

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

FOSTER SCHOOL COMMITTEE V. TOWN OF FOSTER

DECISION

Held: Town of Foster must appropriate additional funds for school operations for the 1994-95 school year. The amount of such additional funding shall be sufficient for the Foster School Committee to meet its contractual obligations and operate the district in conformity with applicable laws and regulations.

Date: December 14, 1994

Travel of the Case

At their annual town financial meeting on May 3, 1994 voters of the Town of Foster voted to approve a school budget for fiscal year 1994-95 in the amount of \$2,425,328. Despite attempts to adjust its budgetary request to the amount of the appropriation, the Foster School Committee determined that it needed additional funds to operate its school system¹ in compliance with applicable laws and regulations, and to meet the financial commitments resulting from collective bargaining agreements. Through the Superintendent, a hearing was requested before Commissioner Peter McWalters on July 7, 1994. The undersigned, designated to hear and decide this appeal, held hearings on September 1 and 26.

Both parties to the appeal appeared pro se, and submitted testimony, documentation and argument in support of their respective positions. Mr. Philip Croome spoke on behalf of the Town of Foster and Superintendent Tetreault presented the case of the school committee.

The record in the case closed on November 9, 1994, upon receipt of the final transcript.

Issue

Is the appropriation of \$2,425,328 sufficient for the Foster School Committee to operate its schools in compliance with applicable laws and to implement the collective bargaining agreements in effect for fiscal year 1994-95?

¹Which consists locally of the Captain Isaac Paine School an elementary school. The towns of Foster and Gloucester have joined to form a regional school district for the public education of students in grades 6 through 12.

Findings of Relevant Facts

- At the Town financial meeting held on May 3, 1994 the voters of the Town of Foster voted to appropriate the amount of \$2,425,328 for the operation of its only local school, the Captain Isaac Paine School.² (H.O. Ex. 1)
- Subsequent to the making of this appropriation, members of the Foster School Committee, together with the Superintendent of Schools, attempted to reconcile the proposed school budget with the amount of the appropriation. (Tr. Vol. I pp. 13-14; SC. Ex. B.)
- Despite the implementation of several cost - saving measures, the school committee determined that:

no matter how the FY 95 budget is fine tuned it is impossible to live within the appropriated funds without violating contracts, mandates or closing the schools before the 180 day requirement...
(S.C. Ex. B p. 2)

- According to the Superintendent's calculations, a minimum of an additional \$105, 154.00 is needed if the school district is to fund its collective bargaining agreements and operate the educational program that is required by applicable laws and regulations. Tr. Vol. I pp. 14, 52.
- The Superintendent has implemented cost-saving measures such as decreasing salaries of certified and non-certified staff, decreasing school supplies and textbook accounts, underbudgeting accounts for maintenance and repair of equipment, etc. S.C. Ex. B. p. 1. Tr. Vol. I pp. 25-49.
- The school district has increased its reliance on funding from the Foster Parent Teacher Group for such expenditures as field trips, library books and periodicals. Tr. Vol. I pp. 30-31.
- The underbudgeting of accounts for various items of the proposed school budget will result in a program at the school which does not meet all the requirements of regulations entitled "Basic Education Program for Rhode Island Public Schools". Tr. Vol. I p. 23.

²The appropriation also enabled the school committee to meet other expenses of operation of the school district, e.g. payment of tuition for special education students whose placement is in private schools.

- Underbudgeting for textbooks in the current school year prevents the school department from updating textbooks in reading and mathematics according to a five-year cycle established to ensure that textbooks in these areas are up-to-date. Tr. Vol. I pp. 32-34. S.C. Ex. A.
- Although the Foster School Committee anticipates that it may require legal services beyond those routine matters budgeted for in its proposed budget, (a dispute exists over repairs to the school roof) no funding is included in the proposed school budget to cover the anticipated costs of litigation. Tr. Vol. I pp. 48-49.
- The School Committee has not updated computers used at the school, nor has it purchased computer software over the past several years. Teachers at the school have not been adequately trained to instruct children in the use of computers. In the opinion of the Superintendent, these factors combine to render computer instruction at the school inadequate under state Basic Education Program requirements. Tr. Vol. I. pp. 46-47.
- The amount budgeted for general school supplies (\$9 dollars per student) is likely to be inadequate for the school department to comply with Article X Section C of the teachers' contract which provides:

C. the Committee will provide sufficient teaching equipment and supplies as required to carry out the educational program of the school system. (p. 14)
S.C. Ex. D; Tr. Vol. I p. 41.

