

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

CHRISTINE GIORDANO, et al ;
 ;
 ;
vs. ;
 ;
WARWICK SCHOOL ;
COMMITTEE ;

D E C I S I O N

July 16, 1990

Travel of the Case

The appeals of the three appellants, Christine Giordano, Joanne Weaver and Cynthia MacLiver, were initially filed in May of 1988 with a request by the parties that pending settlement negotiations, the matters be held in abeyance. On January 4, 1990, Commissioner of Education, J. Troy Earhart, received a request that the appeals be scheduled for a consolidated hearing.

On April 10, 1990 the matters were heard by the undersigned Hearing Officer under authorization from the Commissioner. Briefs were submitted, and the record of the case closed on June 7, 1990.

Jurisdiction to hear these appeals lies under R.I.G.L. §16-39-1 and §16-39-2.

Issue

Are the appellants entitled to credit for purposes of placement on the salary schedule for their years of teaching at Meeting Street School and the Trudeau Center?

Findings of Relevant Facts

- Christine Giordano served as a special education teacher for eight (8) years at the Meeting Street School and for two (2) years at the Trudeau Center, prior to becoming a special education teacher in Warwick in September of 1984. (Tr. pp. 10-11).
- During her years of teaching at both Meeting Street School and the Trudeau Center she held the appropriate and necessary certification

as a teacher of the moderately/severely/profoundly handicapped and physically impaired multi-handicapped.

- During her employment at the above-mentioned facilities, she worked on the basis of a full school day for a two hundred and thirty (230) day school year. (Tr. pp. 12-13).
- When hired as a special education teacher by the Warwick School Committee in 1984, Ms. Giordano was placed on step 6 of the salary schedule.
- Cynthia MacLiver has served as a speech/language pathologist in the Warwick School System since October of 1986. (Tr. p. 26).
- Previous to this employment she worked for one school year (five (5) days a week, 230-day school year) at the Meeting Street School as a speech/language pathologist. At Meeting Street School and in her employment in Warwick she has held the requisite certification as a speech/language pathologist, pre-school through grade twelve (12). (Tr. p. 26).
- Joanne Weaver was hired as a special education teacher by the Warwick School Committee in September of 1986. (Tr. p. 26).
- At her time of hire, she was placed on the first step of the salary schedule. (Tr. p. 36).
- She had previously been a special education teacher for nine (9) years at the Trudeau Center. (Tr. p. 31).
- While at the Trudeau Center (and since being employed in the Warwick School Department) she has held appropriate certification as a teacher

of the moderately/severely/profoundly handicapped and physically impaired multi-handicapped. (Tr.p. 33).

- The special education programs at both facilities have been approved by the Rhode Island Department of Education since 1972. (Response of J. Troy Earhart dated May 2, 1990 to letter of inquiry of Edward J. McElroy, Jr. President, Rhode Island Federation of Teachers, AFT, incorporated in the record of the case by agreement of the parties on May 3, 1990).

Decision

In arguing that they were improperly denied credit for time spent at the Meeting Street School and the J. Arthur Trudeau Center, the appellants state that in their employment at these facilities they functioned as agents of the public schools and provided educational services required by law to be provided to handicapped children by the public school districts in which these children resided. (See: Appellants' Brief at page 5). Also, since the Regulations promulgated by the Board of Regents Governing the Special Education of Handicapped Children require that non-public schools operating approved programs of special education satisfy all of the requirements imposed on public schools, the appellants argue that these facilities are the functional equivalent of public schools in Rhode Island. They further note that significant interaction occurs between local public school representatives and those working in these facilities in the development of the individualized education program for children placed there by the local school districts.

While we can appreciate (1) that the standards for special education programs, services, and professional staff at both the Meeting Street School and the J. Arthur Trudeau Center are the same as those required of the public schools in our state,¹ (2) that these facilities have received program approval by the Department of Education since 1972 and (3) that both facilities provide an essential public service to local school committees and the State of Rhode Island as a whole, we do not agree that the appellants' service at these facilities qualifies for credit under state law. The facts proved and arguments advanced by the appellants do not cause us to conclude that either facility is transformed from a private school to a public school.

Under our present statutory scheme, R.I.G.L. §16-7-29 requires that regularly employed teachers be compensated pursuant to a salary schedule recognizing:

...years of service, experience and training . . .

"Service", as used in §16-7-29, is to have the same meaning as defined in Chapter 16 of Title 16, we are told in §16-7-16, entitled "Definitions". The language of the referenced section (§16-16-1 "Definitions") tells us that "service" shall mean service as a teacher as described in subdivision 2 of §16-16-1. Our investigation concludes upon the following statutory language describing a teacher as a person² regularly employed:

1] See: Section Xi, p.46 of the Regulations of the Board of Regents for Elementary and Secondary Education Governing the Special Education of Handicapped Children (June 1986).

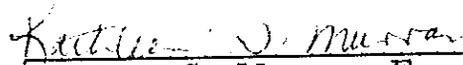
2] Other elements of the definition of teacher in this section have been omitted because they are not relevant to the issue of where a "teacher" must teach to accrue creditable service.

. . . in the public schools of any city or town in the state, or any formalized, commissioner approved, cooperative service arrangement. §16-16-1 (2).

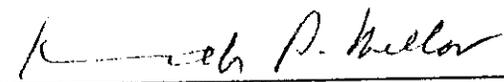
Meeting Street School and the Trudeau Center are not public schools in that they are not operated by a public entity nor are they established and maintained at public expense. See the construction placed upon the words "public school" in Pizza Hut of America, Inc. v. Pastore, 519 A.2d 592 (R.I. 1987) and Price v. Retirement Board, 298 A.2d 121 (1972). The Rhode Island Supreme Court has clearly stated³ that for purposes of §16-7-29, the definition of service is the definition found in §16-16-1 and⁴ that this definition excludes service in private schools.

For the foregoing reasons the appeals of Christine Giordano, Joanne Weaver and Cynthia MacLiver are denied.

3] Howard Union of Teachers v. State of Rhode Island, 478 A.2d 563 (R.I. 1984)
4] We do not understand the appellants to be presenting the argument that their disputed prior service is included in the terminology contained in the second part of the definition, i. e. service in a "formalized commissioner approved cooperative service arrangement". Even if such were the argument, in response to Mr. McElroy's inquiry, the Commissioner noted no such arrangement existed with regard to these two facilities, and furthermore, we understand this language to refer to the type of cooperative service arrangements receiving Commissioner approval as required in §16-3-3 of the General Laws.


Kathleen S. Murray, Esq.
Hearing Officer

Approved: July 16, 1990


J. Troy Earhart
Commissioner of Education