

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

AND

PROVIDENCE PLANTATIONS

JANE A.U. DOE

V.

PORTSMOUTH ABBEY SCHOOL

DECISION

Held: The Commissioner lacks jurisdiction over this dispute, which involves the withholding of a student's final transcript and diploma pending payment of tuition.

DATE: FEBRUARY 19, 1997

Travel of the Case

On October 15, 1996 Jane Doe filed an appeal with the Department of Elementary and Secondary Education to request that the Portsmouth Abbey School be ordered to award her daughter her diploma and transmit her final transcript to the college her daughter presently attends. The school had withheld both the diploma and final transcript because of an "irreconcilable dispute" regarding financial aid (see letter of appeal dated October 10, 1996).

The undersigned was designated to hear the dispute by Commissioner Peter McWalters. Hearing took place on November 20, 1996 at which time the appellant appeared pro se and Portsmouth Abbey was represented by its attorney.

Prior to proceeding, counsel for Portsmouth Abbey School filed a special entry of appearance and a Motion to Dismiss the matter for lack of jurisdiction. At the time of hearing ruling on the Motion to Dismiss was deferred and consolidated with ruling on the merits of this dispute.

Issue

Does this dispute "arise under" a law relating to schools or education such that the Commissioner has jurisdiction to decide the merits of this appeal?

If so, has the Portsmouth Abbey School violated any education law in withholding the diploma and final transcript of the appellant's daughter?

Findings of Relevant Facts

- The appellant's daughter attended Portsmouth Abbey School during school years 1993-94 and 1994-95. She graduated in May of 1995. Tr. pp. 7-8, 10-11.
- Although she graduated from the school the appellant's daughter has not received her diploma (Tr. p. 34) nor has she received her final transcript. (Tr. p. 7).

- The reason that Portsmouth Abbey School has refused to forward this student's diploma and final transcript is that there is a significant balance owed for tuition (\$25,149.27) for the two years the appellant's daughter attended the school. Tr. p. 28, 52; P.A. Ex. A.
- Portsmouth Abbey School is a private school which does not receive any federal funding to support its educational program. Tr. p. 42.
- Upon registration at the school, the student's parent signed a registration card which indicates acceptance of the obligation to pay tuition. The registration card contain a notice that the school's policy is not to release final transcripts or diplomas to students who have outstanding debts. The appellant signed such a card upon her daughter's enrollment in June, 1993. P.A. Ex. B; Tr. pp. 43-44.

Position of the Parties

The Appellant

On the jurisdictional issue the appellant attempted to distinguish the issues in this case from the issues presented in Alan P. Sousa v. School One decision of the Commissioner dated January 27, 1993. In the latter case, the Commissioner ruled that the Rhode Island Educational Records Bill of Rights (R.I.G.L. 16-71-1) does not apply to private schools. The statute, therefore, provided no redress to a parent seeking copies of final transcripts when the private school refused his request. As in this case, the basis for the school's refusal was that tuition was still owed. The Appellant premised her claim not on 16-71-1 et seq., but rather on Chapter 40 of Title 16. The Board approves non-public secondary schools under Chapter 40 and in the course of such approval process determines that schools are in compliance with regulations and standards set by the Board of Regents. The appellant argued implicitly, if not explicitly, that the responsibility to set standards and approve private secondary schools brings with it the authority to intervene to prevent a violation of her rights and those of her daughter.

Given the authority and jurisdiction of the Board to intervene, the Appellant, contends that intervention is necessary because it is clearly in her daughter's best interests to receive her diploma and have her final transcript on file with the college she is presently attending. Without such documentation, she evidently is unable to proceed to declare a major course of study. Tr. p. 8.

As a legal basis for the exercise of such authority, the appellant argues that she was induced to register her daughter at the school, despite her inability to pay the tuition, and was told "not to worry" about the tuition because financial aid would be available. She was later told that a financial aid award was in fact made to continue her daughter's attendance, but the award was subsequently taken away because another student who had demonstrated more financial need was returning to the school and had been in attendance longer than the appellant's daughter. The award was not made in writing. Tr. p. 16. Despite her acknowledgment that the tuition bill is outstanding for both years her daughter was in attendance, the appellant argues that withholding the transcript and diploma is unjustified, given that there also exists a financial aid dispute.

