

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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CONCERNED PARENTS & TEACHERS :  
 :  
vs. :  
 :  
EXETER-WEST GREENWICH :  
REGIONAL SCHOOL DISTRICT :  
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D E C I S I O N

September 15, 1988

This matter was heard on August 5 and 10, 1988, upon the appeal to the Commissioner of Education of Concerned Parents and Teachers in Exeter-West Greenwich from a decision of that School Committee to interchange kindergarten and first grade classrooms at the Lineham School beginning in September of 1988.

The Commissioner has jurisdiction to hear the appeal by virtue of the provisions of §16-39-2 of the General Laws of Rhode Island, 1956, as Amended. The matter was heard by the undersigned Hearing Officer under authorization from the Commissioner.

Due notice was given to the parties as to the date, time and place of the hearing. The School Committee was represented by counsel and the appellants appeared pro se. Testimony was taken, a transcript of which was made, and evidence was presented.

Prior to the hearing the School Committee filed a Motion to Dismiss the appeal. The Hearing Officer advised the parties that he would hear argument on the Motion at the outset of the hearing. The Hearing Officer heard arguments on the Motion at the August 5 hearing; he reserved decision on the Motion and took it under advisement. The parties were advised that he would render a decision prior to the hearing which had been scheduled for August 10 on the merits of the appeal. The Hearing Officer told the parties that if his decision was in the affirmative on the Motion, that would be the end of the appeal at this forum. However, if his decision was to deny the Motion, he would so inform the parties and the hearing would continue on the merits. It is our decision that the appellants

are "aggrieved" within the meaning of §16-39-2 of the General Laws of Rhode Island. It is further our opinion that, since it is clear from the record that the appellant parents and teachers live within the area served by the Exeter-West Greenwich School District and have children who attend the Lineham School, the appellants have standing to be heard. The Commissioner has always interpreted the statutory provision of §16-39-2 very<sup>1</sup> liberally because of its extraordinary breadth.

Accordingly, the Motion to Dismiss is denied.

Upon the testimony taken and the evidence presented, we find the following:

1. Lineham School is an elementary school in the Exeter-West Greenwich Regional School District housing kindergarten and first grade students.
2. At a meeting of the School Committee held on April 12, 1988, the Committee voted on a space proposal for the 1988-89 school year that would interchange first grade and kindergarten classrooms at the Lineham School.
3. On May 31, parents and several teachers met with the principal of the Lineham School and the Superintendent of Schools to discuss concerns about the kindergarten program in small classrooms.
4. On June 14, 1988, School Committee members met with parents and teachers to "listen" to alternative proposals

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1] Bradford Save Our School Committee vs. Westerly School Committee, September 21, 1981. Patricia Miles, et al vs. Smithfield School Committee, December 6, 1985.

that the parents and teachers had submitted to the Superintendent and to the Principal.

5. On June 21, School Committee members met several parents and the Principal at the Lineham School to tour the school and observe the classrooms in question on a first-hand basis.
6. On June 28, parents and teachers presented alternative ideas to the School Committee but the School Committee refused to change its decision made on April 12, 1988.
7. The Commissioner of Education adopted certain "Rules and Regulations for School Health Programs" on February 1, 1979 and amended them in December of 1980.

The appellants testified that an important factor in determining success educationally is the development of self-esteem and that it hinges on having much mobility within a classroom. They further testified that four and five year olds cannot sit still for ten to fifteen minutes, let alone for two or three hours in a confined area as the new proposal would require. They take the position that it would be educationally unsound for seventeen (17) to nineteen (19) kindergarten children to be confined for two-and-one-half hours in a classroom 17 ft. by 23 ft. or a little over 400 sq. ft.. Mrs. Lillian Paolucci Werle testified that she is a half-time kindergarten teacher and a counselor with a small private practice counseling children and their parents. She testified that she

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2] Dimensions given by the Superintendent of Schools under examination by counsel. See Tr. pp. 52-53.

has a Master's Degree in both areas and that she is in a unique position of seeing children have a whole new perspective with regard to their psycho-social educational growth. She further testified that she believes that the proposal adopted by the School Committee would be miseducation and would not be in keeping with all of the current data for successful education of children.

