

0022-99

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

IN THE MATTER OF MICHAEL C.

INTERIM ORDER

Held: Student's school assignment is to be
maintained pending further hearing.

DATE: September 13, 1999

Introduction

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Michael C's parents are appealing their son's 1999-2000 school assignment.

For the reasons set forth below, we shall enter an interim order maintaining last year's enrollment pending further hearing of the matter.

Background

Michael is about to enter the second grade. He attended kindergarten at Hugh Cole School, and the first grade at Main Street School.

Prior to the completion of the 1998-99 school year, the school district adopted attendance zones for school assignment purposes.² The district also adopted a policy that students could attend "out-of-zone" schools if there was space available and the parents provided transportation. Furthermore, the School Committee resolved that, at the elementary level, where the contractual class size limit is 24 students, September enrollments would be limited to 22 students, if possible, in order to provide some flexibility for mid-year enrollments.

Michael experienced academic and health problems last school year. Despite being assigned to an intensive remedial reading class and receiving home tutoring,³ Michael is not reading at grade level and he is having difficulties in math. Midyear,

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- 1 The Commissioner of Education designated the undersigned hearing officer to hear and decide this appeal. A hearing was conducted on September 9, 1999. In light of the imminent opening of school in Bristol-Warren, the hearing officer relied on his notes and the exhibits from the hearing in writing this decision.
 - 2 Previously, children residing in the town of Warren could be assigned to any one of the three elementary schools located in the town.
 - 3 Michael was referred for a special-education evaluation, but he was found not to be eligible for services. His classroom teacher disagreed with that finding.

Michael had his adenoids removed and tubes placed in his ears to relieve excessive fluid. Michael is receiving ongoing treatment for chronic constipation. His doctor believes that Michael “needs to be in a stable and familiar environment to maintain success with [his] treatment plan.” [Appellants’ Exhibit 21]. Michael also is seeing a psychologist who relates Michael’s inattention, poor task completion and underachievement to his colon problem. A letter from the psychologist to Michael’s parents states that Michael’s colon condition has improved, but he “remains at risk psychologically . . . He needs at least one more year in the school where he is the most comfortable and familiar socially and emotionally as part of the ongoing plan to address his encopresis. Stability, consistency and a minimum of stress are necessary at this juncture.” [Appellants’ Exhibit 20].

Appellants testified that a week before school ended in June 1999, they were informed by a school official that, due to transportation changes, Michael would have to return to Hugh Cole School, and his younger sister would remain there for first grade, because it was their zone school. Appellants discussed the matter further with school officials and came to believe that both of their children could attend Main Street School in September 1999 if the family provided transportation, which it agreed to do.

Michael’s final report card for 1998-99 includes a statement that he “has been assigned to grade 2 room 6 (teacher’s name) at Main Street School.” [Appellant’s Exhibit 12]. His sister’s final report card assigned her to a specific teacher at Main Street School. [Appellant’s Exhibit 11].

Michael received tutoring during the summer from an individual who did his

student teaching at Main Street School during the 1998-99 school year. Michael's first grade teacher provided the tutor with materials and exercises that were linked to the instructional program of the second grade Main Street School teacher named in Michael's final report card.

Appellant received a letter dated August 13, 1999 from the school district which provided bus transportation information for Michael to Main Street School. An attachment to the letter, entitled "Transportation Policy Guidelines," includes the following provisions:

To the maximum extent feasible, pupil transportation is to be based on the neighborhood school concept and governed by well-defined transportation "zones" for each school.

Permission for a child to attend a school outside the established transportation "zone" will be granted with the following requirements:

1. Classroom space is available at the receiving school based on enrollment data the week prior to the start of school,
2. Transportation must be provided by the parent,
3. The parent agrees that permission may be revoked at any time, if space is no longer available in the receiving school. [Appellants' Exhibit 13].

Shortly after August 13th, Appellants received a letter stating that they were "inadvertently sent a notice of transportation which included times and bus stop information. Your child attends a school outside of the attendance zone for your home address. Transportation is not available to his/her (sic) school from that area. [Appellants' Exhibit 14].

On August 24, 1999, the school district informed Appellants that 8 children had

moved into the Main Street School attendance zone and, as a result, there no longer is any space for Michael at Main Street School. Appellants also were told that there was space available in the second grade at Child Street School if Appellants preferred that school to Hugh Cole, the zone school. As for Michael's sister, there is space available in the first grade at Main Street School. There are 24 children, the class size limit, presently enrolled in the first grade at Hugh Cole.

As of the date of the hearing, there are 24 students enrolled in the second grade class of the teacher named in Michael's report card, and 23 students in the remaining second grade class.

Positions of the Parties

Appellants contend that Michael's health and academic needs necessitate his continued enrollment at Main Street School. They particularly object to his being removed from the school on such late notice. They argue that Michael's health and academics will be jeopardized unless he remains in the familiar environment of Main Street School, with his sister, where there is close communication between the first and second grade teachers. Appellants note that if Michael and his sister return to Hugh Cole School, the latter's enrollment will exceed the class size limit for first grade. In addition, Appellants question whether the new attendance zones have officially been adopted by the School Committee.

The School Committee contends that the policy changes mentioned above have produced a consistent, cost-effective approach to school assignments. It asserts that it has taken reasonable measures to avoid paying a contractual class size stipend with regard to

second grade enrollments at Main Street School. It states that there are academic benefits for Michael (e.g., smaller classes) if he were to attend second grade at Hugh Cole or Child Street, and that two of Michael's classmates from last year will be attending Child Street School this year. Michael could remain at Hugh Cole School through the fifth grade. Reading assistance is available at all of the elementary schools, and teachers from Hugh Cole and Child Street are able to communicate with Michael's first grade teacher.

Discussion

We find the posture of this case to be similar to that of Kim A. vs. Bristol-Warren Regional School Committee, issued on August 31, 1999. That is to say, the equities of the appeal at this stage warrant the issuance of an interim order under R.I.G.L. 16-39-3.2 directing that Michael's school assignment be maintained pending further hearing. In making this determination, we rely on the statements of Michael's doctor and psychologist, the school and teacher assignment in his final report card for the 1998-99 school year, the nature of the tutoring that Michael received over the summer, the timing of the notice of change in the assignment, and Appellants' agreement to provide Michael's school transportation. We anticipate that these considerations, among others, may be explored in greater detail in further hearing. Pending such hearing, however, the status quo shall be maintained and Michael's school assignment and teacher must be consistent with that set forth in his final report card.

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4 If the parents agree, Michael may be placed in the other second grade classroom at Main Street School.

Conclusion

It is hereby ordered, on an interim basis, that Michael be allowed to continue to attend Main Street School, consistent with the assignment in his final report card, pending further hearing in this matter. Appellants shall be responsible for Michael's school transportation.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date: September 13, 1999