

**STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS**

COMMISSIONER OF EDUCATION

.....

Certain Students at Hope High School

v.

Providence School Board et al.

.....

DECISION

This case concerns issues relating to “common planning time,” at Hope High School. The Motion of the Providence School Board to Dismiss the Petition must be denied because the Petitioners have standing, and because they have made out at least a prima facie case that the Board of Regents regulation governing common planning time will not be observed at Hope High School in the upcoming 2010-2011 school year. An immediate hearing will be scheduled to hear further evidence and argument from the Providence School Board.

DATE: August 16, 2010

Travel of the Case and Jurisdiction

This matter is before the Commissioner on the basis of a petition filed by certain named Hope High school students. This petition was filed by and through their parents. This case concerns issues relating to “common planning time” at Hope High School as required by the common planning time regulations of the Board of Regents. Jurisdiction is present under R.I.G.L.16-39-1 and R.I.G.L. 16-39-2. The petitioners in this case, in fact, do not challenge the decision of the Providence School Board to move to “a daily six period, non rotating schedule.” Their appeal relates only to the amount of common planning time to be scheduled at Hope High School as “common planning time” is defined and required in the Regulations of the Board of Regents at **L-6-4.5**.

Procedural Posture of this Case

The petitioning students, after presenting evidence through testimony and documents, have rested their case. The respondent Providence School Board subsequently filed a motion to dismiss, contending that the petitioners lack standing and that, in any event, the record developed before the Commissioner in this matter demonstrates that no violation of the Board of Regents common planning time regulations has been proved.

Positions of the Parties

The Parents and Students

The Students, by and through their parents, contend that the Providence School Board has enacted policies which will diminish the amount of common planning time at Hope High School. The amount of common planning time now existing at Hope High School was established at a time when Hope High School was in Progressive Support and Intervention. (R.I.G.L. 16-7.1-5) The students contend that the actions of the Providence School Board to reduce this common planning time violate the common planning time regulations of the Board of Regents.

The Providence School Committee

The Providence School Board contends that the petitioners lack standing and that, in any event, the record developed before the Commissioner demonstrates that no violation of the Board of Regents common planning time regulations has been proved.

Issues Presented:

1. Should this matter be dismissed for lack of standing on the part of the parents and students who have claimed this appeal?
2. Should this matter be dismissed because Providence has demonstrated compliance with the Board of Regents Common planning time regulation?

Conclusions of Law

THE REGULATION AT ISSUE

On September 3, 2008, the Board of Regents promulgated a set of regulations entitled “*K-12 Literacy, Restructuring of the Learning Environment at the Middle and High School Levels, and Proficiency Based Graduation Requirements (PBGR) at High Schools.*”¹ These regulations became effective on October 13, 2008.² The Preamble to these regulations states:

It is the express intent of the Board of Regents that the Regulations set forth below will result in substantive redesign of education offerings in Rhode Island’s public schools at the middle and high school levels. Specifically, it is the intent of the Board that each Rhode Island secondary school offer every one of its students a meaningful opportunity to achieve proficiency in six (6) core academic areas, and that sufficient student supports and personalization of instruction be offered to ensure that said opportunity to achieve proficiency is meaningful and realizable. Should a school or local educational agency fail to fully implement these regulations, the Commissioner shall use the full extent of authorities available to that office as set forth in Title 16 of the General Laws to ensure that students in Rhode Island schools realize the full benefits of these regulations. (Emphasis added)

The regulations include a provision that requires “all Rhode Island middle level schools and high schools” to establish “common planning time”:

L-6-4.5. Common Planning Time. -- Effective immediately, all Rhode Island middle level schools and high schools shall require weekly common planning time of a minimum of 30 minutes per session. **However, local educational agencies shall not reduce the number of sessions or amount of time allotted to common planning time currently practiced.** By the year 2012, common planning time must increase to at least two weekly sessions at the high school level and at least four weekly sessions at the middle level. Pursuant to the requirements of this section, local educational agencies shall provide evidence of the manner in which these requirements shall be implemented, as well as the means by which administrators and teachers will receive professional development in the effective use of common planning time. This common planning time must be in addition to individual faculty planning time and the fifteen (15) hours of professional development as set forth in these regulations. Common planning time shall be used by interdisciplinary and content specific teams of teachers, administrators, and other education professionals for substantive planning of instruction, looking at student work, addressing student needs (especially those with the greatest needs), and providing opportunities for group professional development. (Emphasis added)

As we have noted above, this regulatory provision, as part of the Board of Regents Middle and High School Regulations, became effective on October 13, 2008. These regulations have not been altered or amended, and no one has suggested that the Board of Regents has granted to the Providence School Board a waiver or variance concerning “**L-6-4.5. Common Planning Time**” It will therefore be essential for us at some near point to determine “the number of sessions or amount of time allotted to common planning time” that Hope High School had on October 13, 2008.

