

**STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS**

**COMMISSIONER OF
EDUCATION**

.....
Candice Barry

v.

Middletown School Committee
.....

DECISION

The appeal in this case must be denied and dismissed.

Still, we recognize that grade configuration in this case is somewhat unusual. Therefore, in the exercise of our visitorial authority over public education in this state, we will appoint Mr. Joseph DaSilva of the Department of Education to take view of the Gaudet School and prepare a report on the actual functioning of the school housing facilities there with regard to the fourth grade. We will also appoint a special visitor who will file a report on the academic program available to the fourth graders at the Gaudet School. These reports will be made available to the parents in this case.

Date: November 23, 2009

Jurisdiction and Travel of the Case

In the present matter a group of parents is challenging the decision of the Middletown school committee to close the John F. Kennedy School and to assign eight classes of fourth graders to the Gaudet Middle School. Jurisdiction is present under R.I.G.L.16-39-1 and R.I.G.L. 16-39-2.

Positions of the Parties

The Position of the Parents' Group

1. The Middletown school committee should have exercised other options instead of closing the John F. Kennedy Elementary School.¹
2. Fourth graders who will be removed from John F. Kennedy Elementary School will lose the opportunity to be the “big kids” in the elementary school.
3. Fourth graders who are transferred to middle school will be exposed to issues that they, at their age level, are not ready to deal with.²
4. It is inappropriate to place fourth graders on buses that are carrying students who are in the eighth grade.
5. A school that houses students from grade four to grade eight is not an accepted academic configuration.
6. Overall school security at the Gaudet School may not be sufficient.

Position of the Middletown School Committee

The Middletown school committee submits that fiscal exigency justifies the closing of the John F. Kennedy School. It submits that it considered other alternatives to the closing the John F. Kennedy School, but that it found these alternatives to be insufficient to close the budget gap it was facing. It further submits that its decision to house these fourth grade students at the Gaudet School is academically sound and that the students have been placed in a safe, secure, and supportive environment. It contends that its reconfiguration plan was adopted only after careful study, public consultation, public meetings and consideration of expert opinion.

Findings of Fact – The Decision to Close the John F. Kennedy School.

1. Several years ago the Middletown school committee began a planning process to determine its school housing needs for the future. A Facilities Advisory

¹ Parents' Exhibit 4 (Newport Daily News Article “School Officials Stick with Plan for 4th-graders

² T. Vol. I. pages 48 and 52

- Committee and a “Core Committee” were assigned to study the issues presented. A consultant corporation, Fielding McNair, was retained to provide advice to those involved in the study process. An ambitious program for new and modernized school housing was developed.³ Unfortunately this school housing plan was derailed by the fiscal crisis which has now beset Rhode Island.⁴
2. Financial concerns had become particularly pressing in November of 2008 after Rhode Island school districts were advised that state aid to municipalities would be cut.⁵ The upshot of these aid reductions and the existence of tax caps forced the Middletown school committee to confront a budget reduction of over two million dollars.⁶
 3. In order to deal with this situation: “The Core Committee developed planning Options by brainstorming a long list of existing and potential school sites, grade configurations, and community asset adjacencies. The list was organized into the seven formal options, which were evaluated and prioritized by the Core Committee. Core Committee members, in seven separate small groups, evaluated each option and established priorities by ranking the options in order of preference. Without exception, all seven groups chose Option C [which, *inter alia*, moved fourth graders into the Gaudet School] as their most preferred.”⁷
 4. As the result of budgetary constraints the Middletown school committee elected to reconfigure its school system. As a result of this reconfiguration the John F. Kennedy School was closed, and eight fourth grade classes that were located at that school were moved to the Gaudet middle school. By closing the Kennedy School the school committee saved \$805,000.00.⁸
 5. The decision to close the John F. Kennedy School was made because closing the school got the school committee closer to closing its budget gap than any other alternative before the school committee.⁹
 6. If the Kennedy School had remained open the school committee would have had to end full day kindergarten, end support for personal literacy plans, lay-off at least three nurse teachers, end all sports, and eliminate a number of other programs.¹⁰
 7. Consideration was given to closing the school district’s administrative building, but this would not have resulted in any permanent savings.¹¹ Various

³ School Committee Exhibit A

⁴ T. Vol. I, page 158

⁵ T. Vol. I, page 107 See: School committee Exhibit B

⁶ T. Vol. I, page 111

⁷ School Committee Exhibit C

⁸ T. Vol. I, page 115.

⁹ T. Vol. I, page 112

¹⁰ T. Vol. I, page 116

¹¹ T. Vol. I, page 122.

