student is taller and heavier than Matthew.

<sup>3</sup> The student sustained a broken nose, orbital fractures, sinus cavity damage and a chipped tooth. Surgery was performed to place a metal plate under his right eye to support the eye socket. Treatment remains ongoing, and the student continues to experience pain, numbness and discomfort.

and that she heard books drop to the floor and the other student say to Matthew, “what are you going to do about it, faggot.” The female student, who testified that she was walking away from the students because she was late for her next class, did not mention the word “faggot” in her testimony at the School Committee hearing.

School officials testified that the extent of the injuries sustained by the other student was unprecedented in their experience at Johnston High School.

Matthew is a member of the Johnston High School basketball team. Other than cutting class, he has not had any disciplinary problems at the High School.

The other student involved in this matter received a two-day suspension from school.

The Johnston School Committee initially considered this matter on November 25, 2003. Matthew was charged with “attacking another student and causing said student very severe injuries . . .” [Joint Exhibit 1]. The superintendent of schools recommended that Matthew be excluded from school for the remainder of the school year. Following a hearing of the matter,<sup>4</sup> counsel for the School Committee stated that

It is the decision of the Johnston School Committee that Matt will be suspended for the balance of the semester. That during that time we are directing the superintendent to design a program for him including community service and/or counseling . . . The School Committee is going to reserve jurisdiction on this matter, for when we are approaching the end of that suspension to determine whether Matt has cooperated with the superintendent’s plan, and to determine whether he should be allowed to resume sporting and extracurricular activities. And we’ll be waiting for the superintendent’s report on that . . .

The School Committee is also very concerned about the testimony that they’ve heard here tonight regarding the discipline and whether it was disparate treatment in this case, and accordingly the School Committee has directed me to let the superintendent know, and to direct the superintendent that they would like her to investigate the discipline that was imposed on the other participant in this and be prepared to indicate to the School Committee why more discipline should not be imposed or should be imposed. [Joint Exhibit 2].

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<sup>4</sup> Matthew did not testify at the November 25th School Committee hearing.

A School Committee member added that Matthew would be placed on probation. Counsel for the Committee then made the following concluding statement:

And that's going to be the effect of the superintendent's report at the end of the semester. If we get positive reports back, Matt, then the Committee will probably look favorably on letting you back into everything. If we don't get positive reports, they may not. We will reserve jurisdiction to that. On behalf of the Committee we wish you good luck. [Ibid.]

In a letter to Matthew's mother dated December 5, 2003, the Chairman of the School Committee stated, in part, that

The Committee has found as a fact that your son did engage in a fight with another student, causing said student severe injuries. Accordingly, the Committee has voted unanimously:

1. To uphold the superintendent's recommendation of expulsion through the end of the first semester of the 2003-2004 school year, January 23, 2004. This shall be reviewed at the end of the first semester, at which time the Committee will consider whether or not to permit your son to return to school.
2. To maintain your son on probation through the end of the 2003-2004 school year.
3. To prohibit your son from participating in any social or athletic events until at least the end of the first semester, at which time said prohibition shall be reviewed in light of your son's behavior.

The Committee has also unanimously voted to direct the superintendent to make efforts to provide academic and social assistance for your son during the period of his separation from school, and to undertake an investigation into whether any discipline is warranted against the other participant in the fight. The Committee also directed the superintendent to provide anger management counseling and to direct your son to participate in community service. [Joint Exhibit 1].

Matthew was assigned to a Johnston High School social worker for anger-management counseling. He attended 6 counseling sessions, which he finished on January 20, 2004. He received a positive evaluation on January 21st.<sup>5</sup> The evaluation concludes with the social worker's statement that "I fully support Matt's return to Johnston High School when his suspension is complete and his immediate participation in all school related activities." [Appellant's Exhibit S2]. Matthew completed his community service on January 4th. He performed all his academic work. He returned to school on January 26th, the first day of the second semester. He has not been in any fights or other trouble since November 12th.

Matthew's suspension from social and athletic activities was scheduled for review at a School Committee hearing on January 27th. On that date, the superintendent recommended that the School Committee continue Matthew's social and athletic suspension for an additional 6 weeks. [Joint Exhibit S1]. The superintendent based her recommendation on her "review of the facts of the underlying incident, the student handbook, past practice in Johnston, and the goal of bringing Matthew back to full participation in school events in stages, beginning with academic participation." [Ibid.]. The Committee voted to adopt the superintendent's recommendation "based upon the presentations of counsel, [Matthew's] statement, and the Superintendent's discussion of the student handbook, the past practice in Johnston, the nature of the attack underlying this incident, and the belief that [Matthew] is not yet eligible to participate in athletic or social events." [Ibid.].

