

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

N.M.

v.

NARRAGANSETT SCHOOL COMMITTEE

DECISION

Held: The Appellant has not alleged a particularized injury to her daughter; the allegation of “inadequate instructional resources” does not present the type of claim upon which the requested relief can be granted. Accordingly, Appellant’s request that she be permitted to enroll her daughter in North Kingstown High School, at the expense of the Town of Narragansett, is denied.

DATE: August 27, 2015

TRAVEL OF THE CASE:

On May 6, 2015¹ the Rhode Island Department of Elementary and Secondary Education received an appeal addressed to former Commissioner Deborah A. Gist. The Appellant, the parent of an eighth grader at Narragansett Pier Middle School, appealed from the decision of the Narragansett School Committee denying her request for tuition so that she could enroll her daughter in the North Kingstown school system. The School Committee had considered the Appellant's request for tuition and denied it in a written decision dated November 22, 2013. On May 7, 2015, the undersigned was designated to hear and decide this appeal and it was scheduled for hearing on June 23, 2015. This hearing date accommodated the request of the School Department's counsel to defer hearing until after the end of the school year when district administrators were not preoccupied with their year-end responsibilities.

On May 15, 2015 counsel for the School Committee filed a Motion to Dismiss on two grounds: the failure to state a claim on which individual relief could be granted and *laches*. The lapse of time between the issuance of the School Committee's decision and the filing of the appeal was approximately eighteen months. Counsel for the Committee argues that an untimely appeal to the Commissioner makes it more difficult for administrative staff and counsel to prepare the district's defense. In the context of its Motion to Dismiss, the Narragansett School Committee indicated that, while it did not consider it necessary, it welcomed a review by a special visitor to examine the quality of its mathematics and science programming. RIDE elected to adjudicate the Appellant's complaint rather than appoint a special visitor to examine Narragansett's educational program to determine if it was in compliance with applicable laws and regulations. The hearing officer then deferred ruling on the Motion to Dismiss and indicated that, consistent with past precedent, a ruling on the Motion would be consolidated with a ruling on the merits of the appeal.²

A hearing was held on June 23, 2015 at which time testimony and documentary evidence were submitted. Closing statements were received at the time of hearing. The

¹ The letter of Appeal was dated "April 14, 2014". The Appellant indicated that this was a typographical error. See Tr. p.3.

² See Tr.p.4.

record closed upon receipt of the transcript on July 13, 2015. Jurisdiction to hear this matter lies under R.I.G.L. 16-39-1 and 16-39-2.

Issues:

- Does the Appellant's eighteen-month delay in filing an appeal from the November 22, 2013 decision of the Narragansett School Committee bar her appeal to the Commissioner under the doctrine of laches?
- Assuming, *arguendo*, that a school district's educational program has deficiencies, does this situation create an individual right to relief in the form of tuition so that a student can enroll in another Rhode Island school district?
- Does the fact that students are not provided with textbooks in math and science at Narragansett Pier Middle School³ render these programs inadequate and require that the Commissioner order that N.M.'s daughter be permitted to enroll in North Kingstown at the expense of the Narragansett School Department?

Findings of Relevant Facts:

- The Appellant's daughter, L.M. attended the Narragansett Pier Middle School in the 2014 -2015 school year and graduated in June of 2015.
- L.M. is a very good student and took accelerated math during her last year in middle school. She has also attained scores of "Proficient with Distinction" in Reading and Mathematics on the standardized tests administered pursuant to the state assessment program. Tr. pp.58-61; S.C. Ex. F and G.

³ Although it was not her focus at the time of hearing, apparently the fact that students at Narragansett High School have math textbooks that are not aligned with Common Core standards and that are supplemented with various other instructional materials also renders the high school program inadequate. The Appellant maintains that disparities in instructional resources place her daughter at a disadvantage in terms of her preparation for SAT's and ACT's and an inequity results in comparing the resources available to her in comparison to her peers in other Rhode Island districts that do provide students with adequate resources.

