

Travel of Case

On September 13, 1988 the Superintendent of Schools in North Smithfield notified Mr. and Mrs. Gerald T that their proposal to home school their daughter, M , during school year 1988-89 had been approved, subject to certain conditions.¹ Among the conditions was a requirement that M undergo annual standardized testing, administered by the School Department. The test selected would be "the same standardized test which will be administered to all children in the North Smithfield School System". (Ex. II). The T appealed to the Commissioner from the School Committee's conditional approval of the home-schooling proposal, with the focus of their objection the condition relating to the administration of the standardized test under the testing conditions outlined in the Superintendent's letter.

The appeal was heard on March 2, 1989 before the Commissioner's designee. The parties submitted briefs, a process completed by June 8, 1989.

Jurisdiction to hear the appeal lies under R.I.G.L. §16-39-1, §16-39-2 and more specifically under R.I.G.L. §16-19-2.

Issue

Can the North Smithfield School Committee condition the approval of the T home education proposal on the requirement that a) their child be administered the

1] These conditions had been set forth the prior year in an October 15, 1987 letter of the Superintendent. The T had home schooled their daughter that year subject to the same testing requirement but because of the late timing of the approval, and the school system's completion of its testing schedule, the Superintendent decided not to conduct the achievement testing during school year 1987-88. (See Ex. VII).

same standardized test administered to public school children in North Smithfield, on an annual basis and b) that the test be given in the public school by a representative of the School Department?

Findings of Relevant Facts

- Gerald and Karin T are residents of North Smithfield, Rhode Island. Their daughter M is of compulsory school age.
- M , age eight at time of the hearing, was schooled at home by her parents during school years 1987-88 and 1988-89.
- During both school years Mr. and Mrs. T submitted home-schooling proposals outlining the curriculum to be followed and materials to be used; their proposal for school year 1988-89 was submitted on July 10, 1988 (Ex. IV) and approved by the School Committee on September 13, 1988.
- The School Committee's approval was conditioned on six (6) items five (5) of which were agreed to by the T and the sixth, the requirement dealing with standardized testing was rejected by the parents, who then appealed imposition of this requirement to the Commissioner.
- The T prefer to administer either the Iowa State test or Peabody Individual Achievement Test (Ex. III), in their home (Tr. p. 12).
- The test they propose would be administered periodically (but not necessarily annually) by a qualified person chosen

by the parents. (Tr.p.16).

- Mr. and Mrs. T are born-again Christians whose initial decision to home school their daughter was based on the fact that "home schooling represents a necessary part of (their) worship of God" (Ex. I).
- While Mr. and Mrs. T have cooperated with the School Department and provided school administrators with information concerning their home-schooling program, they do not believe the state has the right to approve or disapprove their proposal. (Ex. I).
- Mr. T identified educationally-based reasons for his preference that M be tested periodically, at home with either the Iowa or Peabody test, administered by a person of their choice. He testified that the preference for their test selection and testing conditions was based on a) a more beneficial testing environment, b) a better "match" of test to the curriculum used by the T (Tr.p.12 and 17) and use of a test recommended by their curriculum providers (Tr.p.35),c) M 's progress is adequately measured by less-than-annual standardized testing (Tr.p.27-29).
- Mr. T identified the religious bases for the T refusal to accede to condition Number 6 as a) it would be a sin to relinquish control of M 's testing to school administrators (Tr.p.17),

2] By letter dated April 17, 1989 from the T attorney to this Hearing Officer, the T indicated further that the qualifications they would consider in their selection of the test administrator would be whether M was familiar and comfortable with the person and whether the person was a certified teacher in Rhode Island. They do not consider the latter to be a requirement.

b) yielding to the School Committee's requirements would require the T recognition of secular authority in religious education. (Tr. 40).

