

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

MARIE B

vs.

PROVIDENCE
SCHOOL BOARD

D E C I S I O N

on

INTERIM ORDER REQUEST

March 13, 1991

Travel of the Case

This appeal was heard on March 1, 1991 by the undersigned Hearing Officer, designated by the Commissioner of Education to hear this matter. It is a dispute concerning a student's entitlement to attend the Davies Vocational-Technical High School. Jurisdictionally, the matter comes to the Commissioner via R.I.G.L. §16-39-1 and under Section IV, H (B) (5) of the Regulations of the Board of Regents Governing the Management and Operation of Area Vocational-Technical Centers in Rhode Island, July, 1990.

The mother of this student appealed to the Commissioner for resolution of the dispute and interim relief which he is authorized to afford under §16-39-3.2.

The matter was heard, a transcript made and a copy expedited for purposes of decision. The record of the case closed on March 5, 1991 upon this Hearing Officer's receipt of two Exhibits forwarded after the hearing by the Providence School Department.

Findings of Relevant Facts

- C resides in Providence, Rhode Island with his mother at Wild Street.
- C presently attends Mount Pleasant High School where he is in the ninth grade.
- Since last spring and continuing up to the present, C has been attempting to gain admission to the William M. Davies, Jr. Vocational-Technical High School (hereinafter "Davies").
- C submitted written application to Davies, and was notified by the Principal Kenneth M. Wasmund, on August 8, 1990 that his

name had been placed on a waiting list.

- Upon inquiring as to where her son stood on the waiting list in fall of 1990, Mrs. B learned that he was not, in fact, on a waiting list.
- Through various conversations with Rickie Wilson, Principal of the James L. Hanley Vocational Technical Center (hereinafter the "Hanley Center") and a letter from Mr. Wilson dated November 1, 1990, Mrs. B came to understand that her son was not eligible to attend Davies because he resided in Providence and the area Vocational Technical Center serving Providence is the Hanley Center.
- Mr. Wilson informed Mrs. B that the Hanley Center offered a pre-vocational program, and since this program was available to C in Providence he was not entitled to apply for admission to Davies.
- Both Davies and the Hanley Center offer state-approved pre-vocational instruction in Grade 9, although there are differences in the format and "menu" of course offerings available.
- C's ineligibility was confirmed by Dr. Arthur M. Zarrella, Assistant Superintendent of Schools for Secondary Education.
- Dr. Zarrella looked into and discussed with Mrs. B certain accommodations that would be made available to C if he decided to enroll in the pre-vocational program at the Hanley Center or remain at Mount Pleasant High School.
- These accommodations included C's receiving instruction passes to attend Davies for two (2) of the specific program areas that are

not included in the Hanley Center's pre-vocational program.

- Mrs. B found and continues to find these accommodations unacceptable.

Decision

The Board of Regents Regulations Governing the Management and Operation of Area Vocational-Technical Centers in Rhode Island, (July, 1990)

do not yet require that each area vocational-technical center operating in our State maintain a program of pre-vocational instruction.¹ Both the Hanley Center and Davies have nonetheless put in place such exploratory programs for Grade 9 at their respective schools. Testimony at the hearing was that the programs are:

- state approved
- designed to introduce students to a variety of fields, including exposure to non-traditional occupations
- intended to facilitate a student's choice of a specific vocational program by having the student make an informed choice.

It was also established in the record that the format of the two programs differs in that a) scheduling of academic and vocational subjects was different, b) the total number of specific programs "explored" varied and c) the Davies program became focused on one specific program area after six (6) months.

1] However, note that at pg. 32, section B.1 of the Regulations such a program will be mandated when (and if) full state funding for Vocational Education is in place. See the "Special Notes" found as a foreword to the Regulations. Also, Area Vocational Technical Center Directors are presently required to plan for such a pre-vocational program. (See IV, C, (10) (0).

Despite the differences cited above, we find that the pre-vocational programs at Davies and the Hanley Center are substantially the same.

2 The range of program offerings at the two schools is not identical and the academic component of each program is integrated differently, both in scheduling and in total time allocated. However, given the exploratory nature of the program, and the fact it is intended to introduce a student to a sampling of vocational programs, we conclude that these differences are not major and do not change the essential nature of each of these pre-vocational programs.

The issue of C entitlement to enroll in the 9th Grade pre-vocational program at Davies is governed by applicable law (R.I.G.L. §16-45-1 et seq.) and the Board of Regents Regulations previously cited.

