

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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F. DOE

V.

JOHNSTON SCHOOL COMMITTEE  
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**Decision**

Held: Student suspended from school in October for possession of marijuana may participate in graduation exercises, but is otherwise prohibited from attending senior-class events.

Date: May 6, 2005

## **Introduction**

This is an appeal from the Johnston School Committee's decision to deny student Doe permission to participate in senior activities and the 2005 graduation ceremony.<sup>1</sup>

## **Background**

Student Doe is a senior at Johnston High School. On October 27, 2004, she was tardy for school and went to the office to sign in. At the time Doe signed in, the assistant principal was investigating a suspected drug transaction at the school. According to a witness statement Doe provided later that day, she saw a male student in the office and "he told me he was in big trouble and asked me to hold something for him . . . he put it in my lunch bag . . . he said he would get it later from me." [School Committee Exhibit 4].

Doe left the office and walked to her locker. At the locker she looked in her lunch bag. As recounted in her witness statement, she saw a plastic baggy containing "a large quantity of marijuana." She "panicked" and put the marijuana in her pocketbook. [*Ibid.*]. Doe then went to class, taking her pocketbook with her.

A short time later, a student told the assistant principal that another student had taken the drugs from the office. Working from the late sign-in list, the assistant principal and the school resource officer summoned Doe from her classroom. The assistant principal told Doe that he was looking for marijuana and that he had the right to search her locker. Doe replied that he could search her locker.

The assistant principal, the school resource officer and Doe walked down two hallways and a flight of stairs to Doe's locker. Doe remained silent during the walk. The assistant principal opened Doe's locker, removed the paper lunch bag and looked inside. Not seeing any drugs, he gave the bag to the school resource officer and began searching through the locker. In the meantime, the school resource officer took all the items out of the lunch bag and found a piece of marijuana. The officer asked Doe where was the rest of the marijuana. Doe then admitted to having it.

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<sup>1</sup> The Commissioner of Education designated the undersigned hearing officer to hear and decide the appeal. Hearings were held on April 14 and 19, 2005. The parties subsequently supplemented the record in this case.

Doe was taken to a nearby office where approximately ½ ounce of marijuana in a plastic baggy was taken from her pocketbook. Doe was transported to the Johnston police station and charged with possession of marijuana. Her case was referred to the Juvenile Hearing Board.<sup>2</sup>

The 2004-05 Johnston High School student handbook includes a section entitled “Substance Use/Abuse Policy.” It states that “[t]he use, possession, transportation or sale of alcohol, tobacco, non-prescription drugs and/or controlled substances violates state and federal laws and will not be tolerated in the Johnston Public Schools,”<sup>3</sup> and that “[s]tudents must understand that every staff member in the Johnston public schools will adopt this ‘zero tolerance’ stand and will be pro-active in eliminating any substance abuse by students.” [School Committee Exhibit 2]. Section 5 of the policy, which was applied to Doe, reads as follows:

Any student found under the influence of, or in possession of alcohol, or a controlled drug which is not registered with the school nurse nor prescribed by the student’s medical doctor will be subject to the following:

- A. The Johnston Police Department will be notified;
- B. The student will be suspended for 10 school days and may be referred for counseling at an appropriate school or community agency;
- C. A social suspension will be assigned for six weeks starting from the date of re-entry.
- D. A hearing will be held with the Principal and a recommendation of expulsion may be made to the Superintendent of Schools.

After hearing the matter, the principal recommended that Doe be expelled from school for the remainder of the year. The principal testified that in making this determination, she considered the fact that Doe had never been suspended before, was a good student, and had no involvement in bringing the marijuana in question into school. The principal cited the serious nature of the offense, however, and the need to deter future incidents. She also testified that, under the policy, her only choices were to leave

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<sup>2</sup> Doe has complied with the terms of the disposition of her case.

<sup>3</sup> Emphasis in original.

the 10-day suspension in place or recommend that Doe be expelled for the remainder of the school year.

