

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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JAMES M. THORPE

vs.

RHODE ISLAND  
DEPARTMENT OF  
EDUCATION  
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D E C I S I O N

April 24, 1991

The Petitioner in this case was convicted of assault and battery against a child and was sentenced to serve one (1) year in the Adult Corrections Institutions. His conviction was affirmed by the Rhode Island Supreme Court. State v. Thorpe, 429 A.2d 785 (R.I. 1981). The Petitioner is now seeking to have his disqualification for employment in Early Childhood Education programs (§16-48.1-1) remitted. He contends that he has reformed since the conviction was entered against him and that he is now qualified to work in programs regulated under §16-48-1, et seq. The facts surrounding Petitioner's conviction are set out in State v. Thorpe, supra and will not be restated here.

The Department of Education's evidence in this case consists solely of the conviction entered against the Petitioner. Inquiries by the Department have not revealed any additional offenses committed by the Petitioner. The Department contends that under the applicable rules the Respondent should not be allowed to submit evidence of good character after the conviction to support his contention that he should be allowed to work in an Early Childhood Education program. We think that the Department's reading of the rules is a bit too narrow and we believe that we should consider evidence of good character in making a decision in this case.

It is Petitioner's burden to prove by clear and convincing evidence that the crime of which he was convicted is not such a crime as to give the Commissioner of Education reasonable cause to fear for the safety of a child placed in his care. (Rule 7.2.6) In our mind the offense

for which Petitioner was convicted is obviously one to give reasonable cause to fear for the safety of a child placed in the care of the Petitioner. In all frankness we must state that in our view the crime of which Petitioner was convicted constitutes near per se grounds for exclusion from programs of Early Childhood Education. The more a crime involves a direct injury to a child the harder it becomes to demonstrate that a petitioner is qualified to work in Early Childhood Education programs.

The Petitioner presented the testimony of his Pastor to the effect that the Petitioner had performed his duties as a Sunday school child care worker with exemplary skill and ability. The Pastor testified that he believes that Mr. Thorpe has become a changed person.

The Petitioner also presented the testimony of a licensed day care mother who is a member of his Church and who had had occasion to see him work with children. She testified that Mr. Thorpe performed in an excellent fashion and that he was kind toward children, while at the same time maintaining good order.

The Petitioner next presented the testimony of his Supervisor. The Supervisor testified that Mr. Thorpe was an excellent child care worker.

The Department's cross-examination of the above witnesses centered on the limited number of hours each week on which these witnesses had occasion to observe Mr. Thorpe working with children.

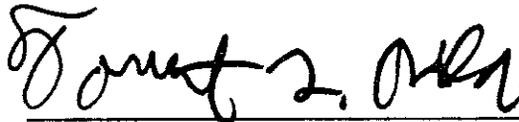
Mr. Thorpe then testified on his own behalf. He stated that he works as a direct care behavioral specialist in a group home for mentally retarded citizens. He attends Rhode Island College and is seeking a degree

in Elementary Education. Mr. Thorpe testified that he is a changed person and that he works well with the children entrusted to his care.

The problem we see in this case is that the conviction entered against the Petitioner is one for a crime against a very small child. It takes only one instantaneous loss of control to commit the crime for which the Petitioner was convicted. In spite of the fine character evidence which has been presented by the Petitioner we still are left with a reasonable fear that the crime for which the Petitioner was convicted gives good cause to fear for the safety of a small child who would be placed in his care.

Conclusion

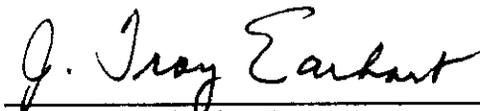
Petitioner's request to lift his disqualification to work in Early Childhood Education programs (§16-48-1, et seq.) is denied.



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Forrest L. Avila, Esq.  
Hearing Officer

Approved: April 24, 1991



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J. Troy Earhart  
Commissioner of Education