

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

RHODE ISLAND PARENTS FOR PROGRESS)

VS.)

PAWTUCKET SCHOOL COMMITTEE)

DECISION

MAY 22, 1992

HELD:

Proceeding is
remanded to the
School Committee for
the purpose of
conducting a study
and issuing a report
regarding student
hunger.

Introduction

This matter concerns an appeal to the Commissioner of Education by the organization Rhode Island Parents for Progress from the Pawtucket School Committee's refusal to "access" a federal school breakfast program.¹ (Joint Exhibit 1). At the hearing, Appellant described its appeal as relating to the School Committee's failure to institute a pilot breakfast program at the M. Virginia Cunningham School² for the remainder of the 1991-92 school year. (Transcript 7-8).

For the reasons set forth below, we remand this proceeding to the School Committee for further action.

Background

Representatives of Appellant appeared before the School Committee in September and October 1991, and March 1992, in support of its request to establish a breakfast program in Pawtucket schools.

The minutes of the School Committee's October 10, 1991 meeting reflect that Dr. Richard P. Charlton, Superintendent of Schools, stated:

that he would have to agree that there are many youngsters in Pawtucket underfed and who would benefit from this Breakfast Program but even if the school department does provide the program (sic) there will still be youngsters who have not been fed; philosophically it is not the school department's job to serve breakfast unless there is (sic) funds available. Our supervision of our lunch program is inadequate at this time and

¹The Commissioner designated the undersigned hearing officer to hear this appeal. It was heard on April 8, 1992, and the record closed on April 13, 1992.

²Cunningham School houses grades kindergarten through 6, with approximately 550 students.

because of our financial limitation the staff for the lunch program is inadequate. This has priority right now for funding if we do find more money -- it should go to the lunch program and then (sic) if there is more funding, we could support a Breakfast Program. The critical issue right now is that we do not have the money to support a Breakfast Program at this time and this would be my recommendation to the committee at this time. Priority should be the supervision of the lunch program. (Emphasis in original; School Committee Exhibit 1)

The School Committee discussion which followed Dr. Charlton's opening remarks addressed both cost and philosophical³ concerns raised by the breakfast program proposal. The School Committee did not vote on the breakfast program request at its October 10, 1991 meeting.

The breakfast program was next discussed by the School Committee at its March 10, 1992 meeting. The minutes of that meeting show that cost and philosophical concerns again dominated the School Committee's discussion. (School Committee Exhibit 2). The Committee voted to deny the request for a school breakfast program on March 10, 1992.

Appellant presented several witnesses at the instant hearing who testified as to the need for a school breakfast program. Testimony was taken with regard to the existence of hungry students in Pawtucket public schools, the effect of poor nutrition and diet on students' ability to learn, the shortcomings of welfare payments and food stamps, the restricted availability of

³The philosophical concerns raised by various School Committee members centered on the question of whether the feeding of children is a social, i.e., parental, obligation or an educational, i.e., governmental, responsibility. It was the expressed opinion of certain School Committee members that the matter of providing breakfast to children is a parental, not an educational, responsibility.

a food supplement program (the WIC Program), and the causes of student dropouts. Appellant noted that 75% of the students at Cunningham School are eligible for a free or reduced lunch, and that it had gathered approximately 450 signatures of Pawtucket residents and non-residents on a petition in support of the school breakfast program. Appellant also presented testimony that volunteers were willing to assist in the operation of a school breakfast program, and that a financial sponsor had been obtained to subsidize the School Committee's program-supervision costs which are not reimbursable under the federal program.

The School Committee presented testimony concerning the "administrative hurdles that would have to be overcome in order to institute a breakfast program." (Tr. 129) Those hurdles are: (1) cost of the program; (2) space considerations; (3) transportation/busing problems; (4) crossing-guard arrangements; (5) additional janitorial requirements; and (6) money-collection and recordkeeping responsibilities.

The School Committee offered testimony that the School Committee's discussion of this matter was not strictly a "dollar and cents" debate, but included the consideration of issues regarding "whose responsibility it is to provide a breakfast program. Whether it's a parental responsibility or whether it's a school department's responsibility." (Tr. 146) The School Committee also presented testimony regarding volunteer and charitable efforts in Pawtucket directed at providing food to the needy.

Testimony also revealed that it costs the school district \$16 per day for each lunch room supervisor it employs. It was

further established that the school district did not determine the student participation rate in the breakfast program and, as a result, "we don't know the numbers that we would anticipate."

