

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

MARGARET B

vs.

MIDDLETOWN
SCHOOL COMMITTEE

DECISION

July 29, 1988

This matter was heard on the appeal to the Commissioner of Education by Margaret B from a decision of the Middletown School Committee in accordance with §16-39-2 of the General Laws of Rhode Island, as Amended. The matter was heard by the undersigned Hearing Officer under authorization from the Commissioner.

Due notice was given the parties as to the date, time, and place of the hearing. Both the respondent and the intervenor were represented by counsel. The appellant failed to appear and no one was present on her behalf. Although the hearing was scheduled for 10 a.m. on June 23, 1988, the Hearing Officer did not convene the hearing until 10:30 a.m. in order to give the appellant ample time to appear. The respondent moved to default the appellant for failure to come forward and prove her case in toto. The Hearing Officer made a bench decision not to dismiss the appeal on the grounds of default since it has not been the practice of the Commissioner to so rule. At the April 12, 1988 hearing on this appeal, the appellant appeared pro se and presented testimony and evidence on the merits of her case. Therefore, since no one was present to represent the appellant, the testimony and evidence presented by her on April 12 will be considered in arriving at a determination in the case before us. Testimony was taken, a transcript of which was made and evidence was presented. Upon the testimony taken and the evidence presented, we find the following:

1. The appellant's daughter, L , was a fifth grade student in the Middletown School System during the fall of 1987.

2. L was a student in Carol Allen's class at the Gaudet School.
3. Ms. Allen taught L: , along with twenty-four (24) other students, all subjects in the curriculum, including penmanship. (See Transcript p. 5).
4. L received a grade of "C" in penmanship for the first quarter of the 1987-88 school year.
5. The grade of "C" in penmanship was arrived at by the teacher as a result of a number of test papers submitted by the appellant's daughter during the period between the opening of school in September and November 6, 1987. (See Appellant's Exhibit 1).
6. Approximately fifteen (15) students, out of a class of twenty-five (25), received a grade of "C" in penmanship for the first quarter of the 1987-88 school year. (See Transcript p. 5).
7. The teacher utilized the Zaner-Bloser Fifth Grade Evaluation Scale: Cursive, in determining the penmanship grade for her students. (See Respondent's Exhibit E).

Issue to be Decided

Did the School Committee and/or its agents act in bad faith, capriciously or arbitrarily in awarding a grade of "C" in penmanship to the appellant's daughter, L: , for the first quarter of the 1987-88 school year?

Position of the Parties

The applicant testified that she is challenging the policy of the school with regard to the teaching of penmanship. She further alleges that her daughter was deprived of the right to an equal education because never was a mark or grade put on any paper to give her an indication as to where she needed to improve. The appellant also testified that a comparison of her daughter's penmanship from September to November 25, 1987 shows no difference, yet, on a paper dated November 25, 1987 (Appellant's Exhibit 1), the teacher wrote the remark "What an improvement in penmanship!"

The appellant further testified that she wanted to go on record stating that she was here pursuing the way that the curriculum was being taught in the fifth grade in the Middletown School System, that she doesn't feel that it is just and that she feels that they did not follow the curriculum as stated in the document entitled "Middletown Public Schools: Handwriting". (See Respondent's Exhibit A) and the Curriculum Manual (See Respondent's Exhibit B). The appellant requests that the grade of "C" which was given to her daughter for the first quarter of the 1987-88 school year be removed from her record if the Hearing Officer finds in her favor.

The respondent testified that the Zaner-Bloser "Guided Growth in Handwriting" system is the official handwriting instruction in the Middletown Public Schools (See Respondent's Exhibits A, B, C, D and E). She also testified that she followed the official curriculum and policy of the Middletown Public Schools precisely in the teaching of penmanship as she did in the

teaching of all other subjects. She testified that she taught the twenty-five (25) students in the appellant's daughter's class all subjects in the curriculum and that in all subjects except for penmanship, the student received all A's and B's. The respondent testified that the standards she applied for the grade in penmanship for all members of the class, including the appellant's daughter, were those shown in the chart labeled "Grade Five Zaner-Bloser Evaluation Scale: Cursive". (See Respondent's Exhibit E). The chart contains samples of what an "A", "B", "C", "D", "E" or "F" in handwriting should be. She testified that a comparison of the appellant's daughter's handwriting on the test dated November 6, 1987 (See Appellant's Exhibit 1) to the chart shows clearly that she was deserving of only a "C" grade as of that date. The respondent stated that if the Middletown School System had Plus (+) and Minus (-) grades, that the appellant's daughter would have been entitled to a "C+".

The respondent testified that she met with the appellant's daughter following the November 6, 1987 test and suggested that she attempt to be consistent with the same slant in her handwriting as well as improving letter formations, writing a little smaller, forming better loops and trying not to be so disjointed. On the test dated November 25, 1987, the student showed more consistency in slant, more consistency in letter size, less crowding of letters and less disjointing of letters. Therefore, the notation, "What an improvement in penmanship!" was placed on the test paper.

As stated in our Interim Decision of June 2, 1988, in Thomas Connelly, Jr. v. The University of Vermont and State Agricultural College, 244 F.Supp. 156 (1965), the Court said:

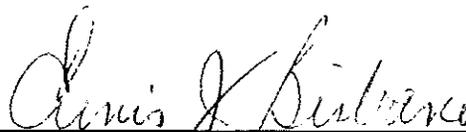
It should be emphasized that this Court will not pass on the issue of whether the plaintiff should have passed or failed his pediatrics-obstetrics course, or whether he is qualified to practice medicine. This must and can only be determined by an appropriate department or committee of the defendant College of Medicine. Bernard v. Inhabitants of Shelburne, supra; Eddie v. Columbia University, supra. Therefore, should the plaintiff prevail on the issue of whether the defendant acted arbitrarily, capriciously or in bad faith, this Court will then order the defendant University to give the plaintiff a fair and impartial hearing on his dismissal order.

The record in this case demonstrates convincingly that the School District had a reasonable policy for awarding grades in handwriting. Moreover, a comparison of the handwriting samples of the appellant's daughter on the test papers dated November 6, 1987 and November 25, 1987, shows clearly a marked improvement in penmanship, particularly with regard to slanting, letter formations, size and disjointing, as testified to by the teacher in making her determination to include the remark, "What an improvement in penmanship!" on the paper dated November 25, 1987. (Appellant's Exhibit 1). We hasten to point out, however, that this Hearing Officer is in no way attempting to substitute his judgment for that of the teacher and other officials in the Middletown School System. Reference is made to the comparison solely for the purpose of addressing the issue of bad faith, arbitrariness or capriciousness.

In accordance with the testimony and evidence presented and Connelly, supra, it is our decision that the Middletown School

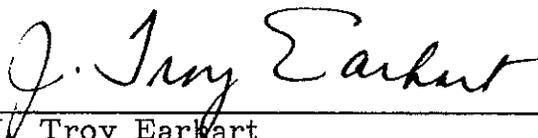
Committee and/or its agents did not act in bad faith, arbitrarily or capriciously when a grade of "C" in penmanship for the first quarter of the 1987-88 school year was awarded to the appellant's daughter.

Accordingly, the appeal is denied.



Ennis J. Bispano
Hearing Officer

Approved:



J. Troy Earkart
Commissioner of Education

July 29, 1988