

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

Lynda Avanzato et al.

v.

North Kingstown School Committee

.....

DECISION

Held: The decision of the North Kingstown School Committee to transfer kindergarten students to neighborhood schools, relocate the fourth and fifth grades of Davisville Elementary School to Quidnessett Elementary School and redefine the geographic boundaries of the attendance areas of Quidnessett and Wickford Elementary was reasonable. The Committee's decision to place two special education preschool classes at Davisville was arbitrary and capricious.

DATE: February 11, 2003

Travel of the Case

This dispute was referred to the undersigned for hearing and decision subsequent to the May 22, 2002 decision of the North Kingstown School Committee to reorganize its elementary school program. Letters of concern and complaint from several parents of affected children in the North Kingstown school district evolved into numerous letters of appeal to Commissioner Peter McWalters. A request was made to consolidate the appeals of seventeen parents. No objection to the proposed consolidation was received, and on June 20, 2002 the hearing officer requested that a consolidated letter of appeal be submitted on behalf of all the appellants. On July 11, 2002 a consolidated letter of appeal was submitted which set forth allegations that the North Kingstown School Committee's (hereinafter the "Committee") decision violated law, was substantively unreasonable, arbitrary and capricious and followed a defective and unfair process.

The matter was heard over the course of several days from July 16 to August 23, 2002. The record closed upon the receipt of written memoranda submitted by both parties on November 6, 2002. Decision in this matter has been expedited because of a perception that resolution of the dispute will clarify certain issues that have arisen in the North Kingstown school community and may assist the Committee as it proceeds to address issues involved in further reconfiguration of North Kingstown schools.

Issues:

Did the Committee utilize proper procedures in adopting the May 22, 2002 plan?

Was the Committee's decision reasonable and consistent with state law, regulation, and statewide educational policy?

Findings of Relevant Facts

- On May 22, 2002 the Committee voted to adopt a plan which called for the transfer of all kindergarten students in the district to their neighborhood schools, relocation of the fourth and fifth grades of Davisville Elementary School to Quidnessett Elementary School, redistricting of some Quidnessett students to Wickford Elementary School and placement of the special education preschool program at Davisville Elementary School. App. Ex. 11.
- Prior to its May 22, 2002 vote to approve this plan, the Committee had solicited parental participation in "focus group" discussions and had facilitated those discussions. The purpose of the focus groups was to consider two reconfiguration plans proposed by the

school administration as well as to develop possible alternative proposals which would meet the objectives set forth in the April 22, 2002 letter to parents¹. App. Ex. 16.

- At its May 1, 2002 meeting the Committee established a timeline, issues, values and criteria to evaluate proposals on the topic of reconfiguration. The timeline called for the Committee to finish formulating its plans from all of the ideas and plans presented by May 15, 2002, to conduct a full open forum on May 20, 2002, and to vote on reconfiguration at its May 22, 2002 meeting. App.Ex. 5.
- As of May 15, 2002 the Committee still had fourteen plans before it for consideration, although it had discussed many of the plans and narrowed down the number of viable plans to three – Plans 13, 14, and 7 (without moving Wickford Elementary School to Fishing Cove School). App.Ex.9; Tr.1730.
- During the process of considering various proposals, the Committee, through its chair, had stated that the Committee was not restricted to any one plan, and could develop an entirely different or new plan. Tr.721; 1730;
- As the Committee moved closer to the date scheduled for its vote on reconfiguration, May 22, 2002, committee members perceived public consensus on a long-term plan to be a neighborhood school concept, with seven elementary, K-5 schools. Tr. 716, 1730-1731, 1883-84; at least five members of the Committee indicated they share this vision for the long-term reconfiguration of North Kingstown elementary schools, if and when sufficient financial resources are appropriated to support such a configuration. App.Ex.11.
- On May 20, 2002 an open forum was held on the subject of reconfiguration; at that meeting the Committee received another proposal (the Stinson proposal) described as a “short-term solution” and a variation of Plan 5 (although it called for Wickford Elementary School to remain open); in discussion, members of the Committee noted some negative aspects of the proposal and dismissed it. App.Ex.10.
- Subsequent to the May 20, 2002 meeting of the Committee the Superintendent talked to members of the Committee personally and determined that a majority of the Committee did not support any of the three remaining proposals; he developed and circulated another proposal to the members of the Committee on May 21, 2002. Tr. 1291-1293; 1736-1737.
- The plan developed by the Superintendent and which had been circulated to the members of the Committee was not distributed to the public, nor was its existence mentioned until after the open forum at the beginning of the May 22, 2002 meeting; the handout which was made available to the public at the beginning of the meeting noted

