0031-93

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

RHODE ISLAND CAMPAIGN TO ELIMINATE CHILDHOOD POVERTY vs. NEWPORT SCHOOL COMMITTEE	DECISION

Held: School Committee did not abuse its discretion by refusing to institute a pilot school breakfast program, but acted unreasonably in refusing to conduct systemwide needs survey regarding student hunger.

August 5, 1993

Introduction

This matter concerns an appeal by the Rhode Island Campaign to Eliminate Childhood Poverty from the Newport School Committee's refusal to institute a pilot school breakfast program at the Dr. M. H. Sullivan School.[1]

As discussed below, we sustain the appeal in part.

Background

On February 9, 1993 and March 9, 1993, the Newport School Committee considered a proposal for a school breakfast program. The minutes of the March 9, 1993 meeting show that the Committee reviewed school department memoranda and other material which stated that New Visions for Newport County[2] had agreed to provide supervisory services for the program, the Senate Finance Office had agreed to fund a pilot program at Sullivan School commencing March 29, 1993, and the program would not be operated by the school department nor require any local funds.

According to the minutes of the March 9th meeting, the School Committee discussed the proposal and moved the following item for consideration:

> to direct the Superintendent of Schools to institute a pilot school breakfast program at Sullivan School commencing March 29, 1993, to be in effect for the remainder of the current school year, utilizing state funds only, with no additional transportation needs, no use of school personnel, no time taken from the school day, in collaboration with Newport Public Schools and an outside social agency, and that

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1 The undersigned hearing officer was designated to hear this appeal. A hearing was conducted on May 14, 1993, and the record in this matter closed on July 2, 1993.

2 New Visions is a private, non-profit community action program.

> administration conduct a systemwide needs' (sic) survey.

It was the recommendation of Superintendent of Schools Dr. Donald J. Beaudette that the School Committee institute a pilot breakfast program at the Sullivan School for the remainder of the 1992-1993 school year. The minutes of the March 9th meeting state that "each School Committee member addressed the full Committee relative to their support or nonsupport of the question and the reasons therefor." The ensuing vote was 3 in favor, and 3 against. The motion did not carry.

The appeal herein consists of a document bearing the name of the Rhode Island Campaign to Eliminate Childhood Poverty and the signatures of 22 individuals. One of the signatories, Ms. Emily Kuiee, testified that she lives in Newport, has a child in the third grade at the Sullivan School, is president of the Sullivan School parent-teacher organization, and is a member of the Campaign to Eliminate Childhood Poverty. Ms. Kuiee appeared before the School Committee in support of the request for a school breakfast program. She testified in this proceeding on behalf of herself and the Rhode Island Campaign to Eliminate Childhood Poverty.

According to Ms. Kuiee, the Campaign to Eliminate Childhood Poverty is a statewide organization affiliated with Parents for Progress. The latter organization is "a group of parents that get together, and . . . talk about different things that they need help with." (Transcript, p. 20). In her testimony, Ms. Kuiee described the difficulties in providing a family with nutritional meals when limited to Aid to Families with Dependent

Children (AFDC) payments and food stamps. She stated that a school breakfast program would help parents provide their children with more nutritional meals.

Appellant presented the testimony of a public health nutritionist employed by New Visions of Newport County. The nutritionist testified that all types of families she serves -- whether employed, receiving public assistance, or in the Navy -- "are having trouble stretching their resources to meet all their food needs . . ." (Transcript, p. 28). Appellant also presented evidence of an April 1993 study of the extent of hunger among children in the city of Newport undertaken by the Center on Hunger, Poverty, and Nutrition in the School of Nutrition at Tufts University. The study, which used family income levels to determine the liklihood of hunger problems, estimated that between 440 and 640 children in Newport are likely to experience chronic underconsumption of adequate nutrients.[3] The record further shows that 82 percent of the students at the Sullivan School qualify for free or reduced-price school lunch based on family income levels.

