

State of Rhode Island
and
Providence Plantations

Commissioner of Education

Parents of Student C.D. Doe

v.

Warwick School Committee

DECISION

Held: The Warwick School Committee has established and implemented a policy permitting enrollment in kindergarten only for students who have attained the age of five (5) on or before September 1st. The petitioners have not proven that the district's policy, which reflects state law on eligibility for kindergarten, is arbitrary or capricious or that the district has deviated from its policy to admit students who do not meet this age requirement. The district is not required to make an exception to its policy to permit the Petitioners' four (4) year old child to enter kindergarten in Warwick or to hear such a request. The Petitioners are however entitled to address the school committee with respect to their concerns about the policy itself.

DATE: September 18, 2009

Travel of the Case

On April 18, 2009, the parent of Student Doe requested that Commissioner Peter McWalters hear his appeal from the denial of his request that his son be enrolled in kindergarten for school year 2009-2010. The reason for denial of his request for kindergarten enrollment was that Student Doe would not be five years old until September 9th. Pursuant to the policy on kindergarten enrollment adopted by the Warwick School Committee, students must turn age five (5) by September 1st of the calendar year. Student Doe's parent asserted in his letter of appeal that the Warwick policy on kindergarten enrollment had not been updated since 2004 and that as a result, decisions at every level within the Warwick School Department had been made exclusively on the basis of his son's age, without any information with respect to his readiness or his educational and developmental best interests. In addition, requests for an in-person meeting with the district's director of elementary education and for a hearing before the Warwick School Committee were denied¹, such that the parents had no opportunity to present persuasive evidence of Student Doe's readiness to attend kindergarten in September of 2009.

Hearing in this matter was deferred pending the General Assembly's consideration of legislation that would require all districts to consider a student's readiness for kindergarten if space were available in the class. When final action was not taken by the General Assembly by the beginning of the summer, the matter was then scheduled and heard on June 25, 2009. The parents of Student Doe appeared pro se and the School Committee was represented by legal counsel. Testimony and documentary evidence were received and a transcript of the hearing was received on August 19, 2009 at which time the record in the case closed.

ISSUE

- Is Student Doe entitled to be enrolled in kindergarten in Warwick?
- Has the Warwick School Department or the School Committee acted in an arbitrary or capricious manner in either its adoption of a policy or in its response to the Requests by Student Doe's parents to be heard?

Findings of Relevant Facts:

- Student Doe will not attain the age of five (5) until September 9, 2009. See letter of appeal dated April 18, 2009.
- The Warwick School Committee has a policy governing enrollment in kindergarten and first grade. The policy provides that children will be admitted to kindergarten each school year if they are five years of age or will be five years of age or before September 1 of the same calendar year. The policy was last revised on April 29, 2004. S.C. Ex. A.

¹ There was no response on the parent's request for a hearing before the School Committee which was taken as an implicit denial.

- Pursuant to the aforementioned policy on entrance age for kindergarten, students in Warwick must have birth certificates or other proof of age for their local schools before they are enrolled. There have not been any exceptions made to this requirement. Tr. pp. 5, 21 and 24.
- When Student Doe’s parents requested to meet with school officials and/or be heard by the School Committee for a review of the decision that had been made with respect to their son’s eligibility to enroll in kindergarten, it was viewed as a request for an exception to be made, and was denied, either explicitly or implicitly, because there are no exceptions made to the age requirement. Tr. pp. 25-31.

Positions of the Parties

Student Doe’s Parents

Both of Student Doe’s parents are educators. They argue that restricting public school kindergarten enrollment to those children who attain age five (5) by September 1st is arbitrary and capricious. Implementation of such a policy fails to take into account the best educational and developmental interests of students and is contrary to research that shows “best practice” is to gauge the readiness of children for kindergarten attendance through an appropriate assessment. In response to the argument of the Warwick School Department that the cost of readiness assessments for children who do not meet age eligibility requirements would be unduly burdensome in the current economic climate, they submit that financial considerations should not dictate whether or not their child receives the education he is ready for. They seek to submit evidence² of evaluation results showing that their son appears older than his chronological age, is extremely polite and personable and scores in the 99.9% percentile on testing that was done to determine his readiness for kindergarten.

Student Doe’s parents also argue that some Rhode Island school districts exercise their discretion to gauge a student’s readiness for kindergarten because it is the enlightened approach and state education officials have indicated discretion can be utilized instead of an arbitrary age cut-off as long as the district has a policy in place that establishes criteria to determine the school readiness of these children. The Petitioners also point out that there is legislation pending that would require all Rhode Island districts to consider readiness, provided that space is available in the kindergarten classroom. The Petitioners request that the Rhode Island Department of Education provide guidance to the Warwick public schools on this subject by hearing this appeal.