¹ The April 22, 2002 letter also identified problems which should be addressed by the focus groups as well, e.g. overcrowding of some schools coupled with ample space in others, lack of accessibility of all schools to the handicapped, etc.

that there were “three remaining proposals for grade reconfiguration (plans 7, 13 and 14)...” App. Ex. 11 and 24; Tr. 1327-1328;

- After the new plan was distributed to those attending the May 22, 2002 meeting, several people from the community asked to be allowed to comment on the plan but were not permitted to do so until after the vote of the Committee. Tr. 188, 421, 1098-1099;
- The protocol for business meetings of the Committee is to start with an open forum, followed by the business agenda. The public is not allowed to comment as the Committee acts on the items on its business meeting agenda. Comment on matters before the committee is usually received when the item is on the agenda of a work session of the Committee. Tr. 1706-1707.
- The May 22, 2002 plan approved by the Committee was substantially different from all of the plans which had been identified as viable and had been the focus of the Committee’s prior discussions.² App. Ex. 7-11;
- The May 22, 2002 plan closely resembled the plan proposed by Glenn Stinson on May 20, 2002, which had been discussed by the Committee at that time; the May 22, 2002 plan differed from the Stinson plan in that it called for the redistricting of different students and proposed that the preschool special education program previously operated at the Fishing Cove School be placed at Davisville Elementary School. App. Ex. 10 and 11.
- Both educational and budgetary benefits of transferring the district’s kindergartens from Fishing Cove School back to neighborhood schools had been identified prior to the Committee’s May 22, 2002 vote. App. Ex. 1 and 2.
- The Davisville Elementary School Advisory Committee, together with other groups and individuals from the Davisville school community, had requested that, assuming the overcrowding of Davisville was relieved in some way³, Davisville kindergarten students be relocated from Fishing Cove School to their neighborhood school even if other kindergarten children remained at Fishing Cove in the 2002-2003 school year. The group identified specific programmatic and educational benefits which would accrue if Davisville kindergarten students attended their neighborhood school. App.Ex. 2.
- Davisville Elementary School was extremely overcrowded during the 2001-2002 school year, to the extent that it impacted on the safety of students and the adequacy of the educational program at the school. Tr. 1160-1163; S.C.Ex. 21 (SALT report of Davisville Elementary School, May 10, 2002).

² Plan Number 3 would have called for the same action the Committee had previously approved on March 27, 2002, and later rescinded, i.e. kindergartens to neighborhood schools, Davisville grades four and five to Quidnessett. Plan Number 3 was not identified as a viable plan after the Committee’s discussion at its May 13, 2002 work session. App. Ex. 7 and 8.

³ the group had provided the Committee with a position statement on March 27, 2002 which recommended placing Davisville grades 4 and 5 at Quidnessett to reduce the school population. App.Ex.2.

- The relocation of the special education preschool program to Davisville Elementary School, as called for by the May 22, 2002 plan, would essentially have closed Fishing Cove School for school year 2002-2003. App. Ex. 11;
- The relocation of the special education preschool program to Davisville Elementary School in the 2002-2003 school year would have placed these students in an inappropriate setting. Tr. 902-903; 2016. Such placement also would have been contrary to the specific recommendation made by the Davisville School Advisory Committee in its position statement of March 27, 2002. App.Ex. 2. The May 22, 2002 plan called for such placement not because of the suitability of the site, but because of the Superintendent’s perception that more members of the Committee would support the May 22, 2002 Plan if it identified a specific location for the preschool classes. Tr. 1303-1304.⁴ The Superintendent had developed the compromise plan because certain action needed to be taken for 2002-2003.
- The plan approved by the Committee on May 22, 2002 impacted space at all the district schools, making space at some of the schools tight and requiring the reutilization of special purpose rooms as classrooms in some cases. It does not provide substantial room for growth⁵ in any of the schools; ⁶ App. Ex.11; Tr. 945, 1493, 1640-1649; 1672-1688; 1800-1803; 1826-1834.
- The North Kingstown Town Council reduced the school committee budget for 2002-2003 by approximately \$275, 000 because of a reduction in the amount anticipated from state school aid. Tr. 549, 562, 574.
- The closing of Fishing Cove School was projected to save approximately \$250,000. App.Ex. 1, 2, 6 and 12.
- The budget submitted by the Committee to the town of North Kingstown is an expenditure budget and does not show revenues anticipated to be received in the course of a fiscal year. Tr. 1349; App.Ex.34 and 36; Revenues allocated to the Committee during the fiscal year are reflected in the town budget and do not include monies anticipated to be received as Medicaid reimbursements during the year. App Ex. 33 Tr. 546-552.

