

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

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Kingstown Hill Academy

Vs.

Chariho Regional School District

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DECISION

Held: This dispute arose when the Chariho Regional School District, through its superintendent of schools, refused to pay tuition for students living in the school district and attending the Kingston Hill Academy, a Rhode Island public charter school. Chariho contended that because the Kingston Hill Academy was discriminating against special education students, Chariho was justified in withholding tuition payments. On the basis of R.I.G.L. 16-77-5.1 and pursuant to its terms, this matter is hereby dismissed without prejudice to Chariho's right to file a complaint with the governing body of Kingston Hill Academy. A special visitor will be appointed to review Kingston Hill's compliance with applicable state and federal special education laws and regulations.

DATE: June 10, 2013

Jurisdiction and Travel of the Case

The somewhat complex travel of this case has been fully set forth by the Rhode Island Supreme Court in *Kingston Hill Academy and the Compass School v. Chariho Regional School District*, 21 A.3d 264 (R.I. 2011) and as such will not be repeated here. For purposes of the matter now before us, it is to be noted that Rhode Island school districts are required to make tuition payments to charter schools whenever a student resident in the district elects to attend a charter school. R.I.G.L.16-77.1-1, *et seq.* The instant dispute began when the Chariho Regional School District (Chariho), through its superintendent of schools, refused to pay tuition payments for students living within its member communities and who were attending the Kingston Hill Academy, a Rhode Island public charter school. Chariho contended that in the judgment of its superintendent of schools the Kingston Hill Academy was discriminating against special education students and, on that basis, the school district was justified in withholding any tuition payments to the Kingston Hill Academy.

This tuition non-payment case was appealed to the Commissioner, as was a case involving another charter school, the Compass School, concerning the mechanics of calculating tuition payments. While these matters were initially consolidated, the Commissioner eventually severed the non-payment case for consideration at a later point in time. The Rhode Island Supreme Court affirmed the Commissioner's decision to sever these distinct claims. *Kingston Hill Academy and the Compass School v. Chariho Regional School District*, *supra*. Chariho continues to press this severed claim contending that it has the right to withhold payments to Kingston Hill Academy because of its belief that Kingston Hill Academy discriminates against students with special education needs, which Kingston Hill Academy has denied. Kingston Hill Academy also contends that, in any event, Chariho lacks standing to pursue this case and in support thereof has filed a motion requesting that its appeal be dismissed. Chariho has filed a motion in opposition to Kingston Hill Academy's request for dismissal. Jurisdiction is present under R.I.G.L. 16-39-1 and R.I.G.L. 16-39-2.

For the reasons discussed below, we dismiss the previously severed claim now before us without prejudice to the right of Chariho to press this claim before the governing board of the Kingston Hill Academy in accordance with R.I.G.L. § 16-77-5.1. Additionally, we do find that Chariho has no authority to withhold tuition payments due and owing under R.I.G.L.16-77.1-1, *et seq.* as a self-help mechanism implemented to enforce its contention that this particular charter school is not complying with requirements of special education law.

Positions of the Parties

Kingston Hill Academy

Kingston Hill Academy contends that Chariho lacks standing to maintain the previously severed claim which Chariho has used as a justification for refusing to make tuition payments to Kingston Hill.

Chariho Regional School

Chariho contends that it has the authority and the standing to withhold the payments at issue and that in any event the Commissioner must immediately hold a hearing to determine whether or not Kingston Hill Academy has defaulted on its obligations under state and federal special education laws and regulations.

Conclusions of Law

Under the Rhode Island Constitution the General Assembly has near plenary control over public education in the state. While school committees may not be state agencies, they are agents of the state. The Rhode Island Supreme Court has said:

The power of school committees is coextensive with the authority conferred upon them by the General Assembly to foster education as agents of the state. [Citations omitted] School committees do not enjoy a residual font of power beyond the dimensions of this authority over matters which incidentally have an impact upon school operations. The extent of their control over school affairs is fixed by their specifically enumerated powers and duties as set out in title 16 of the General Laws and elsewhere. The General Assembly, through its plenary power to apportion authority over public school interests, may either extend or narrow the scope of these provisions if it so chooses.¹

In the case before us we must recognize the fact that the General Assembly has established a comprehensive and complex funding mechanism to ensure the effective operation of charter schools in Rhode Island. R.I.G.L. 16-77.1-1, Statement of purpose, provides:

The purpose of this chapter is to provide a funding mechanism through which costs for charter public schools will be shared between the state and the local school districts sending students to charter public schools.

