

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER
OF
EDUCATION

ANN C. BROUILLETTE

vs.

R.I. DEPARTMENT OF ELEMENTARY
AND SECONDARY EDUCATION AND
EAST PROVIDENCE SCHOOL
COMMITTEE

DECISION

HELD: Despite her initial disqualification because of the incorrect designation of the school in which she taught, the appellant was shown to be teaching in a "middle school" for which she held the appropriate teaching certificate.

TRAVEL OF THE CASE

On March 11, 1991 the appellant's counsel filed a claim of appeal from a) the determination by the R.I. Department of Elementary and Secondary Education (the "Department") that she was not certified to teach 7th grade science in a junior high school and b) the East Providence School Department's removal of her from the 7th grade classroom at Martin Junior High School where she taught science.

Hearings were conducted over the course of the next several months on dates agreed to by the parties, concluding on October 17, 1991. Thereafter the parties submitted legal memoranda, a process concluding with the closing of the record on March 24, 1992.

Jurisdiction to hear this appeal lies under R.I.G.L. 16-39-1, and probably under 16-39-2 as well. Although this matter was not the subject of a formal hearing by the East Providence School Committee, it is likely that the appellant was not required to exhaust her remedies before the school committee,¹ and equally likely that its removal of the appellant from her class constituted a "doing" of the school committee by which she was aggrieved within the meaning of 16-39-2. We need not rule definitively, however, on whether this matter properly proceeded directly to the level of the Commissioner, since the Motion to Dismiss filed by the Department raising this issue was withdrawn

1 The school committee faced loss of funding if it retained Ms. Brouillette in the position to which she was then assigned.

because of facts particular to this case.²

FINDINGS OF RELEVANT FACTS

- o Ann C. Brouillette holds a teaching certificate from the Department of Education issued in July of 1990. (Joint Ex.2)
- o The appellant's teaching certificate, on its face, indicates that she is authorized to serve in the public schools as a:

Provisional teacher of elementary grades
(01-06)...
- with a:

contingent endorsement: middle school
science (grades 07-08)... (Joint Exhibit 2)
- o In September of 1990, Ms. Brouillette was hired by the East Providence School Committee as a full-time teacher, assigned to teach 7th grade science at Martin Junior High School (Tr. Vol.I p.11).
- o At the time she was hired, Ms. Brouillette showed the East Providence school officials a copy her teaching certificate. (Tr. Vol.I p.14)
- o The Department of Education conducted a routine review of teaching assignments in the East Providence school system to determine whether teaching assignments were consistent with the certification status of individual teachers. As a result of this review, the East Providence School Department was notified on January 4, 1991 that the appellant's teaching certificate did not authorize her to teach 7th grade science at the junior high level. (Joint Ex.8)

2 The facts of this case were that in the pre-appeal exchange of information pertaining to Ms. Brouillette's certification status, she was encouraged to appeal directly to the Commissioner if she continued to disagree with the Department's determination that she was not certified to teach 7th grade science in a junior high school.

- o On January 15, 1991 the East Providence School Department removed the appellant from her class. (Joint Ex.1)
- o Shortly after her removal from her class, Ms. Brouillette was restored to full pay and the benefits accorded a full-time teacher, but pending the outcome of this dispute she was assigned to teach as a substitute in the school system. (Tr. Vol.I p.15; Vol.II p.87)
- o Martin Junior High School contains grades 7 through 9. Students are grouped into "houses" and taught by a team of teachers for the four major subjects. Teachers are assigned to teach their specialized subject area to four classes of 25 children, all at the same grade level. The 25 children remain together while they rotate to the classrooms of each of the teachers in their major academic subject areas.³ (Tr. Vol.I p.11, Vol.II pp.5,6)
- o The presentation of the science curriculum in the eighth grade at Martin Junior High is the same as that in the 8th grade at Tiverton Middle School. (Tr. Vol.III pp.64-66)
- o In presenting the 7th grade science curriculum at Martin Junior High the appellant utilized the same methods as those used in the 8th grade at Barrington Middle School where she student-taught. (Tr. Vol. IV p. 53)
- o The school day at Martin Junior High is scheduled so that each team of teachers for each grade level can meet to plan and coordinate interdisciplinary activities and discuss any