The Johnston High School student handbook contains a "Social Suspension" policy. As of November 12, 2003, it read, in part, that

Students who accumulate 6 days of suspension . . . will receive a social suspension of five (5) weeks in the event of the next suspension . . . Social suspension means a student cannot participate in or attend any sporting or extra-

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<sup>5</sup> The evaluation states that

Matt attended all scheduled sessions in a timely manner. He was cooperative and actively participated in all session activities and discussions. I believe that Matt has gained insight to his personal dynamics and to what situations may trigger an angered response. It is my opinion that Matt has a better understanding of how to more effectively manage himself and display self-control when such a situation may arise. He recognizes that certain situations may cause him to get angry but I believe that he is more able to effectively cope with these situations. Matt has accepted responsibility for his participation in the fight and believes that the school community remains one that he can successfully participate (sic).

curricular event for 5 school weeks . . . Social suspension will be renewed for one week for every subsequent day of suspension that occurs thereafter. [School Committee's S1].

### **Positions of the Parties**

Appellant's first appeal challenges the length of the suspension imposed on Matthew at the November 25th School Committee meeting. Appellant contends that the evidence shows that Matthew was not the aggressor in the November 12th incident and that he acted in self-defense. Appellant argues that the school's investigation of the incident was incomplete, that the December 5th letter is defective due to its variation from the decision announced at the hearing, and that Matthew's punishment is excessive.

Appellant's second appeal challenges the School Committee's January 27th decision to continue Matthew's social and athletic suspension for an additional 6 weeks. Appellant argues that the additional 6 weeks of suspension is arbitrary and capricious because Matthew complied with all the requirements of the Committee's original decision, and the reasons for the additional suspension relate exclusively to the previously-considered incident of November 12th. In this latter regard, the Committee did not consider any evidence regarding Matthew's subsequent behavior and, in particular, ignored the report of the school social worker who performed the anger-management counseling.

The School Committee contends that the January 5th appeal is barred by laches. On the merits, it argues that the evidence shows that Matthew engaged in particularly egregious misconduct and that his academic suspension reasonably fit the circumstances of the offense.

As for the second appeal, the School Committee asserts that, unlike attendance in school, participation in extracurricular activities is a privilege, not a right, and therefore not entitled to due process protections. It argues that Matthew's social suspension was not indefinite, but for the balance of the school year subject to a possible early return. Such punishment was warranted in light of the nature of the attack and the extent of the injuries in this case. The School Committee's action on January 27th is consistent with the High School's social suspension policy that was distributed to Matthew. Matthew's social suspension is being reduced, not extended, and the process of gradually returning

him to the full scope of activities at Johnston High School is entirely reasonable. Finally, the January 27th decision of the School Committee warrants and requires deference from the Commissioner.

## **Discussion**

The Board of Regents' regulations governing disciplinary exclusions of students from school provide very specific formal due process protections for suspensions of more than 10 days. Among those protections are the right to a prompt hearing, the right to be represented by counsel and the right to present and cross-examine witnesses. We are satisfied that the November 25th hearing complied with those requirements. We also are satisfied that the suspension from school imposed by the School Committee was valid. The testimony and documentary evidence in this proceeding support the allegation that Matthew attacked another student and caused him severe injuries. Matthew's testimony in this matter is undermined by the fact that, on the day of the incident, when given the opportunity to provide a written description of the altercation, he neglected to mention that the other student called him a "faggot," dropped his books and charged at him. Two months later, Matthew asserts that these are critical facts in explaining what occurred in the hallway. Yet, he did not mention any of them immediately after the incident. We also give little weight to the testimony of Appellant's other student witnesses, one of whom appeared more concerned with proclaiming the unfairness and injustice of Matthew's punishment than relating his observations of the altercation, and the other who was walking away from the scene hurrying to get to her next class. There is no doubt as to the nature and extent of the other student's injuries, however. They are, as the School Committee found, severe and Matthew therefore deserves equivalent punishment. Matthew's suspension from school for the remainder of the first semester cannot be said to be unreasonable.<sup>6</sup>

The Board of Regents' disciplinary regulations also require "a clear, written statement" of the reasons for the suspension, a "complete and accurate" record of the

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<sup>6</sup> In the circumstances of this case, we do not find an appeal filed 30 days after the receipt of the School Committee's written decision to be barred by laches. In light of our disposition of the appeal concerning the length of Matthew's suspension, and our findings of fact as to the incident itself, we find it unnecessary to rule on the School Committee's motion for leave to examine witnesses in camera. Any additional witnesses from the School Committee are unnecessary.

hearing, and a written decision “based exclusively on the record detailing the reasons and factual basis therefor.” The purpose of these due process protections is to ensure the fairness and accuracy of the proceeding, and thus avoid an arbitrary outcome. To achieve this purpose, the protections require a certain measure of clarity.

The School Committee’s decision-making process in this case often lacked clarity. The superintendent recommended at the November 25th hearing that Matthew be suspended for the remainder of the school year. In announcing the Committee’s decision at the conclusion of the hearing, counsel stated that Matthew “will be suspended for the balance of the semester.” But the Chairman’s December 5th letter stated that the Committee voted “to uphold the superintendent’s recommendation of expulsion through the end of the first semester . . .” to be reviewed at that time by the Committee to “consider whether or not to permit [Matthew] to return to school.” The letter’s statements concerning the superintendent’s recommendation and the length of Matthew’s suspension obviously are in conflict with what was said at the hearing.