¹ *Greenhalg v. City Council*, 603 A.2d 1090 (R.I. 1992)

Chapter 77.1, *Funding of Charter Public Schools*, does not give school committees the authority to withhold local payments that are due and owing to a charter public school because the local school committee feels that the charter public school is failing to meet applicable legal standards. This is not surprising since funding chaos would result if close to forty Rhode Island school districts felt they were entitled to monitor the legal compliance of the charter schools attended by their students and to then withhold funding to a school for perceived non-compliance with some particular legal standard. Instead, as common sense would dictate, it is only the Commissioner of Elementary and Secondary Education who is authorized to withhold public funds if the Commissioner concludes that a school district or a charter school as an LEA is violating the law.

R.I.G.L. § 16-5-30 Withholding of aid for infraction of laws or regulations - Report to general assembly. - The commissioner of elementary and secondary education may, for violation or neglect of law or for violation or neglect of rules and regulations in pursuance of law by any city or town or city or town officer or school committee, or for nonpayment of tuition owed by one community to another including but not limited to those children in state custody, vocational education, or special education, order the general treasurer to withhold the payment of any portion of the public money that has been or may be apportioned to the city or town; and the general treasurer upon the receipt in writing of the order shall hold the public money due the city or town until the time as the commissioner by writing requests the withheld funds for the purposes of eliminating the violation or neglect of law or regulation that caused the order to be issued, or the commissioner of elementary and secondary education shall notify the treasurer that the city or town has complied with the order as the department of elementary and secondary education shall make in the premises, in which case payment shall be made to the town immediately. If the violation is for nonpayment of tuition and it has been determined by the commissioner that the tuition is owed, then the commissioner shall, subject to the debtor community's right to appeal to the superior court, order the general treasurer to deduct the amount owed from the debtor community's school aid and to pay the community which is owed the tuition. The board of regents for elementary and secondary education shall report to the general assembly annually all infractions of school law which shall be brought to its attention, with a record of this action as the department shall have taken in each instance.

Furthermore, it is the Commissioner of Education who has the duty “[t]o require the observance of all laws relating to elementary and secondary schools and education.” R.I.G.L. 16-60-6 (9) (vii) Beyond that, it is the Rhode Island State

Board of Education, not local school districts, that has the authority to ensure that charter schools operate in accordance with the law by exercising the its power to revoke the charter of a charter school that does not comply with the law. R.I.G.L.16-77-5.1 Certainly charter schools are required to comply with all state and federal laws and regulations relating to civil rights. And to this point, the Rhode Island General Assembly has expressly provided in pertinent part as follows: :

R.I.G.L. § 16-77-3.1 Legislative purpose. – ... (b) Charter public schools are intended to be vanguards, laboratories, and an expression of the on-going and vital state interest in the improvement of education. Notwithstanding the provisions of this section or any law to the contrary, a charter school shall be deemed to be a public school acting under state law and subject to the Age Discrimination Act of 1975, 42 U.S.C. § 6101, et seq., title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, et seq., title IX of the educational amendments of 1972, 20 U.S.C. § 1681, et seq, § 794 of title 29, and part B of the Individuals With Disabilities Education Act, 20 U.S.C. § 1411, et seq. All students and prospective students of a charter school shall be deemed to be public school students, having all the same rights under federal and Rhode Island law as students and prospective students at a non-chartered public school.... (emphasis added)

In addition, R.I.G.L. 16-77-5.1, entitled *Oversight by commissioner*, provides in pertinent part that:

... (a) Individuals or groups may complain to a charter public school's governing body concerning any claimed violation of the provisions of this chapter by the school. If, after presenting their complaint to the governing body, the individuals or groups believe their complaint has not been adequately addressed, they may submit their complaint to the commissioner who shall hear and decide the issue pursuant to §§ 16-39-1 and 16-39-2. (emphasis added)

Based upon the above cited authorities we conclude that Chariho has no authority to withhold the funds it is required to pay in accordance with R.I.G.L. 16-77.1-1, et seq. We also conclude that the Commissioner of Education has primary jurisdiction over the enforcement of school law in Rhode Island. We will exercise this authority by appointing a special visitor as representative of the Department of Education to examine as soon as practicable Kingston Hill Academy's compliance with federal and state laws and regulations relating to the provision of special education, and to file a report of the findings made upon said examination with the Commissioner's Office.

Given the fact that the General Assembly under R.I.G.L. 16-77-5.1 has provided that in the first instance persons "may complain to a charter public school's

governing body concerning any claimed violation of the provisions of this chapter”, we will refrain from addressing the specific legal issues presented by this case until these issues are addressed at the local charter school level in accordance with R.I.G.L. 16-77-5.1

Conclusions

Kingston Hill Academy's motion to dismiss this matter is hereby granted without prejudice to Chariho’s right to file its complaint with the governing body of Kingston Hill Academy in accordance with R.I.G.L. 16-77-5.1. A special visitor will be appointed to review Kingston Hill Academy’s compliance with applicable state and federal special education laws and regulations.

Forrest L. Avila, Hearing Officer

Deborah A. Gist, Commissioner

June 10, 2013

DATE