- Expert testimony of Dr. Robert A. Shaw established that if administered on an annual basis rather than periodically, the parents' proposal in regard to testing would enable public school administrators to make an assessment of whether the at-home educational program is thorough and efficient (Tr.p.43-44).
- The North Smithfield School Department administers the Metropolitan Achievement Test to its students because it is part of the Department of Education's mandatory testing program. (Tr.p.47-48).
- If one wished to do so, one could correlate the results of the Iowa Test to the Metropolitan Achievement Test in "rough terms" only, because they are not exactly compatible as they test slightly different content. (Tr.p.57).

Decision

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This case is one of three recent appeals brought to the Commissioner involving interpretation and application of R.I.G.L. §16-19-2, providing for local school district approval of home instruction programs. As indicated in our factual findings, Mr. and Mrs. T's home schooling proposal was not accepted by the North Smithfield School Committee in the form submitted. It was approved conditional upon six (6) contingencies, the last of which, the imposition of standardized testing procedures, gave rise to this appeal. The parents take the position that the school district's

3] The other two cases are Gargano vs. Exeter-West Greenwich School Committee and Gauvin vs. Scituate School Committee.

testing requirements impermissibly go beyond the standards for approval as set forth in the statute. In addition, their claim is that conditioning approval of their home education proposal on these testing requirements infringes on their First Amendment right to free exercise of religion, since yielding to these conditions (with which they disagree) would turn control of their child's education over to the local educational authorities.

Although no representative of the School Committee testified at the hearing, we understand the Superintendent's insistence on the administration of the MAT6 Test to be based on the fact that it is this test which is administered to all public-school students in the district, and based on his reading of prior decisions of the Commissioner on the issue of standardized tests.⁴ He determined that administration of the same test is required. We have no indication in the record as to why the School Committee additionally requires that this test be administered in school as opposed to the home and by a representative of the School Department.

For reasons which we will set forth in detail, we sustain the parents' appeal in part, since the record in this case supports the conclusion that the parents' choice of a standardized test and site for administering the test should furnish the school officials with sufficient information on which to

⁴] In his letter of October 15, 1987, Superintendent Shunney encloses a copy of Brennan vs. Little Compton, Commissioner's decision dated January 7, 1987, which upheld a school committee's requirement that the home-schooled children be "tested by the same test as is administered to their peers in the public schools". (Brennan, supra, pg. 3)

⁵] It may not, however, prove to be a sufficient or accurate measurement of the thoroughness and efficiency of the home-schooling program, and if this should prove to be the case, the school officials should not be constrained in the future by our decision here from requiring alternate and additional measures to assess "thoroughness and efficiency" of the program.

assess the thoroughness and efficiency of the home instruction program. Furthermore, should school officials find it necessary or helpful in evaluating this home instruction program to compare the T child's test results to children at her grade level in the public schools, testimony in this case indicates they could do so even though the MAT-6 Test and Iowa Test are not "exactly compatible" (Tr.p.57). The School Committee's condition as to testing is rationally related to, and in furtherance of, its compelling state interest in ensuring an adequate education. However, we rule that the School Committee is required here to show that its condition is both essential to and the least restrictive alternative available to accomplish this interest, because the parents' compliance with this condition would burden their practice of religion. This case does require a reexamination of our ruling in the Brennan case, supra, at footnote 4 to some extent, especially since school districts are apparently interpreting Brennan to require that all home-schooled children be administered the same standardized test as that administered to public school children in the district. However, it must be noted that this case is distinguishable from Brennan on both the facts (testimony in Brennan was that the scores on the different standardized tests could not be correlated) and the law (no First Amendment claims were raised by the parents in the Brennan case).

As we have noted, this case requires both interpretation of R.I.G.L. §16-19-2, application of the statute to facts and consideration of complex constitutional claims as well. We will deal with the question of construction first.

