

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....
Student M. Doe

v.

Newport School District
.....

INTERIM ORDER
DECISION

HELD: We find that these children have a right to remain enrolled in the Newport school system until the end of the 2008-2009 school year. The liaisons for homeless students in Newport and Providence are directed to meet to establish appropriate transportation for these students to Newport. The liaisons will discuss how these students will be transitioned into the Providence public schools at the end of the 2008-2009 school year. The cost of the transportation for these students will be shared between Newport and Providence.

DATE: May 20, 2009

Jurisdiction and Travel of the Case

This is a school 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. In this case a parent is appealing from a decision of the Newport school district to discontinue the enrollment of three of her children in the public schools of Newport.

The Parent

The parent contends that she and her children are entitled to the protection of the Federal McKinney Homeless Act and that this Act allows three of her children to continue to attend the public schools of Newport even through she and her children are now living in Providence.

The School District

The Newport school district concedes that the students in this case are entitled to the protections of the McKinney Act, but the district contends that under the terms of the McKinney Act it is not “in the best interest” of these students to continue to attend the public schools of Newport.

Findings of Fact

1. The petitioning parent has been a long time resident of Newport and her children had always attended the public schools of Newport.
2. Because of an abusive relationship the petitioner and her children left Newport and moved to Virginia where she lived for several months.
3. The petitioner and her children returned to Newport in October of the 2008-2009 school year and went to live in housing provided by a friend. She reenrolled her children in the Newport public schools on November 3 of the 2008-2009 school year.
4. In the middle of December of 2008 the petitioner became homeless and moved to the Crossroads homeless shelter in Providence.
5. The petitioner, without discussing the matter with the Newport School system, continued to send three of her five children to school in Newport. The other two children were enrolled in the Public schools of Providence.
6. The parent, at her own expense, sent the three children who are the concern of this hearing to Newport by means of public transportation, that is to say a RIPTA bus.
7. In February of 2009 the superintendent of schools of Newport found out that the three children were arriving at school in Newport by means of a RIPTA bus from Providence. He was properly advised that the McKinney Homeless Act applied to this situation. Given the ages of the children, and some special needs issues, the superintendent

concluded that this long bus ride on general public transportation presented a safety concern for these children. He arranged for these children to be carried between Newport and Providence by means of a taxi.

8. The Newport school system had correctly concluded that under the Federal McKinney Homeless act the students had the right to continue to attend school in Newport since the petitioner was living in a homeless shelter.
9. On April 9th 2008 two of the petitioner's children accidentally took some sleeping pills, thinking that the pills were their regular medication. A classroom teacher noticed that one of the children appeared to be lethargic. She referred the student to the school nurse who caused the student to be transported to Newport Hospital.
10. The children have had academic difficulties since they began their commute between Providence and Newport. They often arrive too late or too early to school, they have trouble staying awake at school, and they have been absent from school for more than 20 days since re-enrolling in the Newport school system. At times the oldest of the three children has attempted to remove the two younger children from school so that they could return to Providence before the regular end of the school day.¹
11. The superintendent of schools of Newport believes that the present commuting status of the three children is a dangerous situation. There is no evidence of any incidences of difficulty for the children when riding RIPTA.
12. The parent in this case now has secured an apartment in Providence.
13. We take notice that, by road, Newport is about 33 miles from Providence and that a one way highway trip takes something just over 45 minutes.

Conclusions of Law

1. The Federal McKinney Act provides at 42 U.S.C.11432 (i) (3) (A) and (B) that:

(A) In general

The local educational agency serving each child or youth to be assisted under this part shall, according to the child's or youth's best interest -

(i) continue the child's or youth's education in the school of origin for the duration of homelessness -

(I) in any case in which 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 becomes permanently housed during an academic year; *** (Emphasis added)

¹ Transcript, page 29.

2. The General Laws of Rhode Island provide at R.I.G.L.16-64-8 that:

R.I.G.L. 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.

3. In pertinent part the Rhode Island Board of Regents’ regulations that implement the Federal McKinney Homeless Act provide as follows:

- **L-7-1. Definition—Homeless Children and Youths.** — The term homeless children and youths means children and youths "who lack a fixed, regular, and adequate nighttime residence." [42 U.S.C. § 11434a] This definition includes:
 - I. Children and youths 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 a lack of alternative accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement; ***
- **L-7-2. Definition—School of Origin.** — 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.
- **L-7-6. Stay-put placement.** — If a student becomes homeless during an academic year, or between academic years, the student's school of origin must—taking into account the best interests of the student—"to the extent feasible, keep [the student] in the school of origin, except when doing so is contrary to the wishes of [the student's] parent or guardian."² The student may stay in his or her school of origin "for the remainder of the academic year, [even] if the [student] becomes permanently housed during an academic year."
- **L-7-8. Disputed Best Interest Determination.** — If a school district disputes a parent’s best interest determination, the dispute may be appealed to the commissioner.

