

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER
OF
EDUCATION

THERESE LUSIGNAN et al.

v.

EAST PROVIDENCE SCHOOL COMMITTEE

DECISION

Held: The decision of the school committee to implement Phase II of a district-wide reorganization in September, 1999 is reasonable; a special visitor is appointed to monitor compliance with special education regulations at East Providence High School.

DATE: June 17, 1999

Travel of the Case

On March 25, 1999 Therese M. Lusignan filed an appeal with Commissioner Peter McWalters to seek review of the March 3, 1999 decision of the East Providence School Committee. The committee had approved several components of a reorganization proposal submitted for their consideration on February 11, 1999 by Superintendent Taras Herbowy. The undersigned was designated to hear and decide the appeal. A series of seven hearings took place, starting on May 7, 1999 and concluding on June 2, 1999. Prior to commencement of the hearings, several additional parents of students in the East Providence school system joined with Ms. Lusignan in this appeal. They are: Lynn Fortin, Antone Gouveia, Christine Partington, Dennis Streit, and Patricia Streit. A summary of the parties' respective positions and a brief memorandum from the School Committee were submitted at the close of the hearing, and the record in the case closed on June 10, 1999 upon receipt of the final transcript.

Issues

Was the decision making process used by the East Providence School Committee and the Superintendent contrary to the fundamental principles and standards of school management set forth in R.I.G.L. 16-2-9.1 or otherwise in violation of state law? Was the March 3, 1999 decision of the East Providence School Committee based on inaccurate and/or erroneous information?

Was the decision of the East Providence School Committee to reorganize the school district a sound and appropriate exercise of the Committee's administrative authority under R.I.G.L. 16-2-9?

Was the closing of the Meadowcrest School supported by good cause as required by R.I.G.L. 16-2-15?

Findings of Relevant Facts¹

- The appellants are parents of East Providence students who are affected by the recent decision of the school committee to reorganize the district.
- On March 3, 1999 the East Providence School Committee, by a vote of four to one, approved several components of a reorganization proposal that had been submitted for their consideration on February 11, 1999. S.C.Ex. B,D,F. On May 27, 1999, the Committee voted to modify the plan and redirect one hundred and forty-seven students, who would otherwise be placed at the high school in September, to the Watters School. These students are at-risk and require additional educational programming so that they can be successful at the high school level. Tr. Vol.VII. pp. 107-115.
- The March 3, 1999 decision of the committee included the closing of two of the four elementary schools in the Riverside section of the city. These schools are Meadowcrest and Watters. Tr. Vol.II. p.15.
- Students from the Meadowcrest School will be transferred to the Waddington School and the Meadowcrest facility will be utilized as a preschool center for special education, Head Start, ESL, and regular education students. S.C.Ex. B,F.
- Students from the Watters School will be transferred to the Oldham School; the Watters site will be utilized as an alternative education program for students of compulsory school age who are at-risk of dropping out. These students require and will receive special programming at the Watters site. Tr. Vol.VII. pp.107-115. This program is anticipated to be placed at Watters for no longer than one year.

¹ Given the time constraints on the issuance of this decision, Findings of Fact, as well as the other portions of the decision, are condensed to the minimum required to comply with the Administrative Procedures Act.

- The present population of Waddington School is 515 students. Tr. Vol.III p.34. With the influx of the Meadowcrest students, the total population is presently projected to rise to 573 students. Tr. Vol.III p.18.²
- The enrollment projection for the Waddington School which was before the School Committee at the time of its vote was 548 students, a figure which did not include present ESL students at Waddington, nor did it include potential additional enrollment resulting from housing under construction at the present time. Tr. Vol.III pp. 55-56,70; Tr. Vol.VII p.9.
- If the total enrollment at Waddington School is 573 students, the students can be accommodated within the present classroom configuration and without the loss of space presently used as a computer room, multi-purpose room, and music room. Tr.Vol.III p.41. If additional classroom space is needed because of additional students enrolling or being placed at Waddington, space such as that used for computer instruction would have to be converted to classrooms. Tr.Vol.II p.196.
- Some of the projected class sizes for the Waddington School, using a total enrollment of 548 students, approach the maximum class size set by contract for the elementary grades. S.C.Ex.B.
- If enrollment at the Waddington School grows beyond the current projections, the Superintendent plans to accommodate growth by reevaluating the status of students attending the school on the basis of parental request (who do not live within the attendance zone of the school). He would also consider converting space presently

² Sixth grade classes are being removed from the elementary schools and placed at the junior high schools. Therefore sixth graders are not included in next year's projection.

used for computer instruction, music, and the gifted and talented program to classrooms. Tr. Vol.VII pp.43-44, 70.