- For the past two (2) years, students at Narragansett Pier Middle School have not been provided with textbooks in mathematics or science. Textbooks, along with a variety of print and online instructional resources, have been utilized by teachers in implementing the district’s curricula in math. Tr. pp. 26, 46-47, 52-57. S.C.Ex. E-1 through E-4.
- At the middle school level, the science curriculum will be transitioning from alignment with the Grade Level Expectations established by the former Board of Regents to the Next Generation Science Standards. Tr. pp. 22-24. At the middle school, a “blended approach” to learning is used and a variety of print, on-line and teacher-created materials are utilized by students. Tr. pp.22; 46-49.
- Math and Science textbooks are distributed to students at Narragansett High School; however, administrators are trying to find a new math textbook that is aligned to the Common Core Standards adopted by Rhode Island. The math textbooks currently in use are supplemented by “a plethora of supplemental materials,” some of them teacher-created. Tr. pp. 71-74.
- In the opinion of the Superintendent of Narragansett Public Schools, Katharine Sipala, a textbook⁴ is not necessary for effective instruction in math and science. A textbook is one of the tools utilized by teachers, but it is not the only tool and it is not currently the major source of a curriculum in these subjects. Tr. pp. 24-27. The Superintendent also testified that there are very few, if any, textbooks that meet the Common Core state standard. Tr. p.25.
- With the instructional materials that are utilized in the Narragansett school system, students of the district have scored extremely well in Reading and Mathematics in comparison to statewide averages at both the middle and high school levels. S.C. Ex. D-1 through D-4.
- The Appellant works with her daughter on academic subjects, including math and science, outside of the classroom. During the period of time in which her daughter has not been provided with textbooks in math and science at the Middle School, the

⁴ The totality of the Superintendent’s testimony creates the inference that it is the distribution of a textbook to **each student** that is not necessary rather than a teacher’s reference to a recognized textbook as one of the resources in his/her implementation of the curriculum in math and science.

Appellant has been unable to grasp what is going on in the classroom, to see how the curriculum is organized and to access the materials that would enable her to help her daughter understand the concepts and information that she needs to in order to excel in these subjects. Tr. pp. 13-14;75-78; According to her letter of appeal, a textbook (either a physical book or an online book) would provide:

1. A resource to which a student may refer when he/she has questions at home about a topic being studied in class, which includes an index of past, present, and future topics to be covered.
 2. A resource to which a parent may refer when that parent has questions or concerns about what topics are being covered in class. (See Letter of Appeal dated April 14, 2014).
- The Narragansett School Committee considered N.M.'s request for tuition for her daughter to attend school in North Kingstown on November 20, 2013. After reviewing the resources that the science and math teachers provided for their students, the Committee "was satisfied with those materials" and encouraged the Principal of the Narragansett Pier Middle School to share those same resources with N.M. so that she could support her daughter's learning. The Committee's written decision was sent to N.M. on November 22, 2013. See Exhibit 1 of the Narragansett Public Schools' Motion to Dismiss dated May 15, 2015.

Positions of the Parties:

The Appellant:

The Appellant argues that a textbook⁵ is an absolute necessity as a resource to be provided to students in the study of math and science. In the past, she has utilized

⁵ The totality of the Appellant's presentation creates the inference that it is the distribution of a textbook to **each student** that she views as necessary for her daughter, and other students at the Middle School, to have adequate resources and to do well in math and science.

textbooks to obtain an organized, sequential presentation of the material with an index so that she could assist her children as they proceeded to learn the subject matter. She has also used textbooks to determine whether or not her children are being adequately prepared to take the standardized tests (SAT's and ACT's) that they need to take in order to score well and get into the kind of college that she expects them to get into. (Tr. pp.13-14).

She submits that the lack of textbooks in Narragansett has placed her daughter at a disadvantage and created an inequity between the education provided to students in Narragansett and those attending public schools in other districts. Her position is that depending upon where you live in Rhode Island, there are "vastly different educational experiences". She maintains that the lack of textbooks for Narragansett students is an example of the inequitable educational system in this state. Every child in Rhode Island should have access to the same quality of education and academic standards should be set higher than they have been by the adoption of the Common Core. The remedy she requests for her daughter is the issuance of an order directing the Narragansett School Department to pay tuition so that her daughter can attend high school in North Kingstown.

