

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
COUNCIL ON ELEMENTARY AND SECONDARY EDUCATION**

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**BARRINGTON SCHOOL  
COMMITTEE**

**v.**

**C.A. No.18-0SIA**

**STUDENT E. DOE**

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**STUDENT E. DOE'S ADVERSE PARTY BRIEF**

**I. INTRODUCTION**

A hearing on the appeal of the disciplinary action that was taken by the Barrington School Department ("School Department") against eighth grade Barrington Middle School student, xxxxxxxxx, took place on October 29, 2018 at the Rhode Island Department of Education ("RIDE"). After an extensive hearing and briefing, on January 4, 2019 the Commissioner rendered a Decision and Order (the "Decision") holding that:

The "Decision of administrative panel affirming the three day, out-of-school suspension of a middle school student who discussed a school shooting with other students at his school cafeteria lunch table is reversed, and any record of the suspension removed from the student's record as no evidence suggested that the student was a "disruptive student" under RIGL § 16-2-17(a), which prohibits the imposition of out-of-school suspensions for non-disruptive students."

**2. STANDARD OF REVIEW**

"Pursuant to § 16-39-3 the board's review of the commissioner's decision [is] limited to a determination of whether the decision [is] "patently 'arbitrary,

discriminatory, or unfair.'" D'Ambra v. North Providence School Committee, 601 A.2d 1370, 1374 \*RI 1992) *citing* Altman v. School Committee of Scituate, 347 A.2d 37, 40 (RI 1975).

### 3. FINDINGS OF FACT<sup>1</sup>

1. On February 28, 2018, E. Doe sat with six (6) other students at a table in the BMS cafeteria during the lunch period. The conversation at the table turned to the recent school shooting in Parkland, Florida, which had occurred just two weeks prior.

2. Initially, the conversation concerned what the students would do in the event there was a shooter at BMS. However, at some point in the conversation, four (4) of the seven (7) students at the table began discussing what they would do if they were the shooter.

3. The four (4) students who discussed a hypothetical shooter's tactics often played a video game together called Fortnite, which E. Doe explained was "a game where you collect materials and build forts and try to eliminate other opponents." *See Id.* at 47, 50. Fortnite players use pistols and machine guns, as well as grenades, and E. Doe testified that one of the students at his lunch table said he would use grenades like the ones used in Fortnite if he was the shooter. *See Id.* at 50, 235-236.

4. E. Doe was consistent in reporting that after the topic of the conversation changed to what one would do if one were actually the shooter, he "didn't present any new ideas or directly state anything" other than to "agree with everyone else" that if he were the shooter, he "would come in through the front door." *See id.* at 19. E. Doe then claimed that he "stopped speaking after that on the topic." *See id.* at 51, 56-57.

5. When asked what he thought was the meaning of the conversation, E. Doe said:

I don't know. It was not to be taken literally. It was just a conversation they brought up, and it probably wasn't the best thing to have been talking about considering the events; but it wasn't as though they were planning a literal shooting to come into the school and hurt people.

*Id.* at 54. He said he considered it "sort of a joke." *Id.*

6. A student located elsewhere in the cafeteria evidently overhead all or some

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<sup>1</sup> These are taken verbatim from the Decision with footnotes omitted.

portion of the conversation, told his or her parent, and the parent then made an anonymous tip to the Barrington Police Department, reporting that "a group of boys" at BMS had been talking at lunch "about bombs and shooting up the school." One of the boys was identified by name. *See* Barrington Police Department Incident Report # 18-235-OF, Respondent's Ex. 1, at 3. The Barrington Police informed the Superintendent of the report, and sometime that evening the Superintendent contacted the BMS Principal, who confirmed that the students were enrolled at BMS.

7. The Barrington Police then made a visit to the home of the boy who had been identified, and he then identified the other six students at the cafeteria table and identified E. Doe as one of the "three main talkers." *See Id.* The police visited E. Doe's home at approximately 10:45 p.m. and interviewed E. Doe and his parents. *See* Tr. at 21, 111-113. According to the Police, "[a]ll the boys offered similar versions of the conversation that took place ... and assured us that nothing that was said was to be taken literally." *See* Police Department Incident Report, Respondent's Ex. 1, at 3. No criminal charges were made or contemplated.

