

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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H. DOE

V.

PORTSMOUTH SCHOOL COMMITTEE  
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**Decision**

Held: School Committee's exclusion of student's photograph from the senior portrait section of the high school yearbook is unreasonable and arbitrary.

January 19, 2007

## Introduction

This is an appeal by student Doe's mother from the decision of the Portsmouth School Committee to uphold the exclusion of a photograph of Doe from the senior portrait section of the Portsmouth High School yearbook.<sup>1</sup>

## Background

Student Doe is a 17-year-old senior at Portsmouth High School. In early September 2006, he received a yearbook-related notice entitled "Attention Seniors!!" The notice advised seniors of a due date for the submission of 5 items for the school's yearbook. Three of the items were "Senior Photos," "Blurbs," and "Remember When's." For these items, the notice states as follows:

Senior Photos: If it was taken by Armor & Martel you do not need to give us a paper photo. You must inform A&M of the photo you would like appear (sic) in the yearbook. All other students must send in their senior photo by the date above, otherwise we will take your senior picture for you.

Blurbs: Cannot exceed 500 characters including spaces. All of the blurbs will be read by Mr. Littlefield and will be edited for profanity and any inappropriate statements . . .

Remember When's: Up to 5 Remember When's and they will also be edited by Mr. Littlefield and the yearbook staff . . . [Petitioner's Exhibit 2].<sup>2</sup>

In response to the notice, Doe submitted a photograph of himself wearing chain mail on his head and body and holding a broadsword in his right hand and a dagger in his left hand. Both of Doe's hands are at his belt, with the broadsword resting on this right shoulder. Doe is turned slightly to his right in the photograph.

When asked at the hearing why he chose to dress the way he did in the photograph, Doe testified that "It's one of my favorite hobbies and interests . . . re-creation of the medieval times .

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<sup>1</sup> The Commissioner of Education designated the undersigned hearing officer to hear and decide the appeal. At the request of the United States District Court for the District of Rhode Island, where related litigation between the parties is currently pending, this case was handled on an expedited basis. A hearing was held on January 2, 2007 and the parties subsequently submitted memoranda.

<sup>2</sup> Mr. Littlefield is the principal of Portsmouth High School.

. . I really like this sort of thing and I wanted to be remembered as somebody who did.” [Transcript, pp. 16-17, 21]. Doe further testified that he takes part in archery tournaments and arrow-making workshops, and that he participates in faires while dressed as a medieval character. He is a member of the Society for Creative Anachronism, which provides learning experiences through the re-creation of medieval crafts and activities.

Doe submitted his photograph to the yearbook advisor, an educator at Portsmouth High School who also teaches two sections of a course entitled Principles of Publishing. According to the High School program of study, the curriculum for the course focuses on “the design, writing, layout and editing of major publications” whereby “the students will develop the skills necessary for producing the Portsmouth High School Yearbook, The Legend, and a spring supplement.” [School Committee Exhibit 3].

Doe testified that following the submission of the photograph, the advisor told him that it was Mr. Littlefield’s decision not to accept the photograph for the senior portrait section of the yearbook. Doe then briefly spoke to Mr. Littlefield who stated that he was concerned that parents might take offense to the photograph. Doe’s mother subsequently spoke to Mr. Littlefield and the latter indicated that the photograph could be perceived as an endorsement of weapons in school. Doe’s mother asked for a written explanation for the refusal to accept the photograph and Mr. Littlefield suggested that they look at a digitally altered version of the photograph.

Mr. Littlefield later provided Doe’s mother with a photograph that was digitally altered so as to remove the sword and dagger. The altered photograph came with a letter that stated that the new version would be “consistent with our no tolerance policy on weapons, drugs, alcohol, etc.” [Petitioner’s Exhibit 4]. The letter also offered the option of an alternative photograph and concluded by stating that

Another alternative is to place the unedited photo in the advertisement section of the yearbook where many families submit additional photos. It is easier for a school to disavow endorsement or approval of a photo when it is included in the advertising section. I have included a price list. [Ibid.].

Doe’s mother informed Mr. Littlefield that the digitally-altered photograph was not acceptable because it did not provide “a complete representation of what he was looking to

