



State of Rhode Island and Providence Plantations
BOARD OF EDUCATION
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Providence, Rhode Island 02903-3400

Eva-Marie Mancuso, Esq.
Chair

Enclosure 8e
June 16, 2014

Antonio Barajas, M.D.

June 16, 2014

Michael Bernstein

TO: Members of the RI Board of Education

Colleen A. Callahan, Ed.D.

FROM: Eva-Marie Mancuso, Chair

Dennis Duffy, Esq.

Karin Forbes

RE: John Doe v. East Greenwich School Committee, KC13-1260

Jo Eva Gaines

Patrick Guida, Esq.

William Maaia, Esq.

Lawrence Purtill

Mathies Santos

In the enclosed Kent County Superior Court decision dated April 29, 2014, the Court vacated the decision of the Rhode Island Commissioner of Education and of the Board of Education in the John Doe v. East Greenwich School Committee matter. In vacating the decision, the Court observed that the record contained no transcript of any hearing before the School Committee, no record of the proceedings before the School Committee, and no determination by the School Committee.

In its decision, the Court remanded the matter to the R.I. Board of Education with the instructions to remand the matter to the East Greenwich School Committee.

RECOMMENDATION: THAT, "Pursuant to the Superior Court's April 29, 2014, decision in the John Doe v. East Greenwich School Committee, KC2103-1260, this matter is remanded to the East Greenwich School Committee for further proceedings."

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC.

SUPERIOR COURT

[FILED: April 29, 2014]

NATHAN FINSTEIN

:

VS.

:

C.A. No. KC 13-1260

:

EAST GREENWICH SCHOOL
COMMITTEE

:

:

DECISION

RUBINE, J. This case arises from Nathan Finstein's request that the East Greenwich School Committee provide him with information from his son's school record and retract statements in the school record made by a school psychologist that were allegedly false.

Facts and Travel

Mr. Finstein filed this administrative appeal, after a decision of the Rhode Island Board of Education¹ affirmed the decision of the Rhode Island Commissioner of Education (Commissioner), which ultimately resulted in the denial of Mr. Finstein's request. The Commissioner, upon recommendation from the hearing officer, granted a motion to dismiss filed by the East Greenwich School Committee seeking dismissal of Mr. Finstein's appeal to the Commissioner, after the School Committee denied Mr. Finstein's request. In response to the hearing officer's request for a statement of the issues from Mr. Finstein, Mr. Finstein articulated the relief he sought as follows:

1. He sought to compel the East Greenwich School Committee to provide him with all the information to which he was entitled concerning his son's behavioral problems in school and

¹ The Rhode Island Board of Education was established by G.L. 1956 § 16-97-1 on January 1, 2013. It was formerly the Board of Regents for Elementary and Secondary Education.

provide a full account of the process and justification for the school's decision to withhold information from him concerning his son's behavioral problems in school.

2. He further sought an order requiring the School Committee to correct or retract statements made by a school psychologist, which were made part of his son's school records.

In considering the School Committee's motion to dismiss the appeal, the hearing officer characterized the legal issue raised as follows:

Does the Commissioner have jurisdiction to hear a parent complaint that in 2008 a school psychologist employed by the school department made false statements contained in a letter containing the psychologist's opinion that counseling services be reinstated for the Appellant's son?

The Commissioner, in approving the recommendation of the hearing officer, determined that the dispute does not involve interpretation of a law relating to schools or education, and therefore, the Commissioner lacked jurisdiction to hear the appeal.² Further, the Commissioner found that insofar as the requested relief involves a clinical opinion of a medical professional, she believes she did not have the requisite expertise to rule on such a request. Accordingly, the Commissioner determined that she lacked any authority to order revisions to the statements made by a school psychologist. She further found that the issues raised on appeal were moot, and that the petitioner had unreasonably delayed seeking relief. Accordingly, it was the Commissioner's position that the appeal was barred by the legal doctrine of laches.

Mr. Finstein further appealed to the Rhode Island Board of Education (formerly the Board of Regents for Elementary and Secondary Education), see n.1, supra. The Rhode Island Board of Education affirmed the decision of the Commissioner. In affirming the Commissioner's dismissal of the appeal, the Rhode Island Board of Education commented that

² The Commissioner scheduled but then canceled a hearing on Mr. Finstein's appeal.

the Commissioner's decision is consistent with Rhode Island law and not "patently arbitrary, discriminatory or unfair." Mr. Finstein then filed his appeal of the Rhode Island Board of Education's decision to this Court. This Court's jurisdiction is pursuant to G.L. 1956 §§ 42-35-1 et seq.

Standard of Review

The Superior Court's jurisdiction to review the decisions of administrative agencies is governed by the Rhode Island Administrative Procedures Act, §§ 42-35-1 et seq. See Rossi v. Employees' Retirement Sys. of R.I., 895 A.2d 106, 109 (R.I. 2006). The standard of review is set forth in § 42-35-15, which provides, in pertinent part:

"The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, interferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error or law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Sec. 42-35-15(g).

When reviewing an administrative decision, the Court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. Id. When more than one factual inference is possible, the Court may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are clearly erroneous. Guarino v. Dep't of Social Welfare, 122 R.I. 583, 588-89, 410 A.2d 425, 428 (1980). However, questions of law are not binding upon the court and may be reviewed to determine what the law is and its

applicability to the facts. In re Advisory Opinion to the Governor, 732 A.2d 55, 60 (R.I. 1999) (citing Carmody v. R.I. Conflict of Interest Comm'n, 509 A.2d 453 (R.I. 1986)).

This Court is further limited in its review to an examination of the certified record to determine if there is any legally competent evidence therein to support the agency's decision. Barrington Sch. Comm. v. Rhode Island State Labor Relations Bd., 608 A.2d 1126, 1138 (R.I. 1992). "Legally competent" evidence is "such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means an amount more than a scintilla but less than a preponderance." Foster-Glocester Reg'l Sch. Comm v. Bd. of Review, 854 A.2d 1008, 1012 (R.I. 2004) (quoting Rhode Island Temps, Inc. v. Dep't of Labor & Training, 749 A.2d 1121, 1125 (R.I. 2000)).

Analysis

Glaringly absent from the "record" filed in this case is any record of any hearing transcript or determination by the School Committee with respect to Mr. Finstein's complaint or the relief he was seeking. In fact, the record filed with this Court does not even contain a copy of the Petitioner's claim, either to the school itself, or any request to have a decision of the school reviewed by the School Committee.³ The jurisdiction of the Commissioner to address controversies in school matters is set forth in G.L. § 16-39-2, which permits any person aggrieved by any decision or doing of any school committee to appeal to the Commissioner, who shall hold a hearing to examine and decide the appeal.

It would be impossible for the Commissioner to hear and determine an appeal from the East Greenwich School Committee without any record of what this Committee heard or decided. Rather than dismiss the appeal, the proper disposition would have been to remand the matter to

³ The absence of these records from the case as decided below by the School Committee likely explains why the Commissioner's hearing officer had to ask Mr. Finstein to identify the relief he was seeking.

the School Committee to make a record and reach a decision on Mr. Finstein's complaint and request for relief. When the Supreme Court was faced with a similar deficit in the record filed with the Commissioner, it noted that in the absence of any transcript made of the proceedings before the School Committee or evidence that the School Committee rendered a decision subsequent to a hearing, the Commissioner acted properly in remanding the matter to the local School Committee. McSally v. Bd. of Regents, 121 R.I. 532, 533-34, 401 A.2d 438, 439 (1979). In so ruling, the Court found that, absent a record from the School Committee, the Commissioner could neither rule on the adequacy of the hearing afforded to the appellant nor determine if there were sufficient facts on the record to uphold the Commissioner's finding that the doctrine of laches barred the appeal. Id. The Court found affirmatively that the Commissioner has the authority, express or implied, to remand a matter to a local school committee when an inadequate record from the School Committee rendered her appellate responsibilities difficult, if not impossible. Id. at 535, 440.

In the instant case, the Commissioner looked to the provisions of the Educational Records Bill of Rights as providing an adequate remedy to address the alleged inaccuracies in Mr. Finstein's son's school records regarding his mental well-being. See § 16-71-3. In pertinent part, that statute allows certain remedies to a parent who believes their child's school records contain false or inaccurate information. For instance, the parent has the right to request an amendment and/or expungement if the parent believes that information contained in educational records are inaccurate, misleading, or in violation of the student's right to privacy. Sec. 16-71-3(a)(5). The same statute provides that if a parent contests the accuracy of an educational record, he or she has the right to place a statement in the record commenting on any contested information. This statement shall be disclosed when the portion of the record to which it relates

is disclosed. Without a transcript of the proceedings before the School Committee, or a decision rendered thereon, the Commissioner would have no way of knowing whether the Petitioner's complaint was considered in light of the Educational Records Bill of Rights. If, for instance, it is demonstrated that the School Committee considered the school's failure to comply with the statute, the Commissioner could consider the factual and legal outcome of such consideration on appeal. Also, to the extent that the School Committee took the provisions of the Educational Records Bill of Rights into account, it may have altered its determination as to whether the controversy in question was a matter arising under any law relating to schools or education.⁴

This Court's review of the outcome of this controversy is seriously hampered without an understanding of the proceedings below or the decision of the School Committee.⁵

⁴ It seems to this Court that if the controversy concerned the interpretation or applicability of the Educational Records Bill of Rights or the School Committee's adherence to its terms, the Commissioner would be hard pressed to consider the controversy as not arising under a law relating to schools or education.

⁵ By letter dated February 26, 2014, this Court alerted the parties to its concern over the inadequacy of the record filed with the Court. Counsel for the East Greenwich School Committee responded that the local Board of Education does not believe that "the hearing before the Appeals Committee of the Board of Education is part of the official record."

Conclusion

For these reasons, the Court finds that the decision of the Commissioner and the Rhode Island Board of Education should be vacated under § 42-35-15(g) because the Commissioner's dismissal was made upon unlawful procedure, affected by error of law, and was a clearly unwarranted exercise of discretion. The Commissioner should have remanded Mr. Finstein's complaint to the School Committee for a hearing and determination of the issues, which are the subject of the original claim. Therefore, this case is remanded to the Rhode Island Board of Education with instructions that this matter be remanded to the School Committee. The remand is without prejudice to subsequent appeal to the Commissioner pursuant to the provisions of § 16-39-2, brought by any party aggrieved by the subsequent decision of the School Committee.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Nathan Finstein v. East Greenwich School Committee

CASE NO: C.A. No. KC 13-1260

COURT: Kent County Superior Court

DATE DECISION FILED: April 29, 2014

JUSTICE/MAGISTRATE: Rubine, J.

ATTORNEYS:

For Plaintiff: Nathan Finstein, *Pro Se*

For Defendant: Raymond A. Marcaccio, Esq.; Peter F. Spencer, Esq.