

State of Rhode Island
and
Providence Plantations

Commissioner of Education

IN RE: Residency of W. Doe II

DECISION ON
REQUEST FOR ISSUANCE OF AN INTERIM ORDER

Held: The Petitioners have not demonstrated their entitlement to issuance of an interim protective order requiring that the East Greenwich School Department provide extended school year services (ESY) to their son. East Greenwich is not the LEA responsible for the provision of his free appropriate public education (FAPE) at this time. The Petitioners were determined to be residents of North Kingstown for school purposes in a decision of the Commissioner dated August 27, 2012. The family continues to reside in North Kingstown, although steps have recently been taken to move to East Greenwich. East Greenwich school officials made a reasonable decision to require actual residency in the town to precede Student Doe's enrollment in the school district, based on the record at the time of the hearing. Student Doe's current LEA, the North Kingstown School Department, indicates that it is prepared to provide Student Doe with the extended school year services to which he is entitled. There is no legal basis for the issuance of an interim order at this time.

DATE: July 2, 2013

Travel of the Case:

The Petitioners are the parents of a child with a disability who has received special education and related services, as well as extended school year services (ESY) from the East Greenwich School Department since 2007. On June 21, 2013 Commissioner Deborah A. Gist received an appeal on behalf of the Petitioners from a residency determination that had been made at the district level. Superintendent Victor Mercurio had determined that the Petitioners were residents of North Kingstown and that Student Doe was not eligible to enroll in East Greenwich schools. Pursuant to R.I.G.L. 16-64-6, the dispute bypassed the School Committee and came directly to the Commissioner. Because the residency determination impacted upon Student Doe's eligibility to receive ESY services, his counsel requested an interim protective order. The ESY program provided to East Greenwich special education students is scheduled to begin on July 7, 2013.

The matter was assigned to the undersigned for hearing and decision. An expedited hearing was scheduled and evidence and arguments were taken on the afternoon of June 26, 2013. Attorneys representing the Petitioners, the East Greenwich School Department and the North Kingstown School Department participated on behalf of their clients. The record closed at the conclusion of the hearing. Because this matter is presented as an interim protective order under R.I.G.L. 16-39-3.2 and the decision must be issued within five (5) working days, this decision is based on two exhibits admitted at the hearing and the hearing officer's notes of the testimony received.

Findings of Relevant Facts:¹

- Student Doe lives with his family in North Kingstown, Rhode Island. He is eleven (11) years old and is a student with a disability, receiving special education and related services. His last IEP calls for his receipt of ESY services. Such programs typically begin in early July. The ESY program in East Greenwich begins on July 7, 2013.
- A dispute with respect to whether Student Doe was a school resident of East Greenwich arose

¹ Unless otherwise indicated, the findings of fact are based on testimony as recorded in the notes of the hearing officer.

in August of 2012. The matter went to a hearing and in a decision dated August 27, 2012, the Commissioner found that Student Doe was a resident of North Kingstown for school purposes based on the fact that although the family owned a home in East Greenwich, they did not conduct their household activities from the East Greenwich house or sleep there. As a result, Student Doe was determined to have no entitlement to educational services from the East Greenwich public schools. His parents were directed to enroll him in North Kingstown.²

- The East Greenwich home previously owned by the Petitioners has been sold. On May 31, 2013 Student Doe's father signed a Purchase and Sales Agreement for a home in East Greenwich. The Agreement calls for a closing to occur on July 5, 2013. Student Doe's father testified that he has had the property inspected and made plans to adapt the residence to the family's needs. Pet. Ex.1. He testified that the property was purchased because he and his wife are "giving up the battle with East Greenwich" and moving there so that the family could utilize its excellent school system. He further testified that it is his and his wife's full intent to move into the new house in East Greenwich as soon as it is accessible to them. He testified that they will do so whether or not their current home in North Kingstown, which is currently listed for sale with a realtor, is sold. Pet. Ex.2.
- East Greenwich has a consistent practice of enrolling students in the school system prior to the establishment of residency when a family provides school officials with a signed Purchase and Sale Agreement for the purchase of a home in East Greenwich. In the Petitioners' case, the Superintendent determined that an exception to this policy should be made because of past circumstances in which the Petitioners actually owned a home in East Greenwich but did not establish residency in the town for school purposes. His conclusion in this regard was affirmed by the Commissioner in her August 27, 2012 decision. The Superintendent therefore notified the Petitioners that Student Doe would not be enrolled in the district at this time.

² Counsel for the Petitioners indicated that the Commissioner's August 27, 2012 decision was appealed to the Superior Court. Student Doe remained in attendance in East Greenwich throughout the 2012-2013 school year. The parties disagree on whether there was an agreement that he could remain there unconditionally while the residency matter was pending in Superior Court or whether there were (unfulfilled) conditions placed upon his ongoing attendance. He may have been enrolled in North Kingstown at some point during the school year (the hearing officer's notes were unclear on this point). The record is clear, however, that there was a transition plan developed for him, but not implemented because of his parents' reluctance to move him to the special education program in North Kingstown.

