

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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LYNNE HEANEY ET AL.

vs.

WESTERLY SCHOOL COMMITTEE  
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DECISION AND INTERIM ORDER

Held: Decision of School Committee not to provide athletics and extra-curricular activities in public schools for 1993-1994 school year is contrary to student activities requirements of BEP regulations and therefore void.

June 17, 1993

## Introduction

This matter concerns an appeal to the Commissioner of Education by Lynne Heaney and 24 other parents of children attending Westerly public schools<sup>1</sup> "from the action of the Westerly School Committee in eliminating all student activity programs in the Westerly public schools for the 1993-94 school year." (Appellants' Exhibit 1). Appellants also request an interim order pursuant to R.I.G.L. 16-39-3.2 "prohibiting the Westerly School Committee from implementing any change which reduces the student activities program of the Westerly public schools from that offered in the 1992-93 school year."<sup>2</sup> (Appellants' Exhibit 1).

For the reasons set forth below, we sustain the appeal and issue an interim order directing the School Committee to maintain a student activities program which meets regulatory requirements.

## Background

Following the adoption of its 1993-1994 budget, the School Committee decided on May 26, 1993 not to provide athletics and extra-curricular activities in Westerly public schools for the 1993-1994 school year.<sup>3</sup>

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- 1 John and Mary Auth were added as appellants at the hearing.
  - 2 The undersigned hearing officer was designated to hear this appeal. An interim order hearing was held on June 9, 1993. At the conclusion of the hearing, the parties agreed that a complete record had been compiled and that a full decision on the merits could be rendered.
  - 3 Mrs. Jean R. Stenhouse, Chairperson of the School Committee, testified that the following activities would be discontinued for the 1993-1994 school year: interscholastic sports, intramural sports, cheerleaders, marching bands, wind (continued on next page)

In 1989 a basic education program review team from the Department of Education visited the Westerly school district to determine the district's compliance with the requirements of the basic education program (BEP).<sup>4</sup> Topic 29 of the Board of Regents' "Basic Education Program for Rhode Island Public Schools," entitled "Student Activities Program," contains the following "standards," or requirements:

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.

Student participation shall occur at appropriate age and grade levels in a variety of areas.

With regard to Topic 29, the BEP review team found in its October 30/November 1, 1989 report that, aside from a concern regarding inadequate space at a middle school, the student activities program of the Westerly school district met the BEP standards.<sup>5</sup> The question of sufficient space at the middle school was referred to the self-reporting resolution stage of the BEP

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- 3 (continued) ensemble, concert band, jazz band, flag and dance line, student council, class advisors, academic decathlon, school newspaper, yearbook, honor society and honors banquet, drama club, chorus, and field trips.
  - 4 The basic education program was adopted pursuant to the directive in R.I.G.L. 16-7-24 that the Board of Regents "adopt regulations for determining the basic education program and the maintenance of local appropriation to support the basic education program."
  - 5 The Westerly BEP report states that "all schools in Westerly provide opportunities for students to engage in a variety of activities at appropriate age and grade levels. . . All student activities programs . . . address recreational, social, and emotional needs." (Appellants' Exhibit 3).

compliance process.

Appellants presented testimony concerning the various ways in which students' participation in athletics and extra-curricular activities enhances their education, personal development, and prospects of post-secondary education. Both Mrs. Stenhouse and Dr. Andrew S. Carrano, superintendent of Westerly schools, testified that the school district could not meet the student activities objectives of the BEP if athletics and extra-curricular activities were reduced. Mrs. Stenhouse acknowledged that the School Committee has taken the position in a funding-related appeal pending before the Commissioner that the current Westerly student activities program is required by the BEP.

Mr. Walter Gibson, principal of the Westerly High School, described his discussions with students and parents who are considering withdrawing from the public school system because of the elimination of athletics and extra-curricular activities. These discussions involve the school's best students. Mr. Gibson and other teachers testified as to the detrimental effects the withdrawal of top students and role models would have on educational programs (particularly the ability to continue to offer advanced-placement courses), the entire student body, and the school system in general. Mr. Gibson further testified that the School Committee's action has resulted in a state of uncertainty and confusion among students at the high school as to the availability

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6 Subsequent requests by the School Committee for funding to create additional space at the middle school have been denied. As a result, the facility has not been expanded. In the meantime, an increasing enrollment has added to the overcrowding problem.

of courses and programs for the upcoming school year.

The athletic director presented a comparison of the Westerly athletic program to those of other school districts which indicates that Westerly schools offer fewer sports than schools with comparable enrollments. Testimony was also offered to show that extra-curricular activities provide constructive outlets to students and serve as deterrents to juvenile crime and substance abuse.