School Committee member Daniel C. Bolhouse testified that he voted against the school breakfast program for the following reasons: (1) breakfast is "something that should be taken care of at home," not at school; (2) based on the limited number of students who have indicated they were hungry, "there's no need

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3 The record does not reveal the ages of the children. The Rhode Island Public Schools 1992 Education Indicators show that the city of Newport has 3,379 public school students and 565 nonpublic school students.

for this program;" (3) providing breakfast to students who arrive late for school "is going to impact on the beginning of the day, and the day is short enough now;" (4) it will be necessary for administrators to become involved in the program and "they don't have time;" (5) the program will increase custodial responsibilities; and (6) the liklihood that the pilot program will become permanent and state funding will be eliminated. (Transcript, pp. 75-78). Mr. Bolhouse testified that a fellow Committee member who cast a negative vote at the March 9th meeting expressed similar reasons for opposing the proposal and also remarked that public sentiment was against the program.

Mr. Bolhouse recently retired from the Newport school system after 22 years of service as a teacher and administrator. He testified that during those years he encountered children who had not had breakfast on a particular day and were feeling poorly. On those occasions, Mr. Bolhouse provided the children with cereal and milk. According to Mr. Bolhouse, this did not occur more than 25 times in a school year. Mr. Bolhouse was aware of similar instances in other Newport elementary schools.

Two Newport elementary school nurses and the principal of the Sullivan School testified that they ask students who are not feeling or doing well in school whether they had breakfast that morning. If the student did not have breakfast, the nurses and principal provide the child with cereal, milk, crackers, or fruit. This practice of providing breakfast to students occurs at the Sullivan School as well as other Newport elementary schools. Both of the school nurses were of the opinion that, in

their experience, the number of such occurrences did not demonstrate the need for a school breakfast program.

Positions of the Parties

Appellant contends that the School Committee's decision in this matter was arbitrary and capricious because it was not based on pertinent facts and information. Appellant argues that the School Committee abused its discretion by ignoring its duty to be a factfinder and relying on philosophical and political opinions. Such opinions cannot take the place of supporting evidence in the case of a substantial decision affecting the education of children. According to Appellant, the evidence in this case with regard to insufficient fixed incomes and low family income levels supports the implementation, not the rejection, of a school breakfast program.

The School Committee contends that Appellant, as a state-wide organization, has no standing to bring this appeal in that it could not have been adversely affected by the School Committee's decision not to institute a school breakfast program. The Committee asserts that the Committee's philosophical opposition to the school breakfast program was just one of many reasons for rejecting the program. It argues that, unlike the case of Rhode Island Parents for Progress vs. Pawtucket School Committee, there is no evidence in the record that children are educationally disabled from hunger. In addition, Article 96 of the fiscal year 1993 budget provides that a qualifying school may establish a pilot school breakfast program. Consistent with that law, decisions concerning school breakfast programs are left to the discretion

of school committees, the elected representatives of the voters. That discretion has been exercised in a supportable manner in this case and therefore should be upheld.

Discussion

With regard to the School Committee's assertion that Appellant lacks standing to bring this appeal, we find that this matter is properly before the Commissioner. We base this finding on Ms. Kuiee's testimony and our statment in the decision of Rhode Island Parents for Progress vs. Pawtucket School Committee that

> 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. Decision, May 22, 1992, p. 6.

The above-cited Parents for Progress decision also discussed the appropriate standard and scope of review to be applied to appeals of this nature.

Appeals to the Commissioner under R.I.G.L. 16-39-2 are de novo, thereby requiring a new evidentiary hearing, finding of facts, and the hearing officer's exercise of his or her independent judgment based on those facts. On occasion, however, we have

> 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. Concerned

Parents & Teachers vs. Exeter-West Greenwich Regional School District, November 3, 1989, p. 2.

We found in Parents for Progress that an appeal of a school committee's refusal to implement a school breakfast program concerns the type of matter in which it is appropriate for us to defer to the school committee's proper exercise of its discretion to manage its public schools. We further stated that

> 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. Ibid., p. 8.

R.I.G.L. 16-2-9.1 requires a school committee to adopt a code of basic management principles and ethical school standards. The code includes 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. 16-2-9.1(6)].

The School Committee's reasons for refusing to institute a pilot school breakfast program at the Sullivan School as proposed at its March 9, 1993 meeting are set forth in the testimony of School Committee Member Bolhouse. The primary reason offered by Mr. Bolhouse was the philosphical belief that providing breakfast to children is a parental, not an educational, responsibility.

