

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

Residency of Student Z.D.

.....

DECISION

Held: This student is found to be eligible to attend the public schools of Scituate until the end of the current semester. Scituate and Cranston special education staff, with input from the petitioning parent, shall work together to ensure a smooth transition of this student into the Cranston school system. The McKinney Act coordinators of Scituate and Cranston, in consultation with the parent and with the state-level McKinney Act Coordinator, will review this matter to determine whether the petitioning parent is entitled to the protections of that Act.

DATE: January 28, 2005

Jurisdiction and Travel of the Case

In this residency case jurisdiction is present under R.I.G.L.16-39-1, R.I.G.L. 16-39-2, and R.I.G.L.16-64-6. The petitioning parent is challenging the decision of Scituate school authorities to remove her son from school. School officials based this decision upon a conclusion that the student was no longer a resident of Scituate for school purposes.

Positions of the Parties

Position of the Scituate Public Schools

Scituate takes the position that since the student and his parent are both now living in Cranston the student should be enrolled in the public schools of Cranston.¹

Position of the Cranston Public Schools

Cranston has no objection to this student enrolling in the public schools of Cranston. Cranston does argue that some transition period, along with appropriate coordination between school systems, may be in order because of the special difficulties that a student with autism may experience in dealing with a sudden change. Cranston also points out that under R.I.G.L.16-64-8 that once a student is enrolled in a school system the student has the right to finish the semester in that school system, unless the Commissioner orders otherwise. In addition Cranston submits the Federal McKinney Homeless Act² may have some application to this case, depending upon the exact circumstances of the move this family made. If the McKinney Act is applicable to this case the student may have additional rights concerning his continued enrollment in the public schools of Scituate.

Position of the Parent

The parent in this case objects to the abrupt manner in which her son was called down to the principal's office with no advanced communication with her. She submits that if questions about her residency were to be raised, they should be raised with her rather than unilaterally communicated to her son. She also argues that her son should be allowed to finish the school year in Scituate.

¹ R.I.G.L.16-64-1

² 42 U.S.C. sec. 11431 et seq.

Findings of Fact

1. Until recently the parent in this case lived in Scituate. As a result of a divorce she left Scituate in June of 2004 and moved with her two children to live with her mother in Cranston. The petitioning parent in this case has sole custody of her children. While the children's father still lives in Scituate he is not, at this time, able to have his children live with him.
2. Both the students involved in this case have lived in Scituate for most of their lives. They once again enrolled in the Scituate school system in June of 2004. One of the students is now a senior.³ The other student is an 11-year-old boy with autism.
3. In the last days of September of 2004 school authorities in Scituate unilaterally, and without any hearing, decided to order the removal of the petitioner's son from the Scituate schools because, on information and belief, the student was now living in Cranston.
4. The 11 year old student in this case, who has the disability of autism, was summoned to the principal's office where he was told that he could no longer attend the public schools of Smithfield, and that his mother would be called to take him home. When the mother was called she insisted that her son be returned to class because she was unable to go immediately to the school. As a result of this distressing situation the student became distraught. His older sister, who, as noted, is a senior at the school, had to be called in to comfort him. The older sister became upset when she saw that her brother was to be removed from school.
5. The petitioning parent and the children are now living in Cranston.

Conclusions of Law

The General Laws of Rhode Island state:

1. **§ 16-64-2 Retention of residence.** – A child shall be eligible to receive education from the city or town in which the child's residence has been established until his or her residence has been established in another city or town *and that city or town has enrolled the child within its school system*, unless the commissioner of elementary and secondary education, pursuant to § 16-64-6, has ordered otherwise. ***
2. **§ 16-64-6 Disputes over residency – Determination proceedings.** – When a school district or a state agency charged with educating children denies that it is responsible for educating a child on the grounds that the child is not a resident of the school district or that the child is not the educational responsibility of the state agency, the dispute shall, on the motion of any party to the dispute, be resolved by the commissioner of elementary and secondary education or the commissioner's designee who shall hold a hearing and

³ They school district does not contest the right of this senior year student to finish her senior year in Scituate. See: R.I.G.L. 16-64-

determine the issue. At any hearing, all parties in interest shall have the right to a notice of the hearing and an opportunity to present evidence and argument on their own behalf. A hearing under § 16-39-2 shall not be a prerequisite to a hearing under this section. The commissioner of elementary and secondary education shall have power to issue any interim orders pending a hearing needed to insure that a child receives education during the pendency of any matter. Interim orders and all final orders shall be enforceable in the superior court for Providence County at the request of any interested party and shall be subject to review in the superior court in accordance with the Rhode Island Administrative Procedures Act, chapter 35 of title 42.

