

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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R.A.

V.

JOHNSTON SCHOOL COMMITTEE  
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**Decision**

Held: Student's two-day suspension from school is invalid for procedural and substantive reasons.

Date: January 28, 2005

## **Introduction**

This is an appeal of a two-day suspension from school that student Doe received for provoking a fight.<sup>1</sup>

## **Background**

On November 12, 2003, while standing at his locker in a crowded hallway at Johnston High School, student Doe yelled to his girlfriend. A female student standing next to Doe told him to stop yelling in her ear. Doe responded by stating “what’s your problem?” The female student then told Doe to “fuck off” and started walking away. Doe then called the female student a “skank.” [School Committee Exhibit 5]. A male friend of the female student heard Doe’s comment, confronted Doe about it, and assaulted him. Doe suffered serious and permanent facial injuries and had to be taken to the hospital by ambulance. Before the ambulance arrived, an assistant principal spoke to Doe briefly “as to the gist of what happened.” [Transcript, p. 41].

The police requested a statement from Doe concerning the incident. Doe’s father delivered a statement from his son to the police on November 13, 2004. He did not give a copy of the statement to any school official.

The assistant principal testified that he originally intended to give Doe a 5-day suspension from school for fighting. After speaking to the assistant superintendent, however, to whom Doe’s father had complained about the length of the suspension imposed on his son’s assailant, it was decided that Doe would receive a two-day suspension in light of the injuries he sustained.

On November 15, 2003, Doe’s parents received a notice of suspension, dated November 12, 2003, stating that Doe was suspended from school for two days -- November 13th and 14th – for “provoking a fight.” [School Committee Exhibit 1]. Doe did not attend school on either of those days because of the injuries he sustained in the assault. Doe’s father testified that the notice of suspension was the first notice the family received that Doe was being considered for suspension.

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<sup>1</sup> The Commissioner of Education designated the undersigned-hearing officer to hear and decide the appeal. A hearing was held on March 22, 2004. The parties subsequently submitted memoranda.

The district's disciplinary code lists types of conduct that will be considered for suspension from school. The list includes "the use of obscene or profane (sic) language or gestures."<sup>2</sup> [School Committee Exhibit 2]. The Johnston High School handbook prohibits "obscenities, obscene gestures, or abusive language at another student or staff member . . ." [School Committee Exhibit 3]. The handbook also contains the following provisions that apply to suspensions for 10 days or less:

- A. The student shall be given oral and/or written notice of the charges against said student.
- B. If charges are denied, the student shall be given an explanation of the evidence in the possession of the school administration.
- C. The student shall be given the opportunity to present his/her version.
- D. Notice and hearing will be given the student prior to suspension, if feasible; however, if the student's presence endangers persons or property, or threatens disruption of the academic process, the notice of hearing will follow as soon as possible.
- E. Notice will be given to the parent, if feasible, prior to the suspension with the opportunity to be present at the hearing. Written notification is to follow. [*Ibid.*].

The female student who told Doe to "fuck off" was not disciplined. The student who assaulted Doe received a substantial suspension from school.<sup>3</sup>

### **Positions of the Parties**

Appellant contends that the suspension is procedurally defective because Doe's parents were not informed of the possibility of suspension or of the offending conduct prior to the imposition of the suspension. Appellant further contends that the suspension is invalid because the alleged provocation of the assault was too attenuated in that Doe's comment was not directed to his assailant. On the other hand, the obscene and profane comment by the female student, who was not disciplined, was equally provocative of the assault under the School Department's theory of causation.

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<sup>2</sup> We presume that the word "profane" was intended.

<sup>3</sup> We upheld the suspension from school in M.F. v. Johnston School Committee, February 5, 2004.

The School Committee contends that Doe was given the due process to which he was entitled. It asserts that the decision to suspend was made after Doe was given an opportunity to explain his version of the incident. It also argues that Doe's "skank" comment was inappropriate, that it precipitated an assault that compromised the security of the school environment, and that the two-day suspension is reasonable given the severity of the incident and the extent of Doe's involvement.

## **Discussion**

The appeal in this case challenges Doe's suspension on procedural and substantive grounds. With regard to procedure, we find that the School Department did not follow its own policy. As written, the Department's policy for handling suspensions of 10 days or less provides the informal due process that is required. The policy takes effect when it is determined that charges are to be brought against a student. Charges must be based upon an investigation, however. The procedural problem in this case is that the School Department relies upon its interaction with student Doe during the investigation of this incident to show that it complied with its procedural requirements.

The evidence shows that Doe was questioned on November 12th as to "what happened." Doe's father later spoke to school officials about the discipline to be imposed on his son's assailant. A notice of suspension was then prepared and mailed to Doe's parents without any further communication with the family. The notice arrived the day after the two-day term of suspension had elapsed. This occurred without Doe having received notice of the charge against him, the first step of the due process policy. Instead, he was given notice of a *fait accompli* suspension, and thereby deprived of the opportunity to deny the allegations, receive an explanation of the evidence against him, present his version of the incident, and participate in an informal pre-suspension hearing concerning the merits of the charges. As a result, we find that Doe was suspended without being afforded any of the elements of the school's due process policy.<sup>4</sup>

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<sup>4</sup> While at first glance the student's opportunity to present his/her version of the incident may appear to be duplicative of what occurs in an investigation, this opportunity can take on an entirely different perspective when it is offered in the context of potential disciplinary action.

As for Appellant's substantive challenge, we find that Doe's punishment was excessive in light of all the circumstances. The charge against Doe, i.e., provoking a fight, is based on his calling a female student a "skank" in a crowded hallway. While we do not agree with the School Committee's contention that the comment is obscene or profane,<sup>5</sup> it certainly falls within the school's prohibition against abusive language. Doe's comment, however, was an immediate response to an obscene remark by a female student who went unpunished in this incident. Viewed in isolation, Doe's comment warrants some discipline, but not a suspension, for being disrespectful to a student. Moreover, we have serious doubts that Doe's comment to the female student amounted to provocation of a fight initiated by another student. We are convinced, however, that Doe's two-day suspension from school was excessive punishment in light of the fact that no disciplinary action was taken against the female student for her obscene remark.

## **Conclusion**

Student Doe's suspension from school is invalid because it did not comply with the school's procedural policy and it is excessive punishment given the overall circumstances of the case. The suspension shall be expunged from Doe's education record.

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Paul E. Pontarelli  
Hearing Officer

Approved:

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Peter McWalters  
Commissioner of Education

Date: January 28, 2005

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<sup>5</sup> "Skank" is a derogatory slang term. Its recent emergence in American discourse was addressed by William Safire in his May 10, 1998 "On Language" column in the New York Times, hardly a forum for obscene or profane language.