⁴ Members of the Committee who voted for the plan testified that they understood the preschool program’s placement to be tentative at the time of their vote. Testimony at the hearing indicated that the ultimate decision of the Superintendent was to locate the preschool special education program at Fishing Cove School in 2002-2003, in conjunction with a YMCA program, Head Start and some other district programs. Tr. 1214-1221.

⁵ especially in the nature of available classrooms

⁶ whether there is a need to provide room for growth at all, in the existing schools, or whether a shift in population would make a more appropriate solution the construction of another school in the southern part of the town where the population is growing was the subject of testimony and other evidence at the hearing. Resolution of the factual dispute on this issue was not found to be necessary because of the “short term” nature of the school committee’s plan.

- Over the past several years, the Committee has received Medicaid reimbursements because it has expended monies which are reimbursable expenses under this federal program; such reimbursements are reflected as negative expenditures in the actual expenditures calculated for school department expenses. App. Ex. 35 and 36; Tr. 1354-1357; As a result, the number reflecting actual total expenditures for the year is a net number. App. Ex. 35 and 36.
- The receipt of Medicaid reimbursements by the Committee has historically been offset during the fiscal year by expenditures for unbudgeted increases in special education costs so that the receipt of such reimbursements has not historically resulted in a significant surplus of funds allocated to the Committee. Tr. 1353-1354, 1366; 1789.

Positions of the Parties

The Appellants

The post-hearing memorandum of the appellants sets forth several grounds on which they seek to have the Committee's May 22, 2002 decision declared arbitrary, capricious, unreasonable and contrary to law and policy. While the appellants do not argue that the decision should be rescinded, since the parties are at this point already well into the 2002-2003 school year, they do seek the appointment of a special visitor to oversee the Committee's formulation of a new reconfiguration plan to take effect in the 2003-2004. The decision is argued to be flawed both procedurally and substantively. The appellants argue that:

- ❖ The Committee failed to disclose the May 22, 2002 proposal to the public in attendance at the meeting so that parents and other affected persons could comment on it and have input prior to the Committee's decision.
- ❖ The Committee actively misrepresented the alternatives it was considering at that meeting by distributing to the public at the beginning of the meeting a document which described three "remaining proposals" being considered by the Committee, none of which was the plan under consideration.
- ❖ The Committee adopted the May 22, 2002 plan without any prior debate, a fact which, coupled with certain statements attributed to two members of the Committee, establishes that a consensus in favor of the Plan was reached by Committee members before the meeting.
- ❖ The May 22, 2002 plan demonstrates an illegal abdication of the statutory duty of the Committee to oversee and provide for an appropriate preschool special education program. Committee members' testimony is argued to establish that they viewed the matter of placement of the preschool program to be completely delegated to administrative staff. Nonetheless, at the May 22, 2002 meeting the Committee

created a misimpression that they were, in fact, deciding that the preschool program would be located at Davisville Elementary School in the subsequent school year.