- Traffic will be increased at Waddington School because of the placement of additional students there. Tr.Vol.II pp.175-181.
- The school committee had the option to place preschool special needs classes at the Waddington School or Watters School; such placement would not permit integration with non-disabled students of their age group such as that which has occurred at the Thompson School, a preschool center created last year at the north end of the city. The director of special education recommended to the School Committee that the Meadowcrest site would be more suitable for these preschool programs. Tr.Vol.V.pp.137-142. Vol.IV pp.17-18; Vol.V.p.62.
- The reorganization calls for the transfer of two special education elementary-level classes presently located at the Oldham School. S.C.Ex.B. One of these classes will be placed at the Whiteknact School pursuant to the reorganization approved by the School Committee. At the time of the hearing before the Commissioner's designee, final plans for the placement of the other class had not yet been made. Tr.Vol.V pp.119-125.
- Construction of a major addition and renovations at East Providence High School are presently incomplete. At the time of hearing, architectural design of the addition was completed, soil borings and testing were completed, and the digging of the foundation was begun. The project has a contractual completion date of November 1, 1999 and the Superintendent testified that this is the expected date of occupancy of the addition. Tr. Vol.VI pp.53-57.

- Pending completion of the project, which includes a substantial number of additional classrooms, the School Committee authorized use of a contingency plan to accommodate the nearly five hundred additional students who would be ninth graders in attendance in September. S.C.Ex.B Appendix IV; Tr. Vol.VI pp.59-60; Tr.Vol.VII pp.107-111. With the decision of the school Committee to place 147 high school students at an alternative education site at Watters School, the contingency plan for the high school involves fewer students and will not require use of either the gymnasium or cafeteria for instructional purposes. Tr. Vol.VII p.150. Creation of a temporary alternative program at Watters was approved by the School Committee on May 27, 1999.
- Expansion of the existing special education program at the high school is projected for September, 1999. This expansion is necessitated in part by the higher number of children with special needs who will be enrolled there, as well as by the need to address existing regulatory violations identified for the School Committee in the reorganization proposal submitted on February 11, 1999. (See “Unmet Needs” in the description of the proposed high school program, S.C.Ex.B.)
- The contingency plan does not specifically address placement of these additional special education classes. Where these classes will be accommodated has not yet been determined. S.C.Ex.B; Tr.Vol.V pp. 147-152. Although no specific determination has been made, the Superintendent has indicated that placement of special education students will be a priority.

Positions of the Parties

The Appellants:

The appellants contend that the recent decisions with respect to the reorganization of the East Providence school district have not been based on educational benefit to students, in particular general education students at the elementary level. It is their position that without good reason, a small, exemplary school like Meadowcrest is being closed and its students placed at a larger facility. Meadowcrest students will leave the nurturing environment of a small school to go to Waddington where their numbers will strain the school's capacity and increase traffic hazards. Class sizes at Waddington will be increased and placed near the contractual limit. The result is that there will be no space in these classes to accommodate the mainstreaming needs of special education students. Also there will be no capacity in these classes to accommodate increased student enrollment that should be anticipated, given housing construction taking place at the present time. The appellants argue that if enrollment does increase, or if other classes are placed at Waddington, it will result in the loss of space presently used for computer instruction, music, and other programs that have been substantial factors in making the educational program at Waddington School one of quality.

The appellants contend that Phase II of the reorganization, if implemented in September, will be a disaster at the high school. This could be avoided, they point out, if construction of the addition were completed prior to the introduction of several hundred additional students there. Overcrowding will occur, it is argued, and contrary to the representations made by the Superintendent, the resulting chaos will interfere with the education of students, particularly special education students. The appellants do not agree

that the situation at the high school will be one of mere temporary inconvenience, but argue rather that it will create a situation of irreparable harm.

The appellants argue that the decision making process of both the Superintendent and the School Committee were flawed. The Superintendent failed to seek appropriate input prior to making his recommendation. Not only were teachers and parents not consulted, but even the principals at schools which would be affected were not included in the planning of Phase II. At the time of their vote, the members of the School Committee had before them what is characterized as a hastily-drawn, incomplete and inaccurate proposal. It did not even indicate where significant numbers, even entire classes, of students would be relocated. In addition, the proposal submitted inaccurately represented that Phase II would result in a cost reduction of 1.8 million dollars when in fact the major portion of this savings resulted from Phase I of the reorganization.

