

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

MEMBERS OF THE WEST WARWICK  
HIGH SCHOOL INTERSCHOLASTIC  
ATHLETIC TEAMS  
-and the-  
WEST WARWICK SCHOOL COMMITTEE

vs.

DECISION

November 15, 1991

RHODE ISLAND DEPARTMENT  
of  
ELEMENTARY and SECONDARY  
EDUCATION

FINAL DECISION

and

DECISION ON REQUEST

for

ISSUANCE OF AN INTERIM PROTECTIVE ORDER

### Travel of the Case

On October 22, 1991 several members of West Warwick High School's Interscholastic Athletic teams appealed to the Commissioner for issuance of an interim protective order. These students seek such relief because the continuance of interscholastic athletics by the School Committee is tenuous<sup>1</sup> because of the failure of the town to appropriate the full amount requested by the School Committee in its 1991-1992 school budget. A shortfall of \$977,000 exists between the amount requested by the School Committee to operate West Warwick schools and the amount appropriated by the voters at a special Town Financial Meeting hold October 15, 1991. The individual team members seek a protective or to compel the School Committee to keep in place the student activities program, including interscholastic athletics, as such program has existed in West Warwick over the last several years.

Joining in the appeal is the West Warwick School Committee. The Committee seeks a retraction of the Commissioner's prior written interpretation of school law that interscholastic athletic programs are not a regulatory requirement of the Basic Education Program (BEP) for Rhode Island Public Schools (Revised March, 1989). Such ruling was sent September 6, 1991 to Superintendent Thomas E. Sweeney, Jr. in response to his request for an advisory opinion on this issue.

<sup>1</sup> The letter of appeal cites a decision of the West Warwick School Committee to reduce, abolish and eliminate certain student activities. This decision (of which there is no direct evidence in the record before us) was evidently retracted on condition that the Town Council pass a resolution permitting private funds raised to be expended to support extracurricular activities and conditioning continuation of such programs on the availability of private funding. (See S.C.Ex.9).

Jurisdiction to decide the students' appeal lies under 16-39-2, and the specific authority of the Commissioner to issue protective orders set forth in 16-39-3.2.

Jurisdiction to decide the School Committee's appeal lies under 16-39-1.

The matter was heard by the undersigned Hearing Officer on October 22, November 4 and 5, 1991. The transcripts of the hearings and memorandum of the Department of Education were received on November 8, 1991, at which time the record of the case closed.

#### Findings of Relevant Facts

- The West Warwick School Committee has supplemented and integrated its academic program at all grade levels with a variety of student activities.
- Since at least November of 1986 up to the present time, the student activities program offered to students has consisted of a diverse program of athletic and non-athletic activities, described with specificity in both the 1986 BEP Report, Section 29 (Appellants' Ex.A) and the 1991-92 Student Handbook (Appellants' Ex.B; Testimony of Mr. Sweeney, Tr. Vol. II, pp. 129-130).
- The School Committee has reached a point of budgetary impasse as the funds appropriated to date by the Town of West Warwick are approximately \$977,000 less than the amount the Committee deems necessary to meet its obligations under existing collective bargaining agreements and in complying with law and regulations governing the school system. (Tr. Vol. I, pp. 34-36).
- Through its Superintendent Thomas E. Sweeney, Jr. the School Committee has requested that a fact-finding panel be convened pursuant to the budget reconciliation process provided under state law 16-2-21.1.

- In the meantime, the School Committee has adopted a budget in conformity with the May 21, 1991 appropriation, and other sources of school funding, in the amount of \$19,779,337. (S.C.Ex.I).
- The current approved school budget for the 1991-92 school year contains no monies for the student activities program previously offered by the school system.
- At the October 15, 1991 Special Town Financial Meeting, the School Committee's request for an additional appropriation of \$977,000 was rejected. (Tr.Vol.I, pp.35-36).
- Of the additional appropriation requested, a total of \$176,000 represented the revised budget request<sup>2</sup> for funds to support the student activities program, approximately \$160,000 for interscholastic athletics and \$16,000 for other student activities, such as student council, yearbook, etc. (Tr. p.59).
- In November of 1986 an on-site visit was made to the West Warwick public schools. The purpose of the visit was to determine if the school district was operating in conformity with the Board of Regents "Basic Education Program for Rhode Island Public Schools."
- The Rhode Island Department of Education report of this monitoring process shows, among many other findings, that the school district's student activities program met the standards set forth in Section 29 of the regulations "Student Activities Program". (Appellants Ex.A).
- Other than the receipt of annual monitoring reports from the district which would show progress in attaining standards not met at the time of the

<sup>2</sup> Mr. Sweeney testified that the original budget request for student activities was approximately \$225,000.

on-site visit or new areas of non-compliance<sup>3</sup> (Tr. Vol. III, p.32) the Department has not monitored the West Warwick School System for compliance since the 1986 on-site visit, and will not be performing such an evaluation until the "second cycle" of BEP monitoring, the time frame of which has not yet been determined. (Tr. Vol. III, p.36).

