

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

 THOMAS AND CAROL ANN F. :
 :
 :
 :
 :
 :
 :
 :
 :
 :
 CUMBERLAND SCHOOL COMMITTEE :

DECISION

Held: School Committee did not abuse its discretion in refusing to assign Appellants' son to the school located in Appellants' attendance area where the student's grade is over-enrolled.

August 26, 1994

Introduction

This matter concerns an appeal by Thomas and Carol Ann F. from the Cumberland School Committee's refusal to enroll the F. son Matthew in the third grade at Community School.¹

For the reasons set forth below, we deny the appeal.

Background

Appellants have 3 children: Kevin, age 9, Matthew, age 8, and Martin, age 5. Appellants moved from East Providence to Cumberland in May 1994. Their residence in Cumberland is located in the Community School attendance area. Community School is .7 mile from Appellants' home. It is the closest elementary school to their home.

Appellants had been informed prior to their move that there was no room for Matthew in the second grade at Community School for the 1993-1994 school year. As a result, Appellants' children completed the school year in the East Providence public schools.

Kevin and Martin have been enrolled in the fourth grade and kindergarten, respectively, at Community School for the 1994-1995 school year. Appellants have been informed by the School Department that there is no room for Matthew in the third grade at Community School, and that his name has been placed on a waiting list.² Matthew has not yet been assigned to one of the other two Cumberland elementary schools.

1 This appeal was referred to the undersigned hearing officer. Hearings were conducted on August 12 and August 16, 1994. The record in this proceeding closed on August 22, 1994.

2 Placement on the waiting list is governed by the student's date of registration with the School Department. As of the date of this decision, Matthew is third on the waiting list.

Cumberland School Department Policy JE, entitled "Student Attendance," states in part that "A pupil shall attend school in his own district. Permission to enter a school in another district shall be granted only by the Superintendent." (Appellants' Exhibit 1). Policy JC, entitled "School Attendance Areas," states as follows:

Student School Attendance areas

The Committee accepts its responsibility for establishing attendance zones in such a way as to facilitate the educational program. Advance planning for new sites and buildings will be guided by the following criteria in determining school attendance boundaries:

1. Educational needs of students.
 2. Proximity of students to school plants.
 3. Safety of students.
 4. Ages of students.
 5. Nature of the educational program.
 6. Racial/ethnic balance.
- (Appellants' Exhibit 2).

Policies JE and JC were last revised on July 12, 1973. Prior to that date, it was the school district's practice to send students to schools outside their attendance areas when the school in their area of residence lacked the staff or classroom space to enroll them without exceeding class size limits. The School Department has continued to consistently follow this practice since 1973.

The School Department developed several plans to redistrict its elementary school attendance areas, but budgetary restraints prevented it from implementing a plan for the 1994-1995 school year.

The School Department maintains a list of street names for each elementary school attendance area.

Community School has 3 third grade classes. A contractual class size limit of 24 students is applicable. Each of the classes is at the contractual limit. Assistant Superintendent Rose Marie Kavanagh

testified that all of the students enrolled in the third grade classes at Community School reside within the Community School attendance area. Those enrollees include 3 students living on Murphy Drive and Hines Road.

Murphy Drive appears in the street listings for the Ashton School attendance area. Ms. Kavanagh testified that, in practice, children living on Murphy Drive have been enrolled in Community School, that Murphy Drive is in the Community School attendance area, and that the Ashton School street listings mistakenly include Murphy Drive. Ms. Kavanagh also testified that Hines Road travels through all 3 elementary school attendance areas, and that children living on particular portions of Hines Road are assigned to a particular elementary school, depending on the availability of space in the grade involved.

Mrs. F testified that Kevin and Matthew have a very close relationship. She emphasized the boys' closeness in age. Mrs. F also noted the home scheduling problems and the separate set of parental obligations that would result from having the children in different schools. Mrs. F further stated that all of the redistricting plans under consideration place their residence in the Community School attendance area.

The School Department has offered to assign all 3 of Appellants' children to one of the other elementary schools, but Appellants do not view this as solution to the problem herein.

Contentions of the Parties

Appellants contend that School Committee Policy JE unequivocally requires, without qualification, that students attend the school in

the district in which they live. Because the School Committee is required by law and regulation to maintain a policy manual which reflects current administrative and management practices, Appellants argue that the clear language of the policy should control. They further contend that the School Committee's failure to enroll Matthew in Community School is expressly contrary to the criteria set forth in Policy JC, as well as its intent, and is harmful to the educational interests of Matthew and his brothers.

