

0001-98

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JOHN C.Q. DOE
V.
MIDDLETOWN SCHOOL COMMITTEE

DECISION

Held: The decision of the committee to deny the appellant's request for readmission to the high school, because he is nineteen (19) years of age, is upheld under the circumstances of this case.

DATE: January 7, 1998

Travel of the Case

On November 29, 1997 Commissioner Peter McWalters received an appeal filed by Mrs. Doe on behalf of her adult son, John C.Q. Doe. She sought review of the decision of the Middletown School Committee to exclude her son from the high school on the basis of his age and his status as an adult. The undersigned was designated to hear this appeal and the matter was heard on December 1, 1997. Although initially categorized as an interim order request, our interim order statute, on its face, is available only in “cases concerning children...”¹ (emphasis added); however, given the Commissioner’s policy on expediting cases in which students are out of school, we have expedited both hearing and decision in this matter.

Issue

Can the appellant, who turned nineteen (19) on October 3, 1997 be denied readmission to Middletown High School on the basis of his age and the fact that he is now legally an adult?

Findings of Relevant Facts

- Student Doe attended Middletown High School for almost four (4) years when, on May 13, 1997 he withdrew from the high school. S.C. Ex. I. Tr. p. 7.
- At the time he dropped out of the high school he was eighteen years old. He turned nineteen (19) years of age on October 3, 1997. Tr. p. 7.
- The reason Student Doe dropped out of high school was unspecified physical and mental problems as well as an ongoing personality conflict with the Director of Guidance. Tr. p. 18.
- Upon withdrawing from Middletown High School in May of 1997, the appellant enrolled in the “Diploma Plus” program at the Aquidneck Island Adult Learning Center, with the approval of the guidance department at the high school. Doe Ex. A. Tr. p. 18.

¹ R.I.G.L. 16-39-3.2 “Interim Protective Orders”.

- Diploma Plus is an adult education program which enables students to complete credit requirements for the high school diploma. Tr. p. 5.
- Although he has been enrolled in the Diploma Plus program since May of 1997, and in attendance for all of the time the program has been in session² the appellant has not yet completed any courses or earned any additional credits toward his high school diploma. Tr. pp. 27-28.
- In October of 1997 he sought readmission to Middletown High School, so that he could be concurrently registered, and earn credits in both the Diploma Plus Program and Middletown High School. (Tr. p. 15, 17 and 19).
- The appellant presently needs to complete a sophomore-level English course, as well as other required and elective courses totalling 43.5 credits in order to qualify for his diploma from Middletown High School. Doe Ex. A. S.C. Ex. 6.
- When he was enrolled at Middletown High School, the appellant was absent each year for approximately twenty five (25) days. Tr. p. 12; S.C. Ex. 4 & 5. He was also chronically tardy.
- The appellant's present goal is to join the Marine Corps; to do so he has been advised that he must obtain his high school diploma. Tr. p. 33.
- The appellant would be older than most of the other students in the classes he would take if he were allowed to reenter Middletown High School. Tr. pp. 50-51; S.C. Ex. 7.
- The Middletown School Committee denied the appellant's request to re-enroll at the high school. S.C. Ex. 3. The Superintendent testified that the reason for denial was the appellant's eligibility for adult education programs, its policy on adult enrollment, and the fact that Student Doe needed to obtain a substantial number of credits in order to obtain his diploma. Tr. pp. 53-55.
- Other than chronic absenteeism and tardiness, Student Doe was not a disciplinary problem while enrolled at the high school. Tr. pp. 36-38.

Positions of the Parties

The School Committee

Counsel for the school committee argues that the decision excluding the appellant

² The appellant testified that after the summer vacation period, the program did not resume again until approximately November 15, 1997. Tr. pp. 27-28.

is in conformity with both state law and school committee policy. Counsel submits that under R.I.G.L. 16-58-2(d) only persons who remain enrolled or reenroll in regular high school programs prior to attaining age eighteen (18) are eligible for admission into a regular high school program in Rhode Island. All other persons are “subject to adult education “. (S.C. memorandum p. 1; Tr. p. 66).

The Middletown School Committee has adopted Policy 5100 which discusses student admission to the public schools and provides:

To be admitted to the public schools in Middletown
a child less than eighteen years old must reside in
Middletown with their parents or legal guardians...³

The committee interprets its written policy as a prohibition against enrollment by those age eighteen or older. The appellant’s request was, therefore, treated as a request that it “waive” its policy on admission of adult students. The superintendent presented the members of the school committee with her recommendation that the policy not be waived because of the appellant’s age, the age of the students in the classes in which he would be enrolled, and the substantial number of credits he needed to earn for his diploma. The committee also was aware of the ability of the appellant to obtain a Middletown High School diploma through the Diploma Plus Program. Taking into account all of these factors, the school committee denied the request for readmission. It is argued that under Rhode Island law, the school committee exercises the prerogative to develop rules for the admission of students. (R.I.G.L. 16-2-16). Prohibiting adult students’ admission to the high school, especially when they would be attending classes with much younger students, is a reasonable exercise of this prerogative, counsel argues.

³ Policy 5100 (S.C. Ex. 8) which was construed as prohibiting enrollment by adults.

Student Doe

Through his mother, Student Doe argues that he is eligible for readmission to the high school. There is no statutory bar to a student's admission to the regular high school program simply because he has attained age eighteen or because he is technically an adult. Student Doe's mother observed that some students mature later than others and require more time to complete a regular high school program. She notes that as a young adult, her son is finally able to "buckle down" and make the commitment needed to finish his high school program. He should not be penalized merely because he dropped out in May of 1997 and was out of school for approximately two and one-half months before seeking readmission.