- ❖ The Committee not only should have made a decision on the preschool program on May 22, 2002 when the other elements of the reconfiguration plan were determined, but its failure to do so left the decision up to an administrative process that was arbitrary, was not based on relevant facts such as the program's facility requirements, or even took into account available input from parents of these students. The appellants note the contradictory testimony of representatives of the administration as to where certain components of the program would be offered next year, and whether or not there would be a "transition into kindergarten program" offered in the 2002-2003 school year.
- ❖ Although the administration argued that reductions in the amount of anticipated state education aid, and the resulting cut of the Committee's budget by the Town Council, justified the closing of the Fishing Cove School, this reduction had occurred in previous fiscal years and had not warranted such action. The appellants argue that the fiscal picture presented by the Committee to the public is clouded by the fact that the Committee's budget does not include projected revenues, but only expenditures. Budgeted expenditures include some that are in fact reimbursable under the Medicaid program. The amount of the reimbursements is reflected as a negative expenditure in the total of actual expenditures. Therefore, such reimbursements are actually concealed revenues. The Committee actually expends a total sum which exceeds expenditures approved in the budget. Such inaccurate budgetary information misled the public during its consideration of information related to the reconfiguration of schools.
- ❖ The transfer of all kindergarten students to their neighborhood schools was arbitrary, capricious and unreasonable. Such decision was based on perceived educational benefits which were not supported by any scholarly research presented to the Committee. The result of this aspect of the Committee's decision is to overcrowd the elementary schools and leave no room for growth. At some schools, the addition of kindergarten students has caused the loss of such valuable resources as a computer room, separate art and music rooms, and has required the conversion of library space to create another classroom.
- ❖ Resolution of the overcrowding problem at Davisville Elementary School was accomplished in a way which resulted in Davisville being "stripped" of its fourth and fifth grade students. The school advisory committee consensus on this measure was not truly indicative of what the school community wanted, but resulted from the "Administration's control and manipulation of the debate" early on in the process. Many members of the Davisville community sought to explore other options to address the overcrowding problem, yet, it is argued, the Administration remained fixed on the transfer of the school's fourth and fifth grades out of the school, because of the Superintendent's desire eventually to "pair" the district's schools.

- ❖ If one were to compare the criteria established by the Committee to evaluate reconfiguration proposals which were developed at its May 1, 2002 work session, the May 22, 2002 plan is consistent with few, if any, of these criteria. The plan calls for the relocation and disruption of approximately four hundred and fifty students, with the prospect of further disruption when a long-term plan is developed. The plan, in overcrowding the elementary schools, will diminish the quality of the district's educational program. Particularly with respect to the preschool special education students, the Committee's complete delegation of the decision on relocation of the program to the Administration failed to ensure that it would be appropriately placed and operated in compliance with special education law.
- ❖ The Committee restructured major aspects of the elementary program of the district, when the only problem to be fixed was overcrowding at the Davisville School. This problem could have been addressed on a temporary basis until a long-term decision could be made by spot redistricting of Davisville students. If in fact, the elementary program would be strengthened by placing kindergarten students with other primary school grades and in their home neighborhoods, this step should have been taken when it would not have resulted in overcrowding of the district's schools.

The School Committee

The School Committee argues that it has fully implemented the plan called for in the Motion made by Committee member Carol Hueston on May 22, 2002. Four of the seven Committee members approved the steps called for in that motion as well as the redistricting of about thirty-nine students from Quidnessett to Wickford Elementary School as provided in the plan attached to the minutes. These measures have been implemented as a temporary solution to the issues that the Committee determined it had to address for school year 2002-2003.

The Committee also takes the position that procedurally and substantively, its decision has not been shown to be unreasonable, contrary to state law, regulation, or state-wide policy. Specifically the Committee argues that in addressing the four major issues facing the Committee in the spring of 2002 it sought and received community input, listened and responded to that input, and implemented a plan which was reasonable considering all pertinent facts. The Committee accomplished its immediate objectives, and deferred further decision making on a long-range reconfiguration of the district's schools. The Committee argues that:

- ❖ The first, and most pressing issue presented to the Committee was the overcrowding of the Davisville Elementary School. Early on in the reconfiguration process, the Davisville Elementary School Community went on record with its recommended solution to this problem. In a March 27, 2002 "Position Statement" the School Advisory Committee proposed that Davisville's fourth and fifth grades be relocated to Quidnessett Elementary School. The Committee listened and ultimately accepted this recommendation as the most reasonable option for a plan intended to be

