

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER
OF
EDUCATION

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In Re S.I.

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INTERIM ORDER

Held: This student, currently in the custody of the Department of Children, Youth, and Families, is held to be a resident of Pawtucket for school purposes; however, under the McKinney Act she may continue to attend the public schools of East Providence. Pawtucket is responsible for providing this student with transportation, and East Providence is responsible for paying for this transportation. A special visitor is appointed to facilitate cooperation in this matter.

DATE: May 3, 2000

TRAVEL OF THE CASE

This is an interim order hearing concerning the right of a special education student, S.I., to receive transportation. Jurisdiction is present under R.I.G.L. 16-39-1, R.I.G.L. 16-39-3.2, and R.I.G.L. 16-21.1-5.

FINDINGS OF FACT

The facts of this case are not in material dispute. S.I. is a nine-year-old special education student with serious behavior problems who attended the Silver Spring elementary school in East Providence until March 13, 2000 when her mother voluntarily placed her in the custody of the Department for Children and their Families (DCYF). As soon as DCYF took custody of S.I. it moved her to the Blackstone Children's Shelter in Pawtucket, Rhode Island. DCYF is exploring the possibility of placing S.I. at Bradley Hospital but it does not know when, or even if, this placement can be made. Pawtucket is now providing S.I. with 5 hours of home tutoring a week. Pawtucket now believes that it has identified a possible placement in Pawtucket that may meet her educational needs. Still there appears to be a consensus that the better placement for this student would be at the Silver Spring School in East Providence until a placement for her at Bradley Hospital can be arranged. The mother of this student wants her to continue to attend Silver Spring School. The mother of the student is still living in East Providence. The dispute in this case revolves upon who should transport this student from Pawtucket to East Providence. East Providence has no objection to S.I. attending school in East Providence as long as Pawtucket arranges for her transportation.

Under most circumstances it would not be very difficult to arrange transportation for this student. The problem in this case is that there are no places open on any Pawtucket school buses going into East Providence. It also must be recalled that S.I. has severe behavioral problems. She needs supervision when she travels to ensure her safety and the safety of others.

We find that the Blackstone Children's Shelter is just that—"a supervised publicly or privately operated shelter designed to provide temporary living accommodations."¹ Since the Blackstone Children's Shelter is S.I.'s "primary nighttime residence," S.I. is covered by the federal Stewart B. McKinney Homeless Assistance Act.²

HOMELESS CHILDREN

The Rhode Island Residency Law covers many of the issues covered by the federal Stewart B. McKinney Homeless Assistance Act. Rhode Island law states:

16-64-2. Retention of residence. – A child shall be eligible to receive education from the town in which the child's residence has been established until his or her residence has been established in another town and that town has enrolled the child

¹ 42 U.S.C. Sec. 11302

² 42 U.S.C. Sec. 11431-11438.

within its school system, unless the commissioner of elementary and secondary education, pursuant to § 16-64-6, has ordered otherwise. Nothing contained herein shall be construed to prohibit a town in its own discretion from enrolling a child within its school system before a child has established technical residency within the town. The commissioner of elementary and secondary education shall promulgate such rules as may be needed to implement the educational provisions of the Stewart B. McKinney Homeless Assistance Act (P.L. 100-77), 42 U.S.C. § 11301 et seq.

16-64-8. Completion of semester of school year. – When a student changes his or her residence during the course of a semester the student shall be allowed to complete the semester in his or her original town of residence. If the student is a senior or about to enter his or her senior year the student shall be allowed to complete his or her senior year in his or her original town of residence. No school district shall be required to provide transportation to a student exercising the option permitted by this section. No school district shall require a student to exercise the option allowed in this section. No school district shall be required to pay tuition for a student who exercises the option allowed in this section. Nothing in this section shall be construed to diminish the rights of any person covered by the McKinney Homeless Assistance Act (P.L. 100-77), 42 U.S.C. § 11301 et seq.

But the McKinney Act, and its accompanying Rhode Island Regulations, grant homeless students more rights than they would have under regular school residency law. The McKinney Act, in pertinent part, states:

Section 103. General Definition of Homeless Individual (42 U.S.C. § 11302) (a) In general – for purposes of this Act, the term “homeless” or “homeless individual” includes:

- (1) an individual who lacks a fixed, regular, and adequate nighttime residence; and
- (2) an individual who has a primary nighttime residence that is:
 - (A) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);
 - (B) an institution that provides a temporary residence for individuals intended to be institutionalized; or
 - (C) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Under most circumstances the McKinney Act allows, but does not require, homeless children to continue to attend the school they were attending when they became homeless. This is so even if they are no longer living in the district:

(3) Local educational agency requirements

- (A) The local educational agency of each homeless child and youth to be assisted under this part shall, according to the child's or youth's best interest, either –
 - (i) continue the child's or youth's education in the school of origin –
 - (I) for the remainder of the academic year; or
 - (II) in any case in which a family becomes homeless between academic years, for the following academic year; or
 - (ii) enroll the child or youth in any school that nonhomeless students who live in the attendance area in which the child or youth is actually living are eligible to attend.
- (B) In determining the best interests of the child or youth under subparagraph (A), the local educational agency shall comply, to the extent feasible, with the request made by a parent or guardian regarding school selection.
- (C) For purposes of this paragraph, the term “school of origin” means the school that the child or youth attended when permanently housed, or the school in which the child or youth was last enrolled.
- (D) The choice regarding placement shall be made regardless of whether the child or youth lives with the homeless parents or has been temporarily placed elsewhere by the parents.

To implement this federal law, Rhode Island has adopted this regulation:

(1.2) The choice regarding school enrollment shall be based on the child's or youth's best interest, in accordance with Section 2.1 of these regulations, as determined by the parent, legal guardian, natural guardian, or person acting in loco parentis to the child or by an emancipated minor on his or her own behalf.

(1.3) Once the choice is made, the LEA shall maintain the child's enrollment for the remainder of the school year in the same school unless there is a compelling reason to transfer the child to another school in the district. The parent or person in parental relation to the child or youth shall have the right to appeal the proposed transfer to the Commissioner of Education, in accordance with Section 16-64-6, R.I.G.L.

The factors in making a “best interest” determination are, according to Rhode Island’s regulations:

II. Best Interest Determination

(2.1) In determining the best interest of a homeless child or youth as related to choice of school district, the following factors shall be considered:

- (a) special needs of the child
- (b) continuity of services
- (c) distance/travel time
- (d) involvement in special activities or sports
- (e) safety
- (f) other relevant information

In the present case the parties agree that S.I.’s mother has decided that it would be in the best interests of her daughter for her to continue to attend the Silver Spring School in East Providence. No one is disputing this decision.

Homeless students are entitled to receive transportation services under Rhode Island’s cross-district transportation law .³ One of the purposes of this law is “to provide for the transportation of public school students who attend schools located outside the city or town in which they reside.”⁴The Rhode Island Regulations implementing the McKinney Act state:

(4.1) Transportation of a homeless child or youth shall be provided within regional “school bus districts” as established in Section 16-21.1-2 of the Rhode Island General Laws. The provision of transportation shall be the responsibility of the school district in which the pupil is enrolled in accordance with Section 16-21-1, R.I.G.L.

Under Rhode Island’s cross-district transportation law a student such as S.I. is entitled to be “provided with bus transportation to the school or facility which the pupil attends, within the region in which the pupil resides, by the city or town within which the pupil resides.”⁵ While under state and federal law S.I. may well have the right to attend the public schools of East Providence, there is no doubt that for general school purposes she is a resident of Pawtucket and that is to be “enrolled”, at least for administrative purposes, in Pawtucket. The law states:

“Children placed in group homes, in foster care, in child caring facilities, or by a Rhode Island licensed child placing agency shall be deemed to be residents of the town where the group home, child caring facility, or foster home is located for the purposes of

³ R.I. Homeless Regs. 4.1, R.I.G.L. 16-21.1-1, et seq.

⁴ R.I.G.L. 16-21.1-2

⁵ R.I.G.L. 16-21.1-2(b)

enrollment, and this town shall be reimbursed or the child's education paid for in accordance with R.I.G.L. 16-64-1.1⁶

We have no doubt that Pawtucket is correct in its view that S.I. is now a resident of Pawtucket for school purposes. Of course this does not change the fact that by operation of the McKinney Act she also may continue to attend the public schools of East Providence.

CONCLUSION

The law at R.I.G.L.16-64-1.1 makes “ the city or town in which the child’s parent(s) live” responsible for the cost of the child’s education. The mother in this case is living in East Providence. We conclude that under the cross-district transportation law (R.I.G.L. 16-21.1-1) Pawtucket is responsible for providing this student with transportation. We conclude that under the residency law East Providence is responsible for paying for this transportation. (R.I.G.L. 16-64-1) The Commissioner of Education is “responsible for the coordination of the various elementary and secondary educational functions among the educational agencies of the state including local school district and to encourage and assist in the cooperation among them so that maximum efficiency and economy may be achieved.” (R.I.G.L.16-60-6 (5)) We will therefore appoint a special visitor to facilitate cooperation in this matter.

Forrest L. Avila, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

May 3, 2000

Date

⁶ R.I.G.L.16-64-1