3. **§ 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 city or 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 city or 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. 105-220), 42 U.S.C. § 11431 et seq.
4. **§ 16-24-1 Duty of school committee to provide special education.** – (a) *** (b) In those cases that an individual education plan has been adopted for a child and the child moves to another town or city, the plan shall remain in effect until a new plan is adopted for the child in the new town or city.
5. **§ 16-64-1 Residency of children for school purposes.** – Except as provided by law or by agreement, a child shall be enrolled in the school system of the city or town where he or she resides. A child shall be deemed to be a resident of the city or town where his or her parents reside. *If the child's parents reside in different cities or towns the child shall be deemed to be a resident of the city or town in which the parent having actual custody of the child resides.* (Emphasis added) In cases where a child has no living parents, has been abandoned by his or her parents, or when parents are unable to care for their child on account of parental illness or family break-up, the child shall be deemed to be a resident of the city or town where the child lives with his or her legal guardian, natural guardian, or other person acting in loco parentis to the child. *** *** In all other cases a child's residence shall be determined in accordance with the applicable rules of the common law. ***

Discussion

An important rule of Rhode Island's residency law is that once a student is enrolled in a school system the student has a right to stay enrolled in the school system until he or she is enrolled in another school system or the Commissioner has ordered otherwise. The 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 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 intent of this law is to create a “relay race” in which a school system is not allowed to “drop the baton” until educational responsibility for a student is smoothly handed off to the next school system. Thus a school district may not unilaterally end a student's enrollment.⁴ If there is a dispute about a student’s residency, the dispute must be sent to the commissioner of education for a decision about which school system the student is to be enrolled in.⁵

The record is clear that this student was enrolled in the Scituate school system. Given this fact the school district had no authority to unilaterally terminate this student’s enrollment until the Commissioner had resolved the residency dispute between the parent and the school system.⁶

The record is also clear that the student is now living with his mother in Cranston and that Cranston is now his residence for school purposes. The only real question before us is when, and under what conditions, the transfer of this student to the public schools of Cranston will take place.

Since this student has been diagnosed with autism we will exercise our discretion to make this transfer effective at the end of the 2004-2005 in June. This transfer will be carried out in a cooperative manner with full consultation between the special education departments of Cranston and Scituate and with input from the petitioning parent.

The record before us is unclear as to whether or not the Federal McKinney Homeless Act might be applicable to this case. The McKinney Act coordinators of Scituate and Cranston, in consultation with the parent and with the state-level McKinney Act Coordinator, will review this matter to determine whether the petitioning parent is entitled to the protections of that Act and whether the McKinney Act might allow this student to attend the Scituate Schools during the 2005-2006 school year.

Conclusion

This student is found to be eligible to attend the public schools of Scituate until the end of the 2004-2005 school year in June. Scituate and Cranston special education staff, with input from the petitioning parent, shall work together to ensure a smooth transition of this student into the Cranston school system. The McKinney Act

⁴ Commissioner's Memorandum, Re: Residency, May 16, 1989.

⁵ R.I.G.L. 16-64-2, R.I.G.L. 16-64-6

⁶ R.I.G.L.16-64-2

coordinators of Scituate and Cranston, in consultation with the parent and with the state level McKinney Act Coordinator, will review this matter to determine whether the petitioning parent is entitled to the protections of that Act and whether the Act might give the student the right to attend Scituate schools in the 2005-2006 school year. A hearing will be held by the Commissioner on a date to be determined in March of 2005 to determine any issues related to the McKinney Act.

Forrest L. Avila, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

January 28, 2005
Date