

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

-----  
GREGORY D.

V.

TIVERTON SCHOOL COMMITTEE  
-----

**Decision**

Held: School Committee policy governing student eligibility for extracurricular activities is irrational and arbitrary.

Date: October 25, 2002

## **Introduction**

This is an appeal from a decision of the Tiverton School Committee regarding student Gregory D.'s academic eligibility to be a member of the Tiverton High School football team.<sup>1</sup>

For the reasons stated below, we sustain the appeal.

## **Background**

Gregory is a sophomore at Tiverton High School. In the fourth quarter of his freshman year, he received failing grades in two of his courses. He passed both courses with grades of "D," however.

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.

---

<sup>1</sup> The Commissioner of Education designated the undersigned hearing officer to hear and decide the appeal. A hearing was held on October 25, 2002.

- 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).<sup>2</sup>

Gregory's parents did not receive the letter of ineligibility mentioned in Part D of the Code. A letter from the High School principal dated August 13, 2002, was sent to the parents of all High School students. The letter was a "reminder" that students considering participating in extracurricular activities in the fall must meet the Code's academic eligibility requirements. The letter included the statement that "If a student failed more than one class during the fourth quarter then they will be ineligible to participate for the entire first quarter."

Gregory's mother testified that shortly after the close of school, her son's guidance counselor told her that Gregory could play football in the fall because he passed all his courses. According to Gregory's mother, the guidance counselor stated that Gregory did not need to go to summer school to establish his eligibility to play football.

In the middle of August, Gregory's mother was contacted by another member of the guidance staff and informed that Gregory was not eligible to play football under the Code. On August 23rd, Gregory's mother met with the superintendent, the principal and

---

<sup>2</sup> The School Committee adopted the Code on February 28, 2001.

the guidance counselor. They reached agreement on a possible solution to Gregory's football ineligibility. According to the proposal, Gregory would request additional work from the teachers in the two courses he failed for the fourth quarter. If the teachers agreed to provide the work, and if Gregory successfully completed the work, each of the teachers would consider raising Gregory's fourth quarter grade to a "D." The superintendent testified that he authorized the proposal without making it contingent upon the School Committee's approval.<sup>3</sup>

Shortly thereafter, the superintendent was contacted by a School Committee member who asked that the subject of extracurricular eligibility be placed on the agenda for the School Committee's August 26th meeting. The superintendent did so.

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. . ." The School Committee nullified the proposals that the superintendent had reached with Gregory and the other student, and it revised the Code to state that "The appeals process will be brought to the school committee."<sup>4</sup> The changes to the Code were scheduled to become effective in the summer of 2003.

The superintendent testified that it was the School Committee's intention that all eligibility questions under the Code be referred to the Committee for resolution.

The School Committee also ruled that a student who played football in 2001 and failed one course for the 2001-2002 school year was eligible to play football as of the beginning of school because he passed a summer school course in the subject he failed. In so ruling, the School Committee decided to implement the summer school amendment this year, not next.

Gregory's case was considered by the School Committee on August 30th. The Committee decided that Gregory was ineligible to play football for the entire first quarter. In early September, Gregory's mother mailed letters to the superintendent and the principal asking that her son's case be reconsidered. She did not receive a response to

---

<sup>3</sup> The Superintendent testified that he approved a similar proposal for another student at this time.

<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.

either letter. She learned of her right of appeal to the Commissioner following our October 18th decision in Jimmy M. v. Tiverton School Committee.

Gregory attended tutorial sessions at the beginning of the school year. He currently is passing all of his courses.

In the summer school programs offered in the Tiverton area, a student must fail a course for the year in order to be able to register for the summer school course.

### **Positions of the Parties**

Appellant contends that the Extracurricular Code of Conduct is excessively punitive in Gregory's case. She claims that for students like Gregory who failed a quarter, but did not fail the course, the Code imposes a disproportionate penalty. Unlike students who fail a course for the year, students who fail a quarter but pass for the year do not have a means of reestablishing their eligibility for the ensuing quarter.

The School Committee contends that it has the right to set high standards for student participation extracurricular activities, and that it does not wish to have students with multiple failures representing the High School on its athletic teams.

### **Discussion**

As in the recent Jimmy M. case, we again find ourselves in a situation where the School Committee is simultaneously attempting to make policy and review decisions made in the application of the developing policy. For some students, events have unfolded fortuitously. There have been cases of students who failed courses for the year, attended summer school to make up the credits, and then were able to return to the playing field sooner than expected when the School Committee decided to implement the August 26th revisions to the Code this year instead of next. Then there is Gregory's case.

Gregory was a 9th-grade student who struggled academically. He passed all his courses. He failed the fourth quarter in two of those courses, however. Because Gregory did not fail those two courses for the year, he was not eligible for summer school. He did not sign up for college courses in those subjects, a decision that does not seem unreasonable to us under the circumstances. Under the Code, however, his only

opportunity to regain his football eligibility prior to the end of the first quarter was to successfully complete college courses in those two subjects.

We are thus presented with a policy that allowed students who failed courses for the year and took the road often traveled, i.e., summer school, to reestablish their athletic eligibility, yet expected a student who did not fail any courses for the year, but failed the fourth quarter in two of them, to take college courses over the summer to reestablish his eligibility. We find the latter expectation to be totally unrealistic. It is asking a marginal student to perform as a gifted and talented one. Furthermore, the policy rewards and encourages poor academic performance. It clearly is much easier for a student athlete to get back on the team if he or she fails a subject for the year instead of only one quarter. Gregory cannot be punished for falling into some sort of “twilight zone” under the Code. Instead, the “twilight zone” must be taken out of the Code. Instead, the “twilight zone” must be taken out of the Code.

### **Conclusion**

On its face and as applied in this case, the Code of Extracurricular Conduct is irrational and arbitrary.<sup>5</sup> Accordingly, we sustain the appeal. Gregory is eligible to participate in High School football as of this date.

---

Paul E. Pontarelli  
Hearing Officer

Approved:

---

Peter McWalters  
Commissioner of Education

Date: October 25, 2002

---

<sup>5</sup> In light of our holding, we need not reach the issue posed by the school committee’s relieving the superintendent of the responsibility to decide questions under the eligibility policy.