

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

----- :
ROBIN MUGGLE, et al :

vs. :

PAWTUCKET :
SCHOOL COMMITTEE :
----- :

D E C I S I O N

August 25, 1989

Introduction

This appeal was filed July 26, 1989 by Robin Muggle, et al, from a decision or doing of the Pawtucket School Committee; i.e., redistricting certain children (64 in number) from the Varieur School to the Little School. Such action by the School Committee was taken on July 17, 1989.

Hearings were held on August 1st and 7th by Donald J. Driscoll, Hearing Officer, appointed by J. Troy Earhart, Commissioner of Education. Hearing in this case was held under the authority of R.I.G.L. 16-39-2. A stenographic record of the hearings was made, witnesses were sworn, direct testimony and cross examination were taken, and briefs were filed by both parties. The record of the hearing was closed by brief on August 15, 1989.¹

Issue

Did the Pawtucket School Committee abuse its discretionary powers when it adopted a redistricting plan for 64 children which moved them from the Varieur School to the Little School effective September, 1989?

Travel of the Case

1. On or about June 10, 1989, the Superintendent of Schools recommended a redistricting of the school attendance districts of the Pawtucket School Department for the four following schools: Curvin-McCabe, Curtis, Varieur and Fallon (all elementary schools).
2. The redistricting as proposed by the Superintendent was based upon his perception that such a redistricting plan would act to equalize class size,

1] By order, the transcript, record, exhibits, etc. of the case Laprade, et al vs. Pawtucket School Committee, was included as part of the case record in this matter.

which he considered the most important factor in equalizing educational opportunity for all children. (Superintendent's testimony).

3. The School Committee adopted the plan on June 10, 1989.
4. As part of that plan 85 children were to be moved from Varieur to Fallon and 28 children from Curvin-McCabe to Curtis.
5. Mrs. Beverly Laprade, et al, on or about June 22, appealed this decision or doing of the School Committee to the Commissioner on behalf of the 85 children to be redistricted from Varieur to Fallon. A hearing before the Commissioner was set for June 29. The basis of the appeal was that these children from the same area (for matter of identification known as the Barton/High Street Area) would be redistricted for a second time in two years, and that repeated moving would be detrimental to their educational welfare.
6. At a hearing on redistricting set up by the School Committee on June 28, the School Committee agreed to set up an Advisory Committee on the redistricting of affected children. The Advisory Committee was made up of School Committee members, administrators and parents.
7. At the hearing before the Commissioner on June 29, the parents argued for relief from the action of the School Committee on redistricting and other actions which would cause the redistricting to be a "fait accompli." The Commissioner granted the Temporary Order under §16-32-3.2 and continued the hearing until July 11, 1989.
8. The Advisory Committee met on Thursday, July 6 and a modified plan, known as a "compromise", was agreed upon by the parties in attendance.

The Report of the Superintendent is as follows:

In summary of the Advisory Committee Meeting last evening, the parents in opposition of the redistricting plan expressed agreement with the following compromises:

Curvin-McCabe:

1. Students who currently reside in the Curvin-McCabe District (Including the area that is to be relocated to the Curtis District in September 1989) will be allowed to remain enrolled at Curvin-McCabe School if the parents request.
2. Students who become new residents in the area designated to be relocated from Curvin-McCabe to Curtis will be required to attend the Curtis School.
3. In those grade levels at Curvin-McCabe in which excess class size occurs, parents will be surveyed and allowed the option to attend the Curtis School.

Varieur:

1. Students who reside in the Barton/High Street Area and were previously transferred from the Little to the Varieur in September, 1987 will be allowed to remain at Varieur. This exception includes the siblings of these students, i. e., 21 students were involved.
2. The remaining 64 students who reside in the Barton/High Street Area will be transferred to the Little School.

9. The Commissioner conducted the hearing of July 11 and continued action until July 20 as the School Committee had not acted on the
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Advisory Committee's plan.
10. The School Committee met on July 17 and adopted the plan recommended by the Advisory Committee and the Superintendent of Schools.
11. The Commissioner held the hearing on July 20. At that time testimony of the action by the School Committee was taken. The Committee again motioned for dismissal and continued its motions on the jurisdiction of

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The parents of Varieur School children, at this time, recanted their agreement with the Advisory Committee's plan.

the Commissioner and the representational status of Mrs. Laprade, et al. The arguments were taken and a date of July 28 was set for answer.

