

**STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS**

**COMMISSIONER OF EDUCATION**

.....

**Certain Students at Hope High School**

**v.**

**Providence School Board et al.**

.....

**DECISION**

The Providence School Board must maintain the amount of common planning time at Hope High School at the level which has been previously established at that school.

DATE: September 13, 2010

### **Travel of the Case and Jurisdiction**

This matter is before the Commissioner on the basis of a petition filed on behalf of certain named Hope High school students by their parents. The 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 exists under the provisions of R.I.G.L.16-39-1 and R.I.G.L. 16-39-2. The petitioners in this case have expressly stated that they are not challenging 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 the Case**

The matter is now before us for a decision on the merits. The Providence School Board has elected not to submit further evidence in this matter. In a prior decision we denied the motion of the Providence School Board to dismiss this matter. This decision hereby incorporates into the previous decision denying Providence’s Motion to Dismiss.

### **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. See R.I.G.L. 16-7.1-5. The students contend that the actions of the Providence School Board violate the common planning time regulations of the Board of Regents

#### **The Providence School Committee**

The Providence School Board contends that the Regulation at issue should not be construed in a way which requires it to maintain the level of common planning time which now exists at Hope High School.

### **Findings of Fact**

We incorporate into this decision the findings of fact made in ruling on Providence’s Motion to Dismiss.

## Conclusions of Law

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.*”<sup>1</sup> These regulations became effective on October 13, 2008.<sup>2</sup> 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.

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.

In its brief the Providence School Board states:

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<sup>1</sup> 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.*)

<sup>2</sup> Regulatory Filing, Office of Secretary of State.

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.<sup>3</sup> (Emphasis added)

The Providence School Board further 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”.<sup>4</sup> 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 Respondent Providence School Board seems to argue that we should not interpret the common planning time regulation in a way which binds the School Board’s administrative discretion to configure the school day in its school system. The short answer to this argument is that the purpose of a regulation is to establish a binding rule which will prevail until the regulation is amended or repealed, or until a lawful variance to the regulation is granted through an appropriate process. It is important to note here that the Rhode Island General Assembly has delegated to the Board of Regents the authority to promulgate rules and regulations. See R.I.G.L.16-60-10. Such rules and regulations are termed “legislative rules” and, with respect to such rules, the Rhode Island Supreme Court has stated:

A legislative rule is the product of an exercise of delegated legislative power to make laws through rules.... \*\*\* The validity of a legislative rule depends on whether or not it is within the power granted by the Legislature, issued pursuant to proper procedure, and reasonable as a matter of due process. Once the validity of such a rule is established, it is as binding on a court as a valid statute.<sup>5</sup>

No one disputes the validity of the Board of Regents Regulation regarding common planning time. Moreover, the regulation on its face appears to us to be clear and unambiguous. We therefore must give the words of this regulation “their plain and ordinary meanings.” *Liberty Mutual Ins. Co. v. Kaya*, 947.2d 869 (R.I.2008) Under these circumstances, we must find that Providence must maintain the amount of common planning time at Hope High School at the level which has been previously established at that school.

## **Conclusion**

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<sup>3</sup> Brief of Providence School Board, page 4

<sup>4</sup> Brief of Providence School Board, page 4

<sup>5</sup> *Lerner v. Gill*, 463 A.2d 1352 (R.I. 1983)

The Providence School Board must maintain the amount of common planning time at Hope High School at the level which has been previously established at that school.<sup>6</sup>

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Forrest L. Avila, Hearing Officer

APPROVED:

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Deborah A. Gist, Commissioner

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September 13, 2010  
Date

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<sup>6</sup> We note that the compliance with the Board of Regents Common Planning Time Regulation is also obligatory on the certified teachers at Hope High School. This is because under Rhode Island law contractual provisions are deemed to include all applicable statutes and regulations, as if they were written into the contract. *Power v. City of Providence*, 582 A.2d 895 (R.I. 1990), *Citizens for the Preservation of Waterman Lake v. Davis*, 420 A.2d 53 (1980). *Pawtucket School Committee v. Teachers' Alliance*, 652 A.2d 970 (R.I. 1995); Citing: *Vose v. R.I. Brotherhood of Correctional Officers*, 587 A.2d 913 (1991) and *R.I. Court Reporters Alliance v. State*, 591 A.2d 376 (1991) See: *School District of Beverly v. Geller*, 755 N.E.2d 1241 (Mass. 2001) & *State v. Rhode Island Alliance of Social Service Employees*, 747 A.2d 465 (R.I. 2000) See: *National Education Association v. Middletown School Committee*, Commissioner of Education, October 17, 2000.