

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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**Narragansett School Committee II**

v.

**Family O**

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**DECISION**

This matter was before the Commissioner of Education on the basis of a petition filed by the Narragansett school district seeking a declaration that the respondents and their two children are not entitled to the protections of the *McKinney-Vento Homeless Assistance Act*, 42 U.S.C. 11431, et seq., or the *Rhode Island Board of Regents Regulations Governing the Education of Homeless Children and Youth*, L-7-1, et seq. We find that the respondents and their children remain eligible to continue to attend the schools of the Narragansett School District until the respondents attain permanent housing in another school district. All other claims of the respondents are denied and dismissed.

**DATE: August 30, 2011**

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

This matter is now before the Commissioner of Education on the basis of a petition filed by the Narragansett School District seeking a declaration that the respondents and their two children are entitled to neither the protections of the *McKinney-Vento Homeless Assistance Act*, 42 U.S.C. 11431, et seq. nor the *Rhode Island Board of Regents Regulations Governing the Education of Homeless Children and Youth*, L-7-1, et seq. Jurisdiction is present under R.I.G.L. 16-39-1, R.I.G.L. 16-39-2, R.I.G.L.16-64-6, and R.I.G.L.42-35-7.

## **Positions of the Parties**

### **The Petitioning School District**

The Narragansett School District contends that the respondents are not entitled to the protections of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431, et seq. and the Rhode Island Board of Regents Regulations Governing the Education of Homeless Children and Youth, L-7-1, et seq., because, in the view of the Narragansett School District, the respondents attained a stable housing situation in North Kingstown in September of 2009.

Although the school district has concluded that the respondents are no longer homeless, as that term is defined by the McKinney-Vento Act, the school district has continued to provide the students in this case with educational services and transportation to Narragansett during the pendency of this matter as required by law. R.I.G.L.16-64-2

### **The Respondent Parents**

The respondent parents argue that the “McKinney Vento Homeless Assistance Act defines “homeless children and youths” as to include children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason”. 42 U.S.C. 11434a and Board of Regents Regulation L-7-1 (I). The respondents further contend that the facts of this case show that they and their children are presently sharing housing as a result of economic hardship and that therefore they continue to be homeless as that term is defined in the McKinney-Vento Act and associated Rhode Island Board of Regents Regulations. The respondents also contend an entitlement to monetary reimbursement for transportation services that they have provided to their children in order to facilitate their attendance in Narragansett. The parents also object to the manner in which Narragansett investigated this matter.

## **Findings of Fact**

The respondents’ school district of origin is Narragansett. The family had been living in Narragansett for about 12 years when, in May of 2009, the father of the family lost his job. Shortly thereafter, due to the loss of income, the family lost its Narragansett housing and found it necessary to stay with a sister of one of the respondents and her family in North Kingstown. The respondents then moved to live in the one bedroom apartment of a niece in Narragansett. At various times the respondents have stayed with either a sister in Exeter, a friend in Narragansett, or with other relatives, as well as in

motels. Since September of 2009 the respondents have lived continuously with their son in North Kingstown except for a “few times” when they stayed at another address or in a motel. The relationship between the father and the adult son has been a stressful and, indeed, at times argumentative, a fact which contributes to the potential instability of this housing arrangement.

The respondents’ son is about 20 years old and he attends a university in Rhode Island. This son has a lease on one-half of a duplex house in North Kingstown. He signed this lease with the intention of having three roommates living there with him.<sup>1</sup> As it turned out, however, his father and mother, the respondents, and their two children came to live with him because they could find no other accommodations. The respondents pay to their son a sum equivalent to two thirds of the rent for the property. This is not a matter where the respondents are living with their eldest son because of a preference or for convenience. Instead, the respondents are living with their son because they continue to lack the funds needed to obtain independent permanent shelter.