- temporary. The other temporary solution rejected by a majority of the Committee was spot redistricting, a measure which had been utilized in the past and, while it addressed overcrowding, had created a separate problem of children not successfully integrating into their new school (Forrest Park).
- ❖ Reintegration of kindergarten students into their neighborhood schools was an issue that had been raised by the recommendations of the North Kingstown Growth Management Committee in 2000. It was also perceived that full day kindergarten, a direction in which the Committee was slowly proceeding, was best provided in the neighborhood school. The Administration again proceeded in a deliberate fashion, it is argued, and directed school principals to confer with school personnel, advisory committees and parents and report back the results of those discussions. The results were an endorsement of the action contemplated, i.e. returning kindergarteners to their neighborhood schools. In addition, the Committee requested a review and report on the current research that might affect its deliberations. The resulting report, as well as testimony from principals currently administering each of North Kingstown schools, further support the decision of the Committee. Although the return of the kindergarten children did require some modifications to space usage in the schools, all of the principals testified that they could accommodate the additional students with no negative impact on the educational program offered at each of the schools.
 - ❖ With respect to changes made to the special education preschool program, and other modifications to the special education offerings, again a deliberative approach was used – a process which involved the consideration of the various school sites, gathering input from parents through the SELAC organization and observation of a YMCA program in the city of Warwick, where a successful preschool program was in place. In the end, the flexibility accorded to members of the school administration by the Committee enabled special education personnel to review all options, from the point in time at which they knew what would happen with respect to the kindergartens and the Davisville fourth and fifth grade classes. They considered these options in light of the programming requirements set forth in the individualized education plans of these students. School Committee Exhibit No. 26, which sets forth the special education program and its various locations reflects enhanced programming, especially for the preschool students who will remain at the Fishing Cove School and benefit from interaction with their non-disabled peers in the YMCA program.
 - ❖ The long-term reconfiguration issue, the fourth issue confronted by the Committee in the spring of 2002, “defied a consensus resolution despite the forty plus hours of public hearing and countless hours put in by private citizens, school administration and school committee members”. The Superintendent’s assessment was that the Committee would not be able to resolve the problem of how to handle the shift in school population which had occurred in North Kingstown and even if there was agreement on the opening of a seventh elementary school, this could not be accomplished for the 2002-2003 school year because the budget submitted to the

Town Council did not incorporate the additional funding required for this. The Committee's adoption of a short term plan was, therefore, reasonable and recognized that certain issues had to be decided and the solution had to be within the budget that the Committee had created and submitted for fiscal year 2002-2003.

- ❖ Throughout the entire process, the Committee encouraged the opinion and communication from all parts of the community. It sought to make relevant institutional information available to the community so that it could have meaningful input into the Committee's decision making process. This was in fact accomplished, and the decision does reflect the community's input.

DECISION

On April 22, 2002 the North Kingstown School Committee, through its Superintendent James M. Halley, solicited the participation of parents in the district in the resolution of several issues which had been identified. The letter from Dr. Halley to parents stated:

The School Committee is asking each and every parent in the North Kingstown school district to become involved in helping to develop and implement long-term solutions that meet the objectives described above...

Both district objectives and "critical problems" were set forth in the April 22, 2002 communication to parents. The School Committee's effort to enlist the support of parents in this problem-solving process produced a large group of parents who sought to become as well informed as they could, to be as actively involved as the process would permit and to debate thoroughly the advantages and disadvantages of every proposed solution. It is not difficult to understand why under these circumstances parents perceived the Committee's actions at its May 22, 2002 meeting to be a complete setback in which they were not kept informed, not allowed to participate, and reduced by protocol to the status of mere bystanders in a process in which they had been so intensively engaged for several weeks. Not only could they not comment, but the public listened in silence as the Committee members adopted without debate a plan which was very similar to a plan which had been rejected after discussion just two days previously. Clearly, the open and participatory process that had been created by the Committee and embraced by the parents changed at the crucial point when the Committee considered and voted on a new plan.

