

**STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS**

**COMMISSIONER OF
EDUCATION**

B. DOE

V.

SOUTH KINGSTOWN SCHOOL COMMITTEE

**INTERIM ORDER
DECISION**

Held: Student Doe is entitled to attend the Culinary Arts program at the Chariho Career and Technical Center. The South Kingstown School Committee's Policy on Home Schooling clearly authorizes participation of home schooled students in South Kingstown public school curricular and extracurricular activities, and, by logical extension, the career preparation programs to which South Kingstown students are provided access. The district's practice of not permitting home-schooled students to attend academic programs part time is inconsistent with its current written policy.

DATE: September 15, 2015

Travel of the Case

On September 3, 2015 Mr. and Mrs. Doe filed a request for issuance of an interim protective order with Commissioner Ken Wagner. The Petitioners sought an interim order overruling the Superintendent's decision to disapprove her application for enrollment into the Culinary Arts program at the Chariho Career and Technical Center ("CTC").¹ A letter from South Kingstown's Assistant Superintendent Pauline Lisi dated August 27, 2015 notified the Petitioners that in order to participate in the Culinary Arts program at the CTC, Doe would need to participate in the entire high school program (both academic and the vocational courses).² Doe has been in an approved home instruction program since January 14, 2015.³

The appeal was assigned for hearing on September 3, 2015 and heard on September 4, 2015. Mrs. Doe appeared *pro se* and was accompanied by Student Doe. South Kingstown's counsel appeared on behalf of the district and was accompanied by Superintendent Kristen Stringfellow. Testimony and documentary evidence were submitted at the time of hearing and supