

**STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS**

COMMISSIONER OF EDUCATION

.....

K. K.

vs.

**Rhode Island School for the Deaf and
Coventry School District**

.....

DECISION

Held: We hold that this student's placement at the Rhode Island School for the Deaf is simply a placement made by Coventry through which the Coventry School Department is presently fulfilling its continuing obligation to provide him with a free appropriate public education. Coventry has the primary responsibility to provide the student with FAPE and to convene any due process procedures needed to resolve issues relating to the provision of FAPE.

DATE: April 1, 2009

Travel of the Case and Jurisdiction

This case originated as a petition for an interim order seeking to ensure that the petitioning student would continue to receive a Free Appropriate Public Education (FAPE) despite an ongoing educational responsibility dispute between the Coventry School Department and the Rhode Island School for the Deaf (RISD). The parties, however, reached an agreement which obviated the need for a hearing on such an order. Still, the resolution of the interim order petition left for decision issues relating to the respective obligations of the Rhode Island School for the Deaf and the Coventry School Department for the education of the petitioning student. This matter is now before us for a resolution of these responsibility issues. 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. In particular, the law at R.I.G.L. 16-64-6 states:

R.I.G.L. 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 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.

This case, by implication, also involves the Commissioner's responsibility ... "for the coordination of the various elementary and secondary educational functions among the educational agencies of the state including local school districts and to encourage and to assist in the cooperation among them so that maximum efficiency and economy may be achieved." R.I.G.L.16-60- 6 (5)

Positions of the Parties

Coventry

Coventry concedes that this student lives with his family at a street address in Coventry, but Coventry contends this student is not a resident of Coventry for school purposes. Instead, Coventry argues that this student's education is now the entire responsibility of the Rhode Island School for the Deaf (RISD) since the student is now enrolled at RISD, and since RISD is an "LEA."¹ In essence, Coventry contends that once a student is enrolled at the RISD the student becomes a "resident" of RISD for school purposes and that RISD is thereafter responsible for providing all the services which might be needed to provide this student with a free appropriate public education.

The Student

The student contends that he is a resident of Coventry for school purposes. He further contends that his placement at the Rhode Island School for the Deaf is simply a placement made by Coventry through which the Coventry School Department is presently fulfilling its continuing obligation to provide him with a free appropriate public education.

Issue Presented

If a student's placement at the Rhode Island School for the Deaf is not providing the student with all the elements needed to provide the student with FAPE, does the sending school district -- or the School for the Deaf -- have the primary responsibility to provide FAPE and to convene any due process procedures needed resolves issues relating to the provision of FAPE?

Findings of Fact

1. The student in this case lives with his parents in Coventry.
2. The student is now enrolled at the Rhode Island School for the Deaf.

¹ Transcript, Pages 8 & 9.

3. The student is listed in the Special Education Census of RIDE's Information Services documentation (Full Exhibit 2) having the LEA code number 50, which in Full Exhibit 1 sets code number 50 as being that of RISD. RIDE's Special Education Census also lists the student as being a resident of Coventry and as having for his LEA the Rhode Island School for the Deaf.

Discussion

Coventry argues as follows:

RISD is the LEA pursuant to Section 16-26-3.1(c) (2) of the RIGL. RISD has the entire administrative control and direction of a student's program. RIDE's own census data treats [the student] as a RISD student and not a Coventry student. RISD holds meeting for [the student]. [The student's] program and doesn't include Coventry in its planning (and rightfully so). As Judge Selya noted in the case of Carroll v. Capalbo, 563 F.Supp. (D.R.I. 1983), "There is a fair amount of truth in the old barnyard aphorism: if it walks like a duck, and it squawks like a duck, it must be a duck."

In this case, the statute says RISD is the LEA. RIDE treats RISD as the LEA. Coventry treats RISD as the LEA. RISD acts for [the student's] programming as the LEA. Therefore, RISD must be the LEA.

Of course, as Judge Selya would be the first to point out, the above quoted barnyard aphorism is premised on the logical fallacy which goes by the name of "Affirming the consequent." In a system of strict deductive logic any number of things could "walk and squawk like a duck" without being a duck (e.g. a cybernetic decoy.) Still, it must be conceded that while the aphorism may be deductively unsound, it is not without some inductive merit. While an entity that walks and squawks like duck may not necessarily be a duck, the safe bet in most circumstances would be to conclude that it probably is a duck—unless, of course, you are real duck, and the entity is a sophisticated cybernetic decoy. Still, none of this advances the decision of this matter. The question before us is to determine what kind of duck RISD is. Now, as most bird watchers know, there are at least two kinds of ducks:

Ducks may be split into two main groups. Dabbling ducks upend on the surface of fresh and brackish waters, and can jump up and take flight straight out of the water. Diving ducks dive well under the surface of fresh and salt waters; in taking flight, they run and flap horizontally over the water's surface before gaining altitude.²

² National Audubon Society Field Guide to New England, 1998, Chanticleer Press, page 284.

