

STATE OF RHODE ISLAND  
AND PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

Y.S., as parent and next friend of :  
STUDENT F. DOE, :  
*Petitioner* :

v. :

WILLIAM M. DAVIES, JR. CAREER :  
& TECHNICAL HIGH SCHOOL, :  
*Respondent* :

**DECISION**

Held: Regional vocational high school decision  
not to promote student to tenth (10<sup>th</sup> grade) pursuant  
to school policy relating to course failures was in all  
respects reasonable and is upheld. Accordingly,  
parent’s appeal is denied and dismissed.

November 3, 2014

## 1. Jurisdiction, Standard of Review and Burden of Proof

Petitioner, Y.S. (the “Petitioner” or “Mrs. Doe”), as parent and next friend of STUDENT F. DOE, filed an appeal with the Commissioner seeking to reverse a decision of the Respondent, WILLIAM M. DAVIES, JR. CAREER & TECHNICAL HIGH SCHOOL (“Respondent” or “Davies”), a regional vocational school, not to promote F. Doe to the tenth grade.<sup>1</sup>

Jurisdiction here is present pursuant to RIGL § 16-39-2.

After a voluntary, although ultimately unsuccessful, mediation session on October 17, 2014, a short evidentiary hearing with respect to the matter was conducted on October 23, 2014 before the undersigned hearing officer. Mrs. Doe and F. Doe appeared at the hearing *pro se*. The Director of Davies, Victoria A. Gaillard-Garrick, appeared along with F. Doe’s guidance counselor, Anthony Zullo, on behalf of the school, which was represented by Attorney Vincent F. Ragosta.

The Rhode Island Supreme Court has held on several occasions that appeals to the Commissioner under chapter 39 contemplate a hearing *de novo*. See, e.g., *Alba v. Cranston School Committee*, 90 A.3d 174, 184-85 (R.I. 2014) (quoting rule); *Slattery v. School Committee of City of Cranston*, 116 R.I. 252, 262, 354 A.2d 741, 747 (1976) (“one who appeals to the commissioner is entitled to ‘*a de novo* hearing’ and not ‘merely a review of [the] school committee action’”); *School Committee of City of Pawtucket v. State Bd. of Ed.*, 103 R.I. 359, 364, 237 A.2d 713, 716 (1968) (commissioner’s jurisdiction “considerably broader than that of this court in reviewing an appeal” since “it is clear that § 16–39–2 and precursory legislation

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<sup>1</sup> A copy of the October 8, 2014 Petition was accepted into evidence without objection as Petitioner’s Exhibit 1.

give the commissioner of education the right to make a *de novo* decision in examining and deciding the issue involved”).<sup>2</sup>

However, the fact that the hearing is *de novo* does not negate the general presumption in administrative proceedings which “favors the administrators” and places the burden of proof upon the party challenging the action “to produce evidence sufficient to rebut this presumption.” See *Larue v. Registrar of Motor Vehicles, Dept. of Transp.*, 568 A.2d 755, 758-59 (R.I. 1990), citing *Gorman v. University of Rhode Island*, 837 F.2d 7, 15 (1st Cir.1988).

## **2. Facts and Evidence**

F. Doe attended ninth grade at Davies during the 2013-14 school year, and although struggling academically, she made only sporadic use of the structured after school academic assistance available to students at Davies, at least according to the uncontradicted testimony of Mr. Zullo and Ms. Gaillard-Garrick. Her “final” grades for the year evidenced that she failed three (3) separate one-credit courses, having received final grades of “68” in English, “60” in Math and “65” in Social Studies.<sup>3</sup> Under the grading policy in effect at Davies, students are required to receive a minimum final grade of “70” in order to pass.

Mrs. Doe called Mr. Zullo on June 19, 2014 to ask if F. Doe was eligible to attend summer school to make-up for any failed classes. According to Mr. Zullo, he informed Mrs. Doe that since not all of F. Doe’s grades had been submitted, it was uncertain whether or not she would be eligible to make-up failed classes or, alternatively, be required to repeat the ninth grade. Under a policy in effect at Davies, which is published in the Student Handbook, it is

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<sup>2</sup> A hearing *de novo* is one which is heard as if for the first time, i.e., as an entity with original, as opposed to appellate, jurisdiction, would hear it. See Black’s Law Dictionary at 649 (West, 1979).