12. On July 28 the Commissioner ruled as follows:

1. The Jurisdictional Issue: The jurisdictional issue raised by the Committee is denied. The Commissioner of Education has jurisdiction under 16-39-1 and 2.

16-39-1 speaks to "Parties having any matter of dispute between them." 16-39-1 does not limit action to a "general dispute between a school committee and some other body." (School Committee Brief 6/24/89 p.4). Parties refers to one or more persons on each side of the dispute arising under any law relating to schools or education.

16-39-2 speaks for itself and need not be repeated. The law or laws are clear. The Commissioner of Education has been named by the Legislature and confirmed by the Executive to hear disputes raised by persons among and between individuals and formal or informal parties. A hearing before the Commissioner, by appointment and necessity, is the proper forum to begin a resolution of this dispute.

2. The Representational Status of Mrs. Laprade: The representational status of Mrs. Laprade raised by the School Committee is upheld at this time. The original appeal spoke to the movement of a certain 85 children from the Varieur School. Among those 85 children were the children of Mrs. Laprade, Mrs. Lopes, and Mrs. Muggle. At the time of commencing this hearing Mrs. Laprade was and has been the spokeswoman for the group of three known as Mrs. Laprade, et al. Actions taken by the School Committee since that time have resulted in the Madams Laprade and Lopes' children being retained at Varieur School. Technically that removes them as aggrieved parties. However, the Commissioner's Interim Order of June 29, 1989 as modified on July 11 is still in effect. To allow this matter to progress, however, the Commissioner declares that Mrs. Laprade and Mrs. Lopes have lost their status as aggrieved parties and may not represent others in the matter before the Commissioner. This is done, however, with declaration by the Commissioner that the action of the Pawtucket School Committee of July 17, 1989, relating to this matter does not resolve the matter of dispute since the Commissioner has received another complaint from the July 17, 1989 action of the Pawtucket School Committee.

3. The Motion to Dismiss: The motion to dismiss the case brought by Mrs. Laprade, et al, by petitioner on June 24, 1989, is hereby dismissed with notification that a new hearing will be scheduled today July 28, 1989, for next week sometime between July 31 through August 4, 1989, for the complaint dated July 24, 1989, and filed with the Commissioner on July 26, 1989, copies of which are available to counsel

That petition has the following names attached, and I may get them correct and I can stand to be corrected. We will enter them correctly into the record, Edgard R. Monroy, Marta A. Flores, Doris Betanaur, Joanne Robert, Ruth LaDuke, Carlos Franco, Maria Ferreira, Theresa Fernandes, Claire Kirkland, Lori Arruda, Consuelo Tobin, Manuel Ferriera, Angelo Ferres, Margarida Ferres, Robin Muggle. Is there a spokesman for the group present?

Mr. Mann: I will be the spokesperson for the group.

Mr. Driscoll: In the interest of time and written argument the record thus far of the initial proceedings will be made part of the record for the new hearing. The interim order of the Commissioner dated June 29, 1989, and modified on July 11 remains in effect and I am going to repeat that order referencing the hearing of June 29, 1989, Page 83.

"Therefore, we order as follows:

(1) This matter will be heard and decided in a expeditious manner.

(2) The assignment of these students shall not be changed until the Commissioner has decided the matter.

(3) The School Committee is hereby forbidden from taking any action or signing any contract which would commit the district financially or legally to change the assignment of these students (known as the Barton Street students)."

There was a hearing of July 11, 1989, and that order was modified to the extent that the School Committee could act upon the recommendation of the steering committee.

Only arguing the merits of this case will allow a judgment as to the realities of the grievance of an aggrieved party.

Pre-hearing motions are no substitute for determining facts which would allow a determination of whether there has been an abuse of discretionary powers of the School Committee. We will proceed to the parties under this new appeal which was dated the 24th but filed with the Commissioner on the 26th. . . .

13. The present case and the case for this decision is Muggle, et al vs. Pawtucket School Committee. A hearing was set for August 1, 1989, was held and continued to August 7. Briefs were filed on August 15 and the case record closed.

