0014-89

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

MICHAEL V.	
vs.	
EAST PROVIDENCE SCHOOL COMMITTEE	INTERIM ORDER May 1, 1989

On April 28, 1989 this matter was heard by the designee of the Commissioner of Education on motion of Mrs. Karen V for resolution of her residency dispute with the East Providene School Department under R.I.G.L. §16-64-6. The parties agreed at the conclusion of the hearing that the hearing held on Mrs. V 's petition for an Interim Order would be considered a hearing on the merits and any resulting order constitute a final order.

Findings of Fact

- Michael V , along with his two sisters, has been enrolled in the East Providence school system for some years prior to this controversy. He most recently attended the Watters School.
- Michael resides with his mother. Since March of 1989 she has lived in Pawtucket (during the school week.) On weekends he lives with his father who resides in Riverside, Rhode Island.
- Michael has evidenced certain behavioral problems since 1986, has been tested, but has not as of this date been determined either handicapped or in need of special education.
- Michael received two disciplinary suspensions during the school year 1988-89, the most recent one being a three-day suspension (March 29 through 31st) for fighting with another student.
- Mrs. V requested permission to continue her three children in the East Providence school system until the end of this school year, despite her change in residency.

- On April 3, 1989 the Director of Attendance of the East Providence school system wrote to Mrs. V , noting that the Superintendent of Schools had granted her request to keep all three children enrolled in East Providence through June of 1989.
- On April 17, Michael got into a fight with another student in the Watters School.
- On April 19, Mr. Rodericks, the Director of Attendance, notified Mrs. V that the school system was withdrawing its prior approval for Michael to continue his enrollment in East Providence and that he would transfer his records to the Pawtucket School System.
- Mrs. V appealed this determination to the Commissioner of Education, J. Troy Earhart.

Conclusions of Law

Mrs. V 's position is that once the School Department agreed to let her children finish out the school year in East Providence, it could not two weeks later withdraw this approval on the basis of either (1) non-residency or (2) Michael's misbehavior. Superintendent DeGoes and Mr. Rodericks stated that the permission granted to Mrs. V for the continued enrollment of her children in East Providence schools could be withdrawn at any time, since it was a mere courtesy extended to Mrs. V , based on the circumstances of her recent change in residency. In the alternative, if I could characterize the School Department's legal argument, if the letter of April 3, 1989 granting Mrs. V 's request is held to be a binding commitment to continue to enroll the children un-

til the end of the school year, it was conditional upon not just those items expressly stated in the letter, but the condition of Michael's continued good behavior as well. Subsequent to the letter, Michael was involved in the fighting incident of April 17. This is a breach of the condition of his continued enrollment and, therefore, the School Department is released from any obligation to enroll him based on that "agreement".

There is no dispute that Michael (along with his two sisters) became a resident of Pawtucket sometime in March of 1989. The obligations of the East Providence School Department would have terminated at that time except for the action taken by the School Department on or about April 3, 1989. With full access to the knowledge of the apparent history of behavioral problems of this particular child, Michael, the Department indicated that the Superintendent had approved the mother's request for continued enrollment of her children in the school system. The letter (Appellant's Exhibit I) goes on to state the express conditions on which this approval is extended:

> This approval is conditional. The children must maintain good attendance and must arrive at school on time each day. You are responsible for their transportation to and from school each day. This conditional approval expires at the end of the 1989 school year in June.

While there certainly may be occasions on which a school system "extends a courtesy" to parents of non-resident children and approves temporary continued enrollment, and makes such approval revocable at will and without cause, this is not one of those conditions. The School Department set forth, in writing, the precise conditions on which

the approval was extended, and the basis on which it could be withdrawn.[1] It clearly identified the date on which the approval would terminate, and did not indicate a prior termination on the basis of misbehavior of any of the children, including Michael for whom the prospect of future misbehavior was not totally unanticipated.

Under these circumstances, we find that the April 3, 1989 letter to Mrs. V is an "agreement" under §16-64-1[2] which entitles the V children, and Michael in particular, to continue to be enrolled as students in the East Providence school sytem under the conditions specified in that letter.

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[1] While we do not reject Mr. Roderick's testimony with regard to discussions simultaneous with the April 3 letter regarding the need for Michael's continued good behavior, since this condition was not expressly stated in the letter, we find that any subsequent misbehavior on Michael's part would not constitute a "breach" of the agreement, entitling the school system to terminate immediately Michael's enrollment.

[2] §16-64-1. Residency of children for school purposes.- Except as otherwise provided by law or by agreement a child shall be enrolled in the school system of the town wherein he or she resides. . . . (Emphasis added.)

Kathleen S. Murray

Kathleen S. Murray, Esq.
Hearing Officer

Approved:

J. Troy Earhart

J. Troy Earhart
Commissioner

May 1, 1989