<sup>3</sup> A copy of F. Doe’s final ninth grade report card from Davies was accepted into evidence without objection as Respondent’s Exhibit 2.

mandated that any student who fails “more than 2.5 credits in one school year” has to repeat the grade.<sup>4</sup>

On June 23, 2014, Davies sent F. Doe a letter containing her failing final grades in English, Math, and Social Studies and advising her that she would have to repeat ninth grade as she had failed more than 2.5 credits.<sup>5</sup> Mr. Zullo testified that sometime the following week Mrs. Doe again called him and although he did not have a very specific recollection, he believes he “would” have again stated to Mrs. Doe that because F. Doe failed more than 2.5 credits she would have to repeat ninth grade whether or not she attended summer school.

Subsequently, Mrs. Doe enrolled (or assisted F. Doe’s enrollment) in two on-line courses at “Apex Learning” (in Algebra I and English 9), as well as in two enrichment programs at “Brown Summer High School” (in “Math 1B: Mathematical Thinking” and “English 2A: How do our values affect the choices we make, and how do those choices affect our lives?”).<sup>6</sup> Mrs. Doe claimed that she believed at the time that completing these courses would enable F. Doe to be promoted to tenth grade, although she admitted that she did not confirm that assumption with anyone at Davies until after F. Doe had completed the courses. According to Mrs. Doe, she asked Ms. Gaillard-Garrick sometime in August whether F. Doe could be promoted in light of the completion of the summer courses and was told, once again, that under applicable school policy F. Doe could not be promoted.

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<sup>4</sup>A copy of page 28 of the Davies Handbook reciting the policy was accepted into evidence without objection as Respondent’s Exhibit 2. Mrs. Doe signed an “acknowledgement of Student Handbook” form when F. Doe was enrolled at Davies, acknowledging that she would “abide by the rules and policies.” (A copy of the form was accepted into evidence without objection as Respondent’s Exhibit 1). However, Mrs. Doe testified that she did not read any portion of either the form or the handbook before signing, and was not familiar with the policy.

<sup>5</sup> A copy of the June 23, 2014 letter from the Davies Guidance Department was accepted into evidence without objection as Petitioner’s Exhibit 2.

<sup>6</sup> Descriptions of the Brown Summer School courses are contained in Petitioner’s Exhibits 4 and 5, which were admitted into evidence without objection.

F. Doe testified that she “passed” both courses at Apex Learning and in fact received letters from Apex Learning indicating that she received a “Grade to Date/Overall Percent” of 81.4%, with a “Recommended Final Grade” of “82” in Algebra I; whereas in English 9 she received a “Grade to Date/Overall Percent” of 67.1%, with a “Recommended Final Grade” of “70”.<sup>7</sup> However, the letters from Apex Learning made clear that:

[t]he Final Grade below is a recommendation only. Your school [i.e., Davies] holds ultimate grading authority. They will evaluate the grade and either transfer it as is or adapt it based on their standard grading procedures.<sup>8</sup>

When asked how it was possible to turn a “Grade to Date/Overall Percent” of 67.1% in English into a recommended passing grade of “70”, F. Doe stated that the grade had been “cumulated,” but could not explain what that meant.<sup>9</sup> F. Doe did not receive actual grades for the enrichment courses she attended at the Brown Summer School, but the instructor’s comments were almost uniformly excellent.

Mrs. Doe and F. Doe both testified that keeping F. Doe in ninth grade would be a “waste” as, in their opinion, she is capable of doing more advanced work and would benefit if promoted to the tenth grade. On the other hand, Mr. Zullo suggested that given her academic performance to date, promotion, even if permitted under applicable school policy, would not be in F. Doe’s best interest.

