



## **Travel of the Case**

The parents of Student Doe appealed her three-day suspension by the West Warwick School Committee. In a letter of appeal filed with Commissioner Peter McWalters on May 23, 2006, Mr. and Mrs. Doe requested a de novo hearing for review of the School Committee's decision. They contend that their daughter struck another student only after she was threatened and placed in a position in which she had to defend herself. The matter was assigned for hearing and decision, and an acknowledgment sent to the parties on May 31, 2006. At that time counsel for the School Committee filed a Motion to Dismiss the appeal as moot. According to the Motion, the three-day suspension had been served and pursuant to West Warwick policy, short-term suspensions (such as the one at issue) are not noted on the student's permanent record. Mr. and Mrs. Doe filed a written objection to the Motion to Dismiss on June 13, 2006. Following review of the motion and objection thereto, the Motion to Dismiss was denied and the matter was scheduled for hearing on July 20, 2006. At that time the parties appeared and presented testimony and documentary evidence in support of their respective cases.

Jurisdiction to hear this appeal arises under R.I.G.L. 16-2-17.

## **ISSUE**

Was Student Doe's suspension for three days for slapping another student justified and in accordance with the West Warwick High School Code of Conduct?

## **Findings of Relevant Facts:**

- Student Doe is enrolled at West Warwick High School and at the time of the incident in question, March 27, 2006, was a freshman. Tr. p.79; S.C.Ex.3.
- On March 27, 2006 Student Doe, who is female, became involved in a heated argument with a male student who is physically much larger and athletic<sup>1</sup>. As they argued, the male student punched a locker next to Student Doe. Student Doe responded by slapping the male student across the face. She then backed away as the male student followed her, screaming at her and punching himself (but not her) in the face. Tr. p.7; Joint Ex. A; Doe Ex. C; S.C. Ex. 1.
- Student Doe was quickly "cornered" by the male student about one foot from a wall of lockers when another male student physically restrained him and pulled him away from Student Doe. At that point a teacher also intervened and the students were separated. Joint Ex. A; Tyler Ex.C; S.C. Ex.1.
- The male student was instructed to go home and did so. Joint Ex. A.

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<sup>1</sup> Mrs. Doe testified that he plays football and wrestles.

- Student Doe, after talking to her mother by telephone, sought out the school resource officer and the assistant principal who were outside the school supervising the dismissal of students at the end of the school day. She reported to them what had happened. Tr. pp. 79-80; Joint Ex. A.
- After an investigation was conducted, the assistant principal determined that Student Doe should receive a three-day out of school suspension for hitting another student. Tr.pp.91-95; S.C. Ex.3.
- The male student was given a three-day in-school suspension for destruction of school property, i.e. damaging the locker. Tr.pp.92-95.
- As a result of her three-day suspension, Student Doe missed a mandatory chorus performance which was counted as her final exam grade. She was, however, provided with an alternative assignment and, as a result, the suspension had no negative impact on her grade. Tr. pp. 64-65; letter from Superintendent Raiche to Mr. and Mrs. Doe dated August 8, 2006.
- Student Doe's permanent high school record contains no mention of the three-day suspension because of school policy that minor disciplinary matters are not noted in a student's permanent record. Tr. p.4; West Warwick School Committee Motion to Dismiss dated May 26, 2006.
- Student Doe had no disciplinary infractions prior to this incident. Tr. p.95
- Student Doe served her three-day suspension on May 19,22, and 23 of 2006, after it was affirmed by the West Warwick School Committee on May 18, 2006.<sup>2</sup>

### **Positions of the Parties**

#### **Parents of Student Doe**

Mrs. Doe submits that when her daughter slapped the much larger male student it was as he was screaming in her face and just after he had punched a locker next to her with substantial force. This presented Student Doe with a situation of intimidation and threat of bodily injury. When her daughter reached out and struck the other student, it was instinctively to ward off what she anticipated would be his next blow directed at her. Anyone would have done so in the same situation to defend themselves. She had no other option but to strike out as an act of "preemptive self-defense". (See pages 8-9 of the transcript)

This was not a situation in which Student Doe was "fighting" with another student. It is conceded that she hit the male student; however, the aggression was clearly initiated by the male student and directed at Student Doe. She was the real victim in this situation. The male student, who had the clear capability to inflict bodily harm at that moment, and who had just punched a locker to demonstrate this capability, placed her

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<sup>2</sup> The School Committee's May 18, 2006 decision, signed by Superintendent David P. Raiche was not made an exhibit at the hearing, but was provided to the hearing officer for reference.

daughter in fear and gave her no alternative. The combination of violence and verbal abuse created a threatening environment, and Student Doe responded appropriately in a justified act of self-defense.

A witness statement that Student Doe invited the male student to fight her before she slapped him is false. The witness making this statement, a teacher, did not witness the entire incident and provided her statement two full days after the incident. The teacher's conclusion that Student Doe was not in a "threatened" position when she slapped the male student is inconsistent with the statements of others that Student Doe was cornered and could not leave. The more accurate accounts of what happened are those in the statements of three of the four students who were present during the entire altercation. These statements confirm that the male student was out of control and threatening Student Doe at the time she struck him.<sup>3</sup> Because her actions were justified and in self-defense, her parents argue that her suspension should be invalidated.<sup>4</sup>

### West Warwick School Committee

In this case school officials carefully investigated the incident involving these two students and, after determining the facts, fairly applied the provisions of the school's disciplinary code. Since it is undisputed that Student Doe struck the male student in the face, she clearly violated the provision of the school code which prohibits assaults. The three to ten day suspension prescribed as the penalty must be served out of school, since "assault" is one of the offenses<sup>5</sup> for which a student is not eligible for in-school suspension. Thus, even though she had no prior disciplinary infractions, it was required that her suspension be served out of school.

