0001-03

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

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Beverly L. v. Pawtucket

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DECISION

Held: The petitioning parent is challenging the adequacy of the vocational education program being offered to her son by the public schools of Pawtucket. Petitioner also argues that the State of Rhode Island and the Board of Regents should be made parties to this hearing. Petitioner's appeal must be denied and dismissed. This matter is remanded to Pawtucket school authorities for the preparation of a written vocational education program for this student. If the petitioner objects to this plan she has leave to pursue appropriate appellate remedies.

DATE: February 11, 2003

Travel of the Case

The petitioning parent is challenging the adequacy of the vocational education program being offered to her son by the public schools of Pawtucket.

Jurisdiction

Jurisdiction is present under R.I.G.L.16-39-1, R.I.G.L. 16-39-1 and the Vocational Education Regulations of the Board of Regents.[1] While this matter may, arguably, be more appropriately the subject of a special education hearing, it is clear that under Rhode Island law a parent may use the regular education appeal route to adjudicate special education issues.[2]

The Parties to this Case

The petitioner in this case is the mother of a special education student who contends that the Pawtucket school system has failed to provide her son with a free appropriate public education because, in her view, Pawtucket has failed to provide her son with a "hands-on" vocational education. The respondent is, of course, the School Committee of Pawtucket. Petitioner also argues that the State of Rhode Island and the Board of Regents should be made parties to this hearing, since she wishes to raise federal and state statutory and constitutional challenges to the general manner in which vocational education is provided in the state of Rhode Island. We, of course, must address the argument that other parties must be joined in this case.

Joinder of other Parties

The petitioner has failed to provide notice of this appeal to the Office of Attorney General or to the Board of Regents. These facts alone mean that neither the State of Rhode Island nor the Board of Regents, (assuming the dubious premise that we would have jurisdiction over these entities) is before us in the present case.

What petitioner is attempting to do by suggesting that the State and the Board of Regents be added to this case is to convert this hearing into a "home brew" "do-it-yourself" *pro se* class action brought on behalf of all students in the state of Rhode Island. The present record, however, fails to indicate the existence of most of the elements necessary to support such a

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[1] See: *In Re: Joseph S.*, Commissioner of Education, July 26, 2002. See: RI Vocational Regulations, Section IV, C, 7.

[2] *In re Michael C.,* 487 A.2d 495 (R.I.1985)

class action. A very basic introduction to the subject of class actions is contained in the following excerpted language:

> The most common type of multi-party action is the class action, about which books have been written and which can only be described briefly in these pages. In general terms, a class action is a lawsuit in which one or several named plaintiffs sue on behalf of a large group of people who are not formally named in the suit. Cases can proceed as class actions only if the court approves the class under the specific criteria set out in Rule 23. The class action device is authorized only when the named individuals have claims of fact and law in common with the other members of the class; where the class is too large to require all class members to be individual plaintiffs in the law-suit; where the named individuals' claims are typical of those of the absent members; and where the named individuals' claims are typical of those of the absent members; and where the named individuals' claims are typical of those of the absent members; and where the named individuals *and their attorneys will fairly and adequately represent the members of the class* (Rule 23(a)). [Emphasis added]
>
> Adequate representation is essential because, under the Due Process Clause of the Constitution, no one can be deprived of a legal claim unless that person has his or her day in court. Due process is served if another person in the same position brings a claim encompassing the claims of the class, and the court finds that the other person is able to represent everyone adequately. This principle is most often invoked in class actions where only the named plaintiffs are actually bringing the claims, and so the court must find that *both the named parties and their lawyers are adequate representatives for those not present.* (*Emphasis added)*

We doubt, as we have already stated, whether any of the elements requisite for a class action are present in this case—but there is no need to discuss this issue in detail because the petitioner, by legal definition is not qualified to provide the proposed class with *adequate representation*. This is because the petitioner is not an attorney, so any attempt on her part to represent anyone other than herself is prohibited by law. We therefore must, in the present case, decline to hear or rule upon any claims other then those claims relating to the education of the petitioner's own son.

