

**Before the Department of Elementary and Secondary
Education for the State of Rhode Island**

Docket No:

Rhode Island Affiliate,
American Civil Liberties Union

v.

The School Committee of the
Town of North Smithfield

PETITION

PARTIES

1. The Rhode Island Affiliate, American Civil Liberties Union has members in the Town of North Smithfield and otherwise has members throughout the State of Rhode Island who, through their payment of taxes, support the public schools of North Smithfield.
2. The School Committee of North Smithfield is duly elected to oversee the public schools in that town.

JURISDICTION

3. The Department of Elementary and Secondary Education for the State of Rhode Island has jurisdiction to decide all “questions arising under any law relating to schools or education,” Rhode Island General Laws 16-39-1 et seq., and this is a complaint against the North Smithfield School Committee’s practice requiring student athletes to “Pay To Play.”

FACTS

4. For the academic year 2009-2010, the School Committee authorized Matthew J. Tek, the Director of Athletics of the North Smithfield School Department, to impose an “Athletic Management Fee,” so-called, of one hundred and fifty dollars (\$150.00) on all athletes who participate on school athletic teams at the Middle School, Junior Varsity and Varsity Levels. (Attachment 1- Memorandum of Matthew J. Tek, To Parents and Guardians- Undated)
5. By report submitted to the North Smithfield School Committee by Director Tek on 20 October 2009, three thousand eight hundred and forty dollars (\$3840.00) had been collected for Fall athletics pursuant to this authorization.

6. Although Respondent, the North Smithfield School Committee, was specifically made aware that "...the Rhode Island Commissioner of Education has consistently found fees like this to violate state law's guarantee of a free public education," (Attachment 2- Letter of Petitioner's Executive Director Steven Brown to Robert La Fleur, Chairperson, North Smithfield School Committee as dated 27 July 2009), Respondent has proceeded to collect the "Athletic Management Fee," so-called.

7. Part and parcel of the Athletic Management Fee Memorandum, previously identified as Attachment 1, is a form entitled "Athletic Management Fee Waiver Report."

8. This form establishes the bases for a waiver: either the parent or a guardian represents the household meets "...Federal Eligibility Guidelines that are applied to the other school areas" on a grid set out on the Respondent's "Athletic Management Fee Waiver Request," all the while maintaining "this process is totally private, confidential and no financial information will be required," Id. at 2 (Emphasis Supplied) OR takes the position that "Even though I do not meet the criteria above, I am requesting a waiver through the Athletic Department/Athletic Director."

9. The review by the Athletic Director of a request for waiver by one not qualified based on the Financial Eligibility Grid is without standards or criteria and therefore arbitrary and capricious.

LAW

10. The charging of fees to students at public schools "...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 ... cannot afford to risk a dollar." Rhode Island School Reports, 1917, page 21 Report of the State Board of Education.

11. "...[B]y virtue of the decision of the General Assembly in 1868 to abolish tuition rate bills, [Rhode Island Public Schools] are free common schools. In a free common school it does not suffice to waive a fee when a student can not afford to pay it." Opinion Letter of the Commissioner to Supt. DiLuglio, June 26, 1981.

12. This Department has previously addressed a school committee's ability to charge fees:

(a) In Susan Sullivan v. Cumberland School Committee, January 10, 2001, it ruled on the general question of whether school fees may be charged in Rhode Island and concluded they may not; and

(b) In responding on 15 July 2005 to a request from the Burrillville School Department for a waiver of the Department of Education's Policy, set forth in a Commissioner's Opinion Letter dated October 26, 1999 prohibiting Public School Districts from the utilization of a fee for participation in athletics or extra-curricular activities, the Department rejected that request; and

(c) In responding on 5 August 2009 to a request from the Rhode Island Interscholastic League for an opinion on each school district's right to charge families fees to participate in a high school sport, the Department opined the Districts had no such right, and further held that "...students and their families who have limited means do not have to request a charitable waiver to earn the right to participate in school supported athletic programs in the state."

13. The law prohibiting pay to play athletics is clear and the North Smithfield School Committee deliberately, knowingly, and willfully chose not to follow it.

WHEREFORE, Petitioner, the Rhode Island Affiliate, American Civil Liberties Union, demands the following relief:

(1) The Respondent North Smithfield School Committee be ordered to withdraw its Athletic Management Fee forthwith, and that any school district policy authorizing such a fee be declared null, void and unlawful.

(2) The Respondent North Smithfield School Committee be ordered to return, within thirty days, all monies by check to all parents or guardians who paid to play pursuant to this policy and certify to the Department of Education that it has done so.

(3) The Respondent North Smithfield School Committee be ordered to destroy all applications for a waiver submitted pursuant to this policy and certify to the Department of Education that it has done so.

(4) The Respondent North Smithfield School Committee pay the costs of litigation including attorney's fees incurred by Petitioner Rhode Island Affiliate, American Civil Liberties Union pursuant to the Rhode Island General Laws 42-92-1 et seq.

(5) A hearing on the petition be convened forthwith.

(6) The Department award such other relief as it deems just and appropriate.

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December 2009