Yet, the appellants point out, the committee chose to deliberate for a period of less than one month before approving the major changes called for by the proposal. When pressed concerning their lack of knowledge as to where the ESL students would be transferred, or where two special education classes would be placed, members of the school committee indicated that they did not feel knowledge of such details was necessary to the proper performance of their statutory duties. The appellants view this lack of knowledge, and the committee's reliance on the Superintendent to work out such details, as an improper delegation of authority to the Superintendent. They further argue that such action breaches the fiduciary duty of School Committee members to ensure that their decisions promote the educational welfare of all public school students.

The East Providence School Committee:

Counsel for the School Committee argues that the decision of March 3, 1999 results from careful consideration of all pertinent facts involved in this reorganization. Committee members reviewed the proposal and deferred action on the Superintendent's recommendation from February 11 to March 3, 1999. In the intervening time they "did their homework"- solicited and received input from staff, parents and members of the community. They viewed the school sites involved. It was only after careful review and analysis of this information that the members of the committee voted to implement the modified reorganization proposal which was presented to them on March 3, 1999. Although they may not have had before them the specifics as to where each and every class and student in the district would be relocated, they relied on the Superintendent as their chief administrative officer to work out the details. They had sufficient information to weigh the merits of the proposal and make an informed decision.

The committee recognized that its decision would involve transitioning students to new schools. It was aware that its decision would result in a temporary period of inconvenience at the high school; however, the benefits of having a reorganized system sooner rather than later outweighed the obvious disadvantages.

The "debate" as to Phase II focused on just some of these educational benefits. Additional in-district programs created for preschool special education students, at risk students and the restructured program for ESL students responded to unmet needs and addressed priorities which had been set. The opportunity to meet these needs within existing facilities was presented by the anticipated transfer of the remaining sixth grade

classes to the newly formed middle schools. Counsel argues that the educational and financial benefits identified in the record constitute the “good cause” required for closing of schools under state law. The committee’s decision has not been shown to violate state law, regulation or a statewide policy, nor has it been shown to be arbitrary or capricious. Under such circumstances, it must be reaffirmed by the commissioner.

DECISION

It should be made clear at the outset that this decision addresses only those reorganization issues which have been raised by the Appellants and does not address the validity of elements of the reorganization not before the Commissioner at this time. The vast and complex nature of the reorganization is evident in the record, and the focus of the Appellants on only certain issues raised by the School Committee’s decision limits our review to those issues.

The initial question presented is whether the decision making process of Superintendent Herbowy and the School Committee violated state law and in particular R.I.G.L. 16-2-9.1, entitled Code of basic management principles and ethical school standards. This law requires that school committees adopt (and, implicitly, follow) a code of basic management principles. Among the enumerated principles is the obligation to act on legislative and policy-making matters only after examining pertinent facts and considering the superintendent’s recommendations. Additionally, the code requires school committees to accept and encourage a variety of opinions from, and communication with, all parts of the community. Specifically, the appellants contend that the Committee violated both the letter and spirit of these provisions in that meaningful input on Phase II of

the reorganization was neither solicited nor encouraged from key members of the educational community - principals, teachers and parents.

A review of the record in this case would indicate that the decision-making process employed by the School Committee complied with Section 16-2-9.1 of the General Laws. After their receipt of the Superintendent's proposal on February 11, 1999 members of the Committee actively sought out additional information and received input from administrators, staff and parents. Members of the Committee visited school sites, met with staff at the schools, and received questions from concerned parents. At its formal meetings, the committee received comment from numerous parents who questioned both the facts and the merits of the Superintendent's recommendations. Although in disagreement with key elements of the Superintendent's proposal, the East Providence Teachers Association chose not to present its objections to the School Committee either at its meetings or by formal communication to the Committee. The record indicates that the teachers union had opportunity to be heard on its objections prior to the committee's vote. For reasons set forth in the record, the union chose to raise its objections in another forum after the vote to approve Phase II took place.

What is demonstrated in the record of this case is that the Superintendent's decision as to what his recommendation and proposal to the School Committee would be was based on the general direction previously given to him by the school committee, his research and analysis of data, and consultation with his own management team. It did not include input from those outside central administration. Although the Superintendent testified that he did schedule meetings with teacher and parent groups prior to presenting his proposal to the School Committee on February 11, 1999, it was evident that the purpose of those

meetings and visits was to share with those groups what his decision was, not to receive input on what it would be. This may have been due to the fact that the prospect of consolidating and closing schools, always a controversial issue, was clearly raised as an option by the removal of all sixth grades from the elementary schools. It is clear from his testimony that Superintendent Herbowy viewed his responsibility to be to make his professional recommendation to the School Committee, and at that point the committee could receive input from the various segments of the community and respond accordingly. The appellants argue that input at this point is a “minimalist gesture” and insufficient to comply with Section 16-2-9.1. We do not construe 16-2-9.1 to require input at earlier stages of the decision making process. While a “bottom-up” consensus-based approach may be utilized by some superintendents in making some decisions, state law does not require it. Thus, although the appellants have shown that the Superintendent utilized a “top down” somewhat insular approach to decision making, there is no legal obligation for him to do otherwise.