We recognize, of course, that the petitioner *is* providing representation to her own son in this matter. We think however that this sort of limited representation is allowable under the commissioner's authority to hear disputes in educational matters. The applicable statutes (R.I.G.L.16-39-1 and R.I.G.L. 16-39-1 date back to the Barnard Act of 1845, which contained this provision:

> **§ 26.** Any person conceiving himself aggrieved in consequence of any decision made by any school district meeting, or by the trustees of any district, or the committee of any town, or by a county inspector, or concerning any other matter arising under this act, may appeal to the commissioner of public schools, who is hereby authorized and required to examine and decide the same: and the decision of said commissioner, when approved by any judge of the supreme court, shall be final and conclusive.

The comments contained in the proposed Barnard Act of 1845 clarify the purpose of this legislation:

> Remarks. The liberty of appeal here given in the incipient states of any controversy arising among the inhabitants, teachers and officers of any district or town, to a tribunal which ought to be abundantly competent to decide finally all matters growing out of the operation of laws relating to public schools, without cost or delay to the parties, will harmonize many conflicting interests and differences of opinion before they have ripened into bitter neighborhood feuds, and protracted and expensive litigation.
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> This feature is taken from the New York school system, where it has been productive of very beneficial results, and been the means of dispensing equal, exact, cheap and speedy justice, by the adjustment of various differences incident to the work of a system comprehending so great a diversity of interests.[3]

Chief Justice Ames, in one of the first Rhode Island cases to construe this law, held that it made the commissioner a *visitor* in school matters with authority to operate a *forum domesticum* to resolve disputes *sine strepitu*.[4] The commissioner of education, therefore, under R.I.G.L.16-39-1 and R.I.G.L. 16-39-2, exercises *visitatorial*[5] or, in more modern language,

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[3] Journal of the Rhode Island Institute of Instruction for 1845--6, edited by Henry Barnard, Commissioner of Public Schools, Providence 1846, page 113, et seq. (VIII, Draft of an Act Respecting public schools, with remarks explanatory of its provisions.) The Rhode Island Supreme Court has held that in construing a statute that has been taken from another state, decisions of that state are entitled to great weight. *Fleet National Bank v. Clark*, 714 A.2d 1172 (R.I.,1998)

[4] *Appeal of Emor Smith*. I R.I. 590 (1857).

[5] In reference to the jurisdiction of the commissioner the Rhode Island Supreme Court has said: "The summary jurisdiction of visitors of academic bodies…[was], at the adoption of the constitution, as well known in this state and in all other countries of the common law, as the equity, admiralty, and probate jurisdictions…. All these special jurisdictions have for ages, each in its appropriate sphere and in its distinctive method, administered justice side by side with the common law courts…." *Crandall v. James*, 6 R.I. 144 (1859) ["Summary", in this context, means a non-jury trial. (See: Blacks Law Dictionary)] It is interesting to note that the attorneys in *Crandel v. James*, were prominent school reformers of the times. In fact, one of these attorneys was E.R. Potter, Rhode Island's second commissioner of education (and perhaps a co-drafter of the 1845 Barnard School Act).

supervisory authority of Rhode Island public education.[6] We have no doubt that in the commissioner's "*forum domesticum*" parents—while not having the right to represent other peoples children—do have the right to represent their own.

The petitioner's motion to add other parties to this appeal is therefore denied, but the appeal may continue under the allegations related to petitioner's own son. We now must make findings of fact and conclusions of law:

Findings of Fact

1. The Davies Career and Technical High School, a state funded Regional Vocational School, receives students from a number of school districts, including Pawtucket. Students are admitted to Davies in two different ways. The most common way to be admitted to Davies is by way of the regular admissions process. This process is based on assessments of basic skills needed to function in the Davies ninth grade program and a lottery conducted when there are more qualified applicants than seats available. All regular education students and most special education students and students with limited English proficiency who are admitted to Davies are admitted through this process.

2. An alternative admission procedure exists for special education students and students with limited English proficiency whose disability, or English language skills, impact on their ability to compete for admission to Davies School, and who may benefit from placement at Davies. These admission procedures provide these students with alternate means to demonstrate that they are qualified to participate in the Davies program, with accommodation and modifications.