8. The Barrington Police briefed the Superintendent the next morning, and he then briefed the BMS Principal and informed the Principal as to the conclusion reached by the Police. *See* Tr. at 128. The Principal had to deal with an issue at home the following morning (February 29, 2018) and was slightly delayed arriving at BMS, and so he briefed the Assistant Principal, who was at the school, by phone. *See Id.* at 129.

9. Ms. Doe called BMS at approximately 6:45 a.m. on February 29th and somewhere between 7:00 a.m. and 7:35 a.m., the BMS Assistant Principal called her back. According to Ms. Doe, she recounted what had happened the night before, after which the Assistant Principal informed her that the students' lockers and backpacks would be searched. And Ms. Doe testified that the Assistant Principal also informed her that E. Doe would be questioned, but that the police "could not be present" during the questioning, that "it would be quick" and that Ms. Doe "should really have no concerns." *See Id.* at 81

10. The Assistant Principal, while recalling that she informed Ms. Doe that she need not be present during the search of her son's locker and backpack, *See Id.* at 207, did not recall discussing the need for Ms. Doe to be present at any questioning of her son. *See Id.*

11. The Barrington Police arrived at BMS just as the school was opening, advised the Assistant Principal of what had occurred the night before, and repeated their conclusion that the boys did not pose any threat. The Assistant Principal and the BMS Resource Officer searched the student's lockers and backpacks and nothing out of the ordinary was found.

12. At 8:39 a.m., the BMS Principal, responding to the concerns generated by the presence of police at the school, notified parents, teachers and administrators about the anonymous tip by email, emphasizing that "[i]t was quickly determined that there was no threat to our learning community or environment." *See* Petitioner's Ex. 3; Tr. at 237-238.

13. All seven (7) students at the relevant cafeteria table were then called to the Principal's office and were individually interviewed for twenty (20) to thirty (30) minutes by the Principal and the Assistant Principal in the presence of the BMS Resource Officer, who is also a Barrington Police Department Patrolman. E. Doe's parents were not informed that the BMS Resource Officer would be present during the questioning of their son. *See* Tr. at 92-93, 115, 186

14. E. Doe testified that the BMS Resource Officer was standing in front of the door while he was being questioned, which he found "intimidating." *See* Tr. at 25-26, 62-63. By contrast, the Resource Officer, Principal and Assistant Principal all testified that the Officer was seated at the table. *See Id.* at 142, 184, 212, and 233.

15. The BMS Resource Officer's unrefuted testimony was that he did not participate in the actual questioning of any of the students and: (a) made clear at the outset that he was not there in his capacity as a police officer, but rather as a resource officer, and that no criminal charges were pending or were contemplated; and (b) emphasized to each student at the end of their questioning that "everybody makes mistakes," and that they should learn from the mistake rather than let it have an unduly adverse impact. *See* Tr. at 234; 145-46 (Principal's corroborating testimony); and at 212-13 (Assistant Principal's corroborating testimony).

16. The Principal, Assistant Principal and Resource Officer all testified that the students' versions of what had occurred were consistent, and none were aware of any specific evidence contradicting E. Doe's claim that his contribution to the relevant conversation was limited to agreeing with the others that if he were the shooter, he would enter through the BMS front door. *See* Tr. at 142-43, 211-212, 228-29, 236.

17. E. Doe was then questioned by a licensed social worker at the school, who the next day completed a "Risk Screening Documentation Form." *See* Petitioner's Ex. 2. E. Doe's parents were not notified prior to this interview. *See* Tr. at 97, 117, 188. Although the social worker for some reason checked the box on the form suggesting that the "At Risk Behavior that Warranted Initiation of Risk Screening Protocol" was "Homicidal Ideation/Behavior," *See Id.* at 1, she concluded after interviewing E. Doe that he "does not appear to pose imminent danger to himself or to others." *Id.* at 2.

18. The Assistant Principal noted that E. Doe "seemed remorseful" and that, as noted,

"all of [his] stories lined up with [his] friends from the table." See Tr. at 32. In addition, both the Assistant Principal and Principal were aware of the fact that E. Doe was a good student with no disciplinary record, and that the Barrington Police Department concluded that none of the four (4) students posed a threat.

19. Yet, the Principal imposed a three-day, out-of-school suspension upon E. Doe and the other three (3) students who had speculated about being a shooter, which was to commence immediately. And he imposed three (3) days of detention upon the other three (3) students who happened to be seated at the cafeteria table.