Although she has presented this appeal to the Commissioner, the Appellant stated that she does not expect to obtain the order she has requested or be provided with any other form of relief in this forum. She decries the lack of oversight by RIDE and submits that local school districts are not (held) accountable to RIDE or to parents. The quality of the education provided by individual districts is never scrutinized and she intends to take the issue she raises to another forum. She views Rhode Island's receipt of a seventy-five (\$75) million dollar Race to the Top grant as an opportunity to focus public scrutiny on how this money was spent. The fact that the money has been used "for large purchases" rather than to supply textbooks to students is "going to reflect poorly" on the recipients of these funds. Her opinion is that Rhode Island, in general, is "ethically challenged" and its misuse of Race to the Top funding is an example of this state's "Race to the Bottom".

Narragansett School Committee:

In addition to pressing its Motion to Dismiss on the grounds of failure to state an individual claim to relief and *laches*, the district outlines evidence submitted at the hearing that it views as requiring that the Commissioner dismiss and deny this appeal.

Counsel for Narragansett submits that the evidence shows that Narragansett's educational programs are of high quality and systematically developed by teams of educators- curriculum directors, "coaches"⁶ and classroom teachers. There is a well-thought-out curriculum in each of the academic subject areas as well as a deliberate and comprehensive "curriculum mapping" process. Evidence was adduced as to specifically how this process unfolded with reference to Narragansett's alignment of its curriculum to Common Core standards in math. A similar curriculum development process is now underway in science because of the recent adoption of new standards called the Next Generation Science Standards. Curriculum mapping documents (such as School Committee Exhibits E1-E5) provide a suggested list of instructional resources that can be used in the classrooms, without constraining teachers from further supplementing the listed resources. Students often are provided with print materials that are prepared by their teacher. Students must then organize these materials in a binder or notebook. The selection of materials in the various academic subjects is within the discretion of the local school committees and the groups of teachers who collaborate for this purpose.

Narragansett takes the position that under Rhode Island education laws the selection of instructional materials is within the purview of local school committees. Professional staff employed by school districts are called upon to exercise their expertise in the area of instructional resources and determine the best way to implement curriculum. The Appellant has not identified any basis on which the Commissioner could rely to intervene in the decisions made by Narragansett educators and the choices they have made with respect to math and science education in the district. There is no statewide educational policy that is violated by a decision to utilize a variety of instructional

⁶ For example, the testimony showed that Narragansett employs a math coach who works with classroom teachers to identify instructional resources that will best meet the needs of the students in their individual classrooms. Tr. pp.50-51.

resources and not to rely on a textbook distributed to each student. In fact, there is not yet an available textbook in math that is adequately aligned to the Common Core standards.

There has also been a major shift in the ways in which students learn, with increasing reliance upon less traditional instructional resources, including those available on-line and those created by individual classroom teachers. There is no single textbook that can provide the type of differentiated classroom instruction that is necessary to address the learning needs of all students, especially those capable of higher levels of performance in math and science.

In determining whether or not adequate instructional resources are made available to Narragansett students, one need only refer to the evidence of the excellent performance of the district's students on recent state standardized tests. The percentages of Narragansett students attaining "proficiency" are substantially higher than the statewide percentages in both mathematics and reading. The district notes that the Appellant's daughter has clearly shared in this success. Narragansett is providing a superior education to its students, notwithstanding N.M.'s perception that the instructional resources available to students in math and science are inadequate. Furthermore, even if there were deficiencies in the educational program in Narragansett because of inadequate instructional resources, this would present an issue of compliance with the Basic Education Program Regulations. Issues of regulatory compliance are more properly addressed by enforcement of the regulations so that the educational program provided to all students in the district can be brought up to state standards.