It is determined that respondents’ peregrinations have been caused by the employment difficulties, attendant financial hardships, and health issues of the respondents. These problems were perhaps exacerbated by personality conflicts which are inherent to some extent in a homeless situation or which could also be the product of various health conditions. It is further determined that the respondents’ present housing situation is by no means stable because at best it seems to approximate an “at will tenancy” and thereby terminable by the respondents’ son at any time. Based upon these facts, it is clear that the respondents and their children are “doubling up” with the respondents’ son and that the respondents have not yet attained permanent housing.

It is to be noted that the Narragansett School District has gone the extra mile in ensuring that the respondents’ children have received a high quality education and excellent transportation services during the pendency of this matter. In fact, there have been occasions when the school district has provided transportation services at a level which exceeds what might have been required in order to help one of respondents’ children make better progress in school. It would seem that the occasions when Narragansett did not provide these students with transportation were more the result of the respondents’ efforts to avoid disclosing that they were no longer residing in Narragansett rather than being the result of any dereliction on the part of Narragansett. The relationship between the school district and the respondents has not always been harmonious, but the school district has never allowed that to interfere with its efforts to provide the respondents’ children with a quality education and associated transportation services.

After a careful review of Narragansett’s investigation of this matter, it is determined that there was nothing illegal or contrary to school policy for an attendance officer asking third parties questions relating to the residence of the respondents. We also see nothing wrong with an attendance officer viewing the residence from a distance to confirm who was living there. An investigation presumes an inquiry into facts, and it is hard to see how such an inquiry could be made without asking questions or taking a view of the premises.

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<sup>1</sup> 3/16/11, Tr. 13.

## **Conclusions of Law**

In pertinent part the McKinney Act provides as follows at 42 U.S.C. 11434a:

(2) The term “homeless children and youths”— (A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 11302 (a) (1) of this title); and under (B)(i) includes—

. . . 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 the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement . . .

At 42 U.S.C. 11432 (g) (3) the McKinney-Vento Act states concerning local educational agency requirements:

### **(3) Local educational agency requirements**

#### **(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; . . .

It is noted that there is no specific time limit placed upon how long a child or youth may be deemed to be homeless. “Whether a child or youth meets the definition of homelessness depends upon the living situation and the individual circumstances. It is a case-specific inquiry.”<sup>2</sup>

The respondents also contend that under the McKinney-Vento Act they are entitled to receive compensation for transportation they provided to their children. See *Lampkin v. District of Columbia*, 27 F.3d 605, 607 (C.A.D.C, 1994). Since, as a factual matter, we have concluded that the Narragansett School District did not deny transportation to the students in this case, it is not necessary to reach the issue of whether the failure to provide legally required transportation services gives rise to a claim for reimbursement

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<sup>2</sup> “The Most Frequently Asked Questions on the Education Rights of Children and Youths in Homeless Situations.” National Association for the Education of Homeless Children and Youth & National Law Center on Homelessness and Poverty, November 2009.

## Discussion

This case hinges on a determination as to whether or not the respondents have obtained a stable permanent housing situation in North Kingstown or whether they are in a situation where they are “doubling up” with their son due to an inability to obtain suitable “permanent housing”. The applicable Board of Regents Regulation states:

### **L-7-7. Duration of Stay-put Placement and Parental Best Interest Determination.**

A homeless student has the right, as long as it is in his or her best interest, to remain enrolled in his or her school of origin until he or she has permanent housing somewhere. Rhode Island allows the parents of a homeless child to decide, subject to school district challenge, whether it is in the best interest of the student to attend school in the town where the student is now living, or to attend the student’s school of origin. (Emphasis added)

It is determined that the respondents living situation is still quite tenuous and unstable and, accordingly, the respondents have not yet attained “permanent housing”. The respondents are still entitled to receive the protections of the McKinney-Vento Act and their children therefore remain eligible to continue to attend school in their school district of origin—Narragansett.

## Conclusion

We find that the respondents and their children remain eligible to continue to attend the schools of the Narragansett School District until the respondents attain permanent housing in another school district. All other claims of the respondents are denied and dismissed.

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Forrest L. Avila, Hearing Officer

APPROVED:

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Deborah A. Gist, Commissioner

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August 30, 2011  
Date