

STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

IN RE: *Eric Doe II*

DECISION

Held: The decision by the School Committee to exclude the student from participation in extra curricular activities was not arbitrary and capricious and did not deprive him of his due process rights.

Dated: May 18, 1998

Introduction:

This case concerns an appeal by the parents of student, Eric Doe II¹ from an adverse decision of the North Smithfield School Committee affirming the school department's decision to impose the following discipline upon Eric Doe II:

Suspension from school for 10 days;

Forfeiture of membership in the Lettermen's Club;

A loss of senior privileges to exclude Eric Doe II from participating in senior and junior proms;

senior class trip;

senior awards night and senior banquet.

Additionally, Eric Doe II was prohibited from participating in all extra-curricular activities including athletics. He was permitted to participate in graduation ceremonies with his class provided that he not violate any school rules for the remainder of the school year.

The Commissioner of Education designated the undersigned to hear and decide this appeal. A hearing was conducted on April 27, 1998. The appellant was present along with his parents. The School Committee was represented by Attorney Richard Ackerman.

Background²

Appellant, Doe II, is a senior at the North Smithfield High School and is due to

¹The Appellant is referred to as Eric Doe II in order to distinguish him from Eric Doe who was the subject of another appeal.

²As the relevant facts in this appeal are similar to those in: In Re: Eric Doe, the parties agreed to adopt the factual background of Eric Doe in the instant appeal.

graduate in June 1998. At the time of the activities complained of by the School Committee, student Doe II was a member of the High School Lettermen's Club. The Lettermen's Club is a school club comprised of athletes who have earned letters in school sports. The Club's advisor, Jerry Caito, is an instructor at the North Smithfield Junior and Senior High Schools. After the death of Mr. Caito's wife from cancer, the Lettermen's Club began an annual fund raising event to raise money for the American Cancer Society in memory of Mr. Caito's wife. The fund raiser usually took place every year in April. The Lettermen's Club would be provided with fund raising material from the American Cancer Society with the club's logo as well as the American Cancer Society logo evidencing the fund raising partnership between the two entities.

In February of this year, Mr. Caito received a telephone call from a former Letterman who, presumably, graduated from North Smithfield High School and was residing in North Smithfield. The caller asked Mr. Caito why the American Cancer Society fund raiser was taking place in February as opposed to its usual time in April. He also advised Mr. Caito that he had written a check for the fund raiser. After receiving the telephone call Mr. Caito contacted the principal of North Smithfield High School, Kevin Sheehan, and advised him of the telephone call. They agreed to wait until the check surfaced before investigating further.

At some point subsequent to the discussion between Mr. Caito and Mr. Sheehan, parents of one of the appellant's friends came to the school to meet with Mr. Sheehan. They turned documents over to him pertaining to the Lettermen's Club along with two pages of names, amounts of money and addresses with two checks from North

Smithfield residents. This meeting took place in March of 1998. After examining the documents which the parents presented to him, Mr. Sheehan summoned Doe II's friend to the office to question him about the documents and the checks.

When first questioned by Mr. Sheehan, the student denied he was involved in any unlawful fund raising activities and insisted that the fund raising activities he engaged in was for the purpose of raising a minimum of \$50.00 which is necessary to participate in Lettermen's Club field trips. When confronted with the amount of money collected on the two pages which totaled approximately \$200.00 the friend admitted that he and his friends including Doe II had, indeed, solicited money under the guise of the Lettermen's Club cancer fund drive. He stated that he and his friends collected the money, divided it and spent the cash. As a result of the meeting Mr. Sheehan concluded that the activities engaged in by this friend 's appellant as well as the appellant were probably illegal, and the North Smithfield Police Department was notified.

At some point thereafter, the appellant was summoned to Family Court and the charge or charges brought against him were administratively adjudicated with a disposition which required that restitution be made as well as 30 hours of community service.

After consulting with other faculty members at the school, Mr. Sheehan decided to suspend the appellant from school for ten days and to impose the additional sanctions aforementioned.

That decision was appealed to both the North Smithfield School Department and

School Committee. The Department and the School Committee affirmed the school's decision to impose the discipline aforementioned without modification.

Issue

The issue here is whether the discipline imposed by the School Committee deprived the student of his due process rights

Position of the Parties

Student Eric Doe II

The parents argue that the sanctions imposed by the school authorities are unduly punitive. They contend that their son has been punished enough in that he has had to face adjudication of his activities in the Family Court and that he has been punished by them and otherwise ostracized in the eyes of the community. While the appellants concedes that loss of membership in the Lettermen's Club as well as exclusion from sports activities is warranted, they argue that exclusion from senior activities is unduly harsh. (Tr. p. 23).