The superintendent met with Doe and her parent to review the principal's recommendation. Given the seriousness of the infraction, the superintendent decided to recommend to the School Committee that Doe be expelled for the remainder of the school year. The superintendent also decided to provide Doe with home tutoring, and she agreed to limit the reported number of absences from school to 10 days and to remove a course withdrawal from Doe's transcript. In a letter dated November 8, 2004, the superintendent notified Doe's family that the School Committee would consider the matter on November 12th.

Neither Doe nor her parent attended the November 12th School Committee meeting. An attorney spoke to the Committee on Doe's behalf at the meeting. The School Committee voted to expel Doe for the remainder of the school year.

In a letter dated November 16, 2004, the superintendent informed Doe's parent of the School Committee's decision. The letter advised the parent of the right to appeal the decision to the Commissioner of Education. The letter also noted that Doe "may not take part in any school-related activity or be present on school property during the 2004-2005 school year as a result of her expulsion." [School Committee Exhibit 7].

Subsequently, there were discussions about Doe's ability to participate in senior events and graduation exercises.<sup>4</sup> According to Appellant, this issue was under review for some time, but once a definitive response prohibiting Doe's presence at graduation and senior activities was received, Appellant filed this appeal.<sup>5</sup>

There was testimony in this proceeding from the superintendent, principal and assistant principal that during the summer of 2004 it was decided that the High School needed to take a tougher stand on alcohol and drug issues.<sup>6</sup> Students were advised of the heightened vigilance at the beginning of the school year. The two students found to be

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<sup>4</sup> Senior events consist of the senior prom, senior banquet and senior send-off.

<sup>5</sup> The appeal is dated February 14, 2005. Following the filing of the appeal and pending hearing, the Johnston School Committee reconsidered this matter. Due to a tie vote, the Committee's prior decision remained unchanged.

<sup>6</sup> The evidence shows that students received significantly less discipline for alcohol and drug offenses in prior years.

involved in the drug transaction of October 27th, both freshmen, were expelled for the remainder of the school year.

As of the hearing, student Doe has successfully completed her tutoring work. She is scheduled to receive her diploma in June. She would prefer to finish her academic requirements through the tutoring program.

### **Positions of the Parties**

Appellant contends that the punishment imposed on Doe is disproportionate to the circumstances of the offense and to other incidents at the High School involving illegal activity in this and prior school years. It argues that the mechanical application of the zero tolerance policy in this case defies common sense and that Doe is unfairly being denied participation in once-in-a-lifetime events. Appellant asserts that Doe realizes that she made a mistake, has matured from this experience, and should not suffer the additional penalty of missing her senior activities.

The School Committee contends that Appellant's delay in filing this appeal should result in its dismissal on the grounds of laches. On the merits, it argues that Doe became involved in a serious violation of school rules, that as a senior she is expected to be more responsible than younger students, that the disciplinary policy was applied with a view of all the circumstances, that senior activities are a privilege that can be forfeited by a misbehaving student, that school administrators need to send a strong message to students in order to deter drug-related activity, and that the decision of the local school district warrants due deference from the Commissioner.

### **Discussion**

Our standard of review in this type of case is well established. In the case of In the Matter of A.B.,<sup>7</sup> we stated that

The Commissioner accords great weight to the reasoned discretion of school officials when they exercise this discretion in the cases

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<sup>7</sup> June 2, 2000.

that come before them. Unfortunately when school officials abdicate their discretion and take shelter behind inflexible rules they deprive the Commissioner of the opportunity to show proper respect for a discretion which they have failed to exercise. [p. 2].

The A.B. case also noted our earlier statement in John B.L. Doe v. A Rhode Island School Committee,<sup>8</sup> that “school officials must always exercise discretion in the imposition of school penalties.” The John B.L. Doe case dealt with a zero-tolerance school disciplinary provision which required administrators to impose an automatic, pre-established penalty instead of using their discretion in light of the particular circumstances of the case.

