

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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JIMMY M.

V.

TIVERTON SCHOOL COMMITTEE  
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**Decision**

Held: Consistent with superintendent's interpretation of School Committee policy, student is currently academically eligible to play on High School soccer team.

Date: October 21, 2002

## **Introduction**

This is an appeal from a decision of the Tiverton School Committee regarding student Jimmy M.'s academic eligibility to play on the Tiverton High School soccer team.<sup>1</sup>

For the reasons stated below, we sustain the appeal.

## **Background**

Jimmy is a senior at Tiverton High School. He has been a member of the High School soccer team. In the fourth quarter of his junior year, Jimmy failed three subjects.<sup>2</sup>

Part 4 of the Tiverton High School Extracurricular Code of Conduct, entitled "Academic Eligibility," reads as follows:

The Tiverton School Department sets forth the following additional academic requirements for participation in extracurricular activities:

1. Every student is expected to pass all subjects that they register for. In the event a student receives a failing grade(s), the following will occur:
  - A. If a student fails one subject they will be immediately suspended from all activities. Said student will be granted a three-week period in the next marking period in which to raise the failing grade to a passing level. If all course work at that point as indicated by the student's teachers is passing, he/she will be allowed to resume participating with the team, club or activity that they were involved with.
  - B. If after the three-week period the student is still failing any of his/her classes, they will be ineligible for the rest of that marking period. During this three-week period, a student will not be allowed to participate in practices, attend meetings or carry out their duties as a class officer.

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<sup>1</sup> The Commissioner of Education designated the undersigned hearing officer to hear and decide the appeal. A hearing was held on October 18, 2002.

<sup>2</sup> The failing grades were in chemistry, English and Portuguese.

- C. If a student fails more than two subject areas in the same quarter, they will be ineligible to participate in any extracurricular activity for the remainder of that quarter.
- D. If any student has failed more than one subject area in the fourth quarter, they will be ineligible to participate in any extracurricular activity during the first quarter of the following school year. Parents of students who are declared ineligible will receive a letter from the school notifying them of their child's ineligibility. If a student fails one subject area in the fourth quarter, then they must follow the guidelines that are listed in Part 4 Section B of this policy. Students who have failed one class in the fourth quarter may attend captain's practices until the start of fall sports at which time they will be ineligible to participate in practices, attend meetings or carry out their duties as a class officer until they have met the standard stated in Part 4 Section A of this policy. (emphasis in original) [School Committee Exhibit 1].<sup>3</sup>

Jimmy was notified in the summer of 2002 that, because of his three failing grades, he was ineligible to participate in the High School soccer program. Soccer season commences with the beginning of the school year. Jimmy enrolled in summer school courses for chemistry and English. He successfully completed both courses. He has been given academic credit at the High School for chemistry and English.

On August 26, 2002, the School Committee amended the Extracurricular Code of Conduct to include the following: "Students who fail the fourth quarter and/or failed a course for the year will become eligible to participate in a fall sport if they pass an appropriate number of summer school or college courses. . ." [School Committee Exhibit 2]. In addition, the Code was revised to provide that "The appeals process will be brought to the school committee." [School Committee Exhibit 3].<sup>4</sup> The changes to the Code were scheduled to become effective in the summer of 2003.

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<sup>3</sup> The School Committee approved the Code on February 28, 2001.

<sup>4</sup> The School Committee also added a requirement that students who failed one subject in the first, second or third quarter must attend a tutoring program for the first three weeks of the upcoming quarter.

Jimmy appealed his soccer ineligibility to the School Committee. His appeal was denied by a 5-0 vote.

Later, a student who played football in 2001 and failed one course in the fourth quarter last year, appealed his three-week football ineligibility under Part 4, Section A of the Code. The School Committee sustained the appeal, deciding to implement the summer school amendment this year, not next. Because the student passed the summer school course in the subject he failed in the fourth quarter, he was not found to be subject to Part 4, Section A and therefore eligible to play football as of the beginning of school.

After three weeks of school, and continuing to date, Jimmy is passing all of his courses. He is attending tutorial sessions. Jimmy asked for reconsideration of his case in light of the School Committee's ruling in the football player's case. He was told that the matter would have to be considered by the School Committee.