Position of the School Committee

The School Committee contends that the actions taken by appellant and his three cohorts not only embarrassed the school, the Lettermen's Club and its members, but the student body as a whole. They believe that the conduct and actions taken by these four (4) students has had an adverse impact upon fund raising activities in the North Smithfield community and will especially make it difficult for the Lettermen's Club to raise funds in the future. They assert that the appellant's conduct dishonored the

memory of the late Mrs. Caito, dishonored the community as well as the Cancer Society. (Tr. p. 6). They believe and argue that the illegal fund raising activities by appellant and his three fellow students were so egregious as to justify the discipline imposed including but not limited to exclusion from extra curricular activities. They maintain that the imposition of discipline is within the sound discretion of school authorities. As participation in extra curricular activities is not a right but a privilege they argue that when warranted this privilege can be denied to a student. (Tr. p. 6).

Finally, the Appellee notes each and every one of the four students involved was subjected to the same discipline imposed here. (Tr. p. 12).

Findings of Relevant Facts:

- Student Doe II was a senior at North Smithfield High School at all times relevant to this matter.
- That student Doe II at the time of this incident was a member of the Lettermen's Club at North Smithfield High School.
- That student Doe II did collaborate with three fellow students to fraudulently solicit donations through the unauthorized use of the Lettermen's Club's name and annual cancer society drive.
- That Student Doe as well as the other three participants did collect approximately \$200.00 in cash donations as well as a number of donations drawn on checks.
- That the students involved did divide the cash donations and convert the money to their own use.

Decision:

The Facts in this case are uncontested. Student Eric Doe II is before the Department seeking relief from an adverse decision by the North Smithfield School Committee to impose disciplinary action on him after finding that Eric Doe II and his classmates had engaged in unlawful fund raising activities.

The record is clear. Prior to activities of Eric Doe II and three fellow students, the Lettermen's Club enjoyed a respected reputation in the North Smithfield School as well as the surrounding North Smithfield community. The Club had a proud tradition of community service and had established an annual fund raising drive in conjunction with the American Cancer Society. This annual event was commenced after the Club's faculty advisor, Jerry Caito, lost his wife to cancer and was done in memory of Mr. Caito's late wife.

Eric Doe II and his fellow students concocted a scheme to fraudulently solicit donations in the North Smithfield community using the Lettermen's annual cancer drive as the vehicle. In furtherance of the plan, the four students created counterfeit fund raising materials and canvassed the North Smithfield community seeking donations. Their efforts were apparently successful in that they raised in excess of \$200.00 in cash and two donations written by checks. After collecting the money the four students then divided the cash and converted the money to their own use.

The resulting publicity created a significant amount of negative attention for the Lettermen's Club, the North Smithfield High School and the community-at-large.

Without question, the Club's reputation has been tarnished by the behavior of

Eric Doe II and fund raising activities in the future will, no doubt, be viewed as suspicious. What is most disturbing is that this was not one single act but a repetitive act which Eric Doe II and his collaborators had to reflect on each and every time they solicited a donation. Thus, they had an opportunity every time they sought a donation to examine their conscience and to weight the consequences of their behavior. These four were high school seniors on the verge of graduation and should have known their activities would have grave consequences. Rather than some amateurish scheme, their conduct was the product of a relatively sophisticated scam to defraud unsuspecting charitable neighbors.

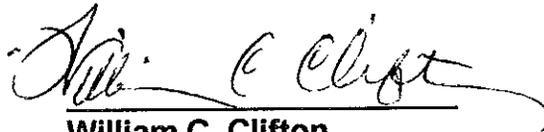
Parents for Eric Doe II argue that the sanctions imposed by the school authorities are unduly harsh and "overbearing". They contend that since Eric Doe II had to face adjudication in the juvenile justice system the additional sanctions imposed by school authorities are unreasonable under the circumstances.

The school authorities, on the other hand, believe that the discipline imposed on Eric Doe II was appropriate given the degree of harm his activities created and given the special injury to the reputation of the senior class, Lettermen's Club and all its members, past and present.

Clearly, the conduct of Eric Doe II and his fellow students was reprehensible as well as criminal in nature. While Eric Doe II has expressed his remorse for participation in the activity, (Tr. p. 43), which we accept as genuine, damage to so many others has already occurred and the degree of sophistication required to perpetrate such a scheme underscores how repugnant the behavior was. Without

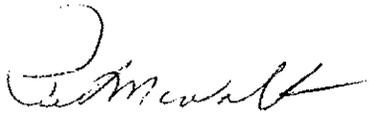
question the school department is empowered to impose appropriate discipline including, but not limited to exclusion from extra curricular activities when the circumstances warrant such action. As participation in extra curricular activities is a privilege and not a right, under appropriate circumstances the exercise of that privilege can be denied. I believe that the facts of this case support the decision by the school authorities to impose the within disciplinary measures. The action taken was not arbitrary or capricious nor did it deprive the student of his due process rights. I am satisfied that there is a rational basis for the School Committee's decision under these circumstances.

For these reasons, the appeal is denied.



William C. Clifton
Hearing Officer

Approved:



Peter McWalters
Commissioner of Education

Dated: May 18, 1998