The controlling sections of the Regulations are Section III, p. 18:

Participating School Districts are those which are geographically situated near the area centers and whose residents are served by these facilities. A list of area centers and participating school districts is included in the appendices (see Ex. O on page 98).

Exhibit O sets forth a list of the nine (9) area vocational technical centers and the school districts to be served by the area center. The Providence School District (and Johnston) are listed as served by the Hanley Center.

The Regulations, in Section IV (c) (7) state:

If a particular program has no openings or is not available at a student's area center, he/she shall have the right to attend the programs (sic) in the center nearest to the student's legal residence offering the program which has an opening and for which he/she is qualified. . .

2] Testimony was that Davies offered Machine Shop and Horticulture, while the Hanley Center does not; however, the Hanley Center offers specific programs not forming part of the Davies course offerings.

C resides in Providence and Providence students are to be served by the Hanley Center according to regulation. (Regents Regulations Ex. O p.98). We have concluded that the pre-vocational program at the Hanley Center is substantially the same as that offered at Davies. Applying the relevant regulatory Section (IV, c, 7, cited supra) we conclude that the "particular program", i. e. pre-vocational program is available to C at the Hanley Center. Thus, under the Regulations he would have no entitlement to attend Davies in the 9th Grade.

Our consideration of C 's legal rights in this matter, however, forces us to acknowledge the existence of, and apply, statutory language at variance with that part of the Regents regulations which effectively excludes students in the Providence School District from the area to be served by Davies. We note that §16-45-4, the statute which provided for the construction of Davies, reads in part as follows:

The state board of regents for elementary and secondary education shall immediately undertake the construction of a regional vocational school at a site to be selected by the board in an industrial area in the Blackstone Valley to serve the inhabitants of the greater Providence area . . . (emphasis added).

The phrase "greater Providence area" must be recognized and given effect as evidencing legislative intent to have inhabitants of greater Providence served by the Davies School. While the phrase is ambiguous -- greater Providence could be interpreted to include the entire state -- it must be interpreted to include, at the very least, the City of Providence.

Every rule of statutory construction leads us to the conclusion that the phrase "to serve the inhabitants of the greater Providence area" was not careless language unintended by the Legislature, but rather carefully chosen to distinguish the area to be served by the school from the area designated for its construction (i. e. the Blackstone Valley).

In exercising its rule-making authority to exclude Providence from the Davies region, the Board of Regents acts legislatively, but may not abrogate the provisions of state law dealing with the same subject. ⁴ Because state law supercedes Board regulation on the eligibility of C

as an inhabitant of Providence to attend Davies, he has established his entitlement to attend there.

In so ruling, we must identify the damage the statutory provision hereby effectuated will have on the carefully-planned and efficient system of regional vocational education established by the Board of Regents. The Legislature granted considerable authority to the Board of Regents in §16-45-1

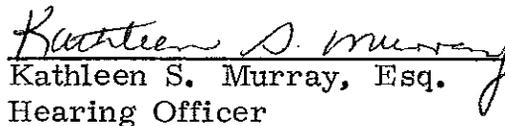
3] Courts interpreting statutory language are bound to give effect to every word, clause or sentence of the statute (R.I. Chamber of Commerce v. Hackett, 411 A.2d 300 (R.I. 1980) Authority to delete or disregard words appearing in a statute for purpose of construing such statute is rigidly circumscribed and rarely exercised. . . Mason v. Bowerman Bros. Inc. 187 A.2d 772 (R.I. 1963). Before words in a statute may be rejected as surplusage, it must be certain that the Legislature could not possibly have intended the words to be in the statute and that the rejection of them serves merely as a correction of careless language and actually gives the true intention of the Legislature. Mason, supra.

4] Reback v. R.I. Board of Regents for Elementary and Secondary Education, 560 A.2d 357 (R.I. 1989).

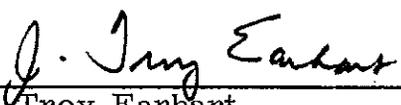
to establish and maintain the entire system of vocational education in the state, in the establishment of "regional schools" and in determining the region to be served by a vocational school. We would urge the Legislature, in keeping with this delegation of authority to the Regents, to amend §16-45-4 to be consistent with the scheme of area vocational-technical centers and participating districts, set forth in regulation.

In the meantime, C. is to be admitted to the ninth grade at Davies.

5] The only retraction of this delegation of authority was the Legislature's 1988 enactment of §16-3-7.2 which transferred North Providence from the Hanley Center region to the Davies region.


Kathleen S. Murray, Esq.
Hearing Officer

Approved: March 13, 1991


J. Troy Earhart
Commissioner of Education