In our view a similar dichotomy, at least in an ontological sense, obtains with regard to Rhode Island LEAs. That is say, that when it comes to special education, there are at least two sorts of LEAs in Rhode Island.³ There are LEAs -- usually called “school districts” --which are operated by “towns and cities” under R.I.G.L. 16-2-2 that have the responsibility to provide FAPE to students who have disabilities and who are resident within the several geographical boundaries of these cities and towns. There are, in addition, special purposes LEAs which, under some circumstances, can provide “school districts” with viable special education placements to help “school districts” provide FAPE. This dichotomy results from the force of the General Laws of Rhode Island. “City and town” LEA’s are established by R.I.G.L.16-2-2:

R.I.G.L. 16-2-2 City and town schools required – School year – Location – Kindergartens. – (a) Except as specifically provided in this section, every city or town shall establish and maintain for at least one hundred eighty (180) days annually exclusive of holidays a sufficient number of schools in convenient places under the control and management of the school committee and under the supervision of the board of regents for elementary and secondary education. In lieu of convenient location the school committee may provide transportation for pupils to and from school in accordance with the provisions of chapter 21 of this title.

These “city and town” LEAs have the obligation to provide special education to children with disabilities who reside in these several city and town LEAs:

R.I.G.L.16-24-1 Duty of school committee to provide special education. – (a) In any city or town where there is a child with a disability within the age range as designated by the regulations of the state board of regents for elementary and secondary education, who is functionally limited to such an extent that normal educational growth and development is prevented, the school committee of the city or town where the child resides shall provide the type of special education that will best satisfy the needs of the child with a disability, as recommended and approved by the state board of regents for elementary and secondary education in accordance with its regulations governing the education of children with disabilities. ***

(e) 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.

³ There are perhaps some other “*nomina dubia*” LEA’s out there, but we need not deal with these potential classifications here.

The Special Education Regulations of the Board of Regents are concordant with the emphasis R.I.G.L.16-24-1 puts on the use of residency as the determining factor in deciding what entity is responsible for providing a child with a free appropriate public education:

Rhode Island Special Education Regulation 300.101 Free appropriate public education (FAPE) -- (a) *General.* A free appropriate public education must be available to all eligible children residing in the LEA, between the ages of 3 and 21, inclusive (until the child's twenty first birthday or until the child receives a regular high school diploma), including children with disabilities who have been suspended or expelled from school, as provided for in 300.530(d). In accordance with 300.130 - 300.144, this section does not apply to students enrolled by their parents in private schools when FAPE is not an issue.

Under Rhode Island's school residency law the residence of a child for school purposes depends on where the child and his parents are residing. That is to say, that when it comes to special education Rhode Island runs a "zone defense" provided by its numerous city and town school districts:

R.I.G.L. 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. 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. An emancipated minor shall be deemed to be a resident of the city or town where he or she lives. Children placed in group homes, in foster care, in child caring facilities, or by a Rhode Island state agency or a Rhode Island licensed child placing agency shall be deemed to be residents of the city or town where the group home, child caring facility, or foster home is located for the purposes of enrollment, and this city or town shall be reimbursed or the child's education shall be paid for in accordance with § 16-64-1.1. In all other cases a child's residence shall be determined in accordance with the applicable rules of the common law. Where a child is a resident in a dwelling which lies in more than one municipality, the parent(s) or guardian shall choose which school district the child shall attend without payment of costs as tuition.

The law at R.I.G.L.16-24-1 specifies that: “the school committee of the city or town where the child resides shall provide the type of special education that will best satisfy the needs of the child with a disability....” It is evident to us that since this student and his parents are residing in Coventry the student is a resident of Coventry for school purposes under Rhode Islands school residency law (R.I.G.L.16-64-1, et seq.) Coventry is therefore responsible under R.I.G.L.16-24-1 to provide this student with a free appropriate public education.

Conclusion

We hold that this student’s placement at the Rhode Island School for the Deaf is simply a placement made by Coventry through which the Coventry School Department is presently fulfilling its continuing obligation to provide him with a free appropriate public education. Coventry has the primary responsibility to provide the student with FAPE and to convene any due process procedures needed to resolve issues relating to the provision of FAPE.⁴

Forrest L. Avila, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

April 1, 2009
Date

⁴ While the statutes at issue may differ a bit we find the case of *Smith v. Cumberland School Committee*, 415 A.2d 168 (R.I. 1980) to be instructive in this matter. In *Smith* the Rhode Island Supreme Court held that local Rhode Island school districts have the primary responsibility to provide student’s with FAPE and that other government programs are simply a supplemental placements by which local school districts may meet their respective obligations to provide FAPE.