3. The Pawtucket special education student in this case is about to enter his first year of high school. He has applied for admission to the Davies School, which is the area vocational school serving his area. But, because of class size limitations at the school, he was placed by lottery on the school's admission waiting list. If the student is not admitted to Davies he will attend the public schools of Pawtucket next year for his high school education.

4. The Pawtucket School Committee has not heard this matter.

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[6] New Jersey too copied its statute relating to the jurisdiction of the commissioner of education from New York. The New Jersey Supreme Court has held that its commissioner of education has "fundamental and indispensable jurisdiction over all disputes and controversies arising under the school laws"[6]

Conclusions of Law

1. Vocational education in Rhode Island is divided into two basic categories:

- ⇨ Vocational education provided by local school districts. These local programs must meet certain state standards, including the employment of properly certified staff.[7]

- ⇨ Rhode Island's system of regional vocational high schools, vocational centers, and skill centers. This regional system is arranged in a number of formats, serving different areas of the state.[8]

2. All students have a right to receive vocational education.[9] However, *Regional Vocational Schools* may establish reasonable non-discriminatory admission standards, and limit the number of students accepted.[10] If a student is not admitted to a regional Vocational school, he or she is still entitled to receive a vocational education from his or her own school district.[11]

Position of the Petitioner

The petitioner argues that her son needs "hands on" vocational education and that the vocational education program offered by the Pawtucket school district does not meet the needs of her son. She also argues that the Davies School has an obligation to admit all qualified students to its program and that the lottery mechanism used to apportion placements at Davies discriminates against Pawtucket residents.

Position of Pawtucket

Pawtucket submitted testimony that it was prepared to seek to place the petitioner's son in another area vocational center next year, and that it

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[7] Rhode Island Basic Education Plan , BEP—TOPIC—21
[8] The Metropolitan Regional Career & Technical Center serves the entire state.
[9] R.I.G.L.16-45-1.1(1)(a)
[10] R.I.G.L. 16-45-1.1 (d)(1), *Pawtucket School Committee v. Davies*, Commissioner of Education, 1995. Affirmed by the Board of Regents, 12 October 1995.
[11] *Katie F. v Pawtucket School Committee and the Davies School,* Commissioner of Education, April 1993.

was prepared to offer vocational education to the petitioner's son this year, and to eventually place him in a work-study vocational program.

Discussion

Vocational Education can be part of a special education student's free appropriate public education (FAPE) The regulations of the Rhode Island Board of Regents, which track federal special education regulations, state:

> 300.26 Special education
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> (a) General. (1) As used in these regulations, the term **special education** means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—
> (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
> ———————-
> (2) The term includes each of the following, if it meets the requirements of paragraph (a)(1) of this section:
> ———————--
> **(i) Vocational education** (emphasis added)
>
> (b) Individual terms defined. The terms in this definition are defined as follows:
> ———————--
> (3) **Specially-designed instruction** means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—
> ———————
> (5) **Vocational education** means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

The record in this case does not define whether this student is seeking vocational education in the form of modified instruction (i.e. as a program of special education) or whether he is seeking vocational education in the form un-modified instruction (i.e. regular education). The present record also does not contain information concerning any vocational or career assessments made concerning this student.[12] In the end the petitioner offered no evidence, other than her own conclusionary assertion, that Pawtucket could not or would not provide her son with an appropriate vocational education. A binding decision from the Board of Regents forecloses the petitioner's

[12] See: 300.31 Vocational/Career Assessment

arguments that Pawtucket is discriminated against in the allocation of student slots in the admission lottery.[13]

Conclusion

Petitioner's appeal must be denied and dismissed. This matter is remanded to Pawtucket school authorities for the preparation of a written vocational education program for this student. If the petitioner objects to this plan she has leave to pursue appropriate appellate remedies.

Forrest L. Avila, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

February 11, 2003
Date

[13] *Pawtucket School Committee v. Davies*, Commissioner of Education, 1995. Affirmed by the Board of Regents, 12 October 1995.