It had been announced that the Committee had not ruled out any plan, could develop a new plan at any time, and that it *would make a decision on May 22, 2002*. However, as the process of consideration of the plans unfolded, public comment on each plan was received over the course of several meetings. Given the timeline formally adopted by the Committee with its provision that the Committee would finish formulating its plans from ideas no later than May 15, it was a reasonable assumption that there would be opportunity for public comment on all plans considered by the Committee. There was an inexplicable

failure to share the May 22, 2002 proposal with the public before it became *the plan* - to distribute it prior to the open forum portion of the May 22, 2002 meeting so that those in attendance could comment on it prior to the Committee's decision. Several members of the Committee testified that they did not understand why public comment was not received. The record does indicate the reason why public comment was not taken during the business meeting portion of the agenda, i.e. that this was the protocol routinely followed by the Committee. However, the record contains no explanation as to why the proposal which had been reduced to writing on May 21, 2002 was not distributed at the beginning of the meeting before the open forum was conducted. The effect was clearly to undermine the open and participatory process utilized by the Committee at all points previous in its deliberations.

The appellants argue that the legal implications of these facts are that the Committee violated certain provisions of R.I.G.L. 16-2.9.1 Code of Basic Management Principles and Ethical School Standards. Particularly they argue that subsections a(4) and (5) were not followed in that the Committee failed to make public relevant institutional information in order to promote communication and understanding between the school system and the community and failure to accept and encourage a variety of opinions from and communication with all parts of the community. As we have observed, on all occasions except the final meeting at which it voted, the Committee observed the principles of providing the public with relevant information and accepting and encouraging a variety of opinions. Because we find that the May 22, 2002 plan was distinct, in fact substantially different, from any of the preceding plans considered by the Committee, the Committee did not comply with the technical requirement imposed by these two sections of 16-2-9.1 in that it did not share very relevant information (the new compromise plan) and did not accept community input on this plan prior to its vote to adopt it.

Although it has not been argued, we must observe that the Committee approved the May 22, 2002 plan without receiving the Superintendent's recommendation, as required by subsection a(6) of this same statute, R.I.G.L. 16-2-9.1. The Superintendent's support for the proposal may have been obvious since he drafted it and circulated it to members of the Committee on May 21, 2002. However, the importance of him taking a formal position on the merits of this proposal as opposed to all the others the Committee had considered is pointed out in this case. The Superintendent's recommendation serves as the focus of debate, which did not occur here. The recommendation is a required prerequisite to school committee action and ensures that the Committee has the benefit of the Superintendent's expertise and analysis. It may be that in discussing the proposal with individual members of the Committee, Dr. Halley gave his informal recommendation, but it is our reading of this law that a formal, publicly-stated recommendation is required.⁷

A threshold issue in this case is determining what the Committee actually voted to do on May 22, 2002. In their post hearing memoranda, both parties argue that the

⁷ We would note that our review of the record indicates other votes such as the March 27 vote of the Committee to accept the Davisville Elementary School's recommendation to move grades 4 and 5 to Quidnessett, were not preceded by the Superintendent's formal recommendation. This vote was later rescinded.

Committee did not vote on the relocation of the preschool program, but rather voted to delegate this decision to the administration. We disagree. The motion approved specifically incorporated by reference an attachment to the minutes of the meeting. The attachment indicates that two “preschool handicapped classes” will be located at Davisville Elementary School. Fishing Cove School is not listed on the attachment at all, a fact which confirms that the preschool has been relocated from Fishing Cove School, effectively closing the school. Another notation on the attachment, the redistricting of a portion of the geographical attendance area of Quidnessett to Wickford Elementary School, was omitted from the motion. Although not mentioned in the motion, the transfer of approximately thirty-nine students from Quidnessett to Wickford Elementary School was clearly effectuated under the plan and discussed by members of the Committee after the motion and prior to the vote. Similarly, the placement of the preschool program at Davisville Elementary School was a step approved by the Committee on May 22, 2002 and was incorporated into its vote and decision.

While it may have been unprecedented for the Committee to vote on the location of special education classrooms in general and Committee members testified that they viewed such decisions as completely within the prerogative of the administration⁸ nonetheless in this case the decision on the relocation of the preschool program was placed squarely before the Committee for action which it took on May 22, 2002. It had previously deferred *its decision* on the placement of the preschool program to such time as other reconfiguration issues were addressed (See page 7 of the minutes of the April 24, 2002 meeting). The minutes of the May 22, 2002 meeting note under “Unfinished Business” that the subject of the preschool program for special education had “already been voted on” (since the Committee had approved the Plan earlier in the meeting). The Superintendent testified that improvement of special education programming and reconfiguration of these educational offerings was one of four major issues facing the Committee in the spring of 2002. It was one of the three major issues which had to be addressed on the short-term basis. Although the Committee could have decided to further defer its decision on placement of the preschool program in order to give additional time to explore all options under consideration, it is our conclusion that the Committee did not do so, but rather decided to place this group of students at Davisville.