DECISION

Motion to Dismiss:

There was an approximately eighteen-month delay in appealing the School Committee's decision to the Commissioner. The Appellant has not explained the reason for the delay or sought to excuse it in any way. In fact, she has not objected, either verbally or in writing, to the Motion to Dismiss. Counsel for the School Committee asserts that the

lapse of time makes it “difficult for Narragansett to defend itself” and for this reason the doctrine of *laches* should apply. We infer that the difficulty lies in the fact that the Appellant’s claim of inadequate instructional resources now covers a longer period of time and brings into issue additional facts about her daughter’s math and science classes at Narragansett Pier Middle School. The gap in time also requires the district to work with its counsel in the preparation of its defense for a second time, obviously an expenditure of resources that might have been less had the matter proceeded directly to the Commissioner back in November of 2013. We find that it is inconvenient and imposes additional costs for the district to be required to respond to N.M.’s appeal after such unexcused delay. However, it has not resulted in the type of significant disadvantage or prejudice to the School Committee that customarily supports invocation of the doctrine of *laches*. Thus, based on this record, there is insufficient evidence of prejudice to the Committee to warrant dismissal of N.M.’s appeal under the doctrine of *laches*.

With respect to the argument that alleged deficiencies in a general education program⁷ do not create an individual right to relief, counsel for Narragansett submits that the law in Rhode Island is well-settled. The Rhode Island Supreme Court has ruled on two occasions that there is no actionable right to an adequate education, or even to an education that is comparable to that which students may receive in other districts.⁸ Counsel for Narragansett argues that for general education students no statute, regulation, or court decision supports an entitlement to individual relief, including tuition to attend another school. This is a correct statement of the current law.

However, the Committee’s additional argument that “(t)here is no authority for the Commissioner to award relief to an individual student for inadequacies of the educational program as a whole” (S.C. Ex. A, p.3) is not a proposition with which we can agree. It is conceivable that a deficiency in a district’s educational program could cause such an adverse and discrete impact upon an individual student that the Commissioner would

⁷ The district distinguishes the rights of general education students from those of special education students. When a special education student is not provided with a free appropriate public education, and certain conditions have been met, the student is entitled to tuition to attend a school which does provide him/her with FAPE under the provisions of the Individuals with Disabilities Education Act (IDEA).

⁸ *Woonsocket School Committee v. Chafee*, 89 A.3d 778, 788 (R.I. 2014), citing *Pawtucket v. Sundlun*, 662A.2d 40, 55 (R.I. 1995). Also see *School Committee Exhibit A, Narragansett Public Schools; Motion to Dismiss* at page 3.

direct his or her enrollment in another district.⁹ However, we find that the type of claim asserted by N.M. - inadequate instructional resources- would impact upon all students enrolled in math and science classes at Narragansett Pier Middle School and not just the Appellant's daughter. The nature of the issues raised in this case when coupled with the requested relief (tuition to attend school in another district) does not present the type of claim upon which the requested relief could be granted. Under such circumstances, this appeal should be denied and dismissed.

Merits of the Appeal:

In the event that our ruling on the Motion to Dismiss is found to be in error, we will proceed to address the merits of the claim that instructional resources at Narragansett Pier Middle School are inadequate. This allegation obviously raises concerns as to the adequacy of the program provided not just to the Appellant's daughter, but to all other students enrolled at the Middle School in Narragansett. Such an allegation, if proven, would place Narragansett in violation of the Basic Education Program Regulations ("BEP") that were enacted by the former Board of Regents on June 4, 2009. The BEP contains standards for instructional programs and resources that must be met by all public school programs in Rhode Island. The BEP is designed to ensure that high quality education is available to all public school students in Rhode Island, regardless of where they reside or which school they attend. The standards set forth in the BEP are designed to be measurable in order to determine compliance with the law, and, more generally, to determine whether equality of educational opportunity is being provided at the local level (See BEP-G-12-1 "Authority, Scope and Purpose of the Basic Education Program").

The BEP is regulatory in nature and, as such, has full force of law.¹⁰ The Commissioner of Elementary and Secondary Education is statutorily charged with the responsibility "(t) o require the observance of all laws relating to elementary and

⁹ One example of a situation that might support such a remedy is in a case of willful failure to respond to bullying or harassment of a student or when, despite the best efforts of the district to address the situation, a bullied student no longer feels safe in his or her school environment.

