

**STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS**

COMMISSIONER OF EDUCATION

.....
STUDENTS S. DOE

VS.

JOHNSTON SCHOOL DEPARTMENT
.....

DECISION

The Johnston School Department found Students S. Doe to no longer be residents of the Johnston for school purposes and unilaterally disenrolled these two students from the school. The Johnston School District also suspended one of these students for over 21 days without an Alternative Education Plan. The Johnston School District is ordered to immediately reenroll these two students into the public schools of Johnston. Johnston shall review its school disciplinary policies and its school residency policies to bring these policies into conformance with state law and regulations.

DATE: March 19, 2013

Travel of the Case

This case arises under R.I.G.L.16-39-1, R.I.G.L.16-39-2, and R.I.G.L.16-64-6. The Johnston school district has found the two children concerned in this case to no longer be residents of Johnston for school purposes and has unilaterally disenrolled these two students from school. Johnston has also suspended one of these students for over 21 days without according this student her rights under the school exclusion regulations of the Rhode Island Board of Regents. We write in haste here since the students concerned are not presently being allowed to attend school in Johnston. For the reasons that follow we reverse these decisions of the Johnston School District and order the immediate re-enrollment of these two students into the public schools of Johnston.

Findings of Fact and Conclusions of Law

The Johnston School System is in violation of R.I.G.L. 16-64-1

The primary rule of the Rhode Island residency law is that once a student is enrolled in a school system, the student has a right to stay enrolled in the school system until he or she is enrolled in another school system. The law states:

16-64-2. Retention of residence. – A child shall be eligible to receive education from the town in which the child’s residence has been established until his or her residence has been established in another town and that town has enrolled the child within its school system, unless the commissioner of elementary and secondary education, pursuant to §16-64-6, has ordered otherwise. Nothing contained herein shall be construed to prohibit a town in its own discretion from enrolling a child within its school system before a child has established technical residency within the town....

The intent of this law is to create a “relay race” in which a school system is not allowed to “drop the baton” until educational responsibility for a student is smoothly handed off to the next school system. Thus a school district may not unilaterally end a student's enrollment.¹ If there is a

¹ Commissioner's Memorandum, Re: Residency, May 16, 1989.

dispute about a student's residency, the dispute must be sent to the commissioner of education for a decision that determines the school system in which the student is to be enrolled.²

The fact that prior to any action by the Commissioner of Education the Johnston school system unilaterally disenrolled the two students in this case, and thereby violated the provisions of R.I.G.L. 16-64-2, but it has also caused the two students concerned to lose valuable school time and compounded the confusion present in this case.

The Johnston School System is in violation of the Board of Regents Regulations Governing Disciplinary Exclusions from School

Despite the fact that the record before us shows that one of the petitioner's daughters was suspended from school for 5 days, this relatively short term suspension was allowed by the School District to extend into an exclusion from school for well over 20 school days. Suspensions from school lasting more than 10 school days must be imposed only in accordance with the Board of Regents Regulations Governing Disciplinary Exclusions from School (Board of Regents July 8, 1976). The applicable regulations governing suspensions for more than 10 days give students the following rights:

For suspensions of more than ten (10) days and expulsions:

- a. Prior to suspension or expulsion, except for such time as not feasible, as where the student's presence endangers persons or property or threatens disruption of the academic process, thus justifying immediate removal from school, the necessary notice or hearing shall follow as soon as practicable, the student shall be afforded:
 - (1) a clear, written statement of the reason for suspension or expulsion;
 - (2) notice of the right to prompt public or private hearing, at the student's election, and the right to be represented by counsel at such hearing;

² R.I.G.L. 16-64-2, R.I.G.L. 16-64-6

- (3) and if a hearing is requested, the student shall be given a prompt notice setting the time and place of such hearing, said time and place to be reasonably set so as to allow sufficient time for preparation, without undue delay.
- b. In the event a student has not attained the age of majority (18 years), the parent or guardian shall be afforded the procedures stated in section 1, 2, & 3 above. Such notice shall be written in the parent’s spoken language, unless it is clearly not feasible to do so.
 - c. The student shall be afforded a hearing at which the student shall have the right to:
 - (1) Representation and participation by counsel; and
 - (2) Cross-examine witnesses and to present witnesses in his or her behalf.
 - d. There shall be a complete and accurate (stenographic or electronic) record of the hearing including all exhibits. The record shall be preserved for transmission to the Commissioner of Education as soon as possible in the event of an appeal.
 - e. The student shall be furnished a copy of the record without cost.
 - f. A written decision shall be rendered, within a reasonable time, based exclusively on the record detailing the reasons and factual basis therefor.
 - g. The student shall promptly be provided with a copy of said decision.
A copy of the decision, together with the record, shall be promptly forwarded to the Commissioner of Education if there is an appeal.³

Since the statutes of Rhode Island only allow school *suspensions*, the word *expulsion* in these regulations is a synonym for long-term suspensions—not a permanent removal from school.⁴ Thus suspensions must be for some definite period of time. Furthermore under the Regulations of the Board of Regents: “[A]ll suspensions of more than ten (10) days shall occur only after formal action by the school committee.⁵ (Emphasis added)

³ See: *In Re Roberts*, 563 S.E.2d 37 (N.C.App. 2002), holding that such due process rights are required by the constitution in long term suspension cases.