Portsmouth Abbey School

In arguing that the appeal should be summarily dismissed, counsel for Portsmouth Abbey notes that the issues are plainly those that were addressed by the Commissioner in Sousa v. School One, decision of the Commissioner dated January 27, 1993. Clearly the appellant has no claim under the Educational Records Bill of Rights. There is also no jurisdiction arising under any other law relating to schools or education. Counsel submits that what is raised by the facts is a contractual issue. He contends that the school's action

is in conformity with the written agreement of the parties in this matter, i.e. that the diploma and transcript will not be released if tuition is owed to the school.

Decision

The statutory references on which jurisdiction over this dispute is premised, namely Chapter 40 of Title 16, contain no provision which relates to the subject matter of this dispute. In addition, the regulations which govern the ongoing approval of non-public schools under Chapter 16-40¹ (of which we take administrative notice) contain no regulatory language applicable to the issue under consideration. In examining whether the Commissioner has jurisdiction over a dispute, our guiding principle is whether the dispute “arises under” any law relating to schools or education. R.I.G.L. 16-39-1. In construing the language “arising under” we must determine whether or not the issue is controlled by school law, or, stated another way, whether resolution of the issue requires construction or application of an educational statute. See the discussion of “arising under” contained in the April 6, 1992 decision of the Commissioner in Laidlaw Transit, Inc. v. South Kingstown School Committee at page 4. As we’ve noted, no provision of Chapter 16-40, or the implementing regulations, controls or even addresses the issue presented here, i.e. the withholding of both transcript and diploma because of nonpayment of tuition.

Furthermore, it is clear that, as the school argues, R.I.G.L. 16-71-1, the Educational Records Bill of Rights, does not apply to a private school. Alan P. Sousa v. School One.

We are, therefore, constrained to rule that the Commissioner has no jurisdiction to rule on the merits of this controversy. It is our assessment that the appeal raises a

¹ Standards for Approval of Non-Public Schools in Rhode Island promulgated by the Board of Regents.

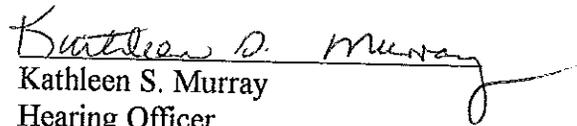
contractual issue. In the event a higher authority should disagree with the ruling on jurisdiction, and conclude that we should have reached the merits, we make the following findings of fact:

- The contract between the parties clearly contained a provision that receipt of the diploma and transcript was conditioned on payment of tuition.
- The appellant owes \$25,149.27 in tuition to the Portsmouth Abbey School.
- The appellant did not prove that the school was bound to provide financial aid to the appellant's daughter or that it breached any promise to provide financial aid.

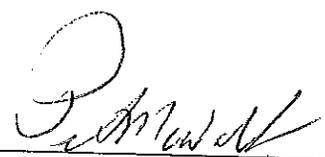
In summary, despite the appellant's contention that her daughter's ongoing enrollment was induced by an agreement that she would not be held responsible for payment of the tuition, and/or that she would be the recipient of financial aid to offset tuition, these allegations were not proven. Although the appellant testified that certain statements supporting her contentions were made, the documentary evidence contradicted this. We find the written evidence persuasive.² Thus, if we were to reach the merits, on the basis of the facts adduced at the hearing, we would deny the Appellant's appeal.

The appeal is dismissed for lack of jurisdiction.

² Especially persuasive is the August 30, 1994 letter from the appellant PAS Ex. C which was written just prior to her daughter's second year of attendance. In that letter, the appellant promises to begin making monthly payments of two hundred (\$200.00) dollars and take steps to sell real estate she owned in Florida "so that she could pay Portsmouth Abbey in full." She also offers to sign a contract confirming her "commitment for full payment of ... tuition." School officials permitted her daughter to attend on the basis of this commitment.


Kathleen S. Murray
Hearing Officer

Approved:


Peter McWalters
Commissioner

Date: FEBRUARY 19, 1997