3 Mathematics, Science, Language Arts, and Social Studies. (Tr. Vol.IV p.47)

- academic or disciplinary problems of the group of children taught by that team. (Tr. Vol.III p.66, Vol.IV pp. 49-50)
- o The team has the flexibility to change the class schedule of its students to accommodate interdisciplinary and non-academic activities. (Tr. Vol.IV p.50)
 - o The Providence School Board utilizes a middle school organizational structure rather than a junior high plan. The transition to a middle school organization took place in 1969. (Tr. Vol.III p.10)
 - o The adoption of a middle school plan in Providence was not accompanied by the School Board's adoption of a "middle school philosophy", i.e. that instruction in the middle school should be "child-oriented" rather than instructional-content oriented, the educational philosophy at work in the secondary grades. (Tr. Vol.III pp.25,27,43)⁴
 - o Grades 7 and 8 in the middle schools of Providence are under the supervisory authority of the Assistant Superintendent for Secondary Education, and are operated on the model of a secondary school. Students move from one class period to another for specialist teaching in each of the academic areas. (Tr. Vol.III pp.21,40-41)
 - o Teachers in grades 7 and 8 in Providence middle schools are "secondary-oriented" teachers. (Tr. Vol.III p.15)

4 Department Ex. 2 does purport to be a draft of a position paper on "the Middle School in Providence Grades 7-8", prepared by a committee of administrators in the Providence School Department. There was no evidence that this document was endorsed or adopted by the Providence School Board, or that it has been implemented in the day to day operation of grades 7 and 8 in the middle schools in Providence.

- o Placement of grades 5 and/or 6 in the middle schools in Providence is determined by the student capacities of the various "feeder" elementary schools. Thus, some middle schools contain grades 5-8, some grades 6-8. (Tr. Vol. III pp.13-15)

POSITION OF THE PARTIES

The appellant argues that the body of regulations which are relied on by the Department to disqualify Ann Brouillette from teaching 7th grade science in a junior high are invalid - both on their face and as applied in this case. The teacher certification regulations distinguish between the qualifications needed to teach 7th grade science depending on whether that grade is placed at the elementary, middle or secondary level. The appellant argues that a scheme with such distinctions impermissibly goes beyond the language of the enabling statute, 16-11-2. This law authorizes the Board of Regents to issue certificates of qualification "which shall be valid throughout the state for the grade and time specified therein". From this the appellant argues that a certificate to teach 7th grade science must uniformly qualify her to teach in any 7th grade, regardless of whether it is placed by a local school committee at the elementary, secondary or middle school level.

Additionally, the appellant argues that by not defining a middle school for purposes of the middle school endorsement, other than by a reference to "grades 5-8",⁵ the regulations become vague

5 The regulations governing teacher certification apparently incorporate many of the definitions or concepts set forth in another regulatory document the Basic Education Program Manual, (Revised January, 1991) which sets forth standards for school approval for all public schools in Rhode Island. We would note that the definition of middle school is slightly different as set forth in that document, i.e. "any combination of grades 5 through 8" see Joint Ex.IV

and arbitrary. The lack of a definition permits local school districts to name or designate a school containing grades 5-8 at random, without consideration of the educational philosophy, school structure, class schedule or methods of curriculum presentation-factors which determine whether a school is an elementary, middle or secondary school. The school district's arbitrary designation need not, as a result, accomplish the purposes behind the regulatory scheme put in place by the Board of Regents. The appellant argues that the certification regulations are therefore arbitrary and capricious.

The East Providence school committee does not challenge the validity of the regulatory scheme, but only a "rigid" application of the regulations in this case. Its position is that reliance on the designation of Martin as a "junior high school" because of the name of the school overlooks the obvious characteristics of the school as a "middle school". Counsel for the school committee points to evidence in the record regarding the organization of the school and the fact that Ann Brouillette, a middle school teacher, taught satisfactorily in the grade to which she was assigned for several months. The school committee disputes the authority of a "third party", the Department of Education, to interfere with the satisfactory relationship between teacher and school system and argues that the position of the Department of Education unnece-

essarily puts the school system and Ms. Brouillette in jeopardy.

Counsel for the Department of Education defended the regulations and the distinctions made among, inter alia, 7th grade teachers based on the actual differences found in schools organized on an elementary, middle, or secondary plan. The regulations operate to ensure that the teachers staffing these various schools have credentials which are compatible with the organizational plan chosen by the school districts. Citing the Regents' decision in Acchioli v. The R.I. Department of Education (May 26, 1977) Counsel argues that distinctions among schools, and grades, may be validly premised on the designation of the school by a district as "elementary", "secondary" or "middle".