School officials did attempt to determine the facts relevant to her position that she acted in self defense<sup>6</sup> and evaluate the merits of her claim that her behavior was justified and excusable. Both the principal and the superintendent determined that at the moment she slapped the male student, Student Doe had the ability to remove herself from the situation. She was not trapped or cornered at that time. It was only after she struck the male student that Student Doe was backed up against the lockers with no route to escape.<sup>7</sup>

Counsel for the School Committee points out that the evidence at this hearing consists of the same witness statements reviewed by school administrators and the

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<sup>3</sup> The parents argue that the male student's behavior was "downgraded" to willful destruction of school property even though he was the actual aggressor in this incident. His penalty was also less severe in that his three-day suspension was served in-school .

<sup>4</sup> In some respects the appeal of this student's suspension is moot. She has already served the suspension, there is no record of it on her permanent school record, and it did not affect her grade. However, since this student may have to acknowledge the fact of her suspension on college applications, her parents' requested remedy is that it be invalidated.

<sup>5</sup> Listed on page 35 of the Student Handbook under "Exclusions" (to In School Suspension)

<sup>6</sup> Even though the West Warwick High School disciplinary code does not recognize an exception for actions in self-defense

<sup>7</sup> See Tr. pp. 123-124; 145-146; 149-158.

members of the West Warwick School Committee. In light of this, counsel submits, the conclusion should be the same with respect to an assault having occurred and the proper penalty imposed.

A de novo hearing at the state level gave Student Doe the opportunity to prove her contention that she was cornered and threatened, feared for her physical safety and struck out in self-defense. Counsel for the School Committee argues that her absence from the hearing “speaks volumes”. Student Doe was obligated to testify before the hearing officer as to her state of mind and to justify her behavior. There is no direct evidence submitted to establish that self-defense was the basis for Student Doe’s striking the young man with whom she was arguing. In the school environment, the appropriate response to physical aggression is, whenever possible, to leave and avoid a fight. Upholding this appeal would send the wrong message and chaos would result in the public schools. The action of the school department must be upheld and Student Doe’s suspension affirmed.

### **DECISION**

Not one single eyewitness to the incident in question testified at the hearing conducted on July 20, 2006. Some facts can clearly be determined by the statements of several witnesses which were submitted into evidence at the hearing- that Student Doe and a male student were arguing, that he forcefully punched a locker near her and that she then slapped him across the face. Unfortunately, the facts on which Student Doe’s parents premise their appeal are not clearly established by a preponderance of the evidence submitted at this hearing. The intimidation claimed to result from the male student’s physical and verbal actions, Student Doe’s fear and “instinctive” response to the punching of a locker next to her simply have not been proven. These facts require evidence of Student Doe’s state of mind throughout this incident. If Student Doe had appeared to testify and verified her fear as well as other facts relevant to the claim of self-defense, this decision would likely have consisted of a legal analysis of self-defense in the school setting.<sup>8</sup> We cannot, as Mr. and Mrs. Doe have done, assume the facts on which they submit her conduct was justified and excusable.<sup>9</sup>

We feel constrained to point out, however, that school officials appear to have misconstrued the provisions of the Student Handbook in determining that the male student involved in this incident simply “damaged school property”, rather than that he, too, committed an assault - on Student Doe. It is not necessary for there to be physical contact (i.e. a “battery”) for an assault to occur. (See the definition of “assault” at page 53

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<sup>8</sup> Which may differ somewhat from a claim of self-defense in the community at large. See In the Matter of Student D.R., decision of the Commissioner dated June 5, 2002 and D.R. v. Cranston School Committee, decision of the Commissioner dated May 11, 2004.

<sup>9</sup> Mr. Doe, after stating that his daughter was “cornered”, testified “We weren’t there. So we don’t know if she could have walked away. We don’t even know if she was in fear. We do know right after the fact she was shaking and crying. We have to assume that she was in fear. Tr. p.184.

of the Student Handbook). If the male student’s punching of the locker next to Student Doe was “an intentional action that threatens or endangers the health or safety of another individual...” then his infraction was on a par with Student Doe’s violation of the disciplinary code. His was not a lesser offense. Implicit throughout this case was the fact that the male student’s punching of the locker was intended as a threat to Student Doe, but as school officials determined, a threat to which she responded inappropriately. We make this observation only to respond to Mr. and Mrs. Doe’s contention that there was a disparity in treatment if one considers this incident a “fight”<sup>10</sup>. We do not imply that school officials intentionally “downgraded” the male student’s offense<sup>11</sup>, but suggest that both students’ behavior was equally punishable and equally unacceptable under our analysis of the facts in this record.

The decision of the West Warwick School Committee is affirmed and Student Doe’s suspension is upheld.

For the Commissioner,

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Kathleen S. Murray, Hearing Officer

APPROVED:

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Peter McWalters, Commissioner

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December 22, 2006  
Date

<sup>10</sup> and in any event the sanction he received is not relevant in determining the appropriateness of Student Doe’s suspension.

<sup>11</sup> On the contrary, West Warwick school officials appeared determined to apply the Code of Conduct even-handedly.