

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

AND

PROVIDENCE PLANTATIONS

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MR. AND MRS. JOHN DOE \*

V. \*

NORTH KINGSTOWN SCHOOL COMMITTEE \*

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DECISION

Held: School Committee's attendance policy provided for loss of summer school credit for absences in excess of one day. Therefore, this student's thirty-five (35) minute absence from class did not render him ineligible for course credit.

Date: June 25, 1996

### Travel of the Case

On September 26, 1995, Student Doe's parents appealed the decision of the North Kingstown School Committee to deny him course credit for Algebra II, a course he had taken in a summer school program operated by the North Kingstown School Department. The undersigned was designated to hear the appeal on October 18, 1995, and on October 24, 1995 the hearing officer was notified that the parties had agreed to a hearing date of December 11, 1995.

On December 11, 1995 the matter was heard and testimony and documentary evidence was presented by both parties. The record closed on January 26, 1996, upon receipt of the transcript.

### Findings of Relevant Facts

- In the Summer of 1995, the North Kingstown School Department operated a summer school program to enable students who had failed certain high school courses to repeat the course and obtain course credit.<sup>1</sup> Enrollment in summer school was also available to students for enrichment purposes.
- Student Doe enrolled in Algebra II for course credit (Appellants' Ex. 2) and in the process of registering, both he, his parents, and the Director of the Summer School signed a "Summer School Contract" Appellants' Ex. 2.
- The "Summer School Contract" included Student Doe's acknowledgment of receipt of the Summer School Handbook of Policies and his agreement to follow the policies and rules it contained. (Appellants' Ex. 2)
- Among the provisions contained in the Summer School Handbook were the requirements that a student pass the summer school work and meet summer school attendance

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<sup>1</sup>To be eligible to enroll in the summer school program for credit, a student must have obtained a grade of at least 60. See Appellants' Ex.1 p.11; Ex. 2 p. 2 of the "Summer School Program"; Tr. pp. 27-28.

requirements in order to obtain credit (page 2 of the handbook), (Appellants' Ex. 2)

- The summer school session began on June 29, 1995, and ran for twenty (20) days. Classes were one and one-half hours in length. (Appellants' Ex. 2. Tr. p. 27)
- On July 14, 1995, Student Doe, together with another student, presented a forged pass to their teacher. The pass indicated that both students had a 10:30 a.m. appointment with a guidance counselor.<sup>2</sup>
- The other student requested that they be allowed to take the test scheduled for that day earlier, so that they could complete it before their appointment. They were allowed to do so, and thereafter, at 10:30 a.m. left the grounds of the school.
- On Monday, July 17, 1995, the Summer School Director notified Student Doe's mother, both orally and in writing, that Student Doe's unauthorized absence from class on July 14th resulted in forfeiture of his opportunity to earn credit because the attendance policy permitted only one absence, and then only for emergency reasons. (Appellants' Ex. 3)
- In addition, Student Doe was suspended for two school days for unauthorized use of a school pass and misrepresentation of facts to his teacher. (Appellants' Ex. 3. Tr. p. 50)
- The Director's decision was appealed to Superintendent James Halley on August 7, 1995 and he affirmed the Summer School Director's decision on August 29, 1995. (Appellants' Ex. 5)
- Thereafter the matter was heard by the North Kingstown School Committee, which affirmed the decision to deny course credit, but permitted Student Doe to enroll in Geometry, and switch from a sophomore to a junior homeroom.
- Student Doe completed the summer school program and passed the Algebra II course, on an enrichment or non-credit basis. Appellee's Ex. A.

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<sup>2</sup>None of the facts concerning Student Doe's misconduct was disputed.

## Position of the Parties

### The School Committee

Counsel for the School Committee argues that given the condensed nature of the instruction in summer school courses, strict attendance rules have been developed and must be enforced. He points to the discussion that Student Doe's mother had with the Director about the possibility of his absence from class for two (2) days because of a previously planned family vacation, as evidence that all concerned were well aware of the attendance rules, i.e., only one emergency absence before loss of credit would occur.

As to the two-day suspension from class as punishment for Student Doe's misconduct, counsel argues that this is a fair, considered response to a serious infraction of school rules. The punitive effect of the action taken here is minimal, Counsel argues, because other than the loss of credit, there are no other adverse consequences to Student Doe. The School Committee permitted this student to go on to Geometry. Thus the normal instructional sequence in mathematics has not been interrupted. Furthermore, since students in North Kingstown routinely accumulate twenty eight (28) credits by the time they complete the senior year, and need only twenty (20) credits to graduate, Student Doe's expected graduation date remains unchanged. He must at some point, however, successfully complete one (1) additional Math course in order to graduate. A number of

options are available to him in obtaining a third required credit in Mathematics, including re-taking Algebra II in summer school or during his senior year.

Mr. and Mrs. Doe

Counsel stated that Student Doe fully admits to his transgression and the need for appropriate disciplinary action. He argues, however, that deprivation of course credit for the misconduct here is not appropriate. It is not consistent with the policies set forth in the Summer School Handbook. The sanction imposed on Student Doe puts his infraction on a par with much more serious offenses listed in the Summer School Handbook's "Disciplinary Code"-such as possession of a weapon or possession of narcotics. In addition the response by the School Administration goes far beyond the penalties specified for the exact same conduct in the 1994-95 Student Handbook for North Kingstown High School.

Counsel urges a close review of the provisions of the Summer School Handbook, which, he argues, should prevail over any differing rules applied by the Summer School Director. The attendance rules contained in that document clearly permit one non-emergency absence. Thus, Student Doe's thirty-five (35) minute absence from class does not disqualify him from obtaining credit for this course. If it is the resulting punishment, i.e., his two-day suspension which has brought about the loss of credit, this constitutes illegal disciplinary action. Imposing an academic penalty

for non-academic misconduct violates notions of fundamental fairness and substantive due process. It is also inconsistent with guidelines issued by the Commissioner in Bento vs. Tiverton School Committee, July 3, 1980.