¹ The statutory authority supporting these regulations is found at R.I.G.L. 16-60-4 (Board of regents for elementary and secondary education – Powers and duties) and R.I.G.L. 16-67-7, which gives the Board of Regents the duty to promulgate regulations to carry out the intent of the Rhode Island Literacy and Dropout Prevention Act (R.I.G.L. 16-67-1, *et seq.*)

² Regulatory Filing, Office of Secretary of State.

RULES OF STATUTORY AND REGULATORY CONSTRUCTION

In construing the regulatory import of “**L-6-4.5 -- Common Planning Time**” we think we must follow the rules of construction established by the Rhode Island Supreme Court for interpreting statutes. The Supreme Court wrote in *Such v. State*, 950 A.2d 1150 (R.I. 2008):

[T]his Court emphasizes that it does not rely in reaching its decision upon the various indicia of legislative intent that the parties advanced. “There is no recorded legislative history in Rhode Island. ... To the extent this Court examines the circumstances surrounding the enactment of a statute, it engages in this exercise only when the statute is ambiguous. ... “When the language of a statute expresses a clear and sensible meaning, this [C]ourt will not look beyond it.” ... This Court, however, does not look to the public statements of officials, the political leanings of the members that introduced the legislation, the meaning of gubernatorial signing ceremonies, or the actions of the compiler in the Law Revision Office. (Citations omitted)

The Court has also indicated that even the sworn statements of legislators can be given no weight in matters of statutory interpretation. *LaPlante v. Honda North America, Inc.*, 697 A.2d 625 (R.I. 1997) This means that, although we have heard testimony concerning the meaning of L-6-4.5, we, in the end must construe this provision without reference to this testimony. It is also clear that even testimony from a high level official of the Department of Education concerning the interpretation of L-6-4 would have no controlling significance on the question of the proper construction to be assigned to this provision. On this point, we note that in a specific contested case, under the Rhode Island Administrative Procedures Act, the Commissioner of Education is not bound by prior legal statements issued under the Commissioner’s general authority to interpret school law. *Jennings v. Exeter-West Greenwich Regional School District Committee*, 352 A.2d 634, 116 R.I. 90 (R.I. 1976) Prior pronouncements concerning this regulation, outside of the context of a litigated case, have no controlling force. In any event, we find that there is no ambiguous wording in “**L-6-4.5 -- Common Planning Time**” which would justify us in assigning to this regulation something other than its plain meaning.

STANDING

In interpreting and enforcing the common planning time regulation, we are, of course, aware that matters of policy or administrative convenience are not before us. The fact the Board of Regents has enacted this regulation and that the Board has specified that “the Commissioner shall use the full extent of authorities available to that office as set forth in Title 16 of the General Laws to ensure that students in Rhode Island schools realize the full benefits of these regulations” more than suffices to indicate that the Board has determined that common planning time is of great educational importance. (Emphasis added) The regulations of the Board of Regents specify that:

Common planning time shall be used by interdisciplinary and content specific teams of teachers, administrators, and other education professionals for substantive planning of instruction, looking at student work, addressing student needs (especially those with the greatest needs), and providing opportunities for group professional development. (Emphasis added)

That is to say, common planning time must be used by the teachers at Hope, *inter alia*, to develop the instruction for these Hope High school students. It will also be used to look at student work and to address students needs, especially those [students] with the greatest needs. It is the individual

work of students at Hope High school and their individual needs that forms, to a very great extent, the subject matter of common planning time at Hope.