- reconfiguration options concerning the Oliphant School, where administration is housed, and the Aquidneck School were considered, but the savings that could be obtained through reconfigurations at these buildings were insufficient to meet budgetary demands.¹²
8. The school committee eliminated late buses, laid off two language art teachers, abolished a mentor program, eliminated an academic dean position, reduced positions in athletics and made other economies to stay within its exiguous budget.¹³
 9. After the vote to close the Kennedy School a transition team comprised of parents teachers, staff members and administrators was created to consider the issues that would be created by the closure of the school. Frequent meetings of this team took place. Different scenarios were discussed concerning the transition within the limitations imposed by the district's budgetary situation.¹⁴ Issues were presented and breakout discussions were held. Parents, Teachers, staff members, and administrators participated in these discussions. These discussions influenced and informed how the transition was made.¹⁵ Issues relating to transportation, social interactions, parent involvement and communications were all discussed.¹⁶
 10. The hearing officer took a view of the Gaudet School as work was being done on it. It was evident that a much of the first floor of the school had been demolished and workers were near completing a whole new area of classrooms of a modern type.

**Findings of Fact—
The Situation of the Fourth Grade at the Gaudet Middle School**

1. These fourth grade classes are housed on the first floor of the Gaudet School in a separately operated wing of the school.¹⁷ Fifth graders are housed in another wing of the school on the first floor.¹⁸ Fourth and Fifth graders use the same bathroom facilities and these facilities are not open to older students.¹⁹ An outdoor learning center with a green house is available to these fourth and fifth grade students.²⁰ A common learning center for fourth and fifth graders will be established.²¹ Fourth graders will have access to the school's planetarium.

¹² T. Vol. II, pages 65 and 98 through 99.

¹³ T. Vol. I, page 112

¹⁴ T. Vol. I, page 128 & T Vol. II, page 5. See: School Committee Exhibits D & G.

¹⁵ T. Vol. II, page 13.

¹⁶ T. Vol. II, page 20.

¹⁷ T. Vol. I, page 130 See: School Committee Exhibit E

¹⁸ T. Vol. I, page 132.

¹⁹ T. Vol. I, page 133

²⁰ T. Vol. I, page 133

²¹ T. Vol. I, page 146

2. “Grade 4 [has] recess with a playground as well as the opportunity to use the Gaudet School fields and track.”²² Grade four students will have Art, Music, Physical Education and Health, and access to the library.²³
3. Grade Four at the Gaudet School operates as an elementary school.²⁴
4. Fourth graders have their own separate lunch period. Lockers have been installed that are appropriate for the use of fourth graders.²⁵
5. While fourth graders travel on the same buses as older students they sit at the front of the bus in assigned seating. A school bus monitor is assigned to each bus that carries fourth grade students.²⁶ Additional training has been given to bus drivers and monitors.²⁷ If more than one monitor on the bus is needed, an additional monitor will be provided.²⁸ The fourth graders will be the first to leave the bus and they will be under adult supervision as they walk to the school building to a separate entrance. They will be greeted by teachers and administrators as they enter the building.
6. Great care is taken to be sure that these fourth graders have only the most guarded contact with the older students on the second floor of the school.²⁹ When such contact may take place, for example in the computer room on the second floor, sufficient adult supervision is present.
7. The school district original hoped to create a combined fourth and fifth grade learning academy at the Gaudet School where fourth and fifth grade teachers would develop common lesson plans and create instructional opportunities where fourth and fifth graders could be instructed together. The school committee’s consultant, Fielding Nair, had recommended such an instructional design. The press of time prevented teacher consultation in the creation of such an academy so development of the academy has been temporary postponed.³⁰
8. Dr. Frank Locker, who is the school committee’s consultant in school facility matters, has a PhD in architecture. He is a member of the American Institute of Architecture.³¹ The Council of Educational Facility Planners has found him to be a “Recognized Educational Facility Planner” (REFP) ³² He is an educational

²² School Committee Exhibit C

²³ School Committee Exhibit C

²⁴ School Committee Exhibit C

²⁵ T. Vol. I, page 139

²⁶ T. Vol. I, page 135

²⁷ T. Vol. I, page 144

²⁸ T. Vol. I, page 144

²⁹ T. Vol. I, page 130.

³⁰ T. Vol. I, page 66.

³¹ See: School Committee Exhibit E (Resume of Frank Locker, PhD)

³² T. Vol. I, page 154. The REFP designation is awarded by the Council of Educational Facility Planners.

consult with Fielding McNair International. He has done consulting work in the United States, Canada, and England.³³