Decision

Section 29 of the Board of Regents' regulations entitled "Basic Education Program for Rhode Island Public Schools"<sup>4</sup> requires every public school district in the State to have a student activities program.

There shall be a Student Activities Program which is integrated with or supplementary to the school program and which shall meet a broad range of student needs not customarily met by the school program. (Section 29a).

The regulation requires further that:

Student participation shall occur at appropriate age and grade levels in a variety of areas. (Section 29b).

The BEP imposes no specific activity requirements and establishes no minimum number or distribution of student activities, giving flexibility in developing such a program to the school districts.

In fulfilling the regulatory requirements imposed by this Section of the BEP, the West Warwick School Committee has consistently provided students in its district with the array of student activities described in the BEP Monitoring Report for West Warwick in Section 29. Athletics, while not specifically

<sup>3</sup> As adjudged by the districts themselves and reported through this self-reporting mechanism.

<sup>4</sup> hereinafter the BEP.

required to be a component of any student activities program<sup>5</sup> has been selected by the West Warwick School Committee in the exercise of both the discretion accorded by Section 29's general language and the statutory power delegated to school committees by 16-2-9 of the General Laws of Rhode Island. The latter section vests local school committees with "the entire care, control and management of all public school interests of the several cities and towns". In identifying the needs of its students the West Warwick School Committee has addressed such factors as student motivation, dropout rate, and availability of higher education in its choices for a student activities program. (See testimony of Superintendent Sweeney, Vol. I, pp.15-18). The West Warwick School Committee has chosen to address these needs, and meet regulatory requirements, by maintaining a student activities program a significant portion of which is devoted to interscholastic sports.

The student activities program of the West Warwick School District was evaluated in 1986 during the BEP monitoring process. The finding at the time was that the program met the standards imposed by Section 29a and 29b of the BEP. That same program, including its interscholastic sports component, continues to be relied on by the West Warwick School District to meet the BEP requirement of Section 29. In this context, then, it is quite likely that an interruption or total discontinuance of all interscholastic sports in West Warwick could put the district "out of compliance" with the BEP. Stated another way, it is likely that some or all of the interscholastic sports activities forming a part of West Warwick's student activities program are mandated by the BEP.

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<sup>5</sup> A ruling made by Interim Commissioner Janice M. Baker in her September 6, 1991 letter to Superintendent Sweeney.

Our conclusion, based on the above analysis, is that the West Warwick School Committee can take the position before the fact finding panel that funds requested for student activities, including interscholastic sports are to provide services mandated by law. Under Exeter-West Greenwich Regional School District v. Exeter-West Greenwich Teachers' Association et al. 489 A2d 1010 C.R.I. 1985) funds for such purposes must be appropriated by the town.

It is quite possible that the student activities program traditionally offered in West Warwick is so extensive that it exceeds regulatory requirements. The determination as to whether this required program is overfunded should be made in the first instance by the fact finding panel about to convene to resolve this impasse. In making its report and developing its recommendations, the fact finding panel will undoubtedly be presented with evidence in this regard. We have no evidence before us that the student activities program in West Warwick exceeds regulatory requirements. The only fact in evidence in the record on appeal was that the program "met" standard 29a and 29b in the evaluation made in 1986 by the Department of Education. The entity most concerned with presenting evidence of over-extensiveness or overfunding (the town) was not even a party to this appeal. Thus we defer to the fact-finding process, the issue of whether the program (and its interscholastic athletics component) can be "trimmed" and still meet regulatory requirements.

We might make a few final observations. First, that a budgetary impasse does not suspend Regents' Regulations and the required operation of a student activities program in each district. The Regents obviously could have left the entire topic out of the BEP, but instead chose to include it - a conscious decision reflecting, one would assume, the importance of student activities, including athletics, to school children. Secondly, the failure of the

appropriating entity to fully fund a school department budget should not limit the flexibility given to the school committee by regulation - the prerogative to choose among a number of options in fashioning the required student activity program. While the Board of Regents could have limited the discretion exercisable by school committees under section 29, it chose not to do so. Standard 29 could have been precise with respect to number of activities, required components, per pupil expenditures, or annual expenditure requirements (like so many other program requirements of the BEP). Again, the Regents chose to adopt only general program requirements, leaving school committees considerable flexibility in meeting these requirements.

#### Relief

The students' request for an Interim Protective Order until the conclusion of the fact-finding process is hereby granted. The West Warwick School Committee is not to discontinue or interrupt the student activities program as it has traditionally operated in the School District during the pendency of the fact-finding process. If the parties determine a need for continuation of this order beyond the fact-finding process, we would think it appropriate to reconvene to take evidence on the issue of curtailments of the program which would be consistent with BEP requirements, and that in such proceeding, the Town of West Warwick would participate.

Our final decision and order is entered, consistent with the above decision, however, the interim order is to remain in full force and effect until

such time as the final order contained herein is enforceable under Rhode Island  
General Law 16-39-3.1.

*Kathleen D. Murray*  
Hearing Officer

Approved

*Jamisi M. Baker*  
Interim Commissioner