20. E. Doe was informed of his suspension following his session with the school social worker, and at approximately 1:30 p.m. Ms. Doe was notified and informed that she should pick up E. Doe from school. See Tr. at 99-100. Ms. Doe testified that she then asked the Assistant Principal whether the suspension was dictated by school policy, and when told that it was, she asked for a copy of the policy. E. Doe's parents claim that to date, they have not received a copy of any such policy. See *Id.* at 102.

21. When asked at the October 29 hearing to explain the rationale for the out-of-school suspensions imposed upon four (4) of the students, the Principal testified that:

... first and foremost, looking at what, what actually, what occurred. And then, you know, in this case, it was a conversation as if they were being active shooters and that, how it was brought to our attention was through the anonymous tip line, so someone in the community was pretty, you know, concerned that a conversation such as this -- so, we have to look at what was said and how does it impact our overall learning community, and we felt that those words and those actions, you know, did have an impact on our community. So, we felt that appropriate, the consequences would be appropriate. So, we, you know, use our handbook as our first and foremost guide as typical consequences.

Tr. at 148-49.

22. The Principal also explained that when considering the appropriate discipline, it was significant to him that:

someone overheard it and was the potential of other folks overhearing the conversation as well. Just also, too, you're two weeks away from one of the greatest school shootings in the country where 17 students lost their lives, so the context is important.

*Id.* at 155.

23. The Assistant Principal explained that:

I think what it came down to, when [the Principal] and I talked about it, is that someone in our school overheard them talking about that; and it was brought to the police matter because that person was not feeling safe at her school. And we kind of went with the thing like that's our number one goal is to keep everyone safe at school; and if one student heard it in the cafeteria -- we have up to 250 kids, 260 kids in the cafeteria, so maybe other kids heard it, and you know, I feel like you can never be too cautious with that, and that we really needed to look at that because, unfortunately, in today's society, it's not uncommon.

*Id.* at 215-216.

24. The Principal also referenced the BMS Student Handbook which, under the headline "Suggested Guidelines for Natural Consequences" contains a violation entitled "Safety," defined as "[e]ngaging in or threatening to engage in behavior which would cause physical or emotional harm; fighting, running, throwing articles, shoving, rowdiness and roughhousing, etc." *See Id.* (Respondent's Ex. 2) at 27-28

25. At some point, E. Doe's parents received a letter from the Assistant Principal dated May 16, 2018 stating that it was the "official notification that on March 1, 2018, your son [E. Doe] was found to be in violation of the school policy: Threat/Intimidation" and "as a result of his behavior, [E. Doe] has been assigned External Suspension - 3 Days commencing on 03/01/2018." *See Tr.* at 103; Petitioner's Ex.4.

26. On March 19, 2018, E. Doe's attorney wrote the Barrington Superintendent to appeal the finding that E. Doe had violated school policy and to demand that any record of the discipline be removed from his school record. *See* Petitioner's Ex. 5. The appeal was heard by "an administrative team" represented by the Superintendent, Barrington's attorney, and the BMS Principal and Assistant Principal. *See* Petitioner's Ex. 6.

27. On May 3, 2018, the Superintendent denied the appeal, emphasizing that E. Doe had admitted that "he had participated in the conversation about how the group of boys would conduct a school shooting in Barrington." *Id.* He also stated that the School Department "would not object if you seek to present this matter directly to the Commissioner."

**4. ARGUMENT**

**A. The Decision was not patently arbitrary, discriminatory, or unfair and should be affirmed.**

**1. The Commissioner correctly held that the Barrington School Committee violated R.I. Gen. Laws 16-2-17 and 16-2-17.1.**

As correctly pointed out by the Commissioner, the Safe School Act states that "suspensions issued shall not be served out of school unless the student's conduct meets the standards set forth in § 16-2-17(a) or the student represents a demonstrable threat to students, teachers, or administrators." *See* RIGL § 16-2-17.1. And RIGL § 16-2-17(a) provides in pertinent part that:

A disruptive student is a person who is subject to compulsory school attendance, who exhibits persistent conduct which substantially impedes the ability of other students to learn, or otherwise substantially interferes with the rights stated above, and who has failed to respond to corrective and rehabilitative measures presented by staff, teachers, or administrators.

The Commissioner correctly found that:

The facts make clear that E. Doe was neither a "disruptive student" under § 16-2-17(a) nor posed a "demonstrable threat to students, teachers, or administrators" under § 16-2-17.1 and as a result, the imposition of an out-of-school suspension was in violation of an express statutory prohibition.

XXXXXXXXXXXXXXXXXXXX has consistently maintained the same story about what transpired on February 28, 2018, that he presented, under oath, on the day of the hearing. On the morning of February 28, Mrs. Andreozzi, a teacher assistant, informed his Algebra class that they were going to be having a lock-down drill later in the day. (Tr. 16). Because of that disclosure, xxxx and some other boys talked about how they were having a lock down drill while at lunch and then they discussed what they would have done if

there was ever a shooter inside the school. (Tr. 17). They discussed how they would defend themselves against a shooter in the school, relying on tips given to them by their sixth grade Science teacher. (Tr. 18).

xxxx testified that at some point the conversation shifted and his friends, xxxxx and xxxxx, brought up a "new topic whereas if they were the shooter in the school, how they would handle it." (Tr. 19). Xxxxxx never said anything directly in response to this topic, nor did he present any new ideas. He testified that he agreed with what everyone else said about coming in the front door. He then "stopped speaking on that topic." (Tr. 19). He testified that he never mentioned using a weapon, bombing the school or harming anyone and that he did not encourage the conversation in any way. (Tr. 19-20). In fact, he testified that instead of participating in this part of the conversation, he turned to his friend xxxxxx and discussed the basketball season at the Middle School, because he felt "uneasy" about the topic in light of the recent school shooting in Parkland, FL. (Tr.20).

The School Department's three witnesses presented no evidence to controvert xxxxx testimony, nor did they present any evidence that xxxxxx said anything which would constitute a "threat" or "intimidation" or "disruption" that day at lunch. The first witness, Principal Anderson, admitted that he received a call from the superintendent the night of February 28, 2018, but that on the morning of March 1, 2018, prior to conducting the investigation, he did not have "any specifics about the conversation." (Tr. 128). Further, Mr. Anderson admitted, that prior to even conducting a school investigation, he did not think that the boys were "an actual threat



to the community." (Tr. 163). And he sent out an email to the entire school community to that effect. (Petitioners' Exhibit 3). Further, after interviewing the boys, he did not think they were a "threat" to the community. (Tr. 163). When pressed, Mr. Anderson could not point out a single specific threatening statement or action that xxxx had made. (Tr. 144; 171-172).

The second witness, Ms. Bulk, admitted that they didn't even bother to ask the students involved what each of them said and who, if anyone, had made a "threatening" statement. When asked if she thought it was important to figure out to what degree each student participated in the conversation, she responded, "We didn't really go, what did you say, what did you say, what did you say....We did not go line by line who said what." (Tr. 229). Ms. Bulk apparently took the position that the boys should have been punished for even bringing up the topic of school shootings at lunch, despite being told by a school employee there would be a lock down drill that day. (Tr. 229-230). She also didn't think it was important to ask the teacher assistant who passed along the drill information whether or not she had done so. (Tr. 230).

Like the previous witnesses, the third witness, Officer Melo, a police officer employed by the Barrington Police Department, confirmed that the police found that the students posed no threat, prior to the school's questioning on March 1. (Tr. 238). He also could not offer a single statement of threat or intimidation that xxxxxxxx had made.

xxx freely admitted in his testimony that he participated in the lunch room conversation to the extent that he and the other boys spoke about how to stop a shooter

and that he agreed with the boys that if he were the shooter, he would come in through the front door. (Tr. 17-18). Xxxx testified that once the "shift" in conversation happened, he never said anything directly in response to this topic, nor did he present any new ideas. He testified that he never mentioned using a weapon, bombing the school or harming anyone and that he did not encourage the conversation in any way. (Tr. 19-20). He further testified that he "stopped speaking on that topic." (Tr.19).

This does not in any way contradict what the school department witnesses say that xxxx said in his interview with them. There was no evidence presented by any of them or through documents that xxxx ever admitted to making any threatening remarks. He admitted then and admitted at the RIDE hearing, that he was simply present for the conversation and took part in a piece of it; none of which involved threats or intimidation or disruption.