¹⁰ This proposition of law is, interestingly, affirmed explicitly in Section G-12-1 of the BEP.

secondary schools and education.”¹¹ Thus, the Commissioner of Elementary and Secondary Education and the administrative department overseen by the Commissioner, the Rhode Island Department of Elementary and Secondary Education (RIDE), have the responsibility to ensure compliance with the standards set forth in the BEP. There is some language in the BEP itself with respect to RIDE’s oversight and compliance responsibilities; however the language is not explicit with respect to RIDE’s responsibility to monitor and enforce compliance by regulated LEA’s.¹² The cited provisions of state law, however, must be read in conjunction with the BEP.

N.M.’s claim is essentially that textbooks are required in math and science in order for her daughter to receive an adequate education and that her enrollment in North Kingstown would provide her with resources not available to her in Narragansett.¹³ We find that there is no provision of state education law that could be interpreted to require that districts provide textbooks to all students as an instructional resource. Furthermore, relevant provisions of state law place the discretion as to whether and how to use textbooks in educational programming with local school committees.¹⁴

We take administrative notice of the fact that RIDE encourages districts to expand the traditional classroom through virtual learning and the use of other resources. These non-traditional resources enable Rhode Island students to access more personalized, high-quality, and more challenging learning environments.¹⁵ Based on the testimony in this case, we find that this is precisely what the educators in Narragansett have done with their implementation of the math and science curriculum at both Narragansett Pier Middle School and Narragansett High School. Although they still utilize traditional textbooks as an instructional resource in the classroom, the textbook is no longer the primary resource. A broad array of print and online learning materials is made available to Narragansett students. The choices of instructional resources in math and science have been made after a thoughtful process focused on enabling all students to access the curricula in both of

¹¹ R.I.G.L. 16-60-6 (9) (vii); similar authority is conveyed under R.I.G.L. 16-1-5(9).

¹² See the discussion of RIDE’s responsibilities set forth in Section G-12-3.1 of the BEP.

¹³ There is no evidence in this record that North Kingstown’s instructional resources in math and science include providing textbooks to all students at the middle school and/or high school level.

¹⁴ See: R.I.G.L. 16-2-9; 16-2-16; 16-2-18; 16-2-20. 16-23-1; 16-23-2 (b); 16-23-3.

¹⁵ This state-level educational policy was made explicit in 2012 when the R.I. General Assembly enacted “The Rhode Island Statewide Virtual Education Act,” R.I.G.L. 16-22.1-1 et seq.

these academic subjects. In math a new curriculum has been developed around the Common Core. In science a new curriculum is in the process of being developed around the Next Generation Science Standards.

The testimony in this case is that Narragansett teachers, working together in in-district groups and as members of a regional consortium, identify and access the best available instructional resources. The materials that have been selected in math and science are the result of this process. The variety of educational resources used by Narragansett may appear to be a “hodgepodge” to non-educators, but their effectiveness as tools for organized and comprehensive accessing of the curriculum by students has been established in this record. Keeping track of numerous printouts, teacher-created materials and information obtained electronically calls upon students to master organizational skills that were not required when they utilized only a textbook. However, based on the evidence in this case, the materials selected are an effective way to implement the curriculum and to ensure that all students are learning what they need to know.

There is no evidence to suggest that Narragansett has been negligent or that the instructional materials provided to middle and high school students in math and science are not adequate. On the precise issue of whether providing a textbook to each student is “necessary for effective instruction” in math and science, expert testimony from Narragansett’s Superintendent established that textbooks are not necessary and that they have become just one tool among many instructional resources. (Tr. p.27) The Principal of Narragansett Pier Middle School,¹⁶ also qualified as an expert, testified that the school uses a “blended approach” to learning and utilizes a variety of materials and formats, including textbooks made available to students in the classroom. (Tr. pp. 46-49) She also noted that by not restricting the source of learning to a single printed resource, students can be provided with access to “differentiations,” i.e. materials that are more challenging or more supportive, depending on their individual needs. She testified that, particularly in science, information is developing at a rate which makes the use of a textbook impractical. The Appellant offered no contrary opinion from an expert in the field of education or

¹⁶ The Principal is the member of the administrative staff who must ensure that teachers have the resources necessary to implement the curriculum. Tr.p.39.

curriculum implementation. The testimony offered on the appropriate role of textbooks in middle school instruction in math and science stands un rebutted.