The students and parents in this matter are not acting as self-appointed Attorney Generals with a roving commission to litigate on behalf of their particular view of the general public good. Instead, these Hope High school students, acting through their parents, are students whose education is the ongoing subject of the common planning time at Hope High school. The fact that the Board of Regents prohibited schools from reducing the amount of common planning time -- along with the fact that the Regents scheduled an increase in common planning time to take place in 2012 -- plainly indicates that the Board of Regents has determined that the amount of common planning time in a school is an important matter. Given the determination of the Board of Regents that the duration of common planning time is important, we will not assume that that common planning time may be diminished without causing a detriment to the specific students who are the beneficiaries of this common planning time. We therefore find that these Hope High school students have alleged “an invasion of a legally protected interest which is (a) concrete and particularized *** and (b) actual or imminent, not ‘conjectural’ or ‘hypothetical.’” *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) See: *Pontbriand v. Sundlun*, 699 A.2d 856 (R.I. 1997) We therefore find that these students will be aggrieved by any reduction of common planning time at Hope High school, and that they therefore have standing to bring the petition now before us.

STATUS OF COMMON PLANNING TIME AT HOPE HIGH SCHOOL

In its brief the Providence School Board, as befits a public agency, candidly states:

At the time the [Common Planning Time] Regulation was promulgated, all but one of the high schools under the jurisdiction and control of [the Providence School Board] were operating under a six-period system, with one 90 minute period of [Common Planning Time] ... By contrast, [Hope High School] was then operating under a four-period system, with one 87 minute of [Common Planning Time] on every other day, for an average of 195 minutes of [Common Planning Time] per week.³ (Emphasis added)

The Providence School Board also candidly states in its brief that in the 2010-2011 school year common planning time at Hope High School will be reduced, “from an 87 minute period twice a week to one 90 minute period per week.”⁴

From these statements it is evident that common planning time will be reduced at Hope High School starting in the upcoming 2010-2011 school year. The Providence School Board seems to argue that in some way the Board of Regents, by returning administrative control over Hope High School to the Providence School Board, has undercut the applicability of to **L-6-4.5 -- Common Planning Time** in relation to Hope High School. On this point the School Board directs our attention to a letter from Commissioner Gist to Superintendent Brady, dated December 29, 2009, submitted as exhibit F in the motion of the Providence School Board to dismiss this matter. The letter states in pertinent part:

I want to thank you for your December 15, 2009 update regarding scheduling changes at Hope High School that you provided to me and the Board of Regents for elementary and Secondary Education. At our December 17, 2009 meeting, members of the Board of Regents and I had the opportunity to review the information you

³ Brief of Providence School Board, page 4

⁴ Brief of Providence School Board, page 4

provided with respect to your rationale fore scheduling changes for Hope High School that will commence with the 2010-2011 school year, In our discussion, we acknowledges that both staffing practices and school schedules are the district’s management responsibilities.

We appreciated the level of detail that you provided with respect to moving into a daily six-period, non-rotating schedule with its benefits to students as well as increasing the opportunity for cross-high school collaboration and professional development. In our discussion of these benefits, the Board of Regents noted that improvements made at Hope High School over the past five years need to be sustained, and the school must continue to focus on instructional practices that accelerate student achievement and graduation rates. Since Hope High School was reconstituted under state intervention, the Board of Regents and I discussed several lessons we can learn from the actions taken with Hope High School. At our meeting, we noted that fiscal sustainability, ongoing evaluation of programs and practices, and clear articulation of performance indicators are some of the required elements needed to be considered in future interventions.

We have read this letter carefully and we find nothing in it that waives the force of any Board of Regents regulation. The letter simply acknowledges that since control over Hope High School has been remitted to the Providence School Board, “... that both staffing practices and school schedules are the district’s management responsibilities.” We find that the letter in no way purports to waive any Board of Regents Regulation.

In sum, at this stage of the present hearing, we must conclude that the petitioners have made out at least a prima facie case that a reduction in common planning time at Hope High School will result in a violation of the Board of Regents regulation governing common planning time. **(L-6-4.5. Common Planning Time)** In saying this we are aware that the Providence School Board has not yet had an opportunity to put in its case in chief. And so we will extend to the Providence School Board the opportunity to place its evidence on the record.

Conclusion

The Motion of the Providence School Board to Dismiss the Petition must be denied because the Petitioner’s have standing, and because they have made out at least a prima facie case that the Board of Regents regulation governing common planning time will not be observed at Hope High School in the upcoming 2010-2011 school year. An immediate hearing will be scheduled to hear further evidence and argument from the Providence School Board.

Forrest L. Avila, Hearing Officer

APPROVED:

Deborah A. Gist, Commissioner

August 16, 2010
Date