We conclude that the proposal was accurate and comprehensive enough to form a proper basis for decision making by the School Committee. The budgetary savings of 1.8 million was tied to the reorganization in its entirety, not exclusively from Phase II, as is argued by the appellants (Exhibit B, page 23). While the enrollment projections for the combined Waddington/Meadowcrest populations were lower than the actual numbers, the difference has not been shown to affect the conclusion that all of the Meadowcrest students could “fit” in the Waddington School in the existing classroom space. Even with the class-size numbers provided in Exhibit B, the fact that some of the classes already approached maximum class sizes was before the committee.

It is true that the written proposal did not indicate where one of two special education classes presently at Oldham School would be relocated. We infer from the record that the failure to make provision for the relocation of this class was a planning oversight. The special education director testified that she is in the process of determining placement for the ten students involved. Knowledge of this situation was not essential to the committee's understanding of the basic elements of the reorganization proposal. There is no evidence in the record that even with the consolidation that will take place, there is no adequate and appropriate classroom space for this class. Under such circumstances this flaw in the proposal does not invalidate the committee's decision to approve it.

The Commissioner's review of the substance of the committee's decision is de novo. Rulings by our Supreme Court, as well as the Board of Regents, have affirmed our authority to make an independent judgement based on consideration of the facts and applicable law. As discussed in the recent case of Spohn v. Newport School Committee,³ the Commissioner has sought to exercise independent judgement in such cases consistent with those provisions of Title 16 which give local school committees the authority to control the public school interests of their respective cities and towns. The Commissioner has thus exercised his independent judgement with restraint, overturning the decision of a local school committee only when the committee's decision is not reasonable or is contrary to state law, regulation, or statewide educational policy. We find in this case that none of these prerequisites to overturning the East Providence School Committee's decision is present.

The decision to go ahead with the placement of all ninth graders at East Providence High School in September, 1999 was in part based on the assessment that their educational

needs could best be met there. It was also based on the need to create room at the two junior high schools in order to move forward with the creation of middle schools. With the facility still under construction, extraordinary measures for accommodating these additional students will have to be taken. As it has turned out, the School Committee's May 27, 1999 decision to utilize the Watters School for an alternative education setting for some of these students resolves the space issue to some degree. Evidence shows that the present contingency plan does not call for use of the gymnasium or cafeteria for instructional purposes. Although the contention of irreparable harm to students at the high school has been made, it is not supported in this record.

The decision to close the Meadowcrest School and utilize the facility as a preschool center for special education has also been shown to be a reasonable exercise of the School Committee's authority. The placement of all remaining sixth graders at the two middle schools created space at both Waddington and Meadowcrest. There was a need to use this space effectively. Rather than place preschool special education classes at an elementary school, the Committee chose to accept the recommendation of its special education director to create a preschool center at Meadowcrest on the model of the Thompson School, i.e. integrating special education preschool children with Head Start, ESL, and regular education preschool-age children. Integral to this decision was the closing of Meadowcrest as an elementary school.

Issues of classroom space and class sizes at the Waddington School result and the potential for loss of programs which enrich the quality of the educational program exist. The record at this level clearly focuses on these disadvantages to the school committee's decision. The potential for such program adjustments, however, does not undermine the

³ Decision of the Commissioner dated October 7, 1998, N.B. pages 11-12 of the decision.

reasonableness of the action of the school committee nor do we find such mere potential to be a compelling reason to overturn the decision. The decision prioritizes the needs of the district and allocates limited resources to meet those needs. It is precisely the type of decision that is within the statutory authority of the school committee to make under R.I.G.L. 16-2-9.

In summary, the committee's decision was reasonable. The closing of Meadowcrest was based on good cause. Even with the disadvantages of consolidation highlighted in the record at this level, they are not compelling enough to cause us to overrule the committee's decision.

Given the evidence in the record concerning present regulatory violations in the special education program at the high school, Robert M. Pryhoda⁴ is appointed special visitor. The role of the special visitor will be to determine whether the expansion of the special education program or other measures employed by the school committee remedies the regulatory violations identified in the record and noted in this decision. A compliance report from the special visitor must be filed with the Commissioner no later than November 1, 1999.

Kathleen S. Murray, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

June 17, 1999

DATE

⁴ Or his designee.