- No money is budgeted for supplies and materials for students in the self-contained special education class (Tr. Vol. I p. 47). No funds are budgeted for supplies for the remedial math and reading programs or the physical education or music program at the school. Tr. Vol. I pp. 36-37.
- No amount is budgeted for roof repairs, the cost of which is estimated at \$4,837. Tr. Vol. II pp. 38,47.
- In prior school years the amounts for some line items of the budget were not fully expended; those funds were diverted to cover overexpenditures and funded negative accounts for other line items of the school budget. Tr. Vol. I pp. 99-100, 102-104 S.C. Ex. A.

- The School Committee has in school years 1992-93 and 1993-94 finished each school year "in the black" with surpluses of approximately two thousand dollars in each of the last two school years. S.C. Ex. A.
- School enrollment in 1994-95 has not decreased from 405 students. S.C. Ex. E, Tr. Vol. I p. 49.
- Average growth of the local school district budget since 1990-91 has been 3.34%. Tr. Vol. II p. 63.
- The Town of Foster reduced its tax rate from 1993 to 1994 by \$.85 per thousand (Tr. Vol. I. p. 57).
- In school year 1993-1994 the Town of Foster made the same appropriation as it did for the current school year, i.e. \$2,425,328. S.C. Ex. B p.1. In fiscal year 1993-94 the Town retained census transition funds in the amount of \$65,625³ unanticipated state aid in the amount of \$43,025, and unanticipated revenue generated by the school department in the amount of \$20,000. S.C. Ex. B p.2.
- If reductions were made to the line item of the budget entitled "Professional and Technical Services" (proposed \$2,626) it would cause the elimination of the penmanship program and reduce the testing program at the school. Tr. Vol. II Pp.10-11.

Positions of the Parties

The School Committee:

In seeking an additional \$105,154 to meet its fiscal 1995 operating obligations, the School Committee argues that this is an absolute minimum amount and will not even ensure a program in Foster which fully complies with the BEP. Although it is not an explicit argument, implicit in the record of the hearing is the inference that underbudgeting or total lack of budgeting for some anticipated, necessary expenditures will prevent the Foster School Committee from managing the school district in a prudent fashion.

³Although the School Committee has raised no issue regarding diversion of this \$65,625 to the Town, such action appears inconsistent with the decision of the Commissioner in Narragansett School Committee v. Town of Narragansett, May 3, 1994.

The Superintendent notes the steady, yet gradually increasing, number of students in the district, the small growth of local school expenditures over the past several years, and the gradual erosion of the quality of the school program because of insufficient funding. He points to the "surplus revenue" received by the town in 1993-94 as a result of increased state aid to education, and questions the decision of the town to "level fund" its educational program, and reduce its tax rate in the subsequent (current) school year.

In response to the inference raised by the Town that the school budget is inflated, the Superintendent argues that the line items throughout the budget are "best estimates" (Tr. Vol. I p. 101) as to what the costs are going to be in each of the expenditure areas. If in past years the town can point to line item surpluses, the surplus was created by a strategy for managing the school budget so that there would not be a deficit. When operation of the school program necessitated overexpenditure in a given area, this forced underexpenditures for other line items in the budget. This underexpenditure is reflected as a surplus, but was expended nonetheless.

The School Committee rejects the suggestion that tuitions projected for private placements of special education students can be eliminated⁴ and, if actually needed, funding obtained through an end-of-year special appropriation. The Superintendent notes his obligation to budget for projected expenditures, and the fact that both students, pursuant to current IEP's⁵ are attending non-public schools. He characterizes as "speculative" the ability of the School Committee to obtain funding for such shortfalls. Thus, the council's proposal to budget for only one of the two tuitions, at a projected savings of \$36,138 was rejected as contrary to sound budgeting principles.