² See: Sec. 722 McKinney Act. The term *school of origin* means “the school that the [student] attended when permanently housed or the school in which the [student] was last enrolled

- **L-7-9. Factors Used in Making a Best Interest Determination.** — The following factors are to be considered in making a best interest determination:
 - (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

- **L-7-10. Burden of Proof.** — In an appeal, the burden of proof is on the school district to show that the parent’s decision is not in the best interest of the child or youth.

- **L-7-11. Interim Protective Orders.** — The commissioner has authority to issue interim protective orders to ensure that a homeless student is allowed to continue to attend school. [R.I.G.L.16-64-6]

- **L-7-14. Transportation.** — School districts must provide homeless children and youths with transportation to and from their school of origin, at the request of a parent or guardian. For unaccompanied youths, districts must provide transportation to and from the school of origin at the request of the homeless liaison. If the student’s temporary residence and the school of origin are in the same school district, that school district must provide or arrange transportation. If the student is temporarily residing outside the district of origin, the district where the student is temporarily living and the district of origin must share the cost and responsibility of providing transportation. If the district in which the homeless student is now living and the student’s district of origin cannot agree on a way to transport the student back to the original district, the cost of the transportation must be divided between the school districts.³ The provision of transportation should not be delayed pending the resolution of an agreement between the district of origin and the district in which the child is temporarily residing. Pending an agreement between the two districts, the district of origin should assume the responsibility and cost of transportation. In addition, districts must provide students experiencing homelessness with transportation services comparable to those provided to other students.

- **L-7-24. Handling Enrollment Disputes.** — If a dispute arises between a school district and parents or guardians over school selection or enrollment or other issues, such as transportation, the LEA must immediately enroll the child or youth in the school in which the parent or guardian seeks enrollment and immediately provide for other services, such as transportation, pending resolution of the dispute by the commissioner. The district must provide to the parent or guardian a written statement of the school placement decision and the appeal rights. The district must refer the child, youth, parent, or guardian to the district liaison, who must expeditiously carry out the dispute resolution process by filing an appeal with the commissioner. Similar protections apply to unaccompanied youth.

³ R.I.G.L. 16-21.1, et seq. See: In Re S.I., Commissioner of Education, May 3, 2000.

Districts with high student mobility should develop and have in place, inter-district agreements regarding the provision of transportation.

Discussion

Under the Federal McKinney Act there is no doubt that the children in this case must be classified as being entitled to the protections of the McKinney Act. The Rhode Island regulations implementing the McKinney Act specify that:

L-7-1. Definition—Homeless Children and Youths. — The term homeless children and youths means children and youths "who lack a fixed, regular, and adequate nighttime residence." [42 U.S.C. § 11434a] This definition includes:

- I. Children and youths 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 a lack of alternative accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement; *** (emphasis added)

Although the parent has now obtained an apartment in Providence the McKinney Act specifically provides at 42 U.S.C.11432 (i) (3) (A) and (B) that:

(A) In general

The local educational agency serving each child or youth to be assisted under this part shall, according to the child's or youth's best interest -

(i) continue the child's or youth's education in the school of origin for the duration of homelessness -

(I) in any case in which 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 becomes permanently housed during an academic year; ***

When the petitioning parent left Newport and went to live at a homeless shelter located in Providence her children, *under state law*, had the right to finish the semester in the public schools of Newport:

R.I.G.L. 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. (Emphasis added)

Since the parent left Newport in December of the 2008-2009 school year it is evident that under R.I.G.L. 16-64-8 that the students in this case would not have been eligible to attend the second semester of school year in Newport. Still R.I.G.L. 16-64-8 specifically states that: “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.”

It is therefore clear that the petitioner’s children have the right under the McKinney Act to attend the public schools of Newport for the rest of the 2008-2009 school year if it is in their several best interests for them to do so. The parent contends that it is in the best interests of her children to continue to attend the public schools of Newport because this attendance brings a measure continuity to their disrupted lives. Newport contends that it is not in the best interest of these students to attend school in Newport because in the judgment of Newport the commute is too long. Newport further submits that in its view the extended commute is causing academic and behavioral problems for these students and that perhaps it may even be putting them at risk of physical harm if a medical emergency were to develop on the ride to Newport.