Our treatment of illegal drugs in schools as a serious offense also is well established.<sup>9</sup> The background of this case involves the attempted sale of a substantial amount of marijuana on school premises, which elevates the seriousness of this matter. While student Doe did not play any role in bringing the marijuana to school, she made a series of decisions on the day in question that gradually increased her involvement in this offense. We recognize that she made a split-second decision when she took the object from the student in the office. But Doe herself admits that the student told her he was “in big trouble.” We also accept that Doe “panicked” at her locker upon seeing the contents of the package that had been placed in her lunch bag. But removing the marijuana and placing it in her pocketbook is a discomfoting development in light of the student’s remark in the office that “he would get it later from me.” Finally, Doe did not produce the marijuana when confronted by the assistant principal and the school resource officer despite being told, in effect, that they were looking for what she was holding. Instead, Doe was evasive, agreeing to what she apparently believed would be a fruitless locker search, and remaining silent during the walk to her locker. Doe’s continued refusal to cooperate with school authorities, despite the rising level of scrutiny being placed on her, deepened her complicity in this matter. We understand the position of the school district that Doe eventually became a major participant in this incident.

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<sup>8</sup> June 13, 1995.

<sup>9</sup> See, e.g., Student A.Z. v. Chariho School Committee, January 28, 2004 and In the Matter of Steven F., June 9, 2000.

On the other hand, the “Substance Use/Abuse” policy is inflexible and does not permit school officials to use their discretion in a reasonable manner. Under the policy, a student in possession of an illegal drug automatically is suspended from school for 10 days. Because the imposition of a 10-day suspension on Doe for her conduct is not unreasonable given the circumstances of this case, we need not address the “automatic” aspect of the policy. However, the only remaining option under the policy is whether the student’s suspension will be limited to 10 days or extended to the remainder of the school year, regardless of when the misconduct occurred. Under this policy, as soon as school officials determine that an offense warrants a suspension of more than 10 days, the suspension must carry to the end of the school year. In Doe’s case, the only choices were a 10-day suspension or an approximate 135-day suspension. There is no room under the policy to determine whether some intermediate punishment is appropriate. When the administrators testified that they considered circumstances favorable to Doe in deciding her punishment, their discretion was limited to determining whether those circumstances would justify a 10-day suspension. Upon determining that Doe’s conduct required at least an 11th day of suspension, the scale of justice embodied in this policy immediately tipped all the way to the end of the school year, or about 135 days.

This policy does not permit the reasoned discretion that we require in the imposition of school discipline. While it is not unreasonable for the school district to conclude that student Doe engaged in a serious offense that jeopardized the educational environment at Johnston High School and therefore warranted a substantial punishment, Doe was deprived of the opportunity of having the mitigating circumstances considered in the determination of her punishment. School officials do not dispute that such circumstances existed. In recognition of those circumstances, we find that student Doe is entitled to participate in graduation exercises provided that she completes all diploma-related requirements. Viewing the overall circumstances of this case in the exercise of our independent de novo review authority, however, we sustain the decision to exclude Doe from senior events.<sup>10</sup>

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<sup>10</sup> Because the record fails to show that the delayed appeal in this case served to prejudice the school district, we reject the argument that the appeal should be dismissed for laches. We further find that the school district’s decision to deal with drug and alcohol cases more aggressively in the 2004-05 school year

## Conclusion

Student Doe, who was found to be in possession of marijuana and suspended from school in October 2004, is entitled to participate in graduation exercises provided she completes all diploma-related requirements through her tutoring program.

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Paul E. Pontarelli  
Hearing Officer

Approved:

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Peter McWalters  
Commissioner of Education

Date: May 6, 2005

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is a legitimate exercise of its authority to regulate the conduct of students. In so finding, we note that students other than Doe have been subjected to the same approach this year.