9. Dr. Locker testified at the hearing that the fiscal crisis facing the school district forced a reexamination of the Master Facilities Plan.³⁴ He became involved in this reassessment in January of 2009. The Core Committee was convened, and met in January, February, and March to consider how school facilities could be reconfigured to meet the existing budgetary exigencies.
10. Concerning the grade configuration at the Gaudet School he testified: “I don’t think we have fourth graders mixed with fifth, sixth, seventh graders. I think we have fourth and fifth graders in a highly articulated zone of the building with very strategic connections to the rest of the building and an awful lot of time-share so that those fourth graders are in a place that may be used by upperclassmen but not necessarily at the same time.”³⁵
11. The Rhode Island Department of Education (RIDE) was consulted in this matter and RIDE looked, “for clarification that we [Middletown school district] creating this “4”, “5” zone as a distinct zone and we weren’t filtering it through the whole building. So, in essence, it was an upper elementary concept within the Gaudet building.” Numerous other issues were also discussed with RIDE.³⁶ Concerning the Kennedy School, school closing regulations were complied with.³⁷
12. Dr. Janice E. DeFrancis testified in this matter. Dr. DeFrancis was hired by the school committee to review the grade configuration at the Gaudet School, particularly in relation to questions concerning safety and the prevention of bullying.
13. She has a post doctorate in neuropsychology from Fielding University [an on line graduate school] a doctorate in Special Education Administration from Boston University, a master’s degree in counseling and guidance from the University of Rhode Island and a master’s degree from Rhode Island College in behavioral special education and a bachelor’s degree in educational psychology from Rhode Island colleges. She teachers at Providence College and the Rhode Island School of Design. She holds several Rhode Island teaching certificates, including a superintendent’s certificate. She has held several positions in the various school districts of this state and she is presently the CEO and president of Harmony Hill School, a special education school located in Rhode Island.³⁸

³³ T. Vol. I, page 156

³⁴ T. Vol. I, page 158

³⁵ T. Vol. I, page 165

³⁶ T. Vol. I, page 166 and 167

³⁷ T. Vol. II, page 75 See: School Committee Exhibit K (Letter to Mr. Joseph DaSilva, RIDE)

³⁸ See: School Committee Exhibit F (Resume of Dr. DeFrancis)

14. She concluded that the grade configuration at the Gaudet School, as structured by Middletown, did provide fourth grade students with an appropriate academic environment that was secure. She was confident that the potential for bullying at the school, particularly with regard to older students, was adequately guarded against.³⁹

15. The Assistant Superintendent of the Middletown school system, Ms. Linda F. Savastano, testified in this matter. Concerning the grade configuration at issue she testified:

Oh, I think it's heaven in the education world. Having that wing with the fourth grade and having our teachers all together to be able to share ideas, curriculum, instruction and students will just provide a learning opportunity that can be customized for everybody. We have great teachers in Middletown. We have just absolutely dynamic fourth-grade teachers. To have them all in one space I think will be very exciting. Our test scores at Gaudet are very good, and I think part of that is because of the culture of the building. So adding the fourth-grade teachers to that is going to make it an even better place.

Also, from the perspective of having the fourth and the fifth grade together, because those grade level expectations are very similar, fourth and fifth, that building that can take place vertically in the curriculum will be very powerful for our fifth grade as well.⁴⁰

16. Middletown has an anti-bullying policy and an anti-bullying committee that meets regularly to review the implementation of this policy. Students, through their advisories, are instructed in this policy.⁴¹

17. Fire and security plans are in effect at the Gaudet School. The local police department, fire department, and building department are involved in safety planning at the Gaudet School.⁴²

18. At the request of the police, the school reviewed traffic safety issues at the Gaudet School. A consultant was obtained and appropriate modifications were made.⁴³

19. The building principal, who has over 41 years experience in education, is very comfortable with the safety environment at the Gaudet School.⁴⁴ He is confident that grade configuration at Gaudet will be academically successful.⁴⁵

³⁹ T. Vol. I, page 194 through 202 See: School Committee Exhibit I (Anti-bullying Policy)

⁴⁰ T. Vol. II, page 20

⁴¹ T. Vol. II, page 25 See: School Committee L (Gaudet Bullying Prevention Initiative)

⁴² T. Vol. II, page 69 & 76

⁴³ T. Vol. II, pages 70 through 72. See School Committee Exhibit J (Traffic and Safety Study for the Gaudet Middle School)

⁴⁴ T. Vol. II, pages 104.

⁴⁵ T. Vol. II, pages 112 & 113.

20. One teacher has been assigned to field questions and concerns from parents and other teachers about safety and supervision on the first floor of the Gaudet School.⁴⁶ A halftime guidance counselor will be available to fourth and fifth grade students at the school.⁴⁷
21. The reconfiguration was preceded by an extensive community outreach program. The school district sought received and took into account input from parents and teachers concerning what decisions were to be made.⁴⁸ We find that the level of public participation in this matter more than suffices to meet the school committees statutory obligation under R.I.G.L. 16-2-9.1 to, *inter alia*:
 - a. Accept and encourage a variety of opinions from and communication with all parts of the community.
 - b. Make public relevant institutional information in order to promote communication and understanding between the school system and the community.
 - c. Act on legislative and policy-making matters only after examining pertinent facts and considering the superintendent's recommendations.