⁴On the basis of a possibility these students may return to the Paine School.

⁵Individualized Education Programs.

As to other suggestions made by the Town with regard to reduction of most other areas of the School Committee's budget request, the School Committee's position is that in each case the Town's argument is based on erroneous analysis or does not take into account actual program requirements for the current school year

However, with respect to the proposed reduction in "Professional and Technical Services," it is the Committee's position that the full amount requested must be appropriated because otherwise the penmanship and testing programs would be reduced or eliminated. These two programs must be left intact because they meet "identified educational needs", and it is the School Committee's position that it has the prerogative under law to expend funds to meet those needs.

Town of Foster:

In defending the Town Council's decision to recommend, and the Town's decision to fund, a school budget in the amount of 2,425,328 the representative of the Council argued that this amount can be sufficient for the operation of the school. If not, it was argued, the School Committee could reconcile any shortfall which might occur by requesting a supplemental appropriation at a special town financial meeting prior to the close of the fiscal year. (Tr. Vol. I p. 95).

It was the position of the Town that given a surplus for certain line items in the prior year(s), these line items could be reduced in the budget for this year without any resulting infringement on contracts or the mandated school program. The town demonstrated a record of underexpenditure for many line items in past budget cycles and , in general, focused on the ability of the school budget to absorb significant unanticipated expenditures (\$23,000 for replacement of a boiler) in the prior school year. The Town also pointed out that in that same year, 1993-94, the School Committee could "afford" to prepay an insurance bill in the amount of \$17,000, and still end the year "in the black". The conclusion to be drawn, it argued, was that inflation of the budget beyond that required for the operation of a

mandated minimum program had occurred in prior school years. Therefore, one could assume the proposed budget for 1994-95 could be further reduced and still provide for operation of a school program which conformed to legal requirements.

The Town also questioned whether the school budget reflected the actual costs for health benefits for retired teachers and properly accounted for savings from the program permitting employees to "buy back" their health insurance and dental coverage.

Total savings or reductions in the School Committee budget in the amount of \$139,992, could be made, argues the Town. This would render the appropriation made by the Town sufficient for the operation of the school this year.

Decision

The uncontradicted testimony of Superintendent Gerard E. Tetreault establishes that the appropriation for the public school program in Foster is insufficient for the School Committee to meet its contractual obligations and legal and regulatory requirements for the present school year. In each area of proposed "savings" described by representatives of the town, the Superintendent demonstrated, by a preponderance of the evidence, that the amount requested in the school budget (as proposed by the School Committee) was the figure which best projected the required expenditures.

In other areas of expenditure, where the inference raised by the Town was that numbers were inaccurate⁶, the School Committee demonstrated that its figures were correct.

With regard to the proposed reduction in expenditures for Professional and Technical Services, Superintendent Tetreault argued that the reduction would cause elimination of the penmanship program and cause an unacceptable alteration

⁶For example, in the area of savings reflected when employees "buy back" the health benefits package.

in the local testing program. His argument was that the School Committee was entitled to the full amount requested for this line item because such programs met needs identified by the School Committee. This argument is contrary to the controlling legal principle established by the Rhode Island Supreme Court in Exeter-West Greenwich Regional School District v. Exeter-West Greenwich Teachers' Association, 489 A.2d 1010 (R.I. 1985). While it may have been unnecessary for our Court to address the general issue of mandatory program appropriations in that case since the issue focused on required funding for collective bargaining agreements entered into by local school committees, our Court ruled that a city or town must fund not only the valid collective bargaining agreements entered into by a school committee, but also:

other obligations incurred in the
providing of services mandated by law.
Exeter-West Greenwich at 1020.

In confining the obligatory appropriation to a sum sufficient to fund collective bargaining commitments and mandated programs and services, the Court, we believe, implicitly held that there is no legal requirement to fund a desired or optional school program. Thus, a community is under no legal obligation to fund a school program simply because it meets needs identified by its local school committee. This was the precise issue which the New Hampshire Supreme Court decided in Laconia Board of Education v. City of Laconia, 285 A2d 793 (NH 1971)⁷. It is the Laconia case which was later distinguished by the New Hampshire Court in Sullivan v. Flynn, 116 N.H. 547, 365 A2d 1052 (1976), the case cited as precedent by our court in its ruling in Exeter-West Greenwich, supra.

