

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

BRYAN PRINCIPE, OSIRIS HARRELL, ELSA CASADO,
DAVID HALLER and ANTHONY VOCCIO
V.

PROVIDENCE SCHOOL BOARD

Decision

Held: School Board's decision to relocate the West
Broadway Elementary School is supported by good
cause.

June 18, 2007

Introduction

This matter concerns three appeals of the decision of the Providence School Board to relocate the West Broadway Elementary School to the Pell Complex. The appeals, which involve 5 individuals, were consolidated and heard together.¹

Background

The West Broadway Elementary School presently is located in a building that was constructed in 1904. The building has three stories and a basement. A two-floor addition, containing a cafeteria/kitchen and gymnasium/stage, was built in 1989. The school houses approximately 490 students in grades pre-kindergarten through 5.

In the summer of 2004, an assistant deputy state fire marshal conducted a code compliance inspection of the West Broadway Elementary School. The assistant deputy marshal issued a report in August 2004 finding 31 fire code violations. A compliance re-inspection was conducted in November 2004. The following month, the assistant deputy marshal issued another report finding the same 31 violations. Item #10 of the report reads as follows:

There are kindergarten and 1st grade classrooms on the basement and 1st floor, as well as one 1st grade class on the second floor. Violation. Rhode Island Life Safety Code 15.2.1.4 Rooms or areas located on floor levels other than as specified in 15.2.1.2 and 15.2.1.3 shall be permitted to be used were provided with independent means of egress dedicated for use by the preschool, kindergarten, first-grade, or second-grade students. [School Board Exhibit 2].

The Department of Public Property for the city of Providence subsequently prepared a “plan of action report,” which addressed fire code issues at 11 schools, including West Broadway. The report was the subject of a hearing at the Fire Safety Code Board of Appeal and Review in April 2005. The Board’s decision of April 28, 2005 granted the city two variances at West Broadway, but it ordered the city to correct the remaining 29 deficiencies, including item #10, “at the direction and to the satisfaction of the Providence Fire Marshal’s Office prior to the commencement of the 2005-06 academic year.” [School Board Exhibit 3]

During the next several months, all but 7 of the remaining fire code violations were corrected. Item #10 remained uncorrected. In November 2005, the assistant deputy state fire

¹ The Commissioner of Education designated the undersigned hearing officer to hear and decide the appeals. Hearings were conducted on April 5, 6 and 18, 2007. Memoranda were subsequently submitted on behalf of 4 of the appellants and by the School Board.

marshal informed the city that it needed to “either come into full compliance with the requirements of the fire code or seek variation. If neither is done, you will force me to file misdemeanor charges against you.” [School Board Exhibit 4].

The egress issue at West Broadway returned to the Fire Safety Code Board of Appeal and Review in April 2006. According to the Board’s decision,

The Board hereby grants a variance in order to allow the Applicant to maintain the cited kindergarten and first grade classrooms until the end of the 2005-06 school year. The Board hereby directs the Applicant to correct this deficiency, at the direction and to the satisfaction of the Providence Fire Marshal’s Office, prior to the commencement of the 2006-07 school year. [School Board Exhibit 5].

Item #10 was not corrected before the beginning of the 2006-07 school year. The director of the Department of Public Property testified that during the summer of 2006 he spoke to the assistant deputy state fire marshal about another egress variance for the classrooms at West Broadway. The marshal would not support a request for another variance, so the director decided that it was futile to pursue such a course. Instead, he told the school district’s director of facilities that there would be no further variances for item #10 at West Broadway.² The facilities director so advised the superintendent.

A year and a half earlier, in January 2005, the school district received a facility assessment report prepared by an architectural/engineering company that specializes in the elementary/secondary education market.³ The report focused on the deferred maintenance and replacement costs for Providence public school buildings.⁴ It also contained a facility condition index (FCI). The report listed a .79 FCI for West Broadway.⁵

² In light of the building’s age and condition, and proposals to alter its use, the city property director did not develop any plans or cost estimates to correct item #10. He testified that he assumed the issue would be resolved by removing the students from the nonconforming classrooms for the 2006-07 school year.

³ This firm worked with a Providence-based construction company to determine the relative condition of the city’s school buildings.