Appellants assert that contractual class size limits cannot compel a violation of the rights of their child, and that the collective-bargaining agreement contains a formal procedure for resolving the issue of excessive class size. They further contend that the School Committee is discriminating against newer residents of the town in violation of the Equal Protection Clause in the federal and state constitutions. Finally, Appellants argue that the School Committee is estopped from sending Matthew to a school out of his district because it has enrolled 3 nonresident children, i.e., those living on Murphy Drive and Hines Road, in the third grade at Community School.

The School Committee contends that it did not violate its attendance area policies because (1) there is no evidence that it did not apply the 6 factors in Policy JC in its advanced planning of the current attendance areas, and (2) a reading of Policy JE in its entirety shows that the first sentence does not constitute an absolute prohibition of out-of-area assignments, but only prohibits parents from sending their children to schools outside the district of residence without the superintendent's permission. The School

Committee argues that the superintendent has discretion under Policy JE to require that a child attend a school outside the area of residence where classroom space is not available in the area of residence. The School Committee relies on its practice before and after the 1973 revision of the policy to show that it was not the intent of the Committee in implementing Policy JE to prohibit the assignment of students outside their area of residence in situations where the local school is overcrowded.

The School Committee denies any Equal Protection Clause violation. It argues that no fundamental right is being abridged by a policy which determines the particular school, among several schools providing equal educational opportunities, a child will attend. It further argues that no "suspect class" has been created by the policy. The Committee also cites several decisions of the Commissioner, particularly Almonte vs. Scituate School Committee, in support of its argument that a school committee has considerable discretion in assigning students to particular schools, drawing attendance areas, and redistricting.

Discussion

The Commissioner of Education reviews a school committee's assignment of students to schools only for abuse of discretion. (Hazebrouck vs. Gloucester School Committee, August 30, 1991). Appellants therefore bear the burden of proving that the School Committee acted arbitrarily in deciding not to enroll Matthew in the school located in his attendance area.

We do not believe that School Committee Policies JC and JE grant a student an absolute right to attend the school located in his or

her attendance area. Policy JC states that the purpose in establishing attendance areas is "to facilitate the educational program." Policy JC otherwise speaks to "[a]dvance planning for new sites and buildings." Policy JE, in our view, states that a student is entitled to attend school only in his or her attendance area unless the superintendent grants the student permission to attend a school in another district. Policy JE limits the student's right to choose a school, not the School Department's discretion to assign a school. This reading of Policy JE is supported by the School Department's longstanding practice, both before and after the revision of Policy JE, of assigning students to schools located outside their attendance areas.

We further find that the School Committee did not abuse its discretion in refusing to assign Appellants' son to Community School for the 1994-1995 school year.

We recently addressed an overcrowding situation in the case of Almonte vs. Scituate School Committee (September 1, 1993). That case also involved a contractual class size limitation. As a result, appellant's youngest son was assigned to attend kindergarten in a school outside the family's attendance area, and different from that of his four brothers. We denied the appeal, recognizing the school committee's goal of maintaining reasonable class sizes and its need "to treat all families on an equal basis." (Decision, p. 3).

We find the same considerations to be applicable here. The School Committee's action is based on a class size limitation. A waiting list has been developed for those children who registered after the class size limit had been reached. The evidence does not

establish that any of the 72 children enrolled in the third grade at Community School reside outside the School's attendance area. More importantly, the evidence fails to show that any nonresident children who registered with the School Department after Appellants' date of registration have been enrolled in the third grade at Community School for the 1994-1995 school year. In addition, the School Committee has offered to enroll all of Appellants' children in one of its other elementary schools. In light of these facts, we cannot say that the School Committee has acted in an unfair, unequal, or arbitrary manner.

We therefore find that the School Committee's decision not to enroll Appellants' son in Community School, based on its use of the waiting list with a date-of-registration ranking, is not unreasonable. ³

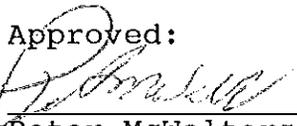
The appeal is denied.

Conclusion

The School Committee did not abuse its discretion in refusing to assign Appellants' son to the school located in Appellants' attendance area where the student's grade in that school is overenrolled.


Paul E. Pontarelli
Hearing Officer

Approved:


Peter McWalters
Commissioner of Education

Date: August 26, 1994

³ We request that the School Committee reexamine this matter prior to making Matthew's school assignment and in light of any change in circumstances concerning Community School enrollments that may occur in the near future. We also request, particularly in light of the School Committee's offer to have all of Appellants' children attend another elementary school, that the School Committee reexamine its attendance area policies from the standpoint of addressing the shared interest in this matter of allowing siblings to attend the same school.