

PROVIDENCE TEACHERS UNION, STEVEN
SMITH, *in his capacity as President*
of the *Providence teachers Union*,
STEPHANIE JONES PRINGLE,
as parent and guardian of AB, a minor child,
ZULMA GARCIA, *as parent and guardian of CD,*
a minor child,

Plaintiffs

V.

C.A. No.

DONNIE W. EVANS, *in his official capacity as*
superintendent of the Providence School Department,
MARY E. McCLURE, *in her official capacity as President*
of the Providence School Board, PETER McWALTERS,
in his official capacity as Commissioner for the
Rhode Island Board of Regents for Elementary
and Secondary Education,

Defendants

AMENDED VERIFIED COMPLAINT AND MOTION FOR
TEMPORARY RESTRAINING ORDER

INTRODUCTION

1. This matter is before the Court on a Complaint by teachers and parents, in their individual and representative capacities, to enjoin violation of a class size regulation governing the education of children with disabilities.

PARTIES

2. Providence Teachers Union ("PTU") is a labor organization representing certain employees of the Providence School Board, ("PSB"), including teachers in self-contained classes for children with mild and moderate disabilities.

3. Steven E. Smith is President of the PTU.

4. Stephanie Jones Pringle is a parent of a child, AB, receiving educational services from the School Department.

5. Zulma Garcia is a parent of a child, CD, receiving educational services from the School Department.

6. Donnie W. Evans is Superintendent of the School Department. He is named in his official capacity.

7. Mary E. McClure is the President of the PSB. She is named in her official capacity.

8. Peter McWalters is the Commissioner for the Rhode Island Department of Elementary and Secondary Education. He is named in his official capacity.

FACTS

9. The Rhode Island Board of Regents for Elementary and Secondary Education ("Regents") has promulgated certain Regulations governing education of children with disabilities pursuant to The Children with Disabilities Act, R.I.G.L. § 16-24-2. The Regulations are intended to guarantee students in need of special education services a free and appropriate public education.

10. In or about June, 2007, the School Department learned that it had insufficient funding for the 2007-08 school year. The PSB has characterized its funding situation as a "financial crisis."

11. In response to the "financial crisis", the School Department sought from Commissioner McWalters a "variance" of sections 300.552(B)(1) and 300.136(b) of the Regulations from Commissioner McWalters. Section 300.552(B)(1) imposes a maximum class size of ten (10) students for special education self-contained classrooms for children with mild to moderate disabilities at all grade levels. Section 300.136(b) requires PSB to employ a full time Special Education Director. Copies of these sections are attached hereto as Exhibit A.

12. The Regulations contain no provision or criteria for requesting or issuing a

"variance."

13. The Regulations were promulgated pursuant to RIGL §16-24-2, which prescribes that the Regents, rather than Commissioner McWalters, must promulgate regulations for the purpose of ensuring that each city and town provides "the type of special education that will best satisfy the needs of the child with the disability."

14. Plaintiffs strongly objected to PSB's requested "variance." Specifically, Plaintiffs aver that the motivating factor for the request, by PSB's own admission, is financial, rather than educational. For example, PSB officials have been quoted as claiming that the School Department cannot balance its \$314,000,000.00 budget without violating the Regulations, and that the "variances" would save the Department \$3,400,000.00. At a meeting of the PSB, Defendant Evans further stated that "the budget crisis" forced it to act. The PSB web site contains the following:

Question 1: Why is the District asking for variances to State Regulations at this time?

Answer: The District is currently in financial crisis because the Legislature decided not to increase funding for the 2007-2008 school year.

15. Plaintiffs objected to the proposed variance regarding class size for the reason that, among other things, fewer teachers, with a twenty percent increase in student assignments, will be unable to provide "appropriate" services. In addition to the obvious difficulties associated with inadequate classroom size, equipment and materials, teachers have had insufficient opportunity to plan for and implement educational services for these additional students. Further, there has been inadequate planning associated with assigning students to particular classrooms according to appropriate instructional groupings rather than simply available seats.

16. Notwithstanding the foregoing objections, Commissioner McWalters, by letter dated August 24, 2007, approved the "request for a variance" to §300.552(B)(1) relating to class size. Exhibit B.

17. Neither the Regents nor Commissioner McWalters conducted public hearings with regard to the proposed variance.

18. The Commissioner's letter asserts a "statutory obligation" to administer and implement Board policy and regulation pursuant to RIGL §16-60-6(4) and §16-60-6, but overlooks RIGL §16-24-2, which vests the Regents with exclusive authority to "set up regulations" relating to special education. The Commissioner's letter fails to acknowledge that RIGL §16-24-1 et seq. makes no provision for "variances" from the

Regulations.

19. The Commissioner's letter concedes that the motivating factor for the "variance" is financial expediency. The Commissioner acknowledges that the PSB is faced with "a recent pattern of diminishing resources" and that the "change in staffing patterns" requested in the variance is "necessary for the District to achieve its goals of continuing to improve its educational offerings for all students in light of diminishing resources." Emphasis added.