(Tr. 132)

We also take official notice of the following:

The School Breakfast Program is a federally-funded Child Nutrition Program administered nationally by the U. S. Department of Agriculture, Food and Nutrition Service. Any public or private elementary or secondary school is eligible to participate in the Program. Under the Program, breakfasts must meet federal nutrition standards, and any child at a participating school may purchase a meal through the Program. Free and reduced-price breakfasts must be provided to children who cannot afford to pay the full price. Those children who do not qualify for a free or reduced-price breakfast must be offered breakfast at the regular price.⁴

Positions of the Parties

Appellant emphasizes the narrow nature of its request: a pilot school breakfast program, subsidized in part by a private sponsor, at the Cunningham School for the remainder of the school year. It relies on the 75% student-body eligibility rate for reduced or free school lunch to justify its selection of the Cunningham School for the pilot program, and it contends that the pilot program would provide valuable experience to school officials in the school-breakfast area.

⁴7 CFR Part 220.

The School Committee argues that the Commissioner does not have jurisdiction to decide this matter because the appeal does not present a "person aggrieved" by the School Committee's denial of the breakfast program request. The School Committee reiterates its philosophical opposition to the breakfast program, contending that feeding children is a social responsibility, not a matter of educational policy. As such, it is the responsibility of parents and volunteers, not the School Committee. Given this philosophical opposition, the School Committee questions what purpose a pilot program would serve. Furthermore, the School Committee claims it cannot cover the costs of the program, particularly given the current level of state funding of the Pawtucket school district. Finally, the School Committee contends it would be inappropriate for the Commissioner to substitute his judgment for that of the body elected by the people to manage Pawtucket's schools.

Discussion

We initially find that this appeal is properly before the Commissioner.

In July 1991, Margaret Madden, a member of Rhode Island Parents for Progress, requested on the organization's behalf that the School Committee consider the matter of instituting a school breakfast program. As previously stated, the breakfast program issue was considered by the School Committee at its meetings in September and October 1991, and March 1992. Dr. Charlton acknowledged at the March 1992 meeting that "there are many youngsters in Pawtucket underfed and who would benefit from this Breakfast Program. . ." (School Committee Exhibit 1) The School

Committee, after debating the merits and propriety of the breakfast program, rejected the request at its March 1992 meeting.

The instant appeal was subsequently filed. It was signed by, among others, Margaret Madden and Bernice Stranko. Mrs. Stranko testified at the hearing that she has three children who attend Cunningham School.

Given the role of the Rhode Island Parents for Progress organization in the presentation of this matter to the School Committee, the latter's recognition of that organization as the proponent of the school breakfast program, the School Committee's consideration of the merits of the program, the participation of at least one Cunningham School parent in this appeal, and the clear interest that a parent has in the services and programs provided at his or her child's school, we find that the decision of the School Committee adversely affected rights of the members of Appellant sufficient to confer standing to bring this appeal under R.I.G.L. 16-39-2.

Appeals to the Commissioner under R.I.G.L. 16-39-2 are de novo. As the Board of Regents stated in Concerned Parents & Teachers vs. Exeter-West Greenwich Regional School District, August 24, 1989, de novo appeals:

require a new evidentiary hearing and findings of fact and, equally important, the independent judgment of the Hearing Officer based on those facts. Slattery vs. Cranston School Committee, 116 R. I. 252, 263 (1976).

In his decision on remand in the Concerned Parents & Teachers case, the Commissioner observed:

. . . we agree with the Regents that appeals of this nature come to us for de novo hearing, and empower us

to exercise our independent judgment. However, we would point out that we have, on occasion, refrained from exercising our independent decision-making authority and accorded deference to the school committee's exercise of discretion in academic matters when such exercise of discretion is supportable (and supported on the record before us) and not contrary to any academic policy of state-wide concern. (Footnote omitted).
Ibid. at 1-2.

We find that this appeal involves the type of matter in which it is appropriate for us to defer to the School Committee's proper exercise of its discretion.

R.I.G.L. 16-2-9 provides that "[t]he entire care, control and management of all public school interests of the several cities and towns shall be vested in the school committees of the several cities and towns."⁵ R.I.G.L. 16-2-9 further provides that school committees have the powers and duties to "identify educational needs in the community", "develop education policies to meet the needs of the community", and to "approve a master plan defining goals and objectives of the school system." Except for those programs and services required by state law or mandated under the Basic Education Program,⁶ a school committee has the discretion to determine the type and level of educational programs and services offered in its school district.

⁵R.I.G.L. 16-2-18 also states that the "entire care, control, and management of all the public school interests of the several towns" rests with the School Committees.

⁶R.I.G.L. 16-7-24 directs the Board of Regents to "adopt regulations for determining the basic education program and the maintenance of local appropriation to support the basic education program." The purpose of the Basic Education Program is to ensure "the presence of a basic level of academic and support programs." (Basic Education Program Manual, p. i).

A school committee's discretionary authority to manage its public schools is not unlimited, however. A school committee abuses its discretion when it acts in an arbitrary or capricious manner. An action is arbitrary or capricious when it is not supported by a reason. When a school committee's exercise of its discretionary authority becomes the subject of an appeal to the Commissioner, the school committee must establish on the record the reason that supports its action.