Having identified the measures which we understand to have been voted on by the Committee on May 22, 2002, and having reviewed all substantive aspects of the vote under the applicable standard of review, it is our conclusion that the Committee’s decision was reasonable in all respects, except for its placement of the special education preschool program at Davisville Elementary School.⁹ Testimony and other evidence in the record demonstrates that relocation of preschool students is not going to occur. Rather, these students are going to continue to be educated at Fishing Cove School, under a revamped program involving the YMCA and Head Start programs. Given the de facto change in this

⁸ and it may under routine circumstances be appropriate to do so

⁹ The Commissioner’s review of the substance of the Committee’s decision is de novo. However, as described in the Commissioner’s decision in *Lusignan et al. v. East Providence School Committee* (June 17, 1999) the Commissioner traditionally exercises his independent judgment in such matters 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.

portion of the Committee's decision, an extended discussion of why we concluded that placement of the program at Davisville was arbitrary and capricious is not warranted. Clearly, a decision to place the program there was not based on facts that the site was appropriate or that a relocation to Davisville would improve programming for these children. The Davisville site was very soon found to be impracticable for this group of students. Also, as noted in our findings of fact, such placement was contrary to the specific recommendation made by the Davisville Advisory Committee in its position statement, which many members of the Committee who voted for the May 22, 2002 plan indicated was persuasive and key to their vote. The special education director testified that he was not consulted on placement of the preschool program at Davisville prior to the May 22, 2002 proposal (Tr.2066), and that he was "puzzled" as to how it appeared on the attachment that evening. Given these factors, it is our finding on the facts of this record that such placement would have been unreasonable, arbitrary and capricious.

We have not been presented with any arguments by the Appellants challenging the continued location of the program at Fishing Cove School, but their argument with respect to the Committee's abdication of its responsibility to oversee special education programs continues to apply to the most recent decision-making of the Administration. Staff have determined the what and where of special education programming for the 2002-2003 year. The Appellants have argued that the Committee members had no knowledge or understanding of the placement of the special education preschool program on May 22, 2002. Implicitly they argue that there is no knowledge or understanding, or oversight exercised by the Committee as to the Administration's recent decisions in this area. There is no evidence in the record that the current information on special education programming had been provided to the Committee or that the Committee had been updated formally on the relocation of the preschool students back to Fishing Cove with the modified program planned for this year. While it is clear that the timing of these administrative decisions was deferred until summer and ongoing negotiations with the YMCA were sensitive, the record as it stood on the final day of hearing, August 23, 2002 does not indicate that the Committee was even at that time formally advised of these developments.

It has been argued that there is demonstrated in this record a need for a "special visitor" to oversee North Kingstown's special education program. We do not believe that oversight by a special visitor is needed, but rather that the Committee should exercise its own oversight more effectively. Although there is no evidence that the special education program is not in compliance with the law, the record does not indicate that the School Committee has enough information to ensure that the program is in compliance. Information on special education matters--programming, location, staffing--should be presented in a timely way to the members of the North Kingstown school committee so that they can exercise oversight, yet at the same time leave administrative decisions to those personnel whose knowledge and expertise in the special education field are to be relied on. While the Committee may in general receive such information and exercise oversight of special education in the district, the picture we have of this brief time period is not consistent with that scenario. As we have noted, the decision on the relocation of the preschool program to Davisville was not accompanied by adequate information, and the subsequent changes to this plan were not even formally brought to the Committee's

attention. Absent evidence of substantial compliance problems within the district, we decline to appoint a “special visitor” to oversee the special education program, but do direct that sufficient information on special education programming be presented to the Committee so that it can exercise its responsibility to oversee all educational programs of the district.

