STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
ELEMENTARY
AND
SECONDARY
EDUCATION

WALTER C.

VS.

BARRINGTON SCHOOL COMMITTEE

DECISION

May 29, 1992

Held: School Administration demonstrated that its policy of requiring certain clothes for physical education class was a justifiable intrusion on a student's liberty interest.

Travel of the Case

Walter C filed a letter of appeal with Interim Commissioner Janice M. Baker on December 26, 1991. He sought review of the Barrington School Department's imposition on his son of a policy on required clothing for physical education classes. The undersigned was designated as hearing officer in this matter and an initial hearing was held on January 9, 1992. At that time counsel for the Barrington School Committee requested that the hearing at the commissioner's level be deferred until after the school committee had opportunity to hear Mr. C 's complaint and make its decision in this matter. Further hearing was deferred until the matter was considered by the members of the Barrington School Committee. They denied Mr. C 's request.

On January 27, 1992 the hearing was reconvened and evidence was presented by both sides. The record in this case closed upon the hearing officer's receipt of the transcript on February 17, 1992.

Jurisdiction to hear the matter lies under R.I.G.L. 16-39-2.

Finding of Relevant Facts

- The appellant is a resident of Barrington, Rhode Island. His eleven year old son is enrolled in the Barrington Middle School and is presently in the sixth grade. (Tr. p.6,14)
- In September, 1991 the appellant's son did not bring certain clothing required to be worn during physical education classes at the middle school. (Tr. p.7)
- The appellant's child was allowed to participate in physical education classes on a couple of occasions, but then was notified that unless he brought the required clothing, he

would no longer be allowed to participate. (Tr. p.8). Since October he has been excluded from gym class, and has been on an in-school suspension for all gym periods.

- In November, the Middle School administrators developed a revised policy on required attire for physical education. The policy established certain consequences for noncompliance (Tr. p.45).
- The revised policy (Appellant's Ex. A) dictates that students at the Middle School shall wear:

> shorts, a tee shirt and suitable blouse, socks and sneakers, also sweatshirts and sweatpants are acceptable and encouraged during cold weather.

- The policy notes that shower facilities are available and their use is encouraged.
- The policy prescribes certain penalties for students' failure to have appropriate clothing for gym class.
- The appellant's son finds the wearing of sweatpants and shorts objectionable because they are inconsistent with his personal taste in clothing (Tr. p.12).
- The child also objects to changing in school, a requirement implicit in the policy as it is enforced by school administrators. (Tr. p.11,13)
- School officials have offered to provide the gym clothing that is required (Tr. p.22) and to provide the child with a separate and private place in which to change. (Tr. p.43)
- School officials base their gym dress policy on the need for children to have freedom of movement during physical education classes, and the need for safety in having clothing appropriate for the types of athletic activities engaged in. (Tr. p.27-28,31)

o The requirement that students change into different clothing for such activities is also based on the school administration's desire to maintain and encourage good personal hygiene among students. (Tr. pp.38-39)

DECISION

The Commissioner has in the past affirmed the right of students in the state's public schools to dress as they wish, with only a slight degree of interference from school officials. See Gardner vs. School Committee of The Town of Cumberland, decision of the Commissioner dated March 24,1971. School officials shoulder the burden of justifying any intrusions on the liberty rights of students, particularly in regulations controlling the length of a student's hair, mode of dress or other aspects of their personal appearance. The specific burden of a school committee in such instances is to show that there is an outweighing state interest which justifies the intrusion. Richards vs. Thurston, 424 F2d 1281 (1970 1st Cir.)

As established by the Court of Appeals for the First Circuit in Richards, the determination of whether an outweighing state interest justifies the intrusion, involves consideration of:

> the nature of the liberty asserted,
> the context in which it is asserted
> and the extent to which the intrusion
> is confined to the legitimate public
> interest to be served. Richards p.1285

The appellant's child is entitled to and is permitted to wear clothing of his personal choice during the entire school day, save for the twice-weekly gym classes. For these brief periods during which he receives state-mandated instruction in physical education, he is required to change into clothing that is appropriate

for the rigorous physical activity that is engaged in. The reason for the required clothing has nothing to do with how it looks, but rather the fact that such loose-fitting clothing permits freedom of movement for children engaging in such activities as soccer, flag football, field hockey, basketball, etc. If this fact were not already self-evident, it was well established by testimony presented by the school committee at the hearing before us.

We accept the testimony of the School Committee's witnesses that another purpose served by requiring "gym clothing" to be worn during physical education classes is that of safety. While no statistics were presented or examples cited, we find the opinion of those experienced in physical education instruction to be entitled to great weight. Given the high-risk nature of physical education activities, those involved in such instruction should be given considerable latitude in implementing those procedures and policies they deem necessary to guard against injuries. The policy requiring appropriate gym clothing is one of these measures.

Given the short duration of the intrusion on this student's liberty interest and the context in which it arises, we find that the School Committee has met its burden of justification for such intrusion. Both the freedom of movement rationale and safety considerations outweigh any infringement on this child's constitutional rights.

As to the requirement that the child change from gym clothes into other clothes for the remainder of the school day, it seems self-evident that gym clothes will (or should) become

soiled after an hour of well-played soccer. It is reasonable for the school district to require unsoiled clothing to be worn during the remainder of the school day. It may also be that promoting good hygiene permits school officials to require different clothes to be worn for gym than for other classes. In any event, we doubt that this student will persist in his objection to changing at school, since we rule that he must wear the gym clothes required, and this is clothing inconsistent with his personal taste. We note that this student's objection to changing at school was not that he was uncomfortable doing so, but just that he objected to the concept (Tr.p.13).

For the above reasons, the appeal is denied and dismissed.

Kathleen S. Munro
Hearing Officer

Commissioner of Elementary
and Secondary Education

Date: May 29, 1992