Despite the fact that the Foster School Committee's argument with regard to retention of its testing and penmanship program is without merit, the funds

⁷In Laconia the New Hampshire Court ruled that optional or desirable programs may be eliminated or reduced by reason of insufficient appropriation by the city council.

necessary to continue these two elements of its school program are part of the mandatory appropriation under the ruling in Exeter-West Greenwich, supra. It is our finding that the Basic Education Program (Board of Regents' regulations commonly referred to as the "BEP") requires both of these programs.

We are convinced that instruction in penmanship is encompassed by the word "writing". Instruction in writing is required for all students by R.I.G.L. 16-19-2, BEP Topic 3. "Curriculum (General)" and Topic 4 "Literacy Program".

It is also our conclusion that an effective local testing program is implicit in the BEP's requirement that each public school have a "curriculum" in the various subject areas discussed in that document. On page iii of the BEP, entitled Key Definitions and Symbols curriculum is described as the planned instruction of pupils with instructional content, instructional resources and processes for the attainment of educational objectives (emphasis added). An effective program of measurement of student progress in the specified content areas is implicit in any process used to determine whether the educational objectives have been accomplished. In addition, throughout the BEP, there are specific testing requirements in each of the content areas. These require that student progress shall be evaluated:

- at least every two weeks
- using a variety of assessment techniques; and
- based on the instructional program⁸

In maintaining a local testing program under "Professional and Technical Services", the Foster School Committee is fulfilling both general and specific requirements set forth in our BEP for public schools. Funding for this program, as

⁸See for example Topic 14 "Generic Standards -- Language Arts/English" subsection F.

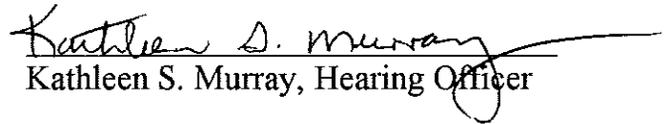
well as for continuation of the penmanship program is required under the principles set forth in Exeter-West Greenwich, supra.

The town has suggested that the School Committee defer its request for additional funds until later in the school year when, if necessary, a supplemental appropriation for school operations could be made. At that time, it is argued, the obligations of the School Committee with respect to such expenses as special education tuitions would be more precisely known. This course of action would be contrary to our law in that School Committees cannot incur deficits. They are entitled to and required to obtain an appropriation sufficient to meet all legal obligations anticipated to be incurred during the school year. Our law does not place the burden on school committees to incur liabilities incidental to mandated school operations, with the prospect of subsequent reimbursement⁹. To prevent deficit situations, School Committees have been urged to address the issue of insufficiency of an appropriation as soon as it becomes evident. This is what the Foster School Committee has done in the appeal before us, and the evidence clearly shows that a minimum of \$105,154 is needed. The Town of Foster is hereby directed to appropriate an additional \$105,154.00 for the operation of the school for fiscal year 1994-95.

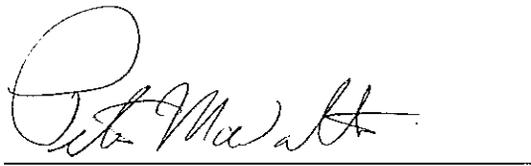
From the record it is clear that the School Committee seeks to find additional funding to completely address existing BEP violations from "other sources". They have indicated that any ruling in this appeal should not be considered a waiver of its right to seek funds beyond the \$105,154.00 should this become necessary. We direct the School Committee to address any remaining BEP violations as soon as possible. If "alternative funding" is not available to

⁹Certainly a situation could arise when a non-routine and unanticipated expense is incurred which could occasion a supplemental appropriation.

address such violations we expect that the School Committee will follow all necessary steps to obtain an additional local appropriation.


Kathleen S. Murray, Hearing Officer

Approved:


Peter McWalters, Commissioner

December 14, 1994
Date