⁴ “Deferred maintenance” was described as the work needed to bring the existing building up to codes and standards. The “facility condition index” is a measure of the relative condition of a building. It is calculated by dividing the deferred maintenance cost by the replacement cost: the higher the index, the poorer condition of the building. There are no industry-standard FCI rating categories for kindergarten-grade 12 educational facilities. For this project, an FCI of greater than .7 was deemed to signify that a building is in poor condition. In higher education, however, an FCI of .1 is used to signify poor condition.

⁵ This number was reached by dividing a replacement cost of \$11,547,250 by an assessed renovation cost of \$9,158,512. It was established through testimony, however, that the deferred maintenance cost for West Broadway erroneously included window replacements (which were completed in 2004) and refrigeration units for air conditioning (which the superintendent testified was not necessary for a school building). When adjusted for these two items, the FCI for West Broadway is .658.

In May 2006, an educational planning firm charged with developing a comprehensive facilities plan for the school district issued its preliminary report.⁶ The report recommended that the West Broadway School be discontinued due to its poor condition, small site, disability access issues, and the fire code violations. The facilities plan remained under development during the summer of 2006. At this time, the planners addressed education specifications, such as the need for flexible classroom arrangements to promote collaborative teaching, small group instruction, large group instruction, and tutorial instruction in smaller adjacent rooms.

By the fall of 2006, the superintendent was aware of the unavailability of additional fire code variances and he had reviewed the findings and recommendations of the facilities plans. As a result, he instructed his staff to develop options to address the egress problem at West Broadway. Several options were presented, including one involving the Pell Complex, which at the time housed an elementary school, a middle school and a high school in two different buildings.⁷ The superintendent also considered making changes to the West Broadway building to bring it into compliance with the fire code.

In December 2006, the finalized version of the “School Facility Master Plan” was released. According to the report,

The primary focus of the Facility Master Plan is to concentrate on major renovations and building replacements while simultaneously addressing deferred maintenance [i.e., health, safety, boilers, and roofs] projects in the other school buildings. By design, the focus of the Facility Master Plan shifts Providence Public School Department building improvement efforts from a reactive repair program to a proactive renovation/building replacement program. The Plan proposes to phase in facility improvements in a manner that new and fully renovated school projects will occur throughout the City of Providence. [School Board Exhibit 23].

The recommendation for the West Broadway School building in the final report remained unchanged. Under “Proposed Projects,” the report lists “West Broadway ES (Move to Pell Complex)” with a .79 facility score and a “poor” facility condition. Under “Proposed Action,” the report states “Discontinue.” [School Board Exhibit 23]. Furthermore, it was determined that there

⁶ Because the education specifications for schools were still under development, the preliminary report did not take them into consideration in making its findings and recommendations. The report did use the buildings information contained in the previously-discussed facility assessment report.

⁷ The Anthony Carnevale Elementary School, the Springfield Middle School, and the DelSesto High School, respectively.

are approximately 1100 more “student stations” for elementary and middle schools than actual students enrolled in the district region within which West Broadway is located.

After reviewing the final “School Facility Master Plan” report, the superintendent determined in December 2006 that the best course of action was to close the West Broadway School at the end of the 2006-07 school year, move the students to the elementary school located at the Pell Complex, and have the West Broadway teachers and administrators reassigned to new positions through their contractual processes. This option was available because the high school students at the Pell Complex were already scheduled to move to a different school for 2007-08. By pursuing this course, the district could create a kindergarten through grade 8 education complex at Pell, with continuous English as Second Language and autism services. It also would provide a continuum of care for students due to the fact that the same faculty and staff would be involved with the students as they progressed through the grades. It was hoped that the resulting nurturing environment would support stronger academic performance by the students.

The superintendent’s decision to close West Broadway was made public in January 2007. In a January 9th letter addressed to the “West Broadway School Community”, the district’s executive director of elementary schools announced that “the first of a series of informational meetings regarding significant changes to West Broadway Elementary School” would be held on the afternoon of January 16th. At that meeting, parents expressed concerns about the closing, asked that other options be explored, and requested that their dialogue be continued. The superintendent agreed, and a second meeting for parents was scheduled for January 18th. That meeting was well attended, with over 200 parents appearing, registering their concerns and praising the school. The superintendent testified that “I was really there to listen to them and hear what they had to say. And the situation was one where, really, they were anxious to talk to me and not necessarily hear me . . . except that I was still open to considering other options.” [4/6/07 transcript, p. 56].