Jurisdictional Issue

The jurisdictional issue raised by the Pawtucket School Committee is denied. The Commissioner of Education has jurisdiction to hear and decide under §16-39-2 which reads as follows:

16-39-2. Appeal of school committee actions to commissioner.- Any person aggrieved by any decision or doings of any school committee or in any other matter arising under any law relating to schools or education may appeal to the commissioner of elementary and secondary education who, after notice to the parties interested of the time and place of hearing, shall examine and decide the same without cost to the parties involved.

- . . . and 16-1-5. Duties of commissioner of elementary and secondary education.-
(j) To interpret school law and to decide such controversies as may be appealed to the commissioner from decisions of local school committees.

The Interim Order was issued pursuant to R.I.G.L. §16-39-3.2.

16-39-3.2. Interim protective orders.- In all cases concerning children, other than cases arising solely under §16-2-17, the commissioner of elementary and secondary education shall also have power to issue such interim orders pending a hearing as may be needed to insure that a child receives education in accordance with the regulations of the board of regents for elementary and secondary education during the pendency of the matter. These interim orders shall be enforceable in the superior court at the request of any interested party.

Since the issue of redistricting was one of considerable complexity and could have been time consuming, i.e., beyond the date of school commencing for the 1989-90 school year, the Commissioner issued the order to assure that no action would be taken which would move the Barton/High Street Area children until the case had been heard and decided on the merits.

Aggrieved Parties

The Commissioner finds that Mrs. Muggle, et al, have standing as aggrieved parties before this office. Based upon the letter of appeal dated July 24, 1989 and signed by persons named, the Commissioner has decided by joinder that they represent the interests of all the children to be moved (64 in number) by action of the School Committee.²

Whatever the number, parents have an interest in where their children attend school. As such, if persons allege that the School Committee acted improperly, i.e., "arbitrarily or capriciously", those persons shall have standing before the Commissioner as "aggrieved" until such time as the case is heard on its merits and decision is rendered. If the persons shall not offer sufficient proof to sustain the appeal, they then lose their status as aggrieved in the denial.

The School Committee, by its own action, has recognized parents in the past as representative of a group and allege to prove this case partly

2] The number may be less since it derives from a number of 85 known in early June 1989 as enrolled in Varieur School. With the subtraction of 21 by action of the Committee, 64 remain on the transfer list. Some of that list may no longer be enrolled in the Pawtucket School District or may be enrolled in another Pawtucket school because of parental/guardian movement. The precise number is not necessary to decide that this group has a like interest sufficient to call for joinder in this case.

based on the actions of those parent representatives, i. e., Laprade and others, on the Advisory Committee on Redistricting. The Superintendent has testified that he recognized these parents as legitimate representatives for decision-making purposes (Record: August 1, 1989, pp. 72-5 and 78-79). The Commissioner can only conclude that these parents can represent all parents involved in the movement of the 64 children. Given the notoriety of this case and extensive media coverage, the Commissioner is positive that there is no lack of general knowledge of this case in the community and that any parent wishing to sever him/herself and child/ren from the case may do so.

Findings of Relevant Facts

1. The children of the Barton/High Street Area were redistricted by the Pawtucket School Committee from the Little School to the Varieur School in September of 1987.
2. The Pawtucket School Committee redistricted the children from the Barton/High Street Area from Varieur School to Fallon School on June 10, 1989 (effective September 1989).
3. The School Committee had a hearing on June 28, 1989 concerning redistricting.
4. From the hearing of June 28, 1989, the Pawtucket School Committee formed an Advisory Committee on Redistricting, made up of School Committee members, School Administrators and parents.
5. The Advisory Committee met on July 6, and reached a compromise plan which the parents from the Varieur School recanted the following day.

- 6. Sixty-four (64) children from the Barton/High Street Area were proposed to be moved from Varieur School to Little School by vote of the School Committee on July 17, 1989.³
- 7. The School Committee adopted the plan (see above travel of the case: #8) on July 17, 1989.
- 8. Contractual class size limits in Pawtucket are as follows: (TR.8/1/89 @ p.62).

Grades K-3	23
Grades 4-12	28

These class sizes are not absolute, however, as provisions have been made to accommodate overages. (TR. 8/1/89 @ pp.63-4).