Warwick School Committee

Consistent with state law and the interpretations that have been made by the Department of Education, Warwick adheres to the age eligibility requirement set forth in

² Counsel for the School Committee objected to the introduction of Student Doe’s assessment into evidence. The objection was sustained on the grounds of relevancy.

R.I.G.L. 16-2-27. It does not exercise discretion that the Department of Education has indicated districts may exercise to admit younger children, because to do so fairly would require the district to provide (and pay for) sufficient staff to administer readiness assessments for all children whose parents desire their early entrance into kindergarten. The cost of such assessments would compete with the cost of other program changes that would benefit children who are Warwick residents and, in any event under the current tight fiscal conditions, such expenditures are not possible. Thus, even if the district were to agree with the Petitioners that the more enlightened approach might be to assess the readiness of younger children to attend kindergarten, it is not in a financial position to do so at this time.

Counsel for the School Committee submits that the evidence in this matter is that there are no exceptions- not by school staff and not by the Warwick School Committee- that have been made to the kindergarten minimum age requirement. The district has followed the policy consistently. It is for this reason that the Petitioners' requests to appeal the decision with respect to their son's eligibility to attend kindergarten were dismissed without in-person meetings with the Director of Elementary Education and the Superintendent or a hearing by the School Committee. If the Petitioners wish to address the Warwick School Committee with respect to the wisdom of its current policy (rather than to appeal the administrative decision in this case), counsel for the Committee states that they will be placed on the agenda at an upcoming meeting so that they may do so. If the General Assembly passes the legislation which would require districts to consider readiness of children who do not meet age eligibility for kindergarten, Warwick will amend its policy accordingly. Until then, however, the School Committee has no plans to change its current policy.

DECISION

The Rhode Island Department of Education has not interpreted R.I.G.L. 16-2-27 to establish a statewide minimum age for kindergarten attendance. In communications as recent as December of 2008 and June of 2009³ the Department has indicated that the age eligibility provision of R.I.G.L. 16-2-27 does not prevent school districts from exercising flexibility in admitting children who are younger than five years of age as of September 1st into their kindergarten classes. While confirming that the statutory criterion is intended as a "guide" for the enrollment of children, the Department has also affirmed that districts may choose to adhere strictly to the statutory criterion, i.e. the attainment of age five (5) by September 1st. The choice of whether or not to adopt a policy that establishes school-readiness criteria for children who have not attained the required age is that of the School Committee. The Commissioner has upheld a school district policy of strict adherence to the statutory date "as long as there is a rational basis for such a policy".⁴ In this case, we find

³ See attached communications to Superintendents from David V. Abbott, Deputy Commissioner/General Counsel and Kenneth G. Swanson, Director of the Office for Diverse Learners.

⁴ See Student J.T. Doe v. Johnston School Committee, decision of the Commissioner June 14, 2006, n.b. page 2 footnote 4.

that Warwick's policy is consistent with state law (a strong enough rational basis in and of itself) and is also supported by the district's argument that it would incur a significant cost

for additional staff if an alternative policy of screening younger children were adopted. As we found in our review of this same Warwick School Committee policy in Parents of Student J.R. Doe v. Warwick School Committee⁵ it is a reasonable policy. As in that case, the evidence confirms that it has been consistently followed by officials of the Warwick School Department. The Petitioners have not established that the policy is arbitrary and capricious, nor have they established any facts that would estop the school district from applying its policy to their child.

Past requests by the Petitioners to be heard by the School Committee were construed as appeals from the decision not to admit their son to kindergarten. The School Committee is not required to hear requests for exceptions to their policy when they do not make exceptions. Should the Petitioners clarify that they wish to proceed before the School Committee to address the wisdom and/or effectiveness of the policy generally, rather than to appeal the decision with respect to their son's enrollment in kindergarten, they should be permitted to do so, assuming they follow the proper procedures for placement on the School Committee's agenda. The record indicated both that they wished to do so and that prior communications in which they sought to be heard by the School Committee may have been unclear on this point.

Their appeal to the Commissioner is denied and dismissed.

For the Commissioner,

Kathleen S. Murray, Hearing Officer

APPROVED:

Deborah A. Gist, Commissioner

September 18, 2009
Date

⁵ Decision of the Commissioner dated September 7, 2006