Mr. John M. Magee testified that he has been teaching kindergarten in Exeter-West Greenwich for ten (10) years. He testified that he sees a need for more space in the kindergarten program as a necessity because being the first social interaction for many of these young children, they need a great deal of space to move around in and become acclimated to a group of children. Under cross-examination, Mr. Magee testified that in the 1987-88 school year he had two sections of kindergarten, one with 27 children and the other with 26 children. In the 1988-89 school year, he is scheduled to have two sections of kindergarten, each with 17 to 19 children. He testified that he would rather have 26 or 27 children in the large classrooms than 17 to 19 in the smaller rooms. The appellants argue that putting the first graders in the small classrooms would have the least negative educational effect. They also argue that Rhode Island Department of Health/Department of Education <sup>3</sup> Rules and Regulations require 30-35 sq. ft. of floor space per kindergarten student and 25-30 sq. ft. of space for first grade students. They argue that this supports their position of placing the first graders in the

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3] Appellants' Exhibit D-Rhode Island Department of Health/Department of Education Rules and Regulations for School Health Programs, February 1, 1979, Amended December 1980.

smaller classrooms. They also argue that these regulations will be violated because by placing 17 to 19 kindergarten students in a 412 sq. ft. classroom would allow only 22 to 24 sq. ft. of space per student.

The Principal testified that she presented the School Committee with three (3) space proposals for the 1988-89 school year for their consideration. The Committee did not select any one of the three plans but made modifications on one plan and adopted that plan. She testified that although the kindergarten program in Exeter-West Greenwich in the past has produced good results, the new proposal of reducing class size from 26-27 to 17-19 students is an attempt to get even better results. The School Committee argues that it is confronted with a situation where either the first grade or the kindergarten has to be in smaller size classrooms. The administrators exercised their professional judgment on the matter and made some proposals to the School Committee that they believe meets the requirements as best as possible. They maintain that they are attempting to improve the education of the students in the Lineham School by starting them out in kindergarten with smaller class sizes in smaller classrooms. They argue that one of the reasons for placing kindergarten students in the smaller classrooms, although not the only reason, is that kindergarten children are in school for a total of two-and-one-half (2-1/2) hours per day while first graders are in school for five-and-one-half (5-1/2) hours per day. The respondents also argue that the Rhode Island Department of Health/Department of Education Rules and Regulations for School Health Programs are not mandatory requirements particularly for existing structures,

but are in fact only guidelines.

Section 16-2-18 of the General Laws reads as follows:

§16-2-18. Selection of teachers and superintendent-General control of schools-Expenses. The selection of teachers and election of superintendent, in such towns, as do not unite for the employment of a superintendent, and the entire care, control, and management of all the public school interests of the several towns, shall be vested in the school committee of the several towns, and they shall also draw all orders for the payment of their expenses.

It has been said that courts do not interfere with the management of a school's internal affairs unless "there has been a manifest abuse of discretion or where [the school official's] action has been arbitrary or unlawful." State ex rel. Sherman v. Hyman, 180 Tenn. 99, 171 S.W.2d 822 L.Ed. 1703 (1942), or unless the school authorities have acted "arbitrarily or capriciously." Frank v. Marquette University, 209 Wis. 372, 245 N.W. 125 (1932), or unless they have abused their discretion. Coffelt v. Nicholson, 224 Ark. 176, 272 S.W.2d 309 (1954). People ex rel Bluett v. Board of Trustees of University of Illinois, 10 Ill. App.2d. 207, 134 N.E.2d. 635, 58 A.L.R.2d. 899 (1956).<sup>4</sup>

It is clear from the language of §16-2-18 that the school committees in this state are vested with "the entire care, control and management of all public school interests", and that those rights and duties are specifically conferred upon individual communities by the General Assembly.

The School Committee is persuasive in its argument that the Rhode

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4] The petitioners in this case have not argued that we should use an intermediate standard of review. (See: e.g. Grilli v. East Greenwich School Committee, Commissioner of Education, February 11, 1986). Although no such request was made we think that even under such a standard the action of the School Committee here passes muster.

Island Department of Health/Department of Education Rules and Regulations for School Health Programs, at least for existing structures, are in fact guidelines and not regulations and are, therefore, not mandatory or binding. In addition, a review of the document itself reveals that recom-  
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mendations have been mixed with regulations.

In view of the foregoing findings, it is our opinion that the School Committee acted reasonably and within its discretionary authority when it voted to interchange the kindergarten and first grade classrooms at the Lineham School beginning in September 1988.

Accordingly, the appeal is denied.

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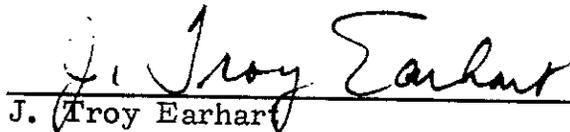
5] A note on page 7, reads as follows: Recommendations have been mixed with regulations, in this section in order to communicate desirable, though not required, features to builders and others involved with new school construction.



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Ennis J. Bisbano  
Hearing Officer

Approved:



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J. Troy Earhart  
Commissioner of Education

September 15, 1988