In Parents for Progress we stated that a school committee's philosophical position that it need not provide breakfast as a matter of convenience to students could be a permissible exercise of its discretionary authority. We also stated that a

school committee's philosophical position that it need not provide breakfast to students educationally disabled by hunger was not acceptable as the basis for the exercise of its discretion. In Parents for Progress, the school committee's failure to examine pertinent facts before acting on the breakfast program request was exacerbated by evidence in the record suggesting the possible existence of a serious student-hunger problem in the school district. We stated therein that "a school committee does not have the discretion to ignore, on philosophical grounds, evidence of a problem of this nature." Ibid., p. 11. In those circumstances, the school committee's total dismissal of the school breakfast proposal was improper.

The record in this proceeding shows that there are children in Newport coming to school hungry. This is borne out by the testimony of Mr. Bolhouse, the school nurses, and the principal of the Sullivan School regarding their encounters with students who did not have breakfast and were experiencing difficulty in the classroom. The testimony of the public health nutritionist and the evidence of the Tufts University study further suggest the possible extent of the hunger and nutrition problems affecting schoolchildren in Newport.

Unlike the Parents for Progress case, however, the record in this matter shows that the school district has not ignored the problem of children coming to school hungry. Administrators, teachers, and nurses have identified children in school who are feeling the effects of hunger and given them food at no cost. Mr. Bolhouse, who engaged in this practice and was familiar with

similar efforts by other school personnel, presented his experience with hungry students for School Committee consideration when he offered his assessment of the need for a school breakfast program. Mr. Bolhouse's experience regarding student hunger and the response of school district staff was confirmed by the testimony of the elementary school nurses and the principal of the Sullivan School. The nurses further testified that, in their opinion, the limited instances of student hunger did not require the implementation of a school breakfast program.

This case therefore does not present a situation in which a school committee relies on a philosophical position in total disregard of a problem which adversely affects the educational well-being of students in the school district. The School Committee, having considered pertinent information regarding student hunger, decided that a pilot breakfast program at the Sullivan School was not warranted for the remainder of the 1992-1993 school year.[4] On the basis of the record before us, particularly the evidence concerning the school district's practice of providing food to hungry children who are unable to effectively perform in the classroom, we find that the School Committee did not abuse its discretionary authority to manage the public schools by refusing to institute a pilot breakfast program at the Sullivan School.

On the other hand, we note that the motion before the School Committee at its March 9, 1993 meeting included a provision that

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4 We emphasize that the information regarding the need for a school breakfast program presented by Mr. Bolhouse to the School Committee was corroborated by the school nurses at the hearing herein.

the administration conduct a systemwide needs survey. Although we have found that the School Committee did not act arbitrarily by refusing to institute a pilot school breakfast program in circumstances where student hunger is being addressed on an ad hoc basis by school personnel, we cannot say the same with regard to the refusal to conduct a systemwide needs survey. Given the school district's experience with hungry students in schools throughout the district and the superintendent's recommendation that a pilot breakfast program be instituted at a school in which 82% of the students qualify for free or reduced school lunch, and further considering the very real possibility that many hungry children are not being identified or are reluctant to admit their condition to school personnel, we are unable to find any reason in the record which supports the School Committee's rejection of a proposal to conduct a systemwide needs survey in the area of student hunger.

We therefore shall remand this matter to the School Committee for the purpose of conducting a systemwide needs survey as proposed at its meeting of March 9, 1993. The survey shall address the existence, extent, and effects of student hunger in the Newport school system. We expect the survey to involve school administrators, teachers, nurses, and the school physician. The survey must solicit the participation of related programs and agencies, such as New Visions of Newport County. It must also address the April 1993 study conducted by Tufts University. The results of the survey, including findings and a proposed response, must be reported at a duly-called School Committee meeting held no later than 60 days from the date of this decision.

Conclusion

The appeal is denied with regard to the School Committee's refusal to institute a pilot school breakfast program at the Sullivan School. The appeal is sustained as to the School Committee's refusal to conduct a systemwide needs survey with regard to student hunger. This matter is remanded to the School Committee for the purpose of conducting a student-hunger systemwide needs survey as described above.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date: August 5, 1993