

**Matter of Pesce v Westhampton Beach School
Dist.**

2008 NY Slip Op 30409(U)

February 11, 2008

Supreme Court, Suffolk County

Docket Number: 0003542/2008

Judge: Sandra L. Sgroi

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SUPREME COURT - STATE OF NEW YORK
SPECIAL TERM, PART 19 SUFFOLK COUNTY

Mot Seq: 001 MD -
CaseDisposed

Present:

Hon. SANDRA L. SGROI

Return Date: 2-7-08

In the Matter of MAUREEN CROWLEY PESCE on behalf of DOMINIC PESCE from the proposed action of the board of Education, Westhampton Beach School District regarding the use of the weighting formula described in Westhampton Beach School District policy # 474 to determine rank in class for the Westhampton Beach High School Class of 2008,

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MAUREEN CROWLEY PESCE,

Petitioner,

KEVIN A. SEAMAN, ESQ.
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Stony Brook, New York 11790

-against-

WEST HAMPTON BEACH SCHOOL DISTRICT
BOARD OF EDUCATION,
Respondent.

Upon the following papers numbered 1 to 48 read on this Proceeding: Order to Show Cause, Petition, amended Petition and supporting papers 1-17; 18-23; Answer, Affirmation and Affidavit in opposition and supporting papers 24-34; Additional affidavit and verified declaration 35-38; Verified Reply Affidavit and Verified Amended Reply Affidavit 39-44; 45-46; Memorandum of Law 47-48; it is,

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ORDERED that the relief requested in the Petition and amended petition is denied in its entirety; and it is further

ORDERED that the temporary restraining order is immediately vacated; and it is further

ORDERED that the attorney for either the Petitioner or Respondent is directed to enter a judgment in this matter within ten days of receipt of this order but no later than 15 days after the issuance of the order.

The Petitioner seeks various relief herein including an injunction restraining the announcement of the class rank of the students in the Senior Class of the Westhampton Beach School District; a determination that the ranking formula is arbitrary, capricious, unreasonable and/or an abuse of discretion; a declaration that the Respondent utilize an unweighted ranking system for the students; a permanent injunction against the present policy of using weighted grades to determine class ranking; a preliminary injunction against the public announcement of class rank results based upon the weighted ranking formula; a determination that Respondent's public presentation about advanced middle school course work must be amended to contain a complete disclosure about its potential impact on rank in class and; a direction that a written policy on this topic be adopted by Respondent.

The Petitioner's son, Dominic, attends Westhampton Beach High School and he is a Senior graduating in June of 2008. He clearly has excelled in his class work while a student at the Westhampton Beach School District and based upon the grading policy that has been in effect since 2001 (see Petitioner's Exhibit "A"), Dominic would be ranked seventh in his graduating class. Under the policy that the Petitioner seeks to impose not only upon the District but upon other students in the entire high school, Dominic would be ranked first in his class.¹ The other members of the high school class have not been noted herein and have not been named as parties although a change in the policy for determining class ranking will immediately, unequivocally and negatively affect a number of graduating Seniors attending the High School.

In or about December of 2007, the Petitioner requested that the Westhampton Beach Board of Education modify their method of determining class ranking. The request was denied and the Petitioner herein appealed that determination to the State Education Commissioner. As of this time, the State Education Commissioner has not issued a ruling on the issue. The Petitioner, by letter dated January 25, 2008, also requested that the Commissioner issue a temporary injunction preventing the public dissemination of class ranking based upon the policy promulgated by the School District in 2001. On that day, the Petitioner came before Justice Jeffrey Arlen Spinner, J.S.C., who issued a temporary restraining order against the Respondent effective until the return date of the Petition, preventing the public announcement of a class ranking. On the return date of the Order to Show Cause, the parties stipulated to a ten day extension of

¹While it is unusual to address the parties in a decision in this manner, the Court congratulates Dominic on his significant and laudable academic achievements and is confident and hopeful that Dominic will be successful in all his future academic endeavors.

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the temporary stay.

The decisions issued by the State Education Department clarify the discretion accorded the local Boards of Education of School Districts in determining grading policy and class rank based upon that policy. The Commissioner will not substitute his judgment for that of a Board of Education with regard to grading unless there is a clear showing that the Board's determination was arbitrary, capricious or unreasonable.

To establish entitlement to a preliminary injunction, the Petitioner must show a probability of success on the merits, a danger of irreparable injury if an injunction is not given, and a balance of the equities in her favor (see, *Aetna Ins. Co. v Capasso*, 75 N.Y.2d 860, 862, 552 N.E.2d 166, 552 N.Y.S.2d 918; *Regatta Condominium Assn. v Village of Mamaroneck*, 303 A.D.2d 741, 742, 758 N.Y.S.2d 813; *Klein, Wagner & Morris v Lawrence A. Klein, P.C.*, 186 A.D.2d 631, 588 N.Y.S.2d 424). Further, a preliminary injunction is an extraordinary and drastic remedy which Courts should rarely grant and, then only under unusual circumstances where such relief is required to maintain the status quo pending the trial (see, *Rosa Har Stylists v Jaber Food Corp.*, 218 A.D.2d 793, 794, 631 N.Y.S.2d 167; *Times Square Stores Corp., v Bernice Realty Co.*, 107 A.D.2d 677, 682, 484 N.Y.S.2d 591).