Counsel for the Committee stated at the hearing that the Committee would look at Matt’s cooperation in fulfilling the superintendent’s plan, which was to include counseling and community service, in determining “whether he should be allowed to resume sporting and extracurricular activities.” Neither counsel nor any Committee member mentioned the school’s social suspension policy. Furthermore, counsel stated that “if we get positive reports back, Matt, then the Committee will probably look favorably on letting you back into everything.”

The Chairman’s December 5th letter stated that Matthew was excluded from social and athletic activities “until at least the end of the first semester, at which time said prohibition shall be reviewed in light of [Matthew’s] behavior.” Aside from substituting Matthew’s “behavior” for his cooperation with the superintendent’s plan as the standard to determine the length of his social suspension, the letter imposes an open-ended prohibition, i.e., “until at least the end of the first semester.” In addition, the letter does not make any reference to the social suspension policy in the student handbook.

As previously noted, Matthew was allowed to return to school at the beginning of the second semester, thus effectively rectifying the conflicting statements regarding the length of his school suspension. He was not allowed to return to social and athletic

activities at that time, however. Instead, the School Committee imposed an additional 6 weeks of social suspension, from which Appellant filed its second appeal in this matter.

As noted by the School Committee, it is the majority view that participation in extracurricular activities is considered a privilege and, because there is no property right at stake, due process rights do not attach. That is not to say that school districts have unfettered discretion in this area. Public school decisions to withhold the privilege to participate in extracurricular activities cannot be arbitrary, capricious or unlawfully discriminatory. In the context of this case, the school district must merely show that it exercised its discretion reasonably.

We are unable to find that the School Committee acted reasonably in excluding Matthew from social and athletic activities beyond the first semester. The December 5th decision to prohibit participation in social or athletic events “until at least the end of the first semester” is an enigma. Worded the way it is, the penalty is uncertain. The prohibition could be as short as the first semester or as long as the remainder of the school year, but one cannot be sure. If the penalty is longer, the implication is that it can be avoided by meeting the conditions imposed on the student’s return. For the sake of fairness, the student needs to know the length of the punishment in order to effectively assess his options, plan his course of action, and, hopefully embark on the course that will ensure his earliest return. For the sake of finality, an adjudicatory body needs to know the length of the punishment in order to review it.

The School Committee only compounded the ambiguity when it reviewed Matthew’s social and athletic status on January 27th. It was presented with evidence that Matthew had successfully completed the required counseling and community service, performed his tutoring assignments and stayed out of trouble. In a word, his post-suspension behavior was positive. But despite the expectation that was conveyed at the conclusion of the November 25th hearing, the Committee decided to continue Matthew’s social suspension for an additional 6 weeks. In listing the reasons for its decision, the Committee mentioned the student handbook, past practice, the nature of the November 12th attack, and “the belief that [Matthew] is not yet eligible to participate in athletic or social events.” [Joint Exhibit S1].

Except for the last item, the School Committee's reasons relate to circumstances that existed as of its November 25th hearing. Although the Committee specifically imposed a social suspension against Matthew on that date, it did not reference the policy in the student handbook or past practice. The logical inference is that the Committee chose to address Matthew's situation in an alternative manner.<sup>7</sup> As we have discussed, the nature of the attack was a primary basis for the Committee's initial decision. This leaves the unspecified "belief" that Matthew is not eligible for social and athletic activities. We find that, in the absence of any explanation, the mere assertion of a "belief" that Matthew is not eligible for social and athletic activities, given the circumstances of this case, cannot serve as a rational basis to support the School Committee's January 27th decision.

Matthew successfully completed all that was required of him by the initial decision in this matter. Furthermore, the person chosen by the School Department to conduct anger-management counseling with Matthew submitted a detailed evaluation of Matthew that is highly favorable. In refusing to allow Matthew to participate in social and athletic activities at the beginning of the second semester, the School Committee disregarded this evidence and instead relied on evidence related to the original offense and an unspecified present "belief" that Matthew is ineligible for such activities. We note that the School Committee did not reserve jurisdiction in this case to revisit the original offense. Furthermore, the "belief" of ineligibility bears no relationship to the requirements placed on Matthew by the initial decision. Given Matthew's compliance with the initial School Committee decision, the absence of any post-suspension negative behavior, and the evaluation of the school social worker, considered in the context of what was communicated to Matthew at the conclusion of the November 25th hearing, we find that the decision rendered by the School Committee on January 27th is arbitrary and capricious.

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<sup>7</sup> School policies cannot intrinsically become part of the School Committee's decision. If the School Committee wished to apply the social suspension policy outlined in the student handbook to Matthew's case, it needed to cite the policy in its decision. It did not do so. In any event, we find the policy's reference to "the next suspension" to be vague and probably inapplicable to this case where Matthew is being suspended from school for the first time.

**Conclusion**

The appeal of January 5, 2004 regarding the length of Appellant's suspension from school is denied. The appeal of January 30, 2004 regarding the imposition of 6 additional weeks of social and athletic suspension is sustained. The School Committee is hereby ordered to remove Matthew's social suspension as of the date of this decision.

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Paul E. Pontarelli  
Hearing Officer

Approved:

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Peter McWalters  
Commissioner of Education

Date: February 5, 2004