The parents allege that the condition of standardized testing, in any form, cannot be imposed on them as it is not mentioned in any of the standards for approval explicitly set forth in §16-19-2. (Appellant's Memorandum at p.14). While we are familiar with state statutes governing home instruction which are specific as to both elements of the "approval process" as well as the mechanisms to be used to determine that the program meets minimum educational standards, we are also aware of those such as Rhode Island's that are silent on both the process and the specific mechanisms to be utilized to assure that the home-educated child is being properly educated. ⁶ Implicit in a statute such as ours, are both a reasonable approval process, and the imposition of requirements as conditions for approval, to ensure that the state interest is protected. Thus, the statute's silence in this regard does not preclude, as the appellants have argued, school districts generally from imposing certain testing requirements shown to be reasonably related to determining the "thoroughness and efficiency" of the home instruction program.

Because neither the approval process itself nor the mechanisms for measurement of thoroughness and efficiency of instruction are set forth by statute, those involved in the home instruction process in Rhode Island benefit from the flexibility to accommodate, when possible, the preferences

6] For an example of a specific statute see the statutory scheme in Arkansas (Ark. Code Ann. §§6-15-501 -6-15-507) discussed in Murphy v. State of Arkansas, 852 F.2d 1039 (8th Cir. 1988). For a statute much like our own, see Massachusetts G.L.C. 76 §1 and the recent case of Care and Protection of Charles, 504 N.E.2d 592 (Mass. 1987) in which the Supreme Judicial Court of Massachusetts found home-schooling to be governed by the statute regulating private schools.

of parents for certain mechanisms for measurement⁷ as well as the flexibility⁸ enjoyed by school officials to require in the appropriate case several different measurements or methods to be used at the same time. Of course, it is precisely this flexibility, and the differences of opinion that may result, which also give rise to disputes such as the case before us.

The second interpretive issue is whether or not the statute requires the school district, in assessing the "thoroughness and efficiency" of the program, to compare the home-schooled child to his/her peers in the public school. We must note a distinction between our statute and, for example, those of New York and Massachusetts. The compulsory education statute in New York (§3204 of New York's Education Law) requires that educational services provided to a minor "elsewhere than at a public school shall be at least substantially equivalent to the instruction given to minors of like age and attainments at the public schools of the city or district where the minor resides. . .". The comparable Massachusetts statute (G.L.C. 76 §1) provides that:

For the purposes of this section, school committees shall approve a private school when satisfied that the instruction in all the studies required by law equals in thoroughness and efficiency, and in the progress made therein, that in the public schools in the same town.

(Note that this statute has been ruled applicable to approval of home instruction programs in Massachusetts).

7] Prior decisions of the Commissioner have either explicitly or implicitly endorsed the use of concensual home visits, lesson plans, submission of progress reports, work samples, standardized testing and other test instruments as well.

8] Perhaps in cases where the child's record of progress is poor or when the achievement of even minimal educational standards is in doubt.

While the Rhode Island statute on home school approval requires:

For the purpose of this chapter a private school, or at-home instruction, shall be approved only when it complies with the following requirements. . .that reading, writing, geography, arithmetic, the history of the United States, the history of Rhode Island, and the principles of American government shall be taught in the English language substantially to the same extent as these subjects are required to be taught in the public schools, and that the teaching of the English language and of the other subjects indicated herein shall be thorough and efficient; . . .

Although our statute requires equivalency in terms of teaching the required subjects, (among other things) it does not require that the "thoroughness and efficiency" with which these subjects are taught to be "equal" to or even "substantially equivalent" to the instruction given to children in the public schools in the district. However, even though the statute does not require comparisons of progress or achievement of home-schooled children to children in the public schools, it may very well be that in a given case this comparative information is exactly what the school officials need to assess the thoroughness and efficiency of the home education program, especially if the program has been on-going for a number of years. Thus, while the language of the statute does not require comparisons, it is certainly legitimate for a school committee to make such comparisons, and require the underlying information needed to make those comparisons, i.e. administration of the same standardized test to both sets of children or tests with scores that could be correlated.