The next day, January 19th, the superintendent sent a letter to the “Parents/Guardians of West Broadway School.” The superintendent began the letter by stating that “I am writing this letter to inform you that West Broadway Elementary School will officially close at the end of the 2006-07 school year.” He continued by stating that

The Providence School Department has been notified by the Fire Marshall (sic) that all kindergarten and grade 1 students must be located in classrooms on the ground level as required by existing fire code. Because West Broadway School is in violation of this code, we must relocate the

student population. . . We are in the process of assigning students to Carnevale Elementary School . . . [Appellants Exhibit 6].

On January 22nd, the superintendent met with the assistant deputy state fire marshal to review the West Broadway fire code issues and possible means of compliance. A School Board meeting was held that evening and despite the fact that the West Broadway School was not on the agenda, about 16 community members expressed their opposition to the closing during the public comment portion of the meeting.

On January 29th, at the city's property director's request, the construction project manager met with the assistant deputy state fire marshal to discuss the fire code issues. The project manager also prepared a cost estimate to remedy the fire code violations at West Broadway. The estimate amounted to \$485,000.⁸

On February 7th, the superintendent and other officials met with the West Broadway Neighborhood Association to discuss options. The closing of the West Broadway School was an agenda item for the School Board's February 12th meeting. The superintendent submitted an 8-page memo entitled "Situation Report for West Broadway Elementary School" to the Board at the meeting. The memo was intended to: (1) provide a summary of the West Broadway situation, (2) describe the superintendent's decision-making process, (3) communicate his recommendation to the Board, and (4) describe the critical questions that must be addressed as the district proceeds with major facilities decisions.

The memo's summary attributed the superintendent's action to

three primary factors: immediate safety concerns due to fire safety code violations; the poor condition of the building and the resulting costs to retrofit it to meet the fire safety code and correct other building deficiencies . . .; and the recommendations and findings set forth in the ["School Facility Master Plan"], including the educational specifications for optimal learning environments. [School Board Exhibit 21].

The memo provided an analysis of the various options that were considered for West Broadway. The analysis included the cost and educational implications for each option. It also discussed several additional options that were suggested by the community. The memo then reviewed the critical factors considered by the superintendent. It discussed the recommendation in the "School Facility Master Plan" to close West Broadway School, the proximity of West

⁸ The estimate included \$150,000 to create a new classroom in the basement for the first-grade students located on the second floor.

Broadway students to other schools, feedback from interested parties, and the inconsistent results of the West Broadway students on the 2006 state tests. In his “Final Recommendation to the School Board,” the superintendent stated

After careful thought and deliberation, I am adhering to my initial decision and am requesting that the Providence School Board approve the closing of the West Broadway Elementary School. This recommendation is based on a number of factors, including the poor condition of the building; the high cost to correct existing structural and functional deficiencies; the recommendations of [the “School Facility Master Plan”] (which confirm the expense and difficulty of renovating the building in accordance with our educational specifications) and their analysis that there are too many seats in the central zone for the number of students residing in the zone; the fact that only approximately one-third of West Broadway students live within one mile of the school; and the plan to build a new elementary or K-8 school in the neighborhood. . . [Ibid.].

The specifics of the superintendent’s recommendation included the reassignment of West Broadway students to the Pell Complex for the 2007-08 school year, and the creation of a K-8 center at the Pell Complex consisting of students from Carnevale Elementary, West Broadway Elementary and Springfield Middle schools.

Approximately 27 persons made extensive comments on the West Broadway matter during the public comment portion of the School Board meeting. The School Board did not act on the superintendent’s recommendation. Instead, it scheduled a hearing on the West Broadway situation for February 20th.⁹

The school district provided notice of the hearing. Four of the 9 School Board members attended the three-hour hearing. Three main themes emerged from the comments at the hearing: (1) West Broadway School should not be closed, (2) a neighborhood school is important, and (3) the teachers and students at West Broadway should remain together as a school. The superintendent’s chief of staff took notes at the hearing and distributed them to all Board members and high-ranking administrators.

⁹ The School Board’s “School Closing/Consolidation Policy” states “that the Superintendent shall recommend to the School Board from time to time as he/she deems necessary schools that are appropriate for closing because of low student enrollments, high operational costs or such buildings that are in need of such extensive renovations that the school department cannot reasonably respond; that upon recommendations by the Superintendent, the School Board shall schedule a hearing on the recommended school closing; that the School Board will place on notice, communities effected (sic) by proposed school closings and offer them an opportunity to speak at such hearings; that within a thirty (30) calendar day period, following the scheduled hearing, the School Board shall issue a formal response on the proposed closing . . .” [Appellants Exhibit 5].