In a dispute of this nature the Commissioner has the obligation to decide what is in the best interests of these students. The applicable Rhode Island Regulations state:

L-7-8. Disputed Best Interest Determination. — If a school district disputes a parent’s best interest determination, the dispute may be appealed to the commissioner.

L-7-9. Factors Used in Making a Best Interest Determination. — The following factors are to be considered in making a best interest determination:

- (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

We must be aware that the burden of proof in this matter is on the school district.⁴ We must also keep in mind that in making a best interest determination we must review the several specific factors mentioned just above.

Looking at the first factor “special needs of the child” we note that several of the children in this case are special education students. Still this status has little direct bearing on this matter since none of the students’ needs specially modified special education transportation. As far as meeting the special education needs of these students we must find that Newport is quite qualified to meet these special education needs.

Looking at the second factor “continuity of services”, we note that the three children have, except for a brief period of time when they were in Virginia, always attended the public

⁴ Rhode Island Homeless Regulations L-7-10

schools of Newport. As we write there are only about five weeks left in the school year. It would therefore seem clear that continuity of services would be best served by continuing the attendance of these students in Newport until the end of the school year.

The “distance/travel time factor” must next be examined. When we examine the *Rhode Island Board of Regents Regulations Governing the Education of Children with Disabilities* we find at 300.902 (4) *Transportation services for children with disabilities* that:

When travel time for children with disabilities who are receiving special transportation is found to exceed one (1) hour to or from the location of special education services, the parent(s) shall be notified in writing. The notice will include the reason(s) for the duration of the travel time and the notification must include a description of the parent(s) right to appeal. The school district will submit a copy of the notification to the Director of the Office of Special Needs at the RIDE. This notice will include the reason(s) for the duration of the travel time.

Of course, the regulation quoted above has no direct governing force in this matter since the transportation these students are receiving is quite properly regular transportation without any special education implications. Still this special education regulation has some persuasive force since it demonstrates that a school bus ride of less than an hour is not considered long enough to raise special concerns about the duration of the ride. If a bus ride of less than an hour raises no special concern for students receiving special education transportation it would be hard to say that a bus ride of less than an hour should raise concerns for students receiving regular education transportation.

The students’ “involvement in special activities or sports” appears not to be of any decisive importance in the matter given how close we are to the end of the school year. More importantly the record before us does not demonstrate that these students were ever involved in special activities of sports in the public schools of Newport.

The “safety” factor here is something which we must examine closely. The difficulty is that the safety issues presented here relate to transportation services these students are receiving and the McKinney Act preempts this issue by requiring school districts to provide transportation services to homeless children. The applicable Rhode Island regulation reads in pertinent part states:

L-7-14. Transportation. — School districts must provide homeless children and youths with transportation to and from their school of origin, at the request of a parent or guardian. *** If the student is temporarily residing outside the district of origin, the district where the student is temporarily living and the district of origin must share the cost and responsibility of providing transportation. If the district in which the homeless student is now living and the student’s district of origin cannot agree on a way to transport the student back to the original district, the cost of the transportation must be divided between the school districts.⁵ The provision of transportation should not be delayed pending the resolution of an agreement between the district of origin and the district in which the child is temporarily residing. Pending an agreement between the two

⁵ R.I.G.L. 16-21.1, et seq. See: In Re S.I., Commissioner of Education, May 3, 2000.

districts, the district of origin should assume the responsibility and cost of transportation. In addition, districts must provide students experiencing homelessness with transportation services comparable to those provided to other students. (Emphasis added)

The superintendent of schools at the hearing of this matter pointed out with great emphasis his concern that if a medical incident (presumably of the type which occurred in this case involving the ingestion of incorrect medication) occurred while the students were being transported to school the students could be put at increased risk. We share the superintendent's concerns, but it seems to us that a medical event could happen whether the children were waiting for or riding a school bus in Providence or in Newport, or whether they were walking to or from school in Providence or in Newport.

Finally, we must look at "other relevant information" in making a best interest determination. We think the relevant "other relevant information" we must look at here is the decline in the students' academic achievement, behavioral problems, and a proclivity to what amounts to truancy. These factors have great weight. Still, given the shortness of the school year that remains, we are confident that these issues would not be greatly ameliorated by enrolling these students immediately in Providence.

Conclusions

We find that these children have a right to remain enrolled in the Newport school system until the end of the 2008-2009 school year. The liaisons for homeless students in Newport and Providence are directed to meet to establish appropriate transportation for these students to Newport. The liaisons will discuss how these students will be transitioned into the Providence public schools at the end of the 2008-2009 school year. The cost of the transportation for these students will be shared between Newport and Providence.

Forrest L. Avila, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

May 20, 2009

Date