While this Court need not make a determination on the request for a preliminary injunction, it feels compelled to address this matter to the extent of noting that the Petitioner is not seeking to maintain the status quo, that Petitioner seeks a remedy that, while beneficial to her child, will adversely affect others whom she has not noticed, and the policy of the Respondent could and should have been challenged sooner than six months before graduation and one month prior to the scheduled announcement of the top ranking students in the graduating, senior class.

It would be "particularly inappropriate" for the Court to involve itself in this controversy at this time since the "relevant statutory duty involves the exercise of judgment and discretion" on the part of the Board of Education and administrative appeals are pending *Matter of Community Action Against Lead Poisoning v. Lyons*, 43 A.D.2d 201, 203, 350 N.Y.S.2d 812, 814, affd. on opn. of App.Div., 36 N.Y.2d 686, 366 N.Y.S.2d 409, 325 N.E.2d 870). The Board of Education statutory network of officials and boards is vested with the responsibility to develop the system to grade and rank students and the State Education Department is charged with the responsibility to review that system if it is challenged. To enjoin the District and to substitute its judgment for that of the officials of the State Education Department "would in effect attempt displacement, or at least overview by the courts and the plaintiffs in litigations, of the lawful acts of appointive and elective officials charged with the management of" the Westhampton Beach School District (*Matter of Abrams v. New York City Tr. Auth.*, 39 N.Y.2d 990, 992, 387 N.Y.S.2d 235, 236-355 N.E.2d 289, 290; see, *James v. Board of Ed. of City of New York*, 42 N.Y.2d 357, 397 N.Y.S.2d 934-366 N.E.2d 1291; *Rafman v. Brooklyn College of City University of New York*, 212 A.D.2d 795, 623 N.Y.S.2d 281).

The review of a long standing policy to determine the class rank of students is initially in the realm of

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responsibility of the Board of Education and followed by review of the Board's decision by the Commissioner pursuant to Education Law § 310 (see, *In the Matter of Perino*, State Education Department, Decision No. 13,732; 2/5/1997).²

The control and management of education affairs is vested in the Board of Regents and the Commissioner of Education (New York Constitution, article V, Section 4; article XI, Section 2; Education Law §§ 207, 305; see *Matter of New York City School Bds. Assn. v. Board of Educ.*, 39 N.Y.2d 111, 116, 383 N.Y.S.2d 208, 347 N.E.2d 568; *Matter of Ocean Hill-Brownsville Governing Bd. v. Board of Educ.*, 23 N.Y.2d 483, 485, 297 N.Y.S.2d 568, 245 N.E.2d 219). As the Appellate Division, Second Department stated in *Patti Ann H. v. New York Medical College*, (88 A.D.2d 296, 453 N.Y.S.2d 19, order affirmed 58 N.Y.2d 734, 445 N.E.2d 203, 459 N.Y.S.2d 27):

“Our courts * * * have * * * long recognized that the management of educational institutions rests on those with special skills and sensitivities.” (*Matter of Gray v. Canisius Coll. of Buffalo*, 76 A.D.2d 30, 33, 430 N.Y.S.2d 163.) For this reason, courts should “only rarely assume academic oversight, except with the greatest caution and restraint” (*Matter of Pace Coll. v. Commission on Human Rights of City of N.Y.*, 38 N.Y.2d 28, 38, 377 N.Y.S.2d 471, 339 N.E.2d 880). This restraint should be even greater when it is realized that the Legislature has established an administrative agency (i.e., the Board of Regents through the Commissioner of Education) with the very duty, power and authority of academic oversight that the petitioner seeks to have the courts exercise in this matter (*Education Law*, §§ 201, 301, 305, 310).

The sound policy reason for judicial restraint rests in the acknowledgment that the review of determinations of a duly, publicly elected local Board of Education with regard to internal educational grading policies is, as a general rule, initially conferred upon the Commissioner of Education because of the Commissioner's specialized expertise in this area.

²In *Appeal of Rebecca Armella, on behalf of Vincent Armella, and Karen Macintyre, on behalf of Grant Macintyre, from action of the Board of Education of the Brocton Central School District regarding class rank*; (Decision No. 14,525, December 22, 2000), it was stated:


The determination of class rank is a decision for the local board of education that should not be altered unless it is arbitrary and irrational (*Appeal of Perino*, 36 Ed Dept Rep 305, Decision No. 13,732; cites omitted). As long as the local policy in question is not wholly without rational basis, the Commissioner will not impose a different policy (*Appeal of Tenbus and Kraack*, 35 Ed Dept Rep 320, Decision No. 13,556).

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The Petitioner does not challenge the constitutionality or applicability of the Education Law, and has alleged no other circumstance that would excuse her failure to exhaust the available administrative remedies (see, *Capers v. Giuliani*, 253 A.D.2d 630, 633, 677 N.Y.S.2d 353; *Pocantico Home & Land Co., LLC v. Union Free School Dist. of Tarrytowns*, 20 A.D.3d 458, 799 N.Y.S.2d 235 appeal dismissed 5 N.Y.3d 849, 806 N.Y.S.2d 167, 840 N.E.2d 136). While the time constraints of graduation and the public announcement of class rank may restrict the remedy available, the Petitioner cannot claim that the grading policy was imposed by subterfuge where, as here, it has been in effect since 2001, the very year that the Petitioner's son entered middle school.

Therefore, the relief requested by the Petitioner is denied and the Petition is dismissed. At this time, Petitioner's remedy is to pursue her appeal to the New York State Commissioner of Education.

Dated: 2/11/08



SANDRA L. SGROI, J. S. C.