### **3. Discussion**

Regional vocational schools like Davies are governed by a board of trustees which, with limited exceptions not pertinent here, have all the powers and duties of school committees under

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<sup>7</sup> Copies of the undated letters from Apex Learning were accepted into evidence without objection as Petitioner’s Exhibits 3 and 4.

<sup>8</sup> See Petitioner’s Exhibits 3 and 4.

<sup>9</sup> Webster’s sheds little more light on the matter, providing that “to cumulate” is “to accumulate,” which is “to gather or collect, often in gradual degrees.” For what it’s worth, Ms. Gaillard-Garrick testified that even if F. Doe was eligible to attend summer school as a means of getting promoted, she would not have accepted a “Grade to Date/Overall Percent” of 67.1% as passing. (As noted, passing at Davies requires a minimum grade of “70”).

Rhode Island law.<sup>10</sup> Thus, the Davies' Board of Trustees had the necessary legal authority to adopt and publish policies in its Student Handbook providing that: (a) students were required to receive a minimum final grade of "70" in order to pass; and (b) students who fail "more than 2.5 credits in one school year" have to repeat the grade.<sup>11</sup> Petitioner has not argued that the policies were irrational or were implemented in an arbitrary or discriminatory fashion, and there has been no evidence so suggesting.

Mrs. Doe argued that F. Doe should not be bound by the policies because Mrs. Doe did not read the Student Handbook and was not aware that the policies existed, despite having signed an "acknowledgement of Student Handbook" form when F. Doe was enrolled at Davies. Aside from: (a) the general rule under Rhode Island law that "a party who signs an instrument manifests his assent to it and cannot later complain that he did not read the instrument or that he did not understand its contents,"<sup>12</sup> and (b) the testimony suggesting that Mrs. Doe was verbally informed of the policies by Davies on more than one occasion prior to F. Doe's enrollment in the summer courses, it was Mrs. Doe's (and F. Doe's) obligation to read the rules governing attendance at Davies, and no evidence has been offered suggesting either that Davies misrepresented the policies, or did not make them readily available.

In addition, whether or not Mrs. Doe relied upon an assumption that attending summer school would enable F. Doe to be promoted to tenth grade, any such reliance would not have been reasonable under the circumstances since Mrs. Doe did not attempt to validate her assumption which, as noted, was flatly contradicted by applicable school policy. In addition,

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<sup>10</sup> See RIGL § 16-45-6(d)(2).

<sup>11</sup> See, e.g., RIGL §§ 16-2-9(a) ("entire care, control, and management of all public school interests . . . shall be vested in the school committees"); 16-2-9(a)(16) (empowered to "establish standards for conduct in the schools and for disciplinary actions").

<sup>12</sup> See, e.g., *Papudesu v. Medical Malpractice Joint Underwriting Ass'n of Rhode Island*, 18 A.3d 495, 499 (R.I. 2011), citing *F.D. McKendall Lumber Co. v. Kalian*, 425 A.2d 515, 518 (R.I.1981).

there is no evidence to suggest that any action taken in reliance upon Mrs. Doe's assumption, i.e., enrolling F. Doe in summer courses, caused legal damage. Indeed, no evidence was presented suggesting that there was any cost associated with the courses and F. Doe presumably has (and will) benefit from her summer school work whether or not she has to repeat ninth grade.

Finally, the opinions of Mrs. Doe and F. Doe that requiring F. Doe to attend ninth grade a second time would be a "waste" are—when coupled with F. Doe's unwillingness to take advantage of the extra academic help available at Davies during the 2013-14 school year and her mixed performance in summer school—an insufficient basis upon which to either: (a) reverse the conclusion reached by F. Doe's guidance counselor and Davies' Director that promoting F. Doe to tenth grade would not have been in her best interest; or (b) make an exception to the school's promotion policy.

## **5. Conclusion**

For all the above reasons, the appeal filed on behalf of F. Doe is hereby denied and dismissed.

For the Commissioner,

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Anthony F. Cottone, Esq.  
Hearing Officer

Dated: November \_\_\_\_, 2014

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Deborah A. Gist,  
Commissioner