DECISION

The appellant's initial challenge is to the ability of the Board of Regents to authorize teachers to teach in certain grades and then qualify that authorization by taking into account whether the grade is placed at the elementary, middle or secondary level. The regulation relating to the certificate for elementary teachers indicates that the certificate is valid for grades one through eight "except where grades seven and eight are organized on the middle or secondary school plan".⁶ (see Joint Exhibit 3) Since the appellant holds the elementary certificate, as well as a middle school endorsement which authorizes her to teach science in -----

6 The regulation describing the secondary certificate indicates a similar qualification in that the holder is authorized to teach in grades seven through twelve "except where grades seven and eight are organized on the elementary school plan." (Joint Ex. 3)

grades seven and eight of a middle school, she argues that her qualifications to teach 7th grade science are well established and that the Regents regulations which restrict her from teaching 7th grade science in a secondary school setting are irrational. Furthermore, she argues that qualifying or restricting her authorization to teach seventh grade science is not permitted under the enabling statute.

Our review of the statute, the regulatory scheme at work here, and the testimony of David Roy, a certification specialist at the Department of Education, leads to our conclusion that the teacher certification regulations are a valid exercise of the regulatory authority conferred on the Board of Regents by R.I.G.L. 16-11-2. Under this regulatory scheme local school districts exercise considerable latitude in organizing grades one through twelve and in placing certain grades at the elementary, middle or secondary level. The level at which a grade is placed impacts on the educational environment of that class. In distinguishing between elementary, middle and secondary schools, the regulations are designed to ensure that a teacher has the appropriate credentials and experience to function effectively in these distinctive learning environments. Thus, a seventh grade teacher in a middle school needs more extensive academic coursework in a particular subject area than a seventh grade teacher of that same subject in an elementary school - but less than the thirty-six credit hours in the subject required of the 7th grade teacher in a secondary school. Testimony at the hearing provided by virtually

ATTACHMENT 4

TO: Steve Olsen, Teacher Certification Specialist – RIDE

FROM: Stanley Thompson, Ed.D., Academic Dean/ Principal

DATE: March 7, 2005

RE: Middle School Endorsement Requirement for Times² Academy Teachers Teaching High School Course Content to Eighth Graders

As per our conversation last week, I am following up with this memo to formally advocate for several Times² Academy teachers who have recently received layoff notices from the Providence School Department because they do not currently have the Middle School Endorsement. Although it is true that the teachers in question teach 8th grade students, they are teaching them high school courses. This structure is what makes Times² Academy unique - its insistence that all 8th grade students take Algebra I in order to prepare them for higher level math courses. Our students have fared well with this arrangement in past years so much so that this past fall we had to add Advanced Placement Calculus (AB) to our curriculum for our seniors. In addition to math, our science and computer technology teachers also teach accelerated curricula to 8th graders. Consequently, all of our students potentially leave eighth grade with the knowledge and skills afforded ninth graders in their high school programs.

We are an anomaly to the Providence School Department because our charter allows us to design and assess our students in ways that are innovative and rigorous. Unfortunately the school department does not acknowledge the curricular and instructional flexibility granted us through the Board of Regents. They assume our eighth graders are taking the same courses in Pre-Algebra, science, and computer technology that other eighth grade students in PSD middle schools are taking - even though this has been shared to the contrary with district administrators. Consequently, when personnel layoffs impact the district, our teachers are viewed as expendable; and certification issues, specifically the Middle School Endorsement, becomes a means by which the district clears the way for more veteran teachers who are not necessarily equipped to teach our curriculum to our 8th graders. In addition, these replacement veteran teachers may not be qualified to teach the higher level content courses that support our charter.

Times² Academy needs an advocate given our unique situation. I am hoping that you and the Teacher Certification Division will acknowledge that the teachers mentioned above are indeed teaching in their certified areas and are providing a rigorous program for our students. Moreover, I am hoping that your support will prevent the further dismantling of our instructional program which is benefiting the students of Providence.

every witness established that, theoretically at least, the educational environment of an elementary school is different from that of a secondary school, and the middle school is characterized by its own type of "transitional" learning environment. While the regulatory scheme may be flawed by some internal inconsistency noted by the appellant,⁷ overall it is rationally and reasonably related to the legitimate state interest of ensuring that teachers possess the minimum qualifications needed to function effectively in the classroom.

The fact that the regulations take into account the level at which a grade is placed is a system designed to ensure that the teacher is adequately prepared for these separate and distinct learning environments. We reject the appellant's argument that R.I.G.L. 16-11-2 (and its language requiring that certificates be "valid throughout the state for the grade and time specified therein") is abrogated by the regulations under review. We find them within the statutory authority conferred on the Board of Regents.