9. Class size at Varieur and Little Schools:

A. Before transfer of 64 children:

<u>Grade</u>	<u>Varieur</u>	<u>Little</u>
K	24 25	16 16 17
T/1	13	15
1	25 25	19 19 20 20
2	23 23 24	25 25 26
3	20 20 21	19 19 20
4	31 32	22 22 22
5	22 22	19 20 20
6	26 26	22 22 23
No. of classrooms: 16		No. of classrooms: 22

B. After transfer of 64 children:

<u>Grade</u>	<u>Varieur</u>	<u>Little</u>
K	20 20	19 19 20
T/1	9	9 10
1	18 18	23 23 23 23
2	19 19 20	22 22 22 22
3	18 19 19	21 21 21
4	27 28	24 25 25
5	19 19	21 22 22
6	23 23	24 24 25
No. of classrooms: 16		No. of Classrooms: 24

3] There were 85 children on the original (June 10, 1989) transfer list. Eighteen, who were transferred in 1987, and 3 siblings were proposed to stay at Varieur by the July 17, 1989 action of the School Committee.

10. The Pawtucket School Committee has authorized a comprehensive study of school population and distribution of pupils to be completed by January 1, 1990.
11. There are decisions about housing and teaching the children (64) at Little School which must be addressed: classroom space, added personnel, additional supplies and materials, and others.
12. There are decisions about housing and teaching the children (64) if they were to remain at Varieur or go to Fallon, the same as #11 above.
13. There are children out-of-district at all schools in Pawtucket per School Committee Policy. As it pertains to this case, there are 7 at Varieur and 7 at Little scheduled for 1989-90.
14. As it pertains to this case there are separate Art and Music rooms at Varieur and none at the Little school.

Decision

Two issues were raised by the appellants:

- (1) There has been a violation of the Equal Protection Clause of the United States and Rhode Island Constitutions based upon a classification of socio-economic deprivation, and
- (2) That the action of the Pawtucket School Committee, i. e., redistricting 64 children from the Varieur School to the Little School effective September, 1989, was arbitrary and capricious.

The first, i. e., the Constitutional Issue is most compelling in its interest and the Commissioner notes strongly his concern that the Constitutional rights of all citizens and residents, and their children, be observed and preserved by elected bodies and appointed officials so that the general good is advanced for the benefit of all.

Schools are so basic to our society's well-being that, by their contact with the mass of our society and their power as teaching examples, any laxity exhibited by those in control would be detrimental on a massive scale. With that in mind the Commissioner would caution that it is most important that even the occasion of a belief of violation should cause officials to take every step to avoid or eliminate that perception.

This issue, however, was not fully developed during the hearing and we make no further comment at this time.

The second issue, i. e., determining whether the School Committee acted in an arbitrary and capricious manner, is the issue on which this case turns.

We note the following:

1. This redistricting was not necessary to meet contract obligations. The Superintendent of Schools testified that the movement of 15 children out of Varieur would have satisfied the contractual problem of class size if one did exist. (TR. 6/29/89 @ p.63). The Committee did not believe the class size issue was a problem from the point of view of the contract (TR. 8/1/89 @ pp.62-5).
2. The School Committee held its June 28 hearing after it had voted the redistricting plan and after the reaction to the plan by the parents. This is hardly an open, planned procedure for the Committee to solicit community input on important policy matters.
3. The Committee stated its purpose was to equalize class size and, therefore, equalize educational opportunity. (School Committee Brief, August 1, 1989 @ pp.5-6). An analysis of the class sizes at Varieur and Little both before and after the transfer reveals not an equalization of class size but a trade-off in general of larger to smaller classes at Varieur and smaller to larger at Little.
4. Uncontroverted testimony of the Superintendent indicated that, as the decision to move children came under pressure and discussion, the decisions were not made with the Committee's full understanding of class size implications (TR. 8/7/89 @ pp.40, 116-7, 136) and the need for extra space and other logistical problems at Little School (TR. 8/1/89 @ p.110). Furthermore, there are separate Art and Music rooms at Varieur and not at Little.

Rhode Island law as relates to School Committee behavior is as follows:

§16-2-9.1. Code of basic management principles and ethical school standards. - . . . for school committee members acting individually and collectively. . . (6) Act on legislative and policy-making matters only after examining pertinent facts and considering the superintendent's recommendations.

This law requires a standard not met in this instant case. In the move contested here, the Committee did not have sufficient factual information before it to make an informed decision.