Positions of the Parties

Relying on the Commissioner's decision in the case of Members of the West Warwick High School Interscholastic Athletic Teams and the West Warwick School Committee vs. Department of Education, November 15, 1991, Appellants assert that every public school student has the right to a diverse student activities program as part of the basic education program required to be offered in every school district. Appellants argue that the record establishes that the Westerly student activities program cannot be reduced in any way and still meet the requirements of the BEP. Appellants contend that the Westerly athletic program is less than that which was found to be required by the BEP in the West Warwick Athletic Teams case. Appellants argue that, given the confusion and apprehension which currently exists in the school district, this matter is ripe for decision and warrants interim order relief in order to prevent the withdrawal of the top students from the system and to provide assurances to all students that a program in conformity with the BEP, including athletics and extra-curricular activities, will be offered in the 1993-1994 school year.

The School Committee asserts that it is committed to providing the necessary programs and activities to all of the students in Westerly public schools. The School Committee questions whether this appeal is premature inasmuch as it relates to a prospective fiscal and school year. An appeal to the Commissioner with regard to the sufficiency of the School Committee's 1992-1993 fiscal appropriation is currently pending, and the School Committee speculates whether a similar appeal will be necessary for the 1993-1994 fiscal year. The School Committee specifically questions whether interim order relief is appropriate where the action at issue is not to take place until a subsequent year.

#### Discussion

We find that this appeal presents the type of dispute which warrants the exercise of the Commissioner's authority "to interpret school law and to decide such controversies as may be appealed to the commissioner from decisions of local school committees."

[R.I.G.L. 16-1-5(j) and 16-60-6(9)(h)].

It is uncontroverted that the School Committee decided on May 26, 1993 not to provide athletics and extra-curricular activities in Westerly public schools in the 1993-1994 school year. The School Committee made the decision to discontinue athletics and extra-curricular activities for the 1993-1994 school year following the approval of its budget for that school year. We find, based on the evidence of the immediate threatened impact of this decision on student enrollments and educational programs and activities for the 1993-1994 school year, that this decision presents more than a hypothetical injury at some future

time to Appellants. Furthermore, the record compiled at the hearing in this matter reveals a controversy which has become concrete and focused and therefore subject to resolution on the merits.

Turning to the merits, we find that the School Committee's decision is contrary to the clear requirements of the BEP.

As previously described, the BEP requires every Rhode Island public school district to have a student activities program. The BEP does not require any specific student activities nor does it impose a minimum number or distribution of student activities. School districts retain flexibility in developing student activities programs.

The 1989 BEP report for the Westerly school district shows that the district met the student activities standards by providing a "variety of activities" which address "recreational, social, and emotional needs." The record indicates that those activities consisted of the athletics and extra-curricular activities at issue herein.<sup>7</sup> The School Committee obviously cannot discontinue the school district's athletics and extra-curricular activities and remain in compliance with the BEP student activities program standards.<sup>8</sup> We therefore shall sustain the appeal and provide

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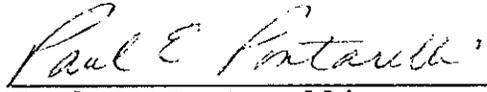
7 No evidence was presented as to any student activities that remained in effect following the School Committee's decision not to provide athletics and extra-curricular activities in the 1993-1994 school year.

8 In the West Warwick Athletic Teams case, it was found that an interruption or total discontinuance of all interscholastic sports, a significant portion of the student activities program, quite likely could put the district out of compliance with the BEP. We reiterate that in this case we are dealing with the discontinuance of the entire student activities program.

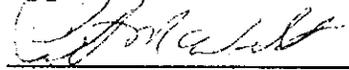
interim order relief in order to ensure that Westerly students receive education in accordance with the Board of Regents' BEP regulations during the pendency of this matter.

Conclusion

The decision of the Westerly School Committee not to provide athletics and extra-curricular activities in Westerly public schools for the 1993-1994 school year is contrary to the student activities program requirements of the BEP and therefore void. Accordingly, we sustain the appeal in a full decision on the merits. We also issue an interim protective order directing the School Committee to maintain a student activities program in the Westerly school district for the 1993-1994 school year which meets the requirements of the BEP.<sup>9</sup> The interim order is to remain in full force and effect until such time as a final decision enforceable under R.I.G.L. 16-39-3.1 is entered in this matter.

  
Paul E. Pontarelli  
Hearing Officer

Approved:

  
Peter McWalters  
Commissioner of Education

Date: June 17, 1993

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<sup>9</sup> In the event the School Committee makes changes in the athletics and extra-curricular activities offered in the Westerly school district which raise a question as to the district's compliance with the BEP, that matter may be resolved via the appeal process.