The School Committee focuses on the alleged impact of the student's statements and whether they could reasonably cause classmates or school staff to feel threatened or intimidated. The School Committee argues that the students were disciplined because the administrators knew that "at least one community member had felt threatened or intimidated. However, the School Committee presented no evidence that anyone was threatened or intimidated by anything that xxxxxxxxx said. The police report submitted by the School Committee specifically states that only one student was identified; xxxxxxx. (Respondents' Exhibit 1). xxxxxxx's name was never mentioned by anyone as a threat or intimidation.

In addition, the School Committee explicitly stated during the hearing that it did not base his discipline on what was said in the police report. (Tr. 195). Further, there was no testimony that the school received any other knowledge that any student or faculty member had even overheard the conversation at xxxxxxx's table, never mind felt intimidated or threatened by it. Therefore, any emphasis on "school disruption" or intimidation that xxxxxxx may have caused, is baseless.

The School Department continually ignores the clear lack of any required evidence and instead relies on the general nature of the conversation without a shred of evidence that the educational environment was disrupted or that xxxx made any threatening or disruptive statements whatsoever. The School Department attempt to create a web of "constitutional" and "safety" concerns to avoid the simple, uncontroverted truth; xxxxxx made no threatening or intimidating comments, he did not disrupt the educational environment, and he appropriately exited himself from conversation in a timely manner. The Commissioner recognized these simple facts and his findings and Decision are not patently arbitrary, discriminatory, or unfair.

**2. The Commissioner correctly held that the Barrington School Committee violated the basic tenants of due process.**

The School Department also deprived xxxx of his due process rights by giving him no notice with respect to the reason for his suspension. On May 16, 2018, over two months after the alleged incident occurred, the parents of xxxxxxx were sent notice by mail, after being verbally notified at an earlier date, that their son was issued a three-day suspension for "violation of the school policy: Threat/Intimidation." (Petitioner's

Exhibit 4). In his testimony, the principal of Barrington Middle School testified that he relied upon a provision in the handbook regarding safety when deciding to give xxxx a three-day suspension. (Tr. 159) (Respondent's Exhibit 2). This provision described the offensive behavior as:

Engaging or threatening to engage in behavior which would cause physical or emotional harm, fighting, running, throwing articles, shoving, rowdyism and rough housing, etc.

Principal Anderson testified that he relied on this policy and then looked at "each individual student, each individual's part of the incident that had occurred and figured(d) out what the best consequence moving forward would be." (Tr. 148).

Despite the fact that xxx's parents had repeatedly asked for specific information as to the "threat" that xxxxx made in violation of the policy, the School Committee presented no evidence at the RIDE appeal hearing, either through testimony or documentary exhibits, to support the premise that xxxx made a threatening comment at the lunch table or violated school policy in any way.

In the 1975 case of *Goss v. Lopez*, 419 U.S. 565 (1975), the United States Supreme Court held that rudimentary due process must be provided in the suspension of students for 10 days or less. The School Department also has an obligation, under Section G-14-2.1.4 of the BEP to notify parents of district and school rules related to conduct.

In the present matter, xxxx and his parents were not sent a notice regarding his suspension until two months after **he** was actually suspended. (Petitioners' Exhibit 2, Tr.103, Tr. 119). Further, that notice contained no mention of what policy xxxxxx had

violated. In fact, despite multiple requests, his parents were not told what policy he allegedly violated until the day of the hearing at RIDE, seven months after the alleged violation. (Tr. 119). The School Department's attempt to equate these egregious errors and omissions with the requires of a criminal code simply have no merit. The Commissioner recognized these egregious errors and his findings and Decision are not patently arbitrary, discriminatory, or unfair.

**3. The Commissioner correctly points out the flaws in the Barrington School Committee's compliance with R.I. Gen. Laws 16-21.5.**

R.I. Gen. Laws § 16-21-5.5-2 states that with respect to an eighth grade student, such as xxxxxx was on March 1, 2018:

(a) Before making an elementary school student<sup>2</sup> pupil available to a law enforcement officer for the purpose of being questioned, the principal of the elementary school, or his or her designee, shall take immediate steps to obtain the oral consent of the parent or guardian of the pupil to permit the questioning.

(b) If the parent or guardian requests that the pupil not be questioned until he or she can be present, the pupil may not be made available to the law enforcement officer for questioning until the parent or guardian is present.

