

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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D. DOE

v.

CUMBERLAND SCHOOL DEPARTMENT  
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**Decision**

Held: School Department's decision to deny request for an exception to its middle-school assignment policy was not arbitrary.

Date: October 19, 2011

## **Introduction**

This is an appeal of the Cumberland School Department's decision not to change Student Doe's middle-school assignment.<sup>1</sup>

## **Background**

Student Doe completed the 5th grade at Community Elementary School in Cumberland in June 2011. He attended Community Elementary continuously since kindergarten. Community Elementary students are assigned to North Cumberland Middle School for 6th grade.

In July 2011, Doe's mother reported a change of address to district administration. The new address is in an attendance area for a different elementary school. Students from that school are assigned to Joseph L. McCourt Middle School for 6th grade.

On July 26, 2011, Doe's mother wrote to the assistant superintendent requesting that Doe be assigned to North Cumberland Middle School. Her letter states that "we just moved recently," that the move was due to an impending divorce, and that she was unaware of the new home being in a different attendance area. [School Department Exhibit 4]. She stated it would be very traumatic for Doe to be separated from his "network of friends and support," that he is "taking the [marital] separation very hard," and that Doe "was deeply affected by the move." The letter further states that Doe "is seeing a child psychologist to help him with this situation." It also mentions Doe's 504 plan, his hearing aids and FM speaker system,<sup>2</sup> and related preparations underway at North Cumberland Middle School. Doe's mother also provided the assistant superintendent with a letter from a clinical psychologist. The psychologist states that Doe "was seen by me for counseling services related to problems with anxiety." [School Department Exhibit 3]. The psychologist also states that

I believe it would be in [Doe's] best interest to allow him to continue on to the school he has been anticipating – the school

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<sup>1</sup> The Commissioner of Education designated the undersigned hearing officer to hear and decide the appeal. A hearing was held on September 14, 2011. The following day, we issued an order directing that a Section 504 team meeting be held to review Doe's school assignment. We received the notes from the 504 meeting on October 4, 2011.

<sup>2</sup> The FM speaker system consists of a teacher microphone connected to an amplification device that rests on the student's desk.

which his siblings attended and the school where his peers/friends will be attending. Switching schools at a time when other traumatic disruptions are occurring in [Doe's] life is likely to be more traumatic for [Doe] than for many children his age, and is likely to greatly exacerbate his anxiety.

The assistant superintendent denied Doe's mother's request. Doe's mother appealed to the superintendent, who also denied her request.

At the hearing, Doe's mother acknowledged that her new address is in the McCourt attendance area, but is very close to the boundary line. Doe's bus stop is served by busses from both middle schools. She testified that Doe is a sensitive boy who is self-conscious about his classroom FM speaker system. On cross-examination, Doe's mother testified that she sold her house in July 2010 and moved into her current home in September 2010. She also testified that the psychologist has not seen Doe since late 2010, nor has he spoken to Doe about his middle-school assignment.

The assistant principal at McCourt Middle School testified that she has spoken to Doe at lunch and in the hallways and he has told her that things are going fine at school. She has not seen any signs of anxiety and Doe has not complained of any bullying-type behavior. Doe's teachers have reported that Doe appears to be comfortable in class.

According to the notes from the Section 504 meeting, Doe's parents stated that Doe became withdrawn, anxious, and resistant to attending school when he learned of his assignment to McCourt. He does not want to wear his hearing aids. Doe's 5th-grade teacher commented that Doe worries about what others think of him and that he can magnify his problems. One of Doe's current teachers at McCourt stated that Doe has become more responsible about wearing his hearing aids, and issues regarding the FM system have been resolved. She felt that Doe's initial anxiety has lessened. The McCourt school counselor reported that Doe told her that he misses his old friends, but he is developing new friendships. The McCourt principal spoke to Doe's psychologist and relayed his comments that he cannot diagnose Doe with anxiety or say Doe currently has anxiety, but that Doe is prone to anxiety. Reviewing the information provided, the 504 team did not find a diagnosis of anxiety for Doe. It identified a number of supports to address Doe's hearing issues and socialization concerns. The team concluded that Doe

could access the curriculum at McCourt Middle School despite his disability and that his assignment there was not discriminatory.

### **Positions of the Parties**

Petitioner contends that Doe's assignment to North Cumberland Middle School would not displace any student there, involve any change in school transportation, or require any special accommodation. While the impact on the school district would be virtually non-existent, the change in school assignment would be of tremendous benefit to Doe in light of his familial and social circumstances. Doe is too stressed at the moment to see his psychologist, but the psychologist knows Doe well enough to credibly predict the anxiety that Doe would suffer in an entirely new school environment. The School Department needs to consider Doe's best interests.

The School Department argues that its residency-based school assignment policy is orderly and reasonable. It notes that Doe moved out of the North Cumberland Middle School attendance area quite some time ago, but did not notify the district until Doe had completed the 5th grade. All 5th-graders in Cumberland undergo the transition to a middle school. Doe's psychologist has not seen him for nearly a year, there is no current diagnosis of anxiety, and his opinions are not to a reasonable degree of medical certainty. Finally, any accommodations or hearing-related services that Doe needs can be provided at McCourt Middle School.

### **Discussion**

Petitioner is not disputing the attendance areas established by the school district nor is she claiming that her home is located in the attendance area for North Cumberland Middle School. She is claiming that extraordinary circumstances exist which warrant an exception to the school-assignment policy.

The record in this matter shows that the School Department considers requests for exceptions to its school-assignment policy. In exercising its discretion in this area, the School Department's decisions cannot be arbitrary or inconsistent. By that we mean the School Department's decisions must be rational and reflect a uniform application of the policy.

We find that the School Department reviewed Petitioner's request and exercised its discretion properly in this case. Petitioner's July 26, 2011 letter states that Doe moved "recently." The School Department showed that the move occurred the previous summer.<sup>3</sup> The letter states that Doe "is seeing" a child psychologist. The School Department established that Doe has not seen his psychologist since late 2010. As a result, the psychologist has not had the opportunity to conduct a firsthand evaluation of Doe's school-assignment issues or to provide him with any necessary treatment. No evidence was presented that the staff at McCourt Middle School cannot implement Doe's hearing-assistance devices.

Petitioner has not shown that the decision to deny her request for a different middle-school assignment was arbitrary. Doe moved to his new neighborhood more than a year ago. He has not spoken to his psychologist about his middle-school assignment. There are no technical impediments to Doe's 504 plan at McCourt Middle School. There is no evidence that similar requests were treated differently by the School Department. The appeal is therefore denied.

## **Conclusion**

The Cumberland School Department's decision to deny a request for an exception to its middle-school assignment policy was not arbitrary.

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Paul E. Pontarelli  
Hearing Officer

Approved: October 19, 2011

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Deborah A. Gist  
Commissioner of Education

Date:

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<sup>3</sup> Under the apparent facts concerning Petitioner's move, Doe had no legal entitlement to finish, and perhaps even to start, the 2010-11 school year at Community Elementary School.