

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

GLORIA DiLUCIA and ESTHER WOLK

v.

COVENTRY SCHOOL COMMITTEE and
RHODE ISLAND DEPARTMENT OF EDUCATION

Decision

Held: Appeals of displaced librarians are denied based on the applicability of §16-2-21(d)(ii), the nature of the Commissioner's authority to grant waivers under the Caruolo Act, and the rational basis in fact supporting the Commissioner's granting of the School Committee's waiver request concerning one full-time librarian at Coventry High School.

Date: September 9, 2010

Introduction

This matter involves appeals filed by Gloria DiLucia and Esther Wolk concerning Ms. DiLucia's dismissal from employment and Ms. Wolk's involuntary transfer to another school. The appeals allege that the dismissal and transfer were based on an invalid waiver of a staffing requirement contained in the Rhode Island School Library Regulations granted by the Commissioner of Education to the Coventry School Committee.¹

Background

Ms. DiLucia and Ms. Wolk were employed as full-time librarians at Coventry High School during the 2007-08 school year. There were approximately 1746 students enrolled at the High School that year.

The Rhode Island School Library Regulations state that "there shall be two full-time librarians and a clerical assistant in schools with over 1,000 children . . ."

On December 27, 2007, the Coventry superintendent of schools asked the Commissioner of Education for a waiver of the staffing requirement for the Coventry High School library. This was followed by a similar request on February 13, 2008 from the chairman of the Coventry School Committee. According to the request, the elimination of study periods from the high school schedule had ended the practice of unescorted students visiting the library during these periods. The request stated that

students are now brought to the library with their classmates under the supervision of their classroom teacher . . . [U]nder this new model, most often there are one or two classroom teachers with two librarians and a full-time clerk. We believe that with the required need for the classroom teacher to escort and supervise the students during their time in the library, the requirement for there to be two librarians is both redundant and cost-prohibitive. [Joint Exhibit 5].

The day before the chairman's request, the School Committee "approved the Superintendent's recommendation not to renew [Ms. DiLucia's] contract . . ." [Petitioners' Exhibit 2]. Ms. DiLucia and other similarly-situated teachers appealed the

¹ The appeals were dated June 30 and September 9, 2008. A hearing was held on December 16, 2008. The Petitioners and the Department of Education were represented at the hearing.

School Committee's action, requesting a hearing before the full Committee. At the request of the superintendent, the hearings were delayed until the school department could complete the town budget development process.

As for the budget development process, the superintendent testified that he was informed by the town finance director in December 2007 that the maximum increase that the school district could request for fiscal year 2009 under §16-2-21 was \$1,985,000. In light of unchanged state aid and significant cost increases in pensions, health insurance and other contractual obligations for the upcoming year, the superintendent identified areas where cost savings could be achieved. These savings, which included the elimination of one of the full-time librarians at the High School, were used to keep the requested budget increase at \$1,985,000. A list of the areas in which reductions totaling \$900,000 were made was attached to the budget in the hope that additional funding would be provided to restore some or all of these items to the budget. This list included the full-time librarian eliminated from the High School.

The School Committee worked on the budget in February 2008. It adopted a budget in early March 2008.² In a letter dated March 7, 2008, the Commissioner of Education granted the School Committee's §16-2-21.4 librarian waiver request subject to the superintendent providing assurances that all students will continue to: (1) "have access to the media center and its staff, the computer lab, the reading room, the study area, and the book and media collection," and (2) "get appropriate academic support from the staff in the media center." [Joint Exhibit 6]. The superintendent provided such assurances in a letter dated March 18, 2008. The letter noted that "[s]tudents who access the library do so in context with their class supervised by the classroom teacher and any teacher assistant assigned to that class," and that "the instructional day schedule can stagger the teacher preparation/unassigned time throughout the week to ensure that no class or specified time period is disadvantaged from access to the librarian." [Joint Exhibit 7].

The School Committee budget was transmitted to the Town Council in March 2008. The Town Council's recommended town budget was approved at the financial

² The budget states that the maximum increase allowed by §16-2-21 is \$1,967,026.

town meeting in June. The approved budget provided for one full-time librarian at Coventry High School.