5. There exists at the Varieur School a number of children (7) on permit, i.e., annual permission to attend a school out-of-district per Policy, (Defendant Exhibit 1). The Committee did not consider that the revocation of this permission policy at Varieur should precede the movement of "districted" children since the permit children are allowed only if there is room to house them and such permission is granted only for one year at a time.
6. The Superintendent testified that the School Committee had a Policy for voluntary movement of children (Defendant Exhibit 1) and indicated that he would consider movement on a voluntary basis. The parents affected testified that they did not know of this Policy. Uncontroverted testimony confirms that the Permit Policy was not widely promoted nor made available to parents, and the transportation restriction would cause persons of less affluence and persons of other cultural disadvantage, i.e., language, to be unaware of or unable to take advantage of the Policy. The failure of the system to recognize and deal with these problems is serious and calls into

question the manner in which the School Committee addresses problems of poorer and less advantaged people.

7. By its own testimony and expert witness, the Committee admitted to the need to identify school districts for attendance purposes from a multiplicity of social, economic and cultural factors which would lead to equalized class size and longevity in assignment. (TR. 8/1/89 @ p.107). (Emphasis added). The children of the Barton/High Street Area had been redistricted in 1987. The Committee did not consider a plan, although explained to them which would have redistricted the entire elementary school population by moving about 10% (415 pupils) of the school age population. The Committee voted on a more restrictive plan, i.e., 85 pupils from Varieur to Fallon and 28 from Curvin-McCabe to Curtis. The Committee changed its plan after a parental protest. Why the urgency to transfer a small number of children in September, 1989 when a comprehensive plan will be presented in January 1990? And since this same area had been redistricted in 1987, how does this satisfy "longevity of assignment?"
8. The Committee recognized community persons as representatives of the parents to serve on an Advisory Committee which the School Committee set up at the end of the hearing of June 28. While selecting and meeting with these community representatives to resolve the issue, the Committee was pressing its case before the Commissioner arguing the lack of representational status of the parents before him. Such a position fails on its face since the per-

sons were the same and points to confused behavior by the Committee in that the Committee cannot have it both ways.

9. The Pawtucket School Committee is knowledgeable of and in support of a complete (K-12) study of the system's demographics and population and housing needs that is to be done by January 1, 1990. The professional staff has the ability to prepare the necessary educational specifications to have a comprehensive plan for the educational future of the City of Pawtucket. There is something inherently irrational in redistricting in 1989, of even a small number of children, if a more comprehensive and just redistricting is contemplated for 1990.
10. There are enormous differences in the Advisory Committee's recommendations which the School Committee approved. The children to be moved from Curvin-McCabe to Curtis are "grandfathered" in and movement is entirely optional if class size is excessive. The children to be moved from Varieur to Little have no such voluntary options. Such unequal treatment is unconscionable and deserves to be overturned.

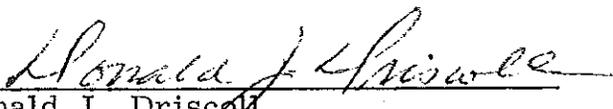
We find the redistricting plan of the Pawtucket School Committee to be an abuse of discretionary powers, arbitrary and capricious, and hereby order the School Committee to apply the same treatment to children and parents scheduled

4] The School Committee in its Brief of 8/11/89 makes references to the "compromise" solution and the Commissioner's role in it. Both of the references indicate that the Commissioner had a role in the compromise solution and that is true. For clarity's sake, however, the Commissioner states that his role was limited to endorsing cooperative action at the local level outside of the Commissioner's hearing which might have developed a solution which would have made the issue moot.

5] The use of the terminology same treatment is not to be construed as an interpretation of the Constitutional question. The finding is limited to the arbitrary nature of the treatment of two different groups in a like circumstance.

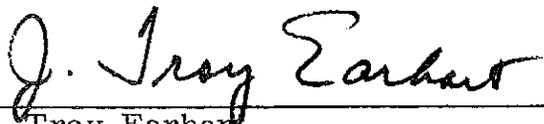
to be transferred out of Varieur as applied to children and parents to be transferred out of Curvin-McCabe. As a result, no children of the Barton/High Street Area enrolled at Varieur are to be transferred out of the Varieur School unless done so with parental consent.

The Interim Order dated June 29, 1989 is to remain in full force and effect until such time as the final order contained herein becomes enforceable under §16-39-3.1.



Donald J. Driscoll
Hearing Officer

Approved:



J. Troy Earhart
Commissioner of Education

August 25, 1989