

**STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS**

COMMISSIONER OF EDUCATION

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**Traci Rossi et al
v.
Johnston School Committee**

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DECISION

The purpose of this remand is to determine whether the Winsor Hill School in the Johnston School District is in compliance with the Board of Regents Regulations concerning the Length of the School Day and the statutory requirement under R.I.G.L. 16-22-4 to provide instruction in Health and Physical Education for a period of an average of 100 minutes per week. The petitioners have also filed a request for the award of attorney fees in accordance with Rhode Island’s Equal Access to Justice for Small Businesses and Individuals. R.I.G.L.42-92-2.

It is hereby determined that the Winsor Hill School is in compliance with the Regulations of the Rhode Island Board of Regents Length of the School Day regulations. In addition, it is determined that there has been compliance with the provisions of R.I.G.L.16- 22-4. Still, by this decision, it is required that the Superintendent of Schools of Johnston file a report with the Commissioner’s Office demonstrating continued compliance with both of these provisions before the start of the 2011-2012 school year. The request for attorney fees, as discussed above, is denied.

DATE: August 25, 2011

Travel of the Case and Jurisdiction

This matter is before the Commissioner of Education on the basis of a remand from the Board of Regents. Jurisdiction is present under R.I.G.L. 16-39-1 and R.I.G.L. 16-39-2. The purpose of this remand is to determine on the record whether the Winsor Hill School in the Johnston School District is in compliance with the Board of Regents Regulations concerning the Length of the School Day and the statutory requirement under R.I.G.L. 16-22-4 to provide instruction in Health and Physical Education for a period of an average of 100 minutes per week. The petitioners have also filed a request for the award of attorney fees in accordance with Rhode Island's Equal Access to Justice for Small Businesses and Individuals. R.I.G.L.42-92-2.

Findings of Fact

It is conceded that the Winsor Hill School is now in compliance with the Board of Regents Length of School Day Regulations.¹ As part of the record in this matter the respondent school district has submitted correspondence to the Commissioner of Education that the Winsor Hill School is in compliance with the health and physical education requirements established by R.I.G.L.16-22-4.² We find no evidence in the record to contradict this submission. We therefore find that the Winsor Hill School is in compliance with these two provisions.

Motion for Attorney Fees

Due to fiscal exigency the respondent school district was forced to merge the Graniteville School with the Winsor Hill School. This merger caused much controversy in the school district and occasioned much administrative turmoil in its implementation. Extensive hearings held in the matter demonstrated that while every administrative aspect of this massive reorganization did not immediately mesh, the school district was either in compliance with Board of Regents regulations or taking prompt steps to remedy with dispatch any shortfalls which existed. In particular, the district was taking effective steps to bring itself in compliance with the Board of Regents length of school day regulations and the statutory requirement to ensure the provision of sufficient minutes of physical education as required by R.I.G.L.16-22-4.

For purposes of this case we will presume that the Rhode Island's Equal Access to Justice for Small Businesses and Individuals, R.I.G.L.42-92-2, applies in matters brought before the Commissioner under R.I.G.L. 16-39-1 and R.I.G.L. 16-39-2.³ The fee award statute reads in pertinent part as follows:

¹ Letter from petitioners' counsel, January 25, 2010.

² Letter from respondent's counsel, February 2, 2010.

³ Language in both R.I.G.L. 16-39-1 and R.I.G.L. 16-39-2 provides that appeals brought under these statutes shall be "without costs", thereby raising the question of its applicability to the Commissioner of Education.

R.I.G.L. § 42-92-3 Award of reasonable litigation expenses. – (a) Whenever the agency conducts an adjudicatory proceeding subject to this chapter, the adjudicative officer shall award to a prevailing party reasonable litigation expenses incurred by the party in connection with that proceeding. The adjudicative officer will not award fees or expenses if he or she finds that the agency was substantially justified in actions leading to the proceedings and in the proceeding itself. The adjudicative officer may, at his or her discretion, deny fees or expenses if special circumstances make an award unjust. The award shall be made at the conclusion of any adjudicatory proceeding, including, but not limited to, conclusions by a decision, an informal disposition, or termination of the proceeding by the agency. The decision of the adjudicatory officer under this chapter shall be made a part of the record and shall include written findings and conclusions. No other agency official may review the award. (Emphasis added)

In the matter before us we find that the Johnston school district was reasonably justified in contending that it was in substantial compliance with the laws and regulations governing operations at the Winsor Hill School. While a demonstration by the Winsor School of perfect compliance with all applicable laws and regulations just after its merger with the Graniteville School at the start of the school year would be ideal, a finding as previously made in this matter is once again made; namely, that the Winsor Hill School was either in compliance or taking steps to achieve compliance with all applicable laws and regulations. We therefore find that the Johnston school district “was substantially justified in actions leading to the proceedings and in the proceeding itself.” R.I.G.L. 42-92-2. Moreover, it appears clear that the petitioners, while being highly motivated and skillful in their presentation, were not prevailing parties in this matter as required under R.I.G.L. 42-92-3. Accordingly, an award of attorney fees must be denied in this matter.

Conclusion

It is hereby determined that the Winsor Hill School is in compliance with the Regulations of the Rhode Island Board of Regents Length of the School Day regulations. In addition, it is determined that there has been compliance with the provisions of R.I.G.L.16- 22-4. Still, by this decision, it is required that the Superintendent of Schools of Johnston file a report with the Commissioner’s Office demonstrating continued compliance with both of these provisions before the start of the 2011-2012 school year. The request for attorney fees, as discussed above, is denied.

Forrest L. Avila, Hearing Officer

APPROVED:

Deborah A. Gist, Commissioner

Date