On June 5, 2008, Ms. Wolk was instructed to attend the job fair because her librarian position at the High School had been eliminated.³ On August 26, 2008, Ms. DiLucia's appeal of the School Committee's February 12, 2008 action was heard and denied by the Committee.⁴

Testimony at the hearing showed that teachers make scheduling arrangements with the High School librarian to bring students to the library so that the librarian may provide instruction with regard to electronic sources of information, share library materials about a classroom instructional theme or topic, and assist with presentations and writing projects. Students also use computers and access video-streaming in the library.⁵ In the 2008-09 school year, the library was open from 7:20 a.m. until 2:00 p.m. It was open from 7:00 a.m. until 3:00 p.m. the previous year. Student busses leave the school at 2:05 p.m. Presently, there is no librarian in the library during the librarian's unassigned period, but the library clerk is present.

Positions of the Parties

Petitioners contend that the waiver is null and void, and that they should be restored to their librarian positions at Coventry High School. They argue that the waiver request and approval were premature under §16-2-21.4 because the School Committee's 2009 fiscal-year budget appropriation had not yet been made. The waiver also is invalid because it excuses a regulatory requirement while other non-mandated items remained in the budget. The district is not in compliance with the assurances it made to the Commissioner in light of the significant reduction in library hours, staff and student service opportunities. Petitioners' appeal to the Commissioner is appropriate because the dismissal and involuntary transfer at issue are directly attributable to the granting of the waiver. The appeal is timely in light of the fact that the School Committee budget was not approved until June 2008.

³ The record shows that another librarian was assigned to the High School library.

⁴ Petitioners' union representative first saw the letters requesting, granting and providing assurances for the waiver at this August 26, 2008 hearing. Ms. DiLucia did not appeal the School Committee's decision to the Commissioner of Education pursuant to the Teacher Tenure Act.

⁵ The computer area is a separate, glass-enclosed section of the library.

The School Committee contends that the appeal is untimely and that the Commissioner of Education does not have jurisdiction over this matter. With regard to the latter, the Committee argues that the proper appeal of a Commissioner's decision to grant a waiver under §16-2-21.4 is to the Board of Regents, and that Ms. DiLucia elected her remedy in this matter by appealing her layoff to the Coventry School Committee. Section 16-2-21.4 does not require that a budget be adopted prior to a waiver request. The librarian reduction is consistent with the elimination of study halls from the high school schedule. While post-waiver library services are not the same, appropriate access and support is being provided to students at the high school library.

The Department of Education contends that the waiver provision in §16-2-21.4 is designed to operate quickly so as to assist in the balancing of school budgets, and that there is no appeal from this legislative grant of authority to the Commissioner. In any event, Ms. DiLucia elected her remedy when she appealed her termination to the School Committee. Under Title 16, the Committee has discretion in determining programs and services for students. Even if library services are found not to be sufficient, it does not necessarily follow that a librarian must be returned to the high school.

Discussion

Before we consider Respondents' arguments concerning appeals from waiver decisions under §16-2-21.4, we must address Petitioners' contention that waivers under the statute are not available to school committees prior to the fiscal-year appropriation by the funding authority. Subsection (a) of §16-2-21.4, commonly known as the Caruolo Act, states in pertinent part as follows:

Notwithstanding any provision of the general or public laws to the contrary, whenever a city, town or regional school committee determines that its budget is insufficient to comply with the provisions of §16-2-21, 16-7-23, or 16-7-24, the city, town, or regional school committee shall adhere to the appropriated budget or the provisions of §16-2-23 in the absence of an appropriated budget. The chairperson of the city, town, or regional school committee . . . shall be required to petition the commissioner, in writing, to seek alternatives for the district to comply with state regulations and/or provide waivers to state regulations and, in particular, those which are more restrictive than federal regulations

that allow the school committee to operate with a balanced budget. Waivers which affect the health and safety of students and staff or which violate the provisions of chapter 24 of this title shall not be granted. The commissioner must consider alternatives for districts to comply with regulations and/or provide waivers to regulations in order that the school committee may operate with a balanced budget within the previously authorized appropriation. In the petition to the commissioner, the school committee shall be required to identify the alternatives to meet regulations and/or identify the waivers it seeks in order to provide the commissioner with the revised budget which allows it to have a balanced budget within the previously authorized appropriation. The commissioner shall respond within fifteen (15) calendar days from the date of the written petition from the school committee.⁶

R.I.G.L. 16-2-21(c) states that “[o]nly a school budget in which total expenses are less than or equal to appropriations and revenues shall be considered an adopted school budget.” R.I.G.L. 16-2-21(d)(ii), which the superintendent mentioned in his testimony concerning budget parameters, provides that

the budget adopted and presented by any school committee for the fiscal year 2009 shall not propose the appropriation of municipal funds (exclusive of state and federal aid) in excess of one hundred five percent (105%) of the total of municipal funds appropriated by the city or town council for school purposes for fiscal year 2008.⁷

