

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

Susan Sullivan

v.

Cumberland School Committee

.....

:
:
:
:
:
:
:

DECISION

Held: This is an appeal from a decision of the Cumberland school committee regarding its policy of awarding extra weight to Advanced Placement (AP) courses when class rank is computed, and of charging a \$70.00 testing fee for these AP Courses. In the present matter we affirm the decision of the school committee to assign extra weight to AP courses when class rank is computed. However, with respect to the \$70.00 fee for the AP test – because it is the school committee that requires the student to take the test to obtain AP credit for high school use – it is therefore a fee that is required for public school credit, and such a fee is not permissible. The school committee cannot condition high school credit on the taking of an examination for which students are required to pay a fee.

DATE: January 10, 2001

Travel of the Case

This is an appeal from a decision of the Cumberland school committee to affirm its policy of awarding extra weight to Advanced Placement (AP) courses when class rank is computed. A parent whose child may be affected by this decision has filed this appeal.

Findings of Fact

Cumberland, like many other Rhode Island school districts, allows students to take *Advanced Placement* (AP) courses. The nature of these AP courses is well described in Cumberland's brief:

Cumberland High School offers AP classes as an option to its highest-achieving students who are seeking a greater academic challenge than that presented by regular Honors classes. AP classes generally impose a significantly higher workload on students and also cover material at a much faster pace than other lower level classes. In addition, AP classes are taught by Cumberland High School teachers based on a standardized national curriculum and, according to the national standard, in classes of 15 or fewer. At the end of the class, students must sit for a nationwide AP exam given by an organization similar to the company that offers the SAT exam. If a student achieves a sufficiently high score on the exam, he or she may receive advanced credit from the college that he or she attends after graduation.

This case arises from a decision of the Cumberland school committee to change Cumberland's method of computing class rank. Under the new method, which became effective in the 1999-2000 school year, AP courses are assigned an increased weight when class rank is computed. To win AP credit students must also pay a \$70.00 testing fee.

Issues

The petitioning parent has *two* objections to Cumberland's AP policy. First of all, she argues that because AP courses are not available in every subject, in every year, unfair discrimination results when increased weight is assigned to AP courses. For example, in some particular year, AP French may be available while AP Spanish is not. If a student of French is then allowed to throw a heavily weighted AP French course into the academic balance, a student of Spanish, in a year in which AP Spanish is not available, is placed at a significant disadvantage in the competition for class rank. The petitioner urges that something as vital as

being the class valedictorian should not hinge on the fortuitous availability of a course.

The petitioner also objects to a \$70.00 testing fee that is associated with the AP program. The company that sponsors the AP program offers a testing program to ensure academic uniformity in evaluating the achievement of students who have taken an AP course. The \$70.00 fee for this test is payable to the sponsoring corporation. The petitioner objects to having public school academic credit depend on a student's ability to pay a \$70.00 fee. The Cumberland school committee concedes that it does require students to take this test as a condition to receiving credit for participation in an AP course. The school committee submits, however, that if a student were too poor to afford the test the school committee would pay the fee for the student.

Conclusions of Law

Rhode Island school committees have authority to establish academic standards for the public schools under their jurisdictions:

16-2-16. Rules and regulations -- Curriculum. -- The school committee shall make and cause to be put up in each schoolhouse rules and regulations for the attendance and classification of the pupils, for the introduction and use of textbooks and works of reference, and for the instruction, government, and discipline of the public schools, and shall prescribe the studies to be pursued therein, under the direction of the department of elementary and secondary education.

The commissioner of education may well have more authority than a court does to review academic decisions. However, given the fact that the school committee has primary statutory jurisdiction in this area, the commissioner, in most cases, will limit review of a local academic decision to the question of whether or not the decision was:

- Arbitrary, capricious, or unreasonable
- Incorrectly computed
- Contrary to statewide academic policy, or
- Made in bad faith.¹

While the commissioner exercises *de novo* review authority it is also true that "a commissioner would seldom reverse a decision of a committee unless he was satisfied that the public good or justice to individuals required it." ²

¹ *Feit vs. Providence School Board*, Commissioner of Education, February 25, 1992. *Jane B.B. Doe v. Warwick School Committee*, Commissioner of Education, June 10, 1998.

In the present matter the record shows that the Cumberland school committee carefully reviewed the question of whether or not AP courses should receive extra weight in computing class rank. The committee considered the fact that an AP course might not be available to match the academic needs of every student. It weighed this difficulty against the need to encourage students to stretch their academic abilities by taking AP courses. It considered the fact that students who have completed an AP course have, in fact, completed a course of study that should receive a measure of extra-recognition.

In sum, we can find no reason to overturn the school committee's decision to award extra weight to AP courses when class rank is computed. We have no reason to believe that any balance we could strike concerning these difficult issues would be any fairer than the balance struck by the school committee. We therefore affirm the decision of the school committee to assign extra weight to AP courses when class rank is computed.

Petitioner's objection to the \$70.00 fee for the AP test has more merit. As far back as 1917 the Rhode Island Board of Education, the predecessor of the Board of Regents, dealt with a situation concerning school districts that were charging evening school students a registration fee. (At the time, evening schools were a method of extending education to young students who worked in the mills.) The Board of Education wrote:

[S]uch [a] registration fee violates a fundamental principle of Rhode Island School law. Tuition charges were abolished in 1868, and free textbooks were ordered in 1893, with the object of making the schools absolutely free. Such a registration fee also violates a fundamental principle of Rhode Island school administration by interposing an obstacle against free attendance and by discriminating against the boy or girl who have not a dollar, and the boy and girl who cannot afford to risk a dollar. It amounts to a retroaction to conditions prevailing forty years ago, and introduces anew one of the greatest evils of the public school system.³

Of course the *evil* the Board of Education was referring to was the tendency to treat the public schools as if they were a species of charity school where the poor, by an act of kindness, are admitted free if they can not afford to pay the price. However Rhode Island public schools are not charity schools--they are, by virtue of the decision of the General Assembly in 1868 to abolish tuition rate bills, free common schools. In a free school system it does not suffice to waive a fee

² See: *Pawtucket School Committee v. State Board*, 103 R.I. 359 (1968)

³ Rhode Island School Reports, 1917, page 21 [Report of the State Board of Education].

when a student cannot afford to pay it.⁴ This is because the "evil" to be avoided is the charging of a fee in the first place.

We cannot accept the school committee's argument that a difference is made by the fact that the fee in this case does not flow to the school committee, but rather to a private corporation. It is the school committee that requires the student to take the test to obtain AP credit for high school use. It is therefore a fee that is required for public school credit, and such a fee is not permissible.

Conclusion

There are a number of ways for the school committee to amend its AP program so that it can pass muster. For example, the teacher's grade alone could be used to compute academic credit for high school purposes. A student who was seeking college credit would still have to pay for the AP examination, but this examination would have nothing to do with high school credit, or class rank. In the alternative, if the school committee insists on using the AP test as a *sine qua non* for high school credit, the committee could pay the testing fee for all students. We limit our ruling here to finding that the school committee cannot condition high school credit on the taking of an examination for which students are required to pay a fee.

APPROVED:

Forrest L. Avila, Hearing Officer

Peter McWalters, Commissioner

January 10, 2001
Date

⁴ See: Opinion Letter of the Commissioner to Supt. DiLuglio, June 26, 1981.