Positions of the Parties:

Counsel for the Petitioners argues that the Commissioner’s past determination that their son was not eligible to be enrolled in the East Greenwich school system is not indicative of their attempt to thwart school residency rules. In good faith, they purchased a home in East Greenwich in 2007, the year in which their son was first enrolled in the district. They continued to pay taxes in East Greenwich throughout the period of his enrollment in the school system. In light of the residency ruling that has been made by the Commissioner, the family has made plans to move from North Kingstown to East Greenwich. They have listed their home for sale and entered into a Purchase and Sales Agreement for a new home in East Greenwich. The sworn testimony of Student Doe’s father is that they intend to move there. The signed agreement, together with the sworn testimony presented at the hearing, should be sufficient for the district to follow the practice that it would follow in any other situation: enroll the student pending the family’s move into town. If this consistent practice is not followed, Student Doe’s receipt of ESY services is jeopardized. Counsel points out that if the move into East Greenwich does not take place (for some unforeseen reason), then the Petitioners could be ordered to disenroll their child from the school system.

Counsel for the East Greenwich School Department submits that the Superintendent’s decision is consistent with the Commissioner’s August 27, 2012 decision that the Petitioners’ son has no entitlement to educational services there. The district’s policy or practice of enrolling students when a signed purchase and sale agreement is submitted was not followed in this case and with good reason. Prior documentation of the Petitioners’ actual home ownership in East Greenwich was inconsistent with their residency in the district. Therefore, the Superintendent was and continues to be justified in not drawing the inference that he would draw in other cases in which he receives a signed purchase and sale agreement: that the Petitioners’ will be establishing residency in the town. If and when the Petitioners take up residency in East Greenwich, their son will be enrolled in the public school.

The position of the North Kingstown School Department is that it is ready, willing and able to provide ESY services to Student Doe.

DECISION

Rhode Island’s school residency law, which restricts school enrollment to residents of a city or town, provides a fair, orderly and predictable system of student enrollment. R.I.G.L. 16-64-1, entitled

“Residency of children for school purposes,” also permits districts to exercise some flexibility³ with respect to student enrollment. Some districts, such as East Greenwich, have a practice or policy of permitting the enrollment of students in anticipation of their family’s imminent residency. Such policies prevent unnecessary classroom transitions for such students. Understandably, the Petitioners’ arguments in this interim order hearing have focused on the East Greenwich policy that permits student enrollment upon the presentation of a signed Purchase and Sale Agreement documenting a family’s anticipated purchase of a home in the town.

Despite the Petitioners’ arguments to the contrary, the record does not show that East Greenwich school officials acted arbitrarily, capriciously or in an unreasonable manner in the application of its policy. The record here demonstrates that the Petitioners previously took advantage of an incorrect presumption of residency in East Greenwich when they owned a home in the town, but did not reside there (and actually lived in North Kingstown). In light of this fact, district officials made a supportable decision that the signed Purchase and Sales Agreement presented by the Petitioners did not create the same inference (that residency in East Greenwich is imminent) as it does in the other cases in which this policy has been applied. The decision to defer Student Doe’s enrollment in the school system until such time as the family actually takes up residence in East Greenwich is, therefore, reasonable. The Commissioner’s prior decision resolved contested residency issues in favor of the district, lending additional justification to the refusal to accept a purchase and sales agreement as sufficient documentation of the family’s imminent move into the town. Stated another way, the district has fully explained why it made an exception to the policy in the Petitioners’ case.

The Petitioners argue that the likely effect of exempting them from district policy - to require that they actually live in the new house before enrolling their son - will be that he will not receive crucial ESY services for a period of approximately two (2) weeks.⁴ The record, however, indicates otherwise. North Kingstown’s attorney stated that her client stands ready, willing and able to provide appropriate ESY services to Student Doe. However, there would be a need to transition Student Doe from the staff with whom he has become familiar over the years to the school staff in North Kingstown. There is clear evidence in this record of ongoing dedication and concern for Student Doe’s educational wellbeing on the part of East Greenwich school officials. For this reason, we request (but do not direct) that the

³ This statute permits districts to enroll students who are not residents of the city or town “by agreement” or by virtue of a more generalized policy. Such policies are established both formally and informally.

⁴ We assume that this is the period between the date ESY in East Greenwich is scheduled to start (July 7, 2013) and the date upon which a move to the new house can reasonably be expected.

Superintendent reconsider his application of school policy if the planned purchase takes place on or before July 5, 2013, the scheduled closing date. School officials should determine if the facts before them at that time warrant Student Doe's enrollment in their school system and, if so, under such conditions as may be necessary to protect the district's interests.

If Student Doe is not enrolled in East Greenwich as a result of the aforementioned process, he must be enrolled in the North Kingstown school system until the family's anticipated move to East Greenwich is accomplished.

The request for issuance of an interim protective order is denied.

For the Commissioner,

Kathleen S. Murray, Hearing Officer

Deborah A. Gist, Commissioner

DATE: July 2, 2013