R.I.G.L. 16-7-23 and 16-7-24 require, in part, that communities maintain their local contribution to schools and provide sufficient funding to support the basic education program and approved programs shared by the state.⁸

The Caruolo Act became law in 1995. The limitation on school committee budget proposals contained in §16-2-21(d)(ii) was enacted in 2006. In its 2009 decision in School Committee of Cranston v. Bergin-Andrews,⁹ the Rhode Island Supreme Court examined the “[n]otwithstanding any provision of the general or public laws to the contrary” phrase in §16-2-21.4(a) and found that the Caruolo Act was in no way hindered by the requirements of other budget-related provisions of Title 16. The Court therefore

⁶ Chapter 24 of Title 16 provides for the education of children with disabilities.

⁷ Other sections of the statute impose more stringent percentage limitations of school committee budget proposals for succeeding years.

⁸ R.I.G.L. 16-2-23 applies to situations where the fiscal year has ended but the annual appropriation for schools for the next fiscal year has not yet been authorized. This is not the situation here.

⁹ 984 A.2d 629, decided December 14, 2009.

rejected the contention that the Caruolo Act is a “stand-alone statute” meant to be applied without reference to any other section of the General Laws. According to the Court, “all relevant sections should be construed to harmonize with each other to give full force and effect to the intention of the Legislature.”¹⁰

We find that §16-2-21(d)(ii) is another relevant section that should be construed in harmony with the Caruolo Act and Title 16’s budget provisions. In discussing the intention of the Legislature with regard to school committee budgets, the Court in Cranston School Committee stated that

[i]n light of the language of the Caruolo Act itself, as well as the other pertinent provisions of chapters 2 and 7 of title 16, it is clear that the General Assembly intended school committees to amend their budgets, request waivers, and request additional appropriations from their host municipalities at the first indication of a possible or actual deficit. The General Assembly’s intent to encourage *expeditious* action in instances of potential school deficit spending is both practical as a matter of public policy and indisputable as a matter of statutory construction. (emphasis in original).¹¹

Elsewhere in its decision, the Court found that the school committee “missed opportunities” to explore possibilities for savings.¹² The Court emphasized the importance of timely action in responding to a deficit, and it observed that “[s]chool committees and school department administrators are exhorted to act quickly when they discover actual or potential budget problems, *see, e.g.*, §§16-2-9(f), 16-2-21 . . .”¹³

The limitations on school committee budget proposals set forth in §16-2-21(d) are not conditional. They are definite restrictions on the amount of municipal funding that a school committee can request in a particular fiscal year. As such, they are fixtures on a school committee’s fiscal terrain. A school committee must take the statutory limitation into account while developing its fiscal-year budget proposal. As explained by the superintendent at the hearing in this matter, the limitation has a calculable impact on the amount of the school committee’s proposed budget. It would be contrary to the

¹⁰ Ibid. at 643.

¹¹ Ibid. at 644. In its discussion of pertinent budget-related statutes, the Court noted that R.I.G.L. 16-2-9(f) requires school committees to submit a written statement, including a corrective action plan, to municipal officials within 5 working days of discovering a “potential or actual” budget deficit

¹² Ibid. at 646.

¹³ Ibid. at 644.

legislative intent in this area for a school committee not to heed the fiscal impact of §16-2-21(d) as soon as it is quantified. Although enacted 11 years after the Caruolo Act, we find that §16-2-21(d) works in harmony with that statute to prevent and eliminate budget deficits.

The Caruolo Act authorizes the Commissioner of Education to grant alternatives and/or waivers to state regulations which would “allow the school committee to operate with a balanced budget.” The Act prohibits the Commissioner from granting waivers which affect the health and safety of students and staff or which violate the provisions of the law regarding the education of children with disabilities. Other than the requirement to respond within 15 calendar days, the Act does not impose any procedural requirements on the Commissioner.

The Caruolo Act’s delegation of authority to the Commissioner is very broad. It allows for the exercise of significant discretion. It does not require school committees to eliminate non-regulatory items from the budget before requesting waivers to state regulations.¹⁴ Nor does it provide for any review of the Commissioner’s responses to school committee requests.