The West Broadway matter was placed on the agenda for the School Board's meeting of February 26th. The superintendent summarized his reasons in support of his recommendation that the West Broadway School be closed and the students moved to the Pell Complex. Public comment followed. By a 6-2 vote, the School Board approved a resolution to

1. Relocate West Broadway as a school (existing students and faculty) to the Pell Complex and operate West Broadway as a school within a school in the DelSesto/Springfield building for the 2007-08 school year.
2. Postpone the establishment of a K-8 school at the Pell Complex.
3. Continue to operate Carnevale as an elementary school for at least one additional year.
4. Convene community groups for both West Broadway and Carnevale/DelSesto this spring to advise decision-making for configuration of these schools beyond 2007-2008.
5. Conduct a Board workshop and community forums on school configurations, including K-8 during the Spring of 2007.¹⁰

Positions of the Parties

Appellants contend that the School Board's decision in this matter is flawed both procedurally and substantively. They argue that the superintendent acted without any legal authority when he decided in January 2007 to close the West Broadway School. The community was "effectively marginalized" when it did not receive proper notice of the superintendent's recommendation and therefore did not have an opportunity to respond to it. The Board's February 20th hearing was a nullity because it did not comply with the Open Meetings Act. Accordingly, the Board did not comply with the hearing requirement in its own policy, and its vote on February 26th was invalid.

Appellants further argue that the Board's closure of West Broadway is not supported by good cause. The "Schools Facility Master Plan" was never adopted by the city or the Board; the Plan's provisions thus remain mere recommendations. By failing to disclose the fire code violations to the public from 2004 until January 2007, the Board violated R.I.G.L. 16-2-9.1's requirement that school committees "[m]ake public relevant institutional information in order to promote communication and understanding between the school system and the community." The School Board and the city did not exercise due diligence in responding to the fire code violations. When corrected, the FCI for West Broadway was not in the "poor" category. The cost of

¹⁰ The minutes of the meeting show that members of the Board, in both the majority and minority, made note of the poor process that occurred with regard to the West Broadway issues.

complying with the fire code was overestimated because it is not necessary to build a new classroom and reimbursement from state housing aid was not considered. The Board never compared the cost of moving West Broadway to the Pell Complex with the cost of correcting the fire code violations. Other elementary schools had much higher FCI ratings than West Broadway. For these reasons, the Board's decision should be reversed and the School Board should be ordered to correct the fire code violations.

The School Board contends that it had abundant good cause to relocate the West Broadway School. In so arguing, it relies on the building's poor condition, the fire code violations, and the overall fiscal considerations that existed. The cost to renovate the West Broadway building is extremely high, the "School Facility Master Plan's" recommendation to close West Broadway is well-supported, and the fire code violations are expensive to remedy. Furthermore, the Board complied with its own policy in this area as it gave the community multiple opportunities to be heard. Finally, the Open Meetings Act does not apply to the hearing that was conducted on February 20th.

Discussion

Rhode Island General Law 16-2-15(a) provides that "[t]he school committee shall locate all schoolhouses, and shall not abandon, close, or change the location of any without good cause . . ." This, along with the district's own policies on the subject, is the standard which guides our de novo review of the School Board's decision to change the location of the West Broadway Elementary School.¹¹

We are convinced that good cause existed to close the West Broadway School and relocate it to the Pell Complex. While Appellants raise legitimate questions about the FCI rating for West Broadway,¹² the fact remains that the building is in a state of serious deterioration. Complicating this fact is the immediate problem of the fire code violations, a problem that has a direct bearing

¹¹ In John Spohn v. Newport School Committee (October 7, 1998), which concerned the closing of an elementary school, we stated that "[h]istorically, in exercising this de novo authority, the commissioner has sought to act consistently with those provisions of Title 16 . . . which convey upon local school committees the specific authority to control the public school interests of their respective cities and towns. The commissioner has thus exercised his independent judgment on an issue so as to overturn the decision of a local school committee only when the committee's decision is contrary to state law, regulation, or a statewide educational policy or issue of statewide concern. See Concerned Parents and Teachers v. Exeter-West Greenwich Regional School District Committee, decision of the commissioner dated November 3, 1989 [footnote omitted]; see also Muggle v. Pawtucket School Committee, decision of the Board of Regents dated May 10, 1990.