Furthermore, Student Doe's mother argues that R.I.G.L. 16-38-1 entitled "Discrimination because of race or age" prohibits the exclusion of a student from any public school:

On account of race or color, or
for being over fifteen (15)
years of age...

She argues that her son's exclusion from school, because of his having attained age nineteen, violates 16-38-1. She also stated she was advised⁴ that this statute has the effect of setting a maximum age of twenty-one (21) for high school students.

While the appellant will be older than most students at the high school by the time he completes the credit requirements for his diploma, Student Doe's mother argues that he will not be the only older student enrolled there. She personally is aware of a student

who is presently seventeen (17) years old and in her sophomore year who will be twenty (20) upon graduation. Mrs. Doe, who is also a taxpayer in the town of Middletown, feels that there is no valid reason, either financial or otherwise, for the school committee's denial of her son's request to be readmitted to the high school.

Finally, Student Doe and his mother stress the benefit to him of re entry to the high school while continuing with his coursework at night in the Diploma Plus Program. Not only will it accelerate the date of completion of the credits for his diploma, but it increases his chances of being accepted by the Marines. Tr. pp. 33-36. She also noted that the schedule followed by the Diploma Plus Program lacks the consistency and continuity that her son needs to finish his high school program there.

Given that there is no legal prohibition against her son's reenrollment in high school, Mrs. Doe questions whether the Middletown School Committee's exercise of its discretion to exclude her son is reasonable or fair.

Decision

In considering the appellant's request to reenter the high school, the Middletown School Committee faced no statutory prohibition to his reenrollment, despite his age and adult status. Unlike counsel for the school committee, we do not read R.I.G.L. 16-58-2 (d) as anything more than a description of the class of persons who will generally participate in adult education. This section of the law clarifies that to participate in "adult education", a student must be above compulsory school age, i.e. at least sixteen (16) years of age. The student need not, therefore, be an "adult" to participate in adult education programs. We would also note that the state law on Adult Education, Chapter 16-63 contains Section 16-63-4 entitled "Rights of Adults". This provision clearly states

⁴ By a staff member at the Department of Elementary and Secondary Education.

that “nothing in this chapter shall be construed as a mandate to any city or town to provide any compulsory education program” (to adults). This section provides, however, that “applicable provisions of the laws of the state or local governments and of any regulations or policies arising therefrom, shall be construed to include adults, as well as young persons, as the recipients and beneficiaries of education...” Thus, there is no provision of state law which bars or mandates adult attendance in a regular high school program⁵. In fact there is indication, as cited in Section 16-63-4 that adult enrollment in high school is encouraged, to the extent deemed appropriate by local school committees.

While the issue of adult attendance in Middletown public schools is implicitly referenced in Policy 5100, our reading of this policy does not convince us that the committee has in place an express written policy which prohibits a student who has attained age eighteen from enrollment in its high school. Thus, the only constraint on the committee was to consider the appellant’s request and make a reasonable and fair decision based on all relevant factors.

Review of such decision by the Commissioner of Education is de novo, with broad authority in school matters to make a fully independent decision. Slattery v. School Committee, 116 R.I. 252, 354 A.2d 741 (1976). O’Connell v. Newport School Committee, decision of the Board of Regents dated May 14, 1992. Concerned Parents and Teachers v. Exeter-West Greenwich Regional School District, decision of the Board of Regents dated August 24, 1989. In the decision on remand in the Concerned Parents and Teachers case, supra, the Commissioner described his policy as one of “voluntary

⁵ We do not interpret R.I.G.L. 16-38-1 as preventing school committees in Rhode Island from placing reasonable upper age limitations for student admissions. The statute prohibits exclusion from public school by reason of being over age fifteen (15). While the intent of this provision of the law is unclear, we find it

restraint” when the issue was within the exercise of a school committee’s discretion in academic matters. Thus, even when the commissioner would, in an exercise of his independent decision-making authority have made a different decision, he may defer to the judgement of the school committee in academic matters if the school committee’s decision is supported and not contrary to any academic policy of state-wide concern.

Such is the case here, in which the Middletown School Committee has validated its decision to exclude the appellant and to limit the range of ages of students at its high school. While we may not have made the same decision, it has been shown to be a reasonable one based on the substantial number of credits the appellant still must earn and his age at the present time. Especially relevant are his academic and attendance records while enrolled at the high school. They do not indicate a likelihood that he will complete the necessary credits within a short time frame.

A factor which directly affects the fairness and reasonableness of the committee’s decision is the viability of the Diploma Plus Program. The testimony received that classes did not resume until approximately November 15, 1997 bring the viability of this program into issue. Given the present record on the program’s schedule and the apparent lack of continuity of the program, we appoint Robert Mason of the Department as a special visitor, to investigate and report to the Commissioner no later than February 1, 1998 on the operation of this program. The special visitor should report specifically as to the program’s present and anticipated schedule of operation and its viability as a method for an adult student, such as the appellant, to gain sufficient credits for his diploma within a reasonable time frame.

illogical to interpret it as a requirement that high schools in Rhode Island have open admissions for adults of all ages.

For the above-stated reasons, the decision of the school committee is affirmed and the appeal is denied. If the special visitor's report indicates the schedule of the Diploma Plus Program is such that the appellant is not provided opportunity to obtain his high school diploma within a reasonable period of time, the appellant may request additional hearing before the school committee and, if necessary, the Commissioner.

Kathleen S. Murray, Hearing Officer

Approved:

Peter McWalters, Commissioner

DATE: January 7, 1998