0040-06

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

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Residency of Student G. Doe

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DECISION

Held: In this school residency appeal, Student Doe, who now resides in transitional housing located in South Kingstown, remains eligible to attend the public schools of Chariho in accordance with the Federal McKinney-Vento Homeless Assistance Act.

DATE: October 3, 2006

Travel of the Case

In this school residency appeal a parent contends that by virtue of the Federal McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431-11435) her son remains eligible to attended high school in the Chariho school system even though he now resides in transitional housing located in South Kingstown. Jurisdiction is present under R.I.G.L.16-64-6, R.I.G.L.16-39-1, and R.I.G.L.16-39-2.

Positions of the Parties

The Chariho Regional School District

The Chariho Regional School District contends that the student is no longer homeless because he is now residing in transitional housing located in South Kingstown. Chariho contends that the student is therefore no longer entitled to the protections of the McKinney-Vento Homeless Act, and that he should therefore be required to enroll in the public schools of South Kingstown, where he is now living.

The Parent

The parent contends that residency in transitional housing does not exclude her, or her children, from the protections of the McKinney-Vento Homeless Act.

Findings of Fact

1. The petitioning parent now lives with her children in supervised transitional housing located in South Kingstown. The Welcome House of South County is the sponsor of this transitional housing. Besides this transitional housing program the Welcome House also operates an emergency shelter for homeless individuals along with some permanent housing. (This permanent housing, which does not figure into this case, appears to focus on meeting the needs of individuals with disabilities.)

2. In order to be accepted into the Welcome House transitional housing program the petitioner had to document (1) that she was homeless and had no other place to live, (2) that she would participate in a counseling program to help her achieve self-sufficiency so that she would be able to avoid homelessness in the future, and (3) that she would make finding permanent housing her priority. She therefore was required to make immediate applications for other alternative or subsidized housing.

3. Under the applicable rules, the petitioner can remain in transitional housing for no more than two years. She pays a reduced rent for this housing.

4. Before she became homeless and entered transitional housing in South Kingstown the petitioning parent lived with her children in the Chariho school district. Chariho serves students in the towns of Charlestown, Richmond, and Hopkinton.

5. The transitional housing the petitioner occupies is part of a Federal program administered by the Department of Housing and Urban Development. (42 U.S.C. 11384 (b)) This particular program is an element of the Federal McKinney-Vento Act. The McKinney-Vento Act has as one of its objects the provision of help to homeless individuals to enable them to move into permanent stable housing.

6. One of the petitioner's children now attends school in South Kingstown. The petitioner argues, however, that her other child should be able to continue attending school at Chariho High School, in accordance with the provisions of the McKinney Homeless Act. (The parties agree that R.I.G.L.16-64-8, which allows high school seniors to finish the school year in their original town of residence, is not applicable in the present case.)

Conclusions of Law

1. The McKinney Vento Homeless Assistance Act states in pertinent part at 42 U.SC. 11434(a)(2)(B)(ii) that:

   (a) Homeless children and youth means individuals who lack a fixed, regular, and adequate nighttime residence. The term includes-- (1) Children and youth who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or *transitional shelters*; are abandoned in hospitals; or are awaiting foster care placement; (emphasis added)

2. Under the McKinney-Vento Act a school district must, if requested to do so, according to the child's or youth's best interest—

   (a) Continue the child's or youth's education in the school of origin--
   (i) For the *duration of homelessness* if a family becomes homeless between academic years or during an academic year; or (ii) For the remainder of the academic year if the child or youth obtains permanent housing during an academic year; (Emphasis added)

3. The question of law in this case is therefore whether residence in "transitional housing" ends a student's eligibility for the protections of the McKinney-Vento Act.

Discussion

The one Federal Court to consider this issue concluded that students who reside in transitional housing remain eligible to receive the protections of the McKinney-Vento Act. (See: *Bullock v. Board of Education of Montgomery County,* 210 F.R.D. 556 at 561 (D. Md. 2002) The Court pointed out that the McKinney-Vento Act itself and its implementing housing regulations, as promulgated by the United States Department of Housing and Urban Development, often conflate the terms *shelter* and *housing.* We also note that under the McKinney-Vento Act the school home liaison required by the Act is required to coordinate services for children residing in *transitional housing.* (42 U.S.C. 11432(f)(5)(B)) We therefore concur with the court's judgment that residence in *transitional housing* equates to residence in a *transitional shelter.* Statutory and regulatory terms should, of course, be construed in *pari materia.*

We must therefore conclude that the student in this case remains "homeless" for purposes of the McKinney Act and that he is entitled to receive the protections of the Act. Furthermore, the very phrase *transitional housing* indicates that a person living in such housing has not yet attained the *permanent* regular housing that would terminate eligibility to receive the protections of the McKinney Act.

Conclusion

The student in this case remains eligible to attend the public schools of Chariho in accordance with the McKinney-Vento Act.

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Forrest L. Avila, Hearing Officer

APPROVED:

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Peter McWalters, Commissioner

October 3, 2006
Date