20. The Commissioner's letter concedes that PSB is currently unprepared and ill-suited for the reduction in services to students in accordance with the "variance." The Commissioner approved the "variance" effective September 1, 2007, conditioned on "continuous adherence" to the following actions or revisions: (1) Monitoring the system for instruction and compliance (2) Improving parent support and communication (3) Roles, duties and the deployment of special education supervisors (4) Training and supports provided to special educators, special education teacher assistants, principals and critical central office personnel affected by the variance (5) Physical space (6) High qualified teachers and qualified teacher assistants (7) Instructional grouping by similar strengths and needs (8) Implementation of the least restrictive environment plan, the disproportionality plan and the school support system plan. These conditions will not be instituted by the PSB until as late as December, 2007. Thus, the Commissioner's letter

approves an immediate reduction in staffing and services contingent upon conditions which the Commissioner explicitly acknowledges do not presently exist, and may never exist.

21. "Variance" from the class size Regulation prior to implementation of conditions upon which the "variance" is placed is arbitrary and capricious and an abuse of discretion.

22. The Commissioner purports to justify the variance by reference to R.I.G.L. §16-7.1-5. However, nothing in R.I.G.L. §16-7.1-5 authorizes the Commissioner to issue a variance from Regents Regulations. To the contrary, progressive intervention under that section is the responsibility of the Regents, rather than the Commissioner. Plaintiff's further aver that this section does not authorize the Commissioner to allow Providence children to receive services inferior to other comparable school districts.

23. PSB has failed and refused to seek increased funding from the City of Providence pursuant to the Caruolo Act, R.I.G.L. § 16-2-21.4, which would mitigate if not eliminate the need for the reduction in services. Given that PSB's stated basis for the reduction is inadequate funding, and the Commissioner's acknowledgment that inadequate funding motivates allowance of the "variance," together with the fact that the deleterious effects of the reduction in services have not been mitigated by compliance with the

Commissioner's expressly stated conditions, the exclusive method for addressing the funding issue is the Caruolo Act. (See e.g. Beil v. Chariho School Committee, 667 A.2d 1259 (R.I. 1995)). Moreover, "variances" to regulations regarding special education are specifically prohibited by the Act. (R.I.G.L. § 16-2-21.4 ("waivers ... which violate the provisions of Chapter 24 shall not be granted.")).

24. Upon information and belief, PSB has refused to utilize the Caruolo Act to solve the funding crisis because each and every member of the Providence School Board is appointed by the Mayor and City Council of the City of Providence.

25. Plaintiffs are without an adequate remedy of law.

26. In the event that an injunction is not granted, Plaintiffs' minor children will suffer irreparable harm in the form of inadequate special educational services, disruption of services, unprepared classrooms and inadequate staffing. With the exception of "improving parent support and communication," which Plaintiffs view as principally public relations, none of the expressed conditions necessary for mitigation of the deleterious affects of violation of the class size Regulation has yet been implemented. Given that these express conditions include adequate training, monitoring, physical space and other educational factors, it is evident that the appropriate educational needs of students will not be satisfied in the immediate future.

27. Teachers will suffer irreparable harm in the form of lost employment benefits and opportunities.

28. Plaintiffs aver that the public interest favors issuance of an injunction. The public interest will be served by ensuring that the goals and objectives of the Children with Disabilities Act and the Regents Regulations are enforced, and by prohibiting Commissioner McWalters and PSB from departing from the exclusive remedial provisions of the Caruolo Act. Most importantly, the public interest will served by ensuring that Providence school children receive a free and appropriate education under the Regulations and the General Laws.

CLAIMS FOR RELIEF

COUNT 1

29. Paragraphs 1 through 28 are hereby incorporated by reference as though fully set forth herein.

30. By the foregoing acts and omissions, Commissioner McWalters acted in excess of statutory authority, and in derogation of R.I.G.L. §16-1-5(1) and (9) by failing to enforce Regulation 300.552(B), failing to deny the request for a "variance," failing to ensure that PSB utilized the Caruolo Act to resolve financial disputes and failing to carry out the Regents' policies and programs. Wherefore plaintiffs pray as hereinafter set forth.

COUNT 2

31. Paragraphs 1 through 28 are hereby incorporated by reference as though fully set forth herein.

32. By the foregoing acts and omissions, PSB has violated R.I.G.L. §16-24-1 et seq. regarding provision of services to children with disabilities and Regulation Section 300.552(B) relating to class size. Wherefore plaintiffs pray as hereinafter set forth.

PRAYER FOR RELIEF

Wherefore, plaintiffs pray that this Honorable Court:

1. Issue a Temporary Restraining Order enjoining defendants, and each of them, from failing to comply with regulation Section 300.552(B).
2. Issue a Preliminary Injunction enjoining Defendants, and each of them, from failing to comply with Regulation Section 300.552(B).
3. Issue a Permanent Injunction enjoining defendants, and each of them, from failing to comply with Regulation Section 300.552(B).

4. Issue a Writ of Mandamus directing Commissioner McWalters to enforce Regulation Section 300.552(B) against PSB.

5. Issue a Declaratory Judgment that the request for variance by PSB, the allowance of the variance by Commissioner McWalters, the failure to enforce the terms of Section 300.552(B) and the utilization of the variance procedure rather than the Caruolo Act, individually and collectively violate R.I.G.L. §16-24-1 et seq., and §16-2-21.4.

6. Order such other relief as the Court deems just and proper.

Respectfully submitted,

Marc B. Gursky, Esq. 2818
GURSKY LAW ASSOCIATES
420 Scrabbletown Road, Suite C
North Kingstown, RI 02852
Tel.: (401) 294-4700
Fax: (401)294-4702