0032-07

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

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William Hicks

v.

Cumberland School Committee

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DECISION

Held: Following a Conditional Order of Dismissal in this matter, the petitioner was provided an opportunity at a supplemental evidentiary hearing to demonstrate injury in fact sufficient to permit him to maintain this action. However, evidence presented at the supplemental hearing was insufficient to demonstrate that the petitioner had standing. The above entitled appeal is therefore denied and dismissed for lack of standing.

DATE: December 17, 2007

Travel of the case

The travel of the case is outlined in our prior conditional order of dismissal in this matter. This order gave the petitioner an opportunity for an evidentiary hearing at which he would have an opportunity to demonstrate an injury in fact sufficient to permit him to maintain this action.

Conclusions of Fact and Law

A conditional order of dismissal has been entered in this matter. This order gave the petitioner leave to demonstrate that he, as a teacher, had suffered injury in fact as a direct result of what he alleges to be poor administration of state and federal special education laws and regulations in Cumberland. (We note that neither the Special Education Unit of the Rhode Island Department of Education nor the petitioner's professional association has filed an appearance in this matter. We also note that no parents have intervened.)

At the supplemental evidentiary hearing in this matter the petitioner contended that that the alleged poor administration of the district's special education program had occasioned him physical and mental distress to the point that he felt the need to consult a physician.

While we find that petitioner's mental and physical heath are interests of great importance, we do not believes that petitioner's health falls within the ambit of protection contemplated by the applicable state and Federal special education laws and regulations. *Rhode Island Ophthalmological Society v. Cannon,* 113 R.I. 16, (1974) We also find that there is no showing here that any decision we might make in this case would have any clear influence on the petitioner's health. We therefore find that the petitioner lacks standing to maintain the present action. *Allen v. Wright,* 468 U.S. 737 (1984)

Conclusion

The above entitled appeal is denied and dismissed for lack of standing

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Forrest L. Avila, Hearing Officer

APPROVED:

_____ December 17, 2007
Peter McWalters, Commissioner Date