The appellant raises the effect of the regulations' failure to define "elementary", "middle" and "secondary" schools other than by reference to the grades permitted at each of these levels. The lack of a definition based on factors such as educational philosophy, class structure, curriculum presentation and other considerations which distinguish elementary-middle-secondary

7 Secondary teachers are authorized to teach in grades 7 and 8 of a middle school despite the non-secondary, child-centered orientation of the middle school, and the secondary teacher's presumed lack of preparation for such a setting.

schools is not a flaw which invalidates the regulations, as the appellant argues. The effect, we believe, is to impair their enforcement.

Grades five through eight can be elementary or middle school grades. Grades 7 and 8 can be elementary, middle or secondary grades. There is no way of determining what criteria are used by school districts in designating the various schools, yet the school district's designation is determinative of the certificates required of the teachers. (Tr. Vol.II pp.12-13,28) While it is true that the organizational structure of the district is "approved" during the BEP (Basic Education Program) approval process, the BEP manual provides no definitions based on the characteristics of a school. Thus, one cannot conclude that the BEP approval process somehow verifies the accuracy of the designation given to a school by the local school committee.

Taken together, these factors leave open the very real possibility that a school (or certain grades within a school) may be incorrectly designated. In this case we find, based on the record before us, that although grade 7 at Martin Junior High was presumed by the certification staff to be a secondary grade, the appellant has shown that the school is organized more on the model of a "middle school". She therefore holds the appropriate certificate to teach science in the 7th grade there.

In his testimony, Mr. Roy⁸ of the certification office defined a middle school as follows:

8 Whom we recognize as an expert in his field. Mr. Roy's articulation of the definition of a middle school was confirmed by Mr. John Signore, who testified with regard to the middle school organization in Barrington, R.I.

the middle school organizational plan is to provide a nurturing environment for the child as they move from the elementary setting to the secondary setting...they are transitional grades with the need to separate the children that are in those grades, house them separately which are grades five through eight, and to provide for a transition from an elementary child-centered curriculum when they arrive... to a more content area moving into the high school setting.

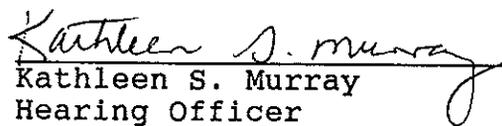
When a local school district chooses to organize on a "middle school" plan, it is presumed to want more emphasis on content area instruction in the earlier grades. (Tr. Vol.II p.69), while at the same time retaining the child in an environment that is more child-centered than that of the secondary-school model. The outward characteristics of a middle school in terms of class schedules, grouping of children, etc. are set forth in our findings of fact. Martin Junior High, at least with respect to grades 7 and 8, has the outward characteristics of a middle school. Whether these characteristics exist despite a contrary decision that Martin was to be as a junior high, or secondary school, is unclear from this record. Counsel for the East Providence School Department argued that it must be presumed that Ms. Brouillette was teaching in total conformity with the educational philosophy articulated by the East Providence officials. If this is correct, curiously enough those same school officials designated this school as a junior high, i.e. indicating a different educational philosophy from that of the child-centered transitional "middle" school. The position of the East Providence school committee throughout this hearing has been

that the label "junior high" was inconsistent with the "reality of the educational philosophy" at Martin.⁹ The evidence adduced at the hearing confirms only that the label is inaccurate in terms of the school's actual structure and operation. If these are inconsistent with the school district's choice of educational philosophy, it is up to the local officials to restructure grades 7 and 8 at Martin Junior High to be truly secondary grades. If grade 9 at Martin is improperly placed¹⁰ with middle school grades, then the East Providence officials should be so notified and steps necessary to comply with any requirements in this regard taken.

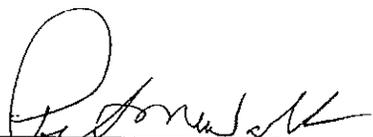
We find that the absence of definitions creates the opportunity to rebut the presumption that a school has been correctly designated. Certification staff of the Department can ensure the appropriateness of a teacher's credentials only if the district has correctly identified the educational setting in which a particular grade is placed. Effective implementation of the certification regulations would be greatly improved by incorporating definitions of elementary, middle and secondary schools within these regulations. Given the definition of a middle school presented in the testimony at this hearing, the appellant has shown that she is teaching science in the 7th grade of a middle school. Her appeal is sustained on this basis.

9 Counsel used his oft-quoted phrase "if it waddles like a duck and quacks like a duck, it ain't a turkey", (Tr. Vol.II p.111)

10 Counsel for the school committee intimated that such was the case but we do not make any findings in this regard.


Kathleen S. Murray
Hearing Officer

Approved:


Peter McWalters
Commissioner

DATE: August 18, 1992