In the instant matter, xxxxxxx testified that she began calling the school at 6:45 AM the day of March 1 after the police came to her house the night before about xxxx. (Tr. 78). Ms. Xxxxx spoke to Ms. Bulk that morning and testified that she told Ms. Bulk that she and xxxxxx were "scared" and "intimidated" by their interaction with the police-

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<sup>2</sup> § 16-21.5-5. Definition of elementary and high school students.

For the purposes of this chapter, "elementary school pupils" are the pupils who are enrolled in kindergarten or any grades 1 to 8, inclusive.

the night before and that Ms. Bulk assured her that xxxxxx would not have interaction with the police and that the police would not question xxxx or be present for questioning. (Tr. 81). Ms. xxxx, when describing this early morning conversation with Ms. Bulk, said that:

She, specifically she told me that there would be some police officers there but they were not allowed to talk to the children. I, I, she said they were not allowed in the room. They were not allowed to question or talk to the kids at all. That was policy. (Tr. 84).

Ms. xxxx stated that she "trusted" the School Department that they were telling the truth and sent xxxx to school. This conversation was witnessed by both xxxxxxxxxxxx and her husband, xxxxxxxxxxx. (Tr. 22-23; 114; 185-187). Ms. Bulk said that she could not recall Ms. xxxxxx asking her about the police, but she did not refute it. (Tr. 207). She described Ms. xxxxxx on the call as "pretty frantic." (Tr. 226).

It is agreed by all parties that the School Department made xxxxxxxxxxx available to the police by bringing Officer Melo in the room during the questioning and investigation of xxxxxx, despite the fact that his mother had made it clear to Ms. Bulk that he was not to be made available to law enforcement for questioning without her present. (Tr. 24; 92-93; 115-116). It is further agreed that the School Department made no attempt to contact xxxxxx's parents to see if they would agree to make him available to the police. (Tr. 92-93; 115-116; 185-187). Finally, the School Department took xxxx's cell phone and locked it in the office so that he could not have access to it and was unable to directly contact his parents to let them know that he was being called into a room for questioning with a police officer. (Tr. 26).

In the present matter, it is clear that there was coordination between the police and the school prior to the school questioning xxxx on March 1. The school administration found out about the alleged threatening conversation from the police and Ms. Bulk said it was a "police matter to that point." (Tr. 225). Principal Anderson described a "police presence" at the school that morning with "multiple police cars." (Tr. 180). Now, in an interrogation of xxxxxx, to get down to the "bottom" of what happened, a member of the same police force, whom xxxxx had never had prior interaction with (Tr. 239), was sitting in on the entire interrogation, either blocking the door or sitting at the head of the table.

Based on the above, it is clear that the School Department violated the letter and the spirit of the law in its interrogation of xxxxxxxx.

## **5. CONCLUSION**

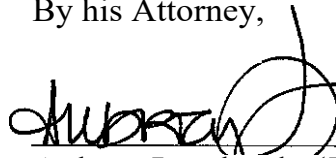
The School Department could not produce a single piece of evidence during the lengthy disciplinary appeal hearing of xxxxxxxxx, showing that he had made a threatening or intimidating statement. Likewise, they could not produce a single piece of evidence that anything he said, made anyone who overheard feel threatened or intimidated. In addition, every piece of information that was collected in the school's investigation of xxxxxxxx was acquired in violation of state or federal law.

The Commissioner agreed when he found that the "Decision of administrative panel affirming the three day, out-of-school suspension of a middle school student who discussed a school shooting with other students at his school cafeteria lunch table is reversed, and any record of the suspension removed from the student's record as no

evidence suggested that the student was a " disruptive student" under RIGL § 16-2-17(a), which prohibits the imposition of out-of-school suspensions for non-disruptive students."

The Decision is clearly based on the facts and evidence presented and is not patently arbitrary, discriminatory, or unfair. Therefore, it must be affirmed.

Respectfully Submitted,  
xxxxxxx,  
By his Attorney,




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Aubrey Lombardo (7546)  
1240 Pawtucket Ave.. Suite 308  
East Providence, RI 02916  
(401) 424-5224  
[alombardo@hcllawri.com](mailto:alombardo@hcllawri.com)

**CERTIFICATION**

The undersigned hereby certifies that a true and accurate copy of the within was electronically mailed to the below listed individual(s) on this **.2D** day of May, 2019.



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David V. Abbott  
[abbott@whelancorrente.com](mailto:abbott@whelancorrente.com)