⁴ Charles Carrol, *Public Education in Rhode Island*, 1918, p. 458.

⁵ Board of Regents Regulations Governing Disciplinary Exclusions, Paragraph 3 (4).

The record before us shows that the parent and the student in this case were given none of the rights accorded by the Regents regulations governing long term suspensions. The superintendent in this case testified that perhaps the extended exclusion from school which took place in this case was more the result of a unilateral decision by the school district to exclude the student from school for residency reasons rather than for disciplinary reasons. But such a contention must fail as a justification for what took place here since the residency exclusion which took place was in violation of R.I.G.L 16-64-2.

The parent and the students in this case are entitled to the protection of the Federal McKinney Homeless Act.

The Rhode Island Residency Law covers many of the issues covered by the federal Stewart B. McKinney Homeless Assistance Act (the McKinney Act).⁶ But the McKinney Act is in some respects broader than the state school residency law. Under the McKinney Act a *homeless individual* is anyone who:

- Lacks a fixed, regular, and adequate nighttime residence; or
- Has a nighttime residence in a supervised public or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill; or
- Has a nighttime residence in an institution that provides a temporary residence for individuals intended to be institutionalized; or
- Has a nighttime residence in a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The McKinney Act allows a homeless student to enroll in the public schools of the community in which he or she is living. In the alternative, the McKinney Act gives a homeless student the right to continue to attend the school he or she was attending at the time of becoming homeless, if such continued attendance would be in the student's best *interest*. Homeless students have the right to attend their old school for the remainder of the academic year or for the following year if the student becomes homeless between school years.

⁶ 42 U.S.C. Sec. 11431-11438.

Under the Rhode Island Homeless Regulations of the Board of Regents, the parents of a homeless child are allowed to decide whether it is in the *best interest* of their child to attend school in the community where the child is *now living*, or to attend school in the town where the child previously lived. Accordingly,

The choice regarding school enrollment shall be based on the child's or youth's best interest, in accordance with Section 2.1 of these regulations, as determined by the parent, legal guardian, natural guardian, or person acting in loco parentis to the child or by an emancipated minor on his or her own behalf.⁷

Once the choice is made, the LEA shall maintain the child's enrollment for the remainder of the school year in the same school unless there is a compelling reason to transfer the child to another school in the district. The parent or person in parental relation to the child or youth shall have the right to appeal the proposed transfer to the Commissioner of Education, in accordance with Section 16-64-6, R.I.G.L.⁸

The divorced parent in this case lost her apartment because of a failure to pay rent during the first semester of the school year. Since then she and her two children have lived mostly with her mother in the mother's apartment which is located in Johnston. In fact however lease and applicable regulatory standards prevent those living in this type of apartment from taking in long term guests or borders. Given these circumstances, it is apparent that the parent and her two children lack "regular" housing in Johnston. The School District, however, contends that the students have the option to stay with their father in Providence and go to school in Providence. The problem with this argument is that it totally misconstrues the McKinney-Vento Homeless Act. The non-regulatory guidance provided for this Act states that a child who become homeless remains eligible to attend his or her school of origin "for the remainder of the academic year if the child becomes permanently housed during an academic year." Thus even if we found, which we do not, that the students in this case have permanent housing available in Providence, we are constrained to find that the students in this case remain eligible to attend the public schools of Johnston for the rest of the present academic year. Non-Regulatory Guidance to the McKinney-Vento Homeless Act, United States Department of Education (July 2004), page 13.

⁷ R.I. Homeless Regulations, 1.2

⁸ R.I. Homeless Regulations, 1.3

Conclusion

The students in this case remain eligible to attend the public schools of Johnston and their enrollment in these schools is ordered to take place forthwith. Johnston shall review its school disciplinary and residency policies in order to bring its practices into conformance with state and federal law and regulations. The Commissioner will retain jurisdiction over this matter to ensure that the required reviews take place. A special visitor will be appointed to provide technical assistance and guidance during this process.

Forrest L. Avila, Hearing Officer

Deborah A. Gist, Commissioner

DATE: March 19, 2013