In making this finding we recognize that the petitioners contend that some of the numerous meetings and hearing held concerning this matter may not have met the precise notice requirements of the Rhode Island Open Meetings Act. Such questions must be directed to the Office of Attorney General since that is where jurisdiction to consider such issues has been placed. (R.I.G.L.42-46-8) We are more than satisfied, however, that the school committee has met its duty of public consultation under R.I.G.L. 16-2-9.1 and that sufficient public meetings were held in this matter that did meet all the requisites of the Open Meetings Act.⁴⁹

Conclusions of Law

1. The law governing school closures and school relocations is found at R.I.G.L.16-2-15:

R.I.G.L. 16-2-15 Location of schools – Control of property. – (a) The school committee shall locate all school houses, and **shall not abandon, close, or change the location of any without good cause;** and, unless provided by law, the school committee of each city or town shall have the care and control of all public school buildings and other public school property of the city or town, including repairs of the buildings and the purchase of furniture and other school equipment. *** (Emphasis added)

⁴⁶ T. Vol. I, page 137

⁴⁷ T. Vol. 1, page 138

⁴⁸ School Committee Exhibits D & G (MPS Transition Team Report)

⁴⁹ T. Vol. I, page 78. & T. Vol. II, page 5.

2. The Rhode Island Supreme Court has held that the Commissioner exercises *de novo* review authority over decisions of local school committees. This means that the Commissioner under most circumstances completely rehears any matter that has been appealed and makes an independent decision in the case.⁵⁰
3. The Commissioner's most recent case discussing school closing and related issues is *In Re: Closing of the Prudence Island School*, Commissioner of Education, 0024-07, October 2007.

**Discussion –
The Closing of the John F. Kennedy School**

Before the Middletown school committee decided to close the John F. Kennedy School it considered numerous other options and consulted with all those who needed to be consulted with. In the end, it concluded that only the option of closing the John F. Kennedy School would save the amount of money that needed to be saved. The cost of keeping the John F. Kennedy School open would have included the end of full day kindergarten, the end of support for personal literacy plans, the lay-off of at least three nurse teachers, the end of all school sports, and the elimination of a number of other programs.⁵¹ After reviewing the evidence it is our independent determination that the school committee's decision to close the Kennedy School is a decision that we must accept as being the best decision available to the school committee given the difficult financial situation school committee had to deal with. Fiscal exigency in this case provides good cause for closing the Kennedy School. *In Re: Closing of the Prudence Island School*, Commissioner of Education, 0024-07, October 2007.

**Discussion —
The Situation of the Fourth Grade at the Gaudet Middle School**

It is evident to us that the Middletown school committee would not have closed the Kennedy School and moved the fourth grade from the Kennedy School to the Gaudet School but for the pressure of fiscal exigency. It is also evident to us that the parental concerns expressed at the hearing in this matter are valid concerns. The question before us is whether or not the Middletown school committee has adequately addressed these concerns.

Our findings of fact document that the school committee has taken great care to ensure that the fourth grade students at the Gaudet School will be protected from over association with older students. The fourth grade students are in their own wing of a thoroughly refurbished first floor of the Gaudet School. They share this first floor with fifth graders who have their own wing on the first floor. There is an expectation that a fourth and fifth grade learning academy will be created at the school. The school district has undertaken appropriate measures to guard against interaction between fourth grade

⁵⁰ *Jacob v. Board of Regents*, 117 R.I. 164 (1976); *Slattery v. School Comm.*, 116 R.I. 252, 354 A.2d 741 (1976); *Altman v. Scholl Comm.*, 115 R.I. 399, 347 A.2d 37 (1975).

⁵¹ T. Vol. I, page 116

students and older students at the Gaudet School and on the school buses these fourth grade students will be riding.

The Gaudet School has appropriate security plans that have been worked out in cooperation with local police and fire agencies. The school has an anti-bully policy that it implements.

Those certified professionals charged with care, control, and management of the Gaudet School are confident that the fourth graders at the school will receive a quality education in the refurbished classrooms they now occupy. This view is seconded by the expert testimony presented at the hearing.

Given the facts on the record we must conclude that the school district has adequately addressed the parental concerns that have been expressed in this case.

Conclusion

The appeal in this case must be denied and dismissed.

Still, we recognize that grade configuration in this case is somewhat unusual. Therefore, in the exercise of our visitorial authority over public education in this state, we will appoint Mr. Joseph DaSilva of the Department of Education to take view of the Gaudet School and prepare a report on the actual functioning of the school housing facilities there with regard to the fourth grade. We will also appoint a special visitor who will file a report on the academic program available to the fourth graders at the Gaudet School. These reports will be made available to the parents in this case.

APPROVED:

Forrest L. Avila, Hearing Officer

Deborah A. Gist, Commissioner

November 23, 2009
Date