The School Committee heard Jimmy's case again on October 15, 2002. By this time, a vacancy existed on the School Committee. Under School Committee bylaws, a majority vote of no less than three members is necessary for any action to pass the School Committee. All four current School Committee members attended the October 15th meeting. At the meeting, the School Committee asked the High School principal and the superintendent of schools for their respective opinions regarding Jimmy's eligibility to play soccer under the newly-revised Code. It was the opinion of both the principal and the superintendent that Jimmy was eligible to play soccer at this time because he passed the two summer school courses and is passing all of his current courses. The School Committee vote was two in favor of eligibility, one opposed to eligibility, and one abstention. In light of the bylaw mentioned above, Jimmy's appeal was deemed to be denied.

### **Positions of the Parties**

Appellant contends that the School Committee has failed to apply Part 4 of the Extracurricular Code of Conduct in a reasonable and consistent manner in Jimmy's case. Jimmy has learned from last year's mistakes, he has made up the credits for two of his failures, he is receiving tutorial services this quarter, and he is doing well in his classes in

the first quarter. As a senior, it means a lot to Jimmy to be able to play in the few remaining games of the soccer season.

The School Committee contends that school committee decisions regarding students' eligibility to participate in extracurricular activities are generally due deference by the Commissioner, and that the facts and circumstances of this case warrant such deference.

### **Discussion**

It is apparent from the record in this case that the Tiverton School Committee has been striving to develop an appropriate extracurricular eligibility policy for its students. Under Rhode Island General Law 16-2-9, school district policy-making is exclusively the function of the school committee. R.I.G.L. 16-2-9.1(a)(6) specifically charges school committees to act on policy-making matters "only after examining pertinent facts and considering the superintendent's recommendations." Developing policy to address specific aspects of school management often takes time. It is not uncommon for policies to develop incrementally. The fact that the Tiverton School Committee has exercised its policy-making authority on several occasions in the past two years regarding extracurricular eligibility does not strike us as unusual. Instead, it appears that the School Committee has been diligently exercising its policy-making authority.

The instant appeal, however, does not involve the School Committee in its policy-making capacity. Jimmy came before the School Committee on October 15, 2002, to review the application of the existing extracurricular eligibility policy to his case. In applying district policy to determine whether a student is academically ineligible to participate in extracurricular activities, the School Committee acts in a decision-making capacity. Furthermore, the decision to be made in this type of case is of a disciplinary nature because the Committee's policy clearly has a punitive aspect to it. When making decisions affecting students, particularly disciplinary-type decisions, the legal relationship between the school committee and superintendent is different than when policy is being made. Under R.I.G.L. 16-2-11, the superintendent has administrative responsibility for the schools, with "responsibility for the care and supervision of the public schools."

In addition, R.I.G.L. 16-2-11(a)(14) makes the superintendent “responsible for discipline in the school system.” Under R.I.G.L. 16-2-9(a)(17), school committees “hear appeals from disciplinary actions.”

When it last revised the extracurricular eligibility policy, the School Committee provided that appeals under the policy would come before it. An appeal obviously follows the decision made in the first instance. Thus, the common understanding of an appeal process and the School Committee’s policy in question are consistent with the statutes referenced above concerning the administration of the school system. As the chief administrative agent of the school committee, the superintendent applies existing policy to student issues and the school committee hears students’ appeals from the superintendent’s decisions.

Jimmy was directed to the School Committee for reconsideration of his case following the Committee’s decision regarding the football player. At the hearing, the School Committee asked the superintendent for his opinion regarding Jimmy’s current eligibility status. The superintendent offered his opinion: under the extracurricular activity policy as most recently articulated by the School Committee, Jimmy currently is eligible to play soccer.

When the superintendent rendered that opinion to the School Committee, there no longer was a dispute in this matter. The superintendent agreed with Jimmy that he should be able to play soccer at this time. Because the superintendent and Jimmy were in agreement on this question, any “appeal” in this matter became moot. Moreover, to the extent there was any issue presented to the School Committee in its decision-making capacity, it was whether the superintendent’s interpretation of the Extracurricular Code of Conduct was correct.<sup>5</sup> Because two members of the School Committee agreed with the superintendent, the resulting vote did not produce the majority vote needed to reverse the superintendent’s position. Either way, the superintendent’s opinion at the School Committee establishes Jimmy’s current eligibility to play on the High School soccer team.

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<sup>5</sup> Again, it is of fundamental importance in this case that the School Committee was engaged in a decision-making, not policy-making, function.

**Conclusion**

In light of the position taken by the superintendent at the October 15th School Committee meeting, Jimmy currently is eligible to play soccer under the district's Extra-curricular Code of Conduct.

The appeal is sustained.

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Paul E. Pontarelli  
Hearing Officer

Approved:

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Peter McWalters  
Commissioner of Education

Date: October 21, 2002