9] As measures of the equivalency of the instruction or educational services provided, or of the "progress made therein".

In light of the foregoing interpretation of our home-schooling law, it should be clear that the issue in this case cannot be resolved by reference to our statute alone. We must determine whether or not in this instance the School Committee may legitimately insist on the MAT-6 Test, administered under the conditions set forth in Ex.II as a prerequisite for approval using a balancing of interests test. The School Committee's interests must be weighed against the interest of the parents in conducting a home-schooling program and testing environment that they feel is in the best interests of their child.

School committees are delegated substantial responsibility under our state statute, and with this delegation, the Legislature has given specific requirements which must be met before approval can be given. Not the least of these is the determination that the child is receiving thorough and efficient instruction. In fact in ruling on the importance of this function, courts have uniformly found that making certain that children receive an adequate education is a compelling state interest, perhaps the most important function of state and local governments".

On the other hand, there is no uniformity of legal opinion as to whether parents have a fundamental, constitutionally- based right to

10] That is to say, our interpretation that §16-19-2 neither precludes nor requires the administration of the same standardized test administered to children in the public schools.

11] New Life Baptist Church Academy v. Town of East Longmeadow, United States Court of Appeals, First Circuit, 885 F.2d 940 (1989 1st Circuit at 944.

12] Brown v. Board of Education, 347 U.S. 483, 493, 74 S.Ct. 686, 691, 98 L.Ed. 873, 880 (1954).

educate their children at home. We recognize that comments contained in our past decisions have indicated our belief that the right to home-school one's children in Rhode Island has both statutory and constitutional origins.¹⁴ Since there is such divergence in legal authority on this issue we think it inappropriate to rule on whether, standing alone, the right to home-school is a fundamental right under the federal Constitution. It is also unnecessary for us to rule on this issue because the parents have premised their claim here on the First Amendment guarantee of freedom of religion as well.

We are satisfied from our review of the case law and the testimony before us that the approval process, particularly the fact that it would require the T to accede to testing requirements with which they do not agree, would constitute an indirect burden on their sincere religious beliefs, which dictate they and they alone must direct their children's

13] See discussion of this issue at pp.135-137 of Blackwelder v. Safnauer, 689 F.Supp. 106 (N.D. New York 1988) in which the District Court in New York indicated its uncertainty as to whether a strict scrutiny analysis was appropriate: note 2, p. 634 of State of North Dakota v. Patzer, 382 N.W.2d 631 (1986) and p.1043 of Murphy v. State of Arkansas, 852 F.2d 1039 (8th Cir. 1988); and Care and Protection of Charles, 504 N.E2d 592, 598, (Mass. 1987) in which the Court ruled that parents have a basic right under the Fourteenth Amendment to direct the educational upbringing of their children subject to reasonable government regulation. Note 8, p.598.

14] See footnote 15 at p.6 of Humble v. Middletown School Committee, Decision of Commissioner of Education, August 14, 1985 and our reference to a "constitutional right" to educate one's children at p. 8 of the Commissioner's decision in Payne v. New Shoreham School Department, September 15, 1987.

education and all its components. In a First Amendment case, the burden then shifts to the School Committee to show that administration of the standardized test it prefers (the MAT-6) in the setting and under the conditions set forth by the Superintendent, is the least restrictive means of achieving the compelling state interest.

The decision of the First Circuit Court of Appeals in the New Life case, supra and its analysis of "least restrictive alternative" is our guide in determining what accommodations to the parents' religious beliefs are required here. We are bound by, and apply in this case, the three-part test set forth by the First Circuit in the New Life case. The

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15] In the case which would have been of most assistance to us on this issue, Murphy v. Arkansas, supra, the parties stipulated that the statutorily-based testing requirements burdened the plaintiffs' sincerely-held religious beliefs; however, we find legal support for this ruling in the First Circuit's ruling in New Life Baptist Church v. Town of East Longmeadow, supra; the First Circuit accepted the district court's finding that the School Committee's proposal would burden the Academy in exercising its religious beliefs. The District Court had stated:

It has long been recognized that there is a significant burden imposed by official actions which compel an individual to acknowledge the authority of the state when it is contrary to his convictions to do so.