#### Decision

It is clear from the evidence in this case that the Director of the North Kingstown Summer School, an experienced educator, responded to Student Doe's misconduct on two different levels. First, she imposed the academic penalty she felt was required under the applicable attendance policy, i.e. loss of credit. Secondly, she imposed a two-day suspension as punishment for the non-academic misconduct--forging of the pass, presenting it to the teacher, and leaving the school premises. Her testimony<sup>3</sup> at the hearing, as well as her written notice to Student Doe's parents on July 17, 1995<sup>4</sup> clearly differentiate between Student Doe's academic and non-academic misconduct. It is his violation of the attendance policy which caused his loss of credit for this course. Whether instinctively or based on her knowledge of case law in this area, the summer school director thus refrained from imposing an academic sanction for non-academic misconduct.

Courts have generally disallowed the use of disciplinary measures for non-academic misconduct which result in adverse academic consequences. See Rapp on

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<sup>3</sup>N.B. pages 58-63 of the Director's testimony.

<sup>4</sup>Appellants' Ex. 3.

Education Law §8.05 (2) (C); Bento v. Tiverton School Committee, decision of the Commissioner dated July 3, 1980<sup>5</sup>. The Summer School Director clearly considered the suspension as having no bearing on Student Doe's loss of credit. Our inquiry in this case thus becomes limited to whether or not Student Doe's absence from class for thirty-five minutes on July 14, 1995 supports loss of his opportunity to earn credit for Algebra II.

School Committees in Rhode Island have the statutory authority to develop and enforce reasonable attendance rules in the public schools. R.I.G.L. 16-2-16. It is generally acknowledged that attendance, class participation and similar factors are educational factors bearing on a student's achievement. Slocum v. Holton Board of Education, 429 N.W. 2d 607, 610 (1988). Generally speaking such attendance policies prescribe penalties for unexcused absences and excessive absences from class. Penalties range from a zero (0) for a skipped class to loss of course credit for excessive absences<sup>6</sup>. The Commissioner (October 12, 1990) and Board of Regents (May 14, 1992) struck down one such attendance policy in Michaud v. Middletown School Committee. Both the Commissioner and Board of Regents concluded that a policy calling for a reduction of ten (10) points in a student's grade for each unexcused absence was

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<sup>5</sup>N.B. footnote 12.

<sup>6</sup>For a full discussion of the legal principles implicated by rules of attendance see Campbell v. Bd. of Education of Town of New Milford, 475 A.2d 289 (Conn. 1984) and Slocum v. Holton, *supra*.

arbitrary and capricious. Although the reasoning for such conclusion is not entirely clear, the argument presented at the Commissioner's level was that the attendance rule in question<sup>7</sup> was too harsh and established a penalty inconsistent with the penalty for an unexcused absence provided for in the Student Handbook and Policy Manual of the Middletown School Committee.

The attendance rule at issue here can be found at Page 7 of the Summer School Handbook (Appellants' Ex. 2). It reads as follows:

#### Attendance Regulations

It is the intent of this policy that staff and parents work cooperatively to ensure the regular attendance of students in summer school... the following attendance criteria are established:

...in courses for academic credit:  
Students are allowed one (1) absence for courses taken for credit. Students needing additional absences will request a waiver from the Director of Summer School.

The attendance regulation goes on to describe certain "emergency" situations which may be considered by the Director "when considering exemptions or appeals from the absence limitation/loss of summer school credit policy".

The Director testified that she has consistently described the rule to entering students as permitting a "one-day emergency absence" Tr. p 56. She further testified that "if a student has a legitimate emergency that requires

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<sup>7</sup>Set forth in the teacher's "Classroom Management Plan".

him to be absent for one day, we will allow them to make up that time without dropping them. But any emergency beyond that one day, we don't feel we can even negotiate". (Tr. pp. 39-40)

While the attendance rule described by the Director may be legitimate and supportable, it differs substantially from the attendance regulation contained in the summer school handbook. The rule in the Handbook was agreed by the parties to be controlling when they signed the "Summer School Contract". The rule clearly states that one absence is permitted for courses taken for credit. The emergency limitation applies only to "additional absences" which may be considered and excused by the Director.

Prior to ruling on Student Doe's appeal, Superintendent Halley testified that he "saw the same situation that we're all seeing here in terms of-- in terms of language". Tr. p. 67 (i.e. the language of the written regulation as opposed to the Director's statement of the rule). The Superintendent was, however, later "convinced" in talking to the Director that "there was an understanding both of Student Doe and his -- and his mother of exactly what the rules were". There is some evidence in the record concerning notice to Student Doe and his parents of the "one emergency absence" rule. Their attorney disputes their knowledge of a rule other than that set forth in the handbook. We are not convinced, however, that even if Mr. & Mrs. Doe and their son were somehow aware of this different

attendance rule, that it supercedes the attendance regulation promulgated by the North Kingstown School Committee. Once established by the school committee and published in the handbook and acknowledged and agreed to by the student, it is the written attendance regulations which apply to absences from the summer school program. The Director is without authority to enforce a different rule until it is adopted and promulgated by the school committee.

Applying the rule contained in the handbook, Student Doe's 35-minute absence on July 14, 1995 does not disqualify him from receiving credit for Algebra II. The school committee is directed to correct his records to reflect credit for this course.

  
Kathleen S. Murray  
Hearing Officer

Approved:

  
Peter McWalters  
Commissioner

Date: June 25, 1996