As to the remaining measures effectuated by the May 22, 2002 vote, it is our finding that such measures were reasonable and did not violate state education law or regulation. The decision to adopt a temporary plan implicitly identified two steps the majority of the Committee determined had to be taken for this school year. These were the reintegration of the kindergartens to neighborhood schools and relief of the overcrowding at Davisville Elementary School. While spot redistricting of Davisville students may have been a reasonable option as well, we cannot find on this record that the transfer of the fourth and fifth grades from Davisville to Quidnessett was unreasonable. North Kingstown has treated Davisville differently in that its grade levels are different from all of the other elementary schools. This is not inherently unreasonable or arbitrary and capricious under the facts here.

It is true that the reintegration of kindergarten students had some negative implications for the use of space at many of the district schools and could have been deferred until a “long-term” reconfiguration decision was made. However, when the principal of Fishing Cove School resigned mid-way in the 2001-2002 school year, an opportunity was presented to take this step, and eliminate this principal’s position, at the close of that year (Tr.1703). The budgetary savings were real, although several Committee members testified that the savings effected by closing Fishing Cove School were not determinative of their vote in favor of the May 22, 2002 plan. The educational benefits were also real, and had been specifically identified and discussed by the Committee. There was no scholarly research which validated their decision¹⁰, but practical factors such as eliminating an unnecessary transition, cross-grade articulation, shorter bus rides, etc. supported this aspect of the decision. Those members who voted for the proposal, although they did not know specifically what room changes and creative use of space might be required at each individual school, were aware of the number of vacant classrooms in each school and that there was not a lot of room for growth in any of the district’s schools. The disadvantages were clearly weighed against the benefits which would accrue to the district. While the final plan approved by a majority of the Committee did not meet all the criteria previously discussed for evaluation of reconfiguration plans, and did not address all the problems of the district, it became the imperfect solution the majority could accept. This record does not support a finding that it was unreasonable or arbitrary, with the exception we have noted as to the placement of the preschool program. To the extent that the closing of Fishing Cove has, as a practical matter, been undone, we will not address whether there was “good cause” as required by our statute to close the school.

Finally, after careful consideration of the Appellants’ argument, we do not agree that the Committee and Administration misrepresented budget issues to the public. There is no provision of education law of which we are aware that would require that school committee budgets include revenues. Even if there were such provision, we are not able to conclude

¹⁰ There was no scholarly research which supported the isolation of kindergarten students in an educational program separate from other primary grades.

that Medicaid reimbursements received by the Committee are revenues, rather than “negative expenditures” as they are presently treated in the Committee’s budget. Resolution of this issue would require expert testimony from an accountant. While it may be true that the amount of Medicaid reimbursements for the last school year and for the current school year are anticipated to be in excess of budgeted expenditures, it has not been proven that this produces “extra money” (a surplus) but rather has resulted in funds available to meet unbudgeted, unanticipated expenses, particularly for special education costs. Thus, we cannot conclude that there was a misrepresentation of the budgetary situation faced by the Committee when it provided financial information to the public during consideration of the various reconfiguration proposals.

Based on the foregoing analysis, the appeal is sustained in part and denied in part. The matter is remanded to the North Kingstown School Committee for further action as may be consistent with this decision. The procedural defects in the Committee’s adoption of the May 22, 2002 plan, as set forth in this decision, are not cause to invalidate the Committee’s decision since we have found the measures actually put in place to be reasonable and we have done so after a de novo hearing at which the appellants have placed on the record all of the information and arguments against the plan which they could have presented to the Committee, if they had been given the opportunity to do so.¹¹

We decline to direct that the Committee adopt a new reconfiguration plan to take effect in the 2003-2004 school year, or to appoint a special visitor to oversee the Committee’s formulation of a new reconfiguration plan. The elements of any new reconfiguration plan, and the timing of its adoption are matters for local determination. Our statutory scheme requires that locally elected officials, acting in good faith and with adequate information and after hearing from those affected by their decisions, are responsible to make these decisions.¹² Ongoing community involvement in this particular decision making process will result not only from our clarification as to the legal requirement for such input, but from the very firm commitment of all concerned.

Kathleen S. Murray
Hearing Officer

APPROVED:

Peter McWalters, Commissioner

February 11, 2003
Date

¹¹ Certainly it is impossible to determine how Committee votes would have changed, if at all, if the Committee had heard the comments from the community that evening.

¹² The Commissioner’s statutory responsibility with respect to such local decisions is to provide an impartial de novo hearing when such matters are challenged as illegal, arbitrary or capricious.