The BEP establishes a somewhat objective description of the standards that a district's educational program must meet. A review of the relevant provisions of the BEP would indicate that Narragansett is in compliance with the standards as they relate to instructional resources. The relevant sections are as follows:

- Section G-12-4.2 (c) which requires that local education agencies ("LEA's") provide access to rigorous, guaranteed, and viable curricula for all students; ensure differentiated instructional strategies, materials and assessments.... This is a core function of each LEA.
- Section G-13-2.1 (c) (10) (in a discussion of effective instruction) which requires that an LEA's guidelines for effective instruction include accessing an array of texts, technology and materials to support learning.
- Section G-13-2.2, entitled "Resources and Materials Aligned to Curriculum" which requires each LEA to provide the necessary programs, texts, and materials that ensure that students are supported fully in acquiring the knowledge and skills specified in a comprehensive program of study. Programs, texts, and materials must be in sufficient quantity to ensure that students can engage in and complete all curriculum activities. In addition, programs, texts, and materials must be aligned to the GLE's and GSE's and LEA curriculum design, be research-based and current and selected with input from educators representing all grade levels and courses. Materials must be universally designed to ensure access for all students.
- Section G-15-1.2 entitled "Management Duties and Responsibilities" which describes the responsibility of the LEA's "chief executive" to accomplish system-wide planning and evaluation, including the:
 - ✓ Evaluation of the effectiveness of educational plans, policies, and programs to meet the needs of the students of the LEA, including implementing the governing board's policies concerning curriculum and ensuring the availability of multiple pathways of instruction,

student support systems, textbooks¹⁷, and local assessment systems in order to provide a guaranteed and viable curriculum for all students.

Also of significance in this case is the Board of Regent's description of a 21st Century Learning Environment, found in the definitions section of the BEP. The Board envisioned that:

In a 21st century learning environment all students are able to learn, instruction is engaging, interactive, contextual in the real world, student centered and differentiated for individual learners needs; 21st century tools and technologies are integrated into the learning process; systems (technological and otherwise) are student and learning focused; and personnel engage in continuous professional growth to maintain their skills and knowledge. (BEP at page 41)

A textbook has not become obsolete in the six (6) years since the BEP was promulgated, but it has, evidently, in some subjects at certain grade levels, become a secondary rather than a primary resource for student learning. The record in this case evidences that this is the case with math and science at Narragansett Pier Middle School.

The absence of a textbook has presented an obstacle to N.M.'s work with her daughter outside of the classroom in these subject areas. If her daughter attends Narragansett High School, where a textbook is currently distributed to students in math and science,¹⁸ it may become somewhat easier for her to continue to assist her daughter in the mastery of these subjects. As did the faculty and administrators at Narragansett Pier Middle School, staff at the high school should be ready to work with N.M. to assist her in whatever way they can so that she can remain a partner in her daughter's education.

¹⁷ The mention of "textbooks" in this section does not require that students be provided with textbooks in some or all academic subjects. Such a requirement would be stated directly and placed in a more relevant context-perhaps the discussion of required resources in Section G-13-2.2.

¹⁸ The Principal of Narragansett High School testified that textbooks are still used along with a "plethora of supplemental materials" particularly in math. Tr.p.73.

For all of the foregoing reasons, N.M.'s request for an order requiring Narragansett's payment of tuition for her daughter to attend North Kingstown High School is denied and her appeal is denied and dismissed.

For The Commissioner

Kathleen S. Murray, Hearing Officer

Ken Wagner, Commissioner

DATE: August 27, 2015