The Commissioner's authority to review a school committee's discretionary managerial decision was established by the Rhode Island Supreme Court in 1873 in the case of Appeal of John T. Cottrell, 10 RI 615. In Cottrell, the school committee selected a particular location for a schoolhouse. The school committee's decision was appealed to the Commissioner, who chose a different location for the schoolhouse.

It was argued before the Supreme Court in Cottrell that the school committee's decision was final and conclusive, and that no right of appeal to the Commissioner existed from this type of discretionary decision by the school committee.

The Supreme Court reviewed the historical development of the statutory language granting an aggrieved party the right to appeal school committee decisions to the Commissioner. The Court then considered the question "[d]oes the fact that the school committee exercise a discretion in the choice of a site, prevent an appeal?" and stated as follows:

To apply such a doctrine to the school law would almost nullify the provision for appeal. There is hardly an exercise of power by the school committee or trustees which does not imply the exercise of discretion. . . . If because [the school committee or trustees] have the

power to decide in the first place, and because they exercise a discretion in doing it, there can be no appeal, there would be hardly a case left for the exercise of such a right; and yet the language of the provision is very broad, and it would be difficult without a great deal of verbiage to make it more comprehensive. Id. at 617

With regard to a school committee's authority to manage its schools, R.I.G.L. 16-2-9.1 requires a school committee to adopt a code of basic management principles and ethical school standards. Included in the code is the principle to "[a]ct on legislative and policy-making matters only after examining pertinent facts and considering the superintendent's recommendations." [R.I.G.L. 16-1-9.1(6)].

The record before us shows that the School Committee, based on cost and philosophical reasons, voted to deny the request for a school breakfast program. The record further shows that, prior to its vote to deny the request, the School Committee did not determine the number of students that would be interested in participating in a school breakfast program. As a result, the cost-related factors and "administrative hurdles" offered by the School Committee as justification for denying the request are based on speculation, not facts. Being based on speculation, they are not reliable, and, therefore, cannot be considered as support for the School Committee's decision to reject the breakfast program.

We also find that, as set forth on the record before us, the philosophical argument advanced by the School Committee falls short of establishing a reason in support of its action.

The School Committee categorically asserts, as a matter of philosophy, that it does not bear the responsibility of providing

breakfast to students. To the extent that the School Committee claims it need not provide breakfast as a matter of convenience to students, we believe that such a philosophical position, if articulated on the record, could be a permissible exercise of its discretionary authority to manage its school district.

However, if the School Committee claims that it need not provide breakfast to students who, upon arriving at school, are educationally disabled by hunger, we cannot accept such a philosophical position as the basis for the exercise of its discretionary authority.

As stated previously, the School Committee has an obligation to examine pertinent facts before acting on policy-making matters. The record in this proceeding does not indicate what, if any, factfinding the School Committee undertook with regard to the issue of hungry students prior to its March 1992 vote to deny Appellant's request. We note that the Superintendent admitted that "there are many youngsters in Pawtucket underfed." We also note the statement of the WIC Program Coordinator at the Blackstone Valley Community Health Care that approximately half of the 1,356 children in the program reside in Pawtucket.⁷ The record clearly raises a question as to whether there are children in Pawtucket coming to school hungry.

The School Committee's failure to respond to Appellant's request in the manner required by law is exacerbated by the evidence in the record suggesting that there may be a serious

⁷The WIC Program provides free food to children on a monthly
(Footnote Continued)

student-hunger problem in Pawtucket. A school committee does not have the discretion to ignore, on philosophical grounds, evidence of a problem of this nature.

On the other hand, the record in this proceeding does not establish that there are students in Pawtucket who come to school educationally disabled by hunger and who can be assisted only by participating in the federal school breakfast program. In the absence of evidence establishing such a situation, we cannot order the School Committee to "access" the federal program. The conclusion we reach, after reviewing the record in this matter, is that more information is needed.

We therefore remand this matter to the School Committee for the purpose of investigating the existence, extent, and effects, if any, of student hunger in the Pawtucket school system. We expect the school physician, nurses, and teachers to participate in this study. Input from related programs and agencies, such as the WIC Program, should be solicited. We order the School Committee to report the results of its study, including findings and a proposed response, at a duly-called public meeting to be held no later than July 15, 1992. We are prepared to rehear this matter if an appeal is taken from the School Committee's report.

(Footnote Continued)

basis. The Program serves children until they reach the age of 5.
(Appellant's Exhibit 2)

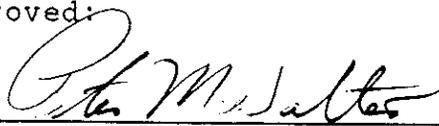
Conclusion

This matter is remanded to the School Committee for the purpose of conducting a study and issuing a report as described above.



Paul E. Pontarelli
Hearing Officer

Approved:



Peter McWalters
Commissioner of Education

May 22, 1992