

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

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**Residency of  
Student James B.**

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**INTERIM ORDER**

Held: Department for Children, Youth and Families (DCYF) seeks the designation of a Rhode Island school district to be responsible for the education of a student in the custody of DCYF who is attending the Spurwink School in Lincoln. We find that the South Kingstown school district is responsible on an interim basis for preparing this student's IEP and for making a per pupil special education cost contribution to DCYF toward the cost of this student's education at Spurwink School. If a hearing on the merits is required in this matter it will be scheduled upon the request of any party to this contested case.

DATE: July 26, 2005

## **Jurisdiction and Travel of the Case**

This is an Interim Order hearing in which the Rhode Island Department for Children, Youths and Families (DCYF) seeks the designation of a Rhode Island school district to be responsible for the education of a student in the custody of DCYF who is attending the Spurwink School in Lincoln. Jurisdiction is present under R.I.G.1.16-39-1, R.I.G.1.16-39-2, and R.I.G.1.16-39-3.2.

## **Issue Presented**

Which Rhode Island school district is responsible for preparing this student's IEP, and making a per pupil special education cost contribution to DCYF for the cost of this student's education?

## **Positions of the Parties**

- The **South Kingstown School District** argues that the Exeter-West Greenwich School district is responsible for this student's education. It makes this claim based upon the residence of the student's father who moved to Exeter in September of 2004.
- The **Exeter-West Greenwich School District** points to South Kingstown as the school residence of this child since the student was a school resident of South Kingstown when he came into the custody of DCYF. Exeter-West Greenwich also notes that, although the student's father moved into Exeter in September of 2004, the student's mother moved back into South Kingstown in the same month and year.
- **DCYF** simply argues that one of these school districts is responsible for the education of this student.

## **Interim Findings of Fact**

1. The student in this interim order case is presently attends the Spurwink School II in Lincoln, Rhode Island.
2. The Department for Children Youth and their Families (DCYF) licenses Spurwink School. Spurwink has a contract with DCYF for a specific number of residential treatment "slots" including "slots" at a therapeutic group home in Lincoln, operated by the Spurwink School.

3. Spurwink School is also approved by the Rhode Island Department of Education as a Special Education School.
4. Both the parents of this student have relinquished their parental rights concerning this student to DCYF. This student is now under the legal guardianship of DCYF.
5. Since October of 2002 this student has been attending an approved off grounds educational program operated by Spurwink School.
6. This student's federally required Individualized Education Plan (IEP) at the Spurwink program has been approved since October 2002 by the South Kingstown School Department.
7. At the time this student went into the custody of DCYF he was attending the public schools of South Kingstown. He was living in South Kingstown with his father at the time. At that time this student's mother was living in Charlestown.
8. After this student went into DCYF custody, his father became homeless. At various times this student's father lived on the streets of South Kingstown and in a homeless shelter in South Kingstown.
9. In October of 2004 the South Kingstown School Department informed DCYF that it would no longer assume responsibility for this student's IEP.
10. The mother of this student presently resides in South Kingstown, in the village of Peacedale. She took up this residence in September of 2004.
11. The last residence of this student's father was in Exeter, where he was living with his mother. He established this residence sometime in September of 2004.
12. From the preliminary record before us it would appear that this student has always had at least one parent living in South Kingstown.
13. Parental rights in this case appear to have been terminated in early March of 2005.

## Interim Conclusions of Law

An important rule of Rhode Island's school 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. 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.<sup>1</sup> 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.<sup>2</sup>

## Discussion

The record before us establishes that the last Rhode Island school district this student was enrolled in was South Kingstown. Since he has not yet been enrolled in another school district, this fact alone would justify keeping South Kingstown as the responsible school district in this matter until a hearing on the merits is held.<sup>3</sup> Furthermore it appears that while the student's parents have lived in different communities at different times, it is also true that at least one of them, at any given time, has been living in South Kingstown. This fact makes it likely that, even after a hearing on the merits, this student will be found to be a resident of South Kingstown for school purposes.

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<sup>1</sup> Commissioner's Memorandum, Re: Residency, May 16, 1989.

<sup>2</sup> R.I.G.L. 16-64-2, R.I.G.L. 16-64-6

<sup>3</sup> R.I.G.L.16-64-2

## Conclusion

We find that the South Kingstown school district is responsible on an interim basis for preparing this student's IEP and for making a per pupil special education cost contribution to DCYF toward the cost of this student's education at Spurwink School. If a hearing on the merits is required in this matter it will be scheduled upon the request of any party to this contested case.

APPROVED:

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Forrest L. Avila, Hearing Officer

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Peter McWalters, Commissioner

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July 26, 2005  
Date