

Travel of the Case

On October 9, 1988 this matter was appealed to the Commissioner of Education. The subject matter of the dispute is the Scituate School Committee's attachment of certain conditions to its approval of Mr. and Mrs. G's proposal to educate their children at home. On September 23, 1988 Mrs. G was notified that the School Committee had approved the proposal subject to certain testing conditions, to which Mrs. G objected.

The appeal was heard on February 13 and April 20, 1989. Thereafter, counsel representing the G filed a written brief on June 14, 1989. Prior to filing the School Committee's brief, its counsel requested to reopen the case to submit additional evidence and counsel for the G's objected. After consideration of written arguments, counsel were notified that the matter would be reopened on August 2, 1989, and that a hearing would be scheduled if the additional matters could not be the subject of stipulation. In the meantime, the School Committee filed its brief on September 11, 1989, and indicated it would waive the prior request to reopen the case on October 16, 1989. The Hearing Officer on October 20, 1989 notified the parties of her intent to close the record in the case on November 1 but was then notified by counsel for the G of his need to put an additional document into the record. Over objection of School Committee counsel, the record was kept open, and additional testimony and documentation were received at a hearing convened on January 23, 1990.

Jurisdiction to hear the appeal is found in R.I.G.L. §16-39-1, §16-39-2 and §16-19-2.

Issue

Can the Scituate School Committee condition its approval of the G home-schooling proposal on certain testing requirements¹ set forth in the letter from Superintendent Manning on September 23, 1988?

Findings of Relevant Facts

- Jeannine and Maurice G reside in Clayville, Rhode Island with their children M , J and foster child C
- All three children are of compulsory school age.
- On September 23, 1988 the Scituate School Committee, through Mr. Manning notified Mrs. G that the proposal to home-school her children during school year 1988-89 was conditionally approved.
- Mrs. G objected to certain testing requirements imposed by the School Committee and appealed these requirements to the Commissioner of Education.
- Mrs. G prefers to administer the Stanford Achievement Test (rather than the MAT-6) to the children in April of the school

1] Administration of the MAT-6 test for M ; administration of the MAT-6 test and health and physical education tests for C (a foster child cared for by the G); administration of the MAT-6 test, health and physical education tests and approved exams in all academic subjects taught by Mrs. G for J .

year. She refuses to administer Department final exams for J or submit her exams for School Department approval. She also refuses to administer the health and physical education tests provided by the School Department to C and J .

- As to any of the tests administered, the G agree to select, subject to School Department approval, a Rhode Island certified teacher who will administer the tests in accordance with prescribed testing procedures.
- Mrs. G prefers the Stanford Achievement Test because it is the test recommended by the Association of Christian Schools and she feels it will correlate well with the Christian education she wishes to provide for her children. (Tr.p.9)
- Mrs. G 's religious beliefs require her to teach her children at home (Tr.p.62) and to direct every aspect of this instruction, including administration of any tests to the children.
- If Mrs. G relinquished control to permit administration of the tests over her objection, this would violate her religious beliefs (Vol. II p.8 and pp.22-23).
- Dr. Robert W. Shaw, the appellants' expert witness testified that the results of the Stanford Achievement Test would provide an educator with sufficient information to determine if the home instruction for these children is thorough and efficient. (Tr.p.17).
- Superintendent of Schools Albert A. Manning, testified that he could use the results of the Stanford Achievement Test to determine the thoroughness and efficiency of this home instruction program

"without difficulty" (Tr. Vol. II, p. 113-115) but his choice of the MAT-6 was based on the ease with which he could use the test results to compare these children to public school children (Tr. Vol. II, p. 36), as well as his understanding that the state required use of the MAT-6 Test for all children in the district (Tr. Vol. II, p. 114).

- It is Mr. Manning's understanding as well that health and physical education are required components of all home-instruction programs in this state. (Tr. Vol. II p. 114).
- The reason Mr. Manning proposed School Department or approved individual final exams for J is that the norm-referenced tests don't test individual courses at the high school level; so final exams would be the only testing mechanism to assess the instruction in these areas. (Tr. Vol. II, p. 115).
- During the pendency of this appeal, Superintendent Manning retired and his successor, Allen G. Brown, indicated that he would recommend to the School Committee approval of the 1989-90 home-instruction proposal without requiring the testing conditions which were objected to by the G. (See letter of Superintendent Brown, September 18, 1989 (Appellant's E)).

Decision

Despite the fact that at present the parties to this appeal have reached agreement on the legal sufficiency of the G home-schooling program, both parties have argued that the case is not moot. To the extent that it is not moot, we hereby incorporate by reference the recent decision

in Thifault vs. North Smithfield School Committee. That decision addresses the issue of whether school districts responsible for determining the "thoroughness and efficiency" of home instruction programs are required to make this determination using the same test administered to public school children under the uniform achievement testing program established under R.I.G.L. §16-22-9. The second issue raised in this case, one of a trilogy of cases which were initially consolidated for hearing,³ is the First Amendment issue of under what circumstances can the school district include as a condition for approval a requirement which poses a burden on the observance of the parents' religious beliefs. Again, our ruling in Thifault, supra, is dispositive of this issue as well, as the facts of this case, as they relate to the First Amendment analysis, are substantially the same.

There was one issue, however, which is not addressed in the Superintendent's September 18, 1989 letter⁴ nor was it an issue raised in the Thifault case; that is, whether instruction in health and physical education is a required component of home-instruction programs. Reference to R.I.G.L. §16-22-4, "Instruction in health and physical education" clearly indicates that these subjects are necessary components for an

2] Decision of the Commissioner of Education, July 2, 1990.

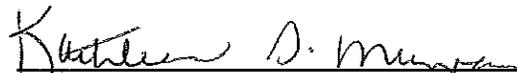
3] The other two are Thifault, supra, and Gargano vs. Exeter-West Greenwich, Decision of the Commissioner dated July 3, 1990.

4] The letter essentially outlines quarterly reports and achievement testing as tools for measurement as conditions which are also acceptable to the G according to their counsel.

approved program of home instruction in Rhode Island. We read §16-22-4 as supplementary to the listing of required subjects contained in §16-19-2.

Conclusion

The record to date does not indicate that the Scituate School Committee has taken any action on the September 18, 1989 recommendation of Superintendent Brown. This matter is, therefore, remanded to the School Committee for such action and any additional action which is consistent with this decision as to the requirement that health and physical education be included in the G program.



Kathleen S. Murray, Esq.
Hearing Officer

Approved:



J. Troy Earhart
Commissioner of Education

July 5, 1990