New Life Baptist Church Academy v. Town of East Longmeadow, 666 F. Supp. 293 (1987) at p. 314.

16] To summarize the elements of the analysis (1) balancing of the compelling state interest against the probable burdens upon religious freedom (2) determining the extent to which accommodation of religious belief will interfere with achieving the state's compelling interest and (3) determining if accommodation of the belief (when combined with the precedential effect of a rule of law that would give similar rights to control administrative detail to others with different beliefs) may significantly interfere with the state's ability to achieve its educational objectives.

dispute here centers around choice of standardized test, rather than the administrative method per se. The parties have agreed that a standardized test is an appropriate tool to measure the adequacy of the instruction given to these home-schooled children. The record indicates that either standardized test would provide essentially the same evaluative information. Since the school administrators can make the necessary educational judgments from the parents' standardized test, no interference with achievement of the compelling state interest is posed by accommodation of the parents' religious beliefs. The focus then becomes the first and third elements of the three-part New Life test for "least restrictive alternative", i.e. balancing of the state interest against the probable burden on religion and determining if accommodation would result in "multiple administrative accommodations" that would make it difficult for the state to implement a coherent system of furthering the compelling interest in educational quality. (See: New Life 885 F.2d 940,949). In the facts of this particular case, we cannot discern the presence of any administrative burdens placed on the School Committee by accommodation of the parents' choice of standardized test. Thus, we do not find the School Committee's test choice to be the "least restrictive alternative". We draw the same

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17] The federal standard for approval of private schools is set forth in New Life Baptist Church Academy v. Town of East Longmeadow, 885 F.2d 940 (1989). This is the standard we apply in evaluation of private schools. With regard to the approval of private schools the Circuit Court points out that:

. . .if it is too easy for religious groups with different religious beliefs to force (perhaps through time consuming litigation) differing, say, costly or complex, administrative accommodations with too little reason rooted in their religious faiths, then a rule of law that too readily requires such multiple administrative accommodations can itself become a rule of law that prevents the state from offering the welfare or educational or other "compelling" program.

conclusion with regard to the School Committee's requirement that the children be tested at school, rather than in their customary educational setting, their home.

However, the record before us contains testimony from the parents' own expert, Dr. Shaw, which supports the School Committee's requirement that the standardized test be administered annually in order to give the School Committee the necessary feedback on progress of the children.

Conclusion

The parents' appeal is sustained as to choice of test and test site. Their appeal is denied as to the School Committee's requirement that the test be administered annually. This matter is remanded to the School Committee for reconsideration of the parents' proposal consistent with this decision.

On reconsideration of the proposal, we urge the parties to come to agreement on the issue of who would administer the tests to these children. It seems essential that the School Committee retain the right to approve the identity of the test-giver and the person's qualifications to administer a standardized test, if the administration of the test is not to take place in the public school.

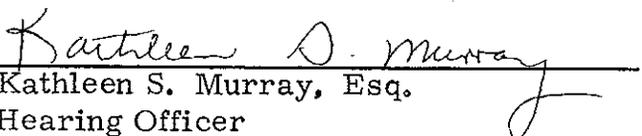
footnote 17 continued

We think, however, when the issue is one of a family educating a child at home, each case by its very nature must be judged on an individual basis. We, therefore, see the balance tipping in favor of requiring more accommodation in such cases than would be at all appropriate in running a statewide program of school approval.

Approved:


J. Troy Earhart

Commissioner of Education


Kathleen S. Murray, Esq.
Hearing Officer

July 2, 1990