¹² And have established that the actual FCI rating is slightly below the number that was selected to indicate "poor condition."

on the safety of students. Appellants are justified in feeling “marginalized” by the failure of the school district to notify parents and guardians of the fire code status of the school.¹³ This does not change the dilemma faced by the city and the school district, i.e., do they invest a substantial sum of money to make structural changes to a building that is seriously deteriorated? Furthermore, the results of the district-commissioned studies and planning indicate that West Broadway would need additional costly renovation in order to meet the educational specifications for a desirable learning environment. These issues, which would require the expenditure of several million dollars, exist for a school located in a district zone that has a surplus of seats for students. We find that these circumstances, which are fully set forth in the superintendent’s February 12th memo to the School Board,¹⁴ constitute good cause for the Board’s decision to relocate the West Broadway School as a school-within-a-school in the Pell Complex.¹⁵

As for the procedural aspect of this case, the superintendent’s January 19th letter obviously stirred the pot in this matter. Appellants are correct: a superintendent does not have the legal authority to close a school. To the extent that the superintendent thought that his “decision” to close West Broadway achieved that result, he was mistaken. Such a decision would have no legal effect.¹⁶ It is clear from his testimony, however, that at least as of the time of hearing, the superintendent understood that his “decision” represented the culmination of the process that he and his staff had undertaken to reach a proper resolution of the issues at West Broadway. Because only the School Board is authorized to close or relocate a school, the superintendent’s “decision” constitutes a proposal or recommendation that must be presented to the duly-authorized body, i.e., the School Board, for approval. The superintendent’s choice of words created a significant amount of confusion about the process by which these difficult issues were being addressed. Confusion easily leads to resentment, which can totally subvert the type of engagement that needs

¹³ Although the city received variances for two years and thereby attained legal compliance, the finding of the violations should have been disclosed to parents and guardians and the subject of immediate discussion.

¹⁴ While Appellants correctly observe that the “Schools Facility Master Plan” has yet to be adopted by any public agency, the recommendations in the Master Plan concerning West Broadway have been shared with the School Board and were clearly a major basis for the superintendent’s recommendation to close the school. By virtue of its vote to relocate West Broadway, the School Board has effectively adopted that portion of the Master Plan which deals with the West Broadway School.

¹⁵ We note that the superintendent’s recommendation to eliminate the West Broadway School as an entity, disperse the students to several schools, and reassign the faculty to other positions within the district was not accepted by the School Board. The Board agreed with the superintendent’s underlying premise, i.e., that the school known as West Broadway could not continue to exist in its present building, but it also apparently agreed with many of the parents’ concerns about preserving the identity and community that had been established at West Broadway. Consequently, the West Broadway Elementary School will continue to exist in name and, hopefully, spirit at the Pell Complex.

¹⁶ This is true not only under state law (§16-2-15), but under the district’s policy as well (see footnote 9).

to occur within an educational community in order to properly address issues of this magnitude. Fortunately, in large part due to the dedication and resilience of Appellants and other parents, a complete breakdown in procedure did not occur here. In terms of the law, the West Broadway School was not closed in January 2007. While the process was somewhat rushed and disjointed, there was sufficient notice and opportunity for interested parties to be involved as required by the district's policy.¹⁷

The district's policy requires the scheduling of a hearing following the submission of the superintendent's recommendation. The superintendent submitted his recommendation to the Board at its February 12th meeting. Notice of the hearing was provided and over 200 persons attended the hearing. At its meeting of February 26th, well within the policy's 30-day requirement, the School Board responded to the proposed closing. While it is not within the jurisdiction of the Commissioner of Education to enforce the Open Meetings Act, we need to point out that the "hearing" required under the district's policy is not a School Board "meeting." The fact that slightly less than a quorum of Board members attended the hearing does not invalidate it. As long as a record of the substance of the hearing is made and shared with Board members, which occurred here, the hearing has served its purpose and is valid. To sum up, we find that the district complied with its own policy and that the notice and opportunity to be heard provided to community members, while not a model to be emulated, was adequate.

Conclusion

The Providence School Board had good cause to relocate the West Broadway Elementary School to the Pell Complex. The appeal is therefore denied.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

June 18, 2007

¹⁷ As previously noted in footnote 10, some members of the Board noted the poor quality of the process.