In sum, the waiver authority given to the Commissioner of Education under the Caruolo Act is designed for quick, flexible and definitive action to respond to a time-sensitive need. It is precisely the type of delegation that will assist in carrying out the General Assembly’s intent “to encourage *expeditious* action in instances of potential school deficit spending . . .”¹⁵ The Commissioner’s action in this case is tantamount to legislative action. Absent a claim that the waiver adversely affects the health and safety of students or staff, or violates special-education regulations, we find no basis for a direct appeal from the Commissioner’s exercise of his authority under the Caruolo Act.¹⁶

¹⁴ The record does not specify which particular non-mandated items are funded in the School Committee’s proposed budget.

¹⁵ 984 A.2d at 644 (emphasis in original).

¹⁶ In United States v. George S. Bush & Co., which involved the president’s exercise of authority granted to him by the Tariff Act of 1930, the Supreme Court stated that “[w]henver a statute gives a discretionary power to any person, to be exercised by him upon his own opinion of certain facts, it is a sound rule of construction, that the statute constitutes him the sole and exclusive judge of the existence of those facts.” 310 U.S. 371, 380 (1940). Also see Utah Association of Counties v. Clinton, 316 F.Supp.2d 1172 (2001), which involved the president’s discretion under the Antiquities Act to make determinations concerning federal property.

Petitioners are certified teachers, however. There is another act of the General Assembly, i.e., the Teachers' Tenure Act, which applies to certified teachers. For purposes of this decision, we will construe the waiver provision of the Caruolo Act and Teachers' Tenure Act harmoniously.

Ms. DiLucia, by reason of her termination from employment, enjoys the protections of the Teachers' Tenure Act; Ms. Wolk, who was involuntarily transferred, does not.¹⁷ Under §16-13-4, Ms. DiLucia is entitled to a hearing concerning her termination before the full School Committee and, if aggrieved by the School Committee's decision, the right of appeal to the Commissioner. Without reaching the issues concerning election of remedies, the timeliness of Ms. DiLucia's appeal to the Commissioner, and the standard of review to be applied to the Commissioner's exercise of his discretion under the Caruolo Act, we will examine the evidence in the record to determine whether a rational basis existed for the granting of the waiver which led to Ms. DiLucia's termination.¹⁸

Students visiting the High School library need to be supervised by certified educators. Students also depend upon the expertise of librarians when accessing library equipment and materials. Teachers rely on the assistance of librarians with regard to technology and curricula.

A major change in library use took place with the elimination of study periods at the High School. The practice of students going to the library unaccompanied by a teacher ended. Students now visit the library with their class, classroom teacher and any teacher assistants who may be assigned to the class.¹⁹ The resulting reduction in the supervisory responsibilities of a librarian is obvious. Teachers are also more available to help students access the more rudimentary library resources and assist with the academic aspects of presentations and projects.

There was a considerable reduction in the library's hours of operation. The School Committee attempts to minimize this cutback by noting that most of the reduced

¹⁷ If Ms. Wolk was actually terminated, she did not pursue the matter with the School Committee under Title 16. In any event, the remainder of our analysis is equally applicable to her case.

¹⁸ In other words, we are looking for factual support for the waiver as part of the good and just cause that is required to dismiss a tenured teacher under §16-13-3.

¹⁹ Under §16-11.2-1, a teacher assistant may "provide instructional or other direct services to students . . . under the supervision and direction of the classroom teacher or other appropriately-certified professional staff." With oversight by a certified educator, a teacher assistant may help supervise students.

library time took place after the end of the school day. Clearly, the library day is shorter, but there is insufficient evidence to establish that the after-school closure denied students meaningful access to the library. With regard to the ability of teachers to schedule classroom sessions with the librarian, we see no appreciable reduction in librarian availability when the elimination of the need to supervise and assist unescorted students is taken into account. We also believe that staggering the librarian's unassigned period is a workable solution in light of the increased teacher presence in the library.

Accordingly, we find that appropriate levels of access and support are being provided to students despite the elimination of one full-time librarian from the Coventry High School library. We therefore find a rational basis in fact for the Commissioner's waiver decision.

Conclusion

Based on the applicability of §16-2-21(d)(ii) to this case, the nature of the Commissioner's authority to grant waivers under the Caruolo Act, and the rational basis in fact supporting the Commissioner's granting of the waiver request concerning one full-time librarian at Coventry High School, the appeals are denied and dismissed.

Paul E. Pontarelli
Hearing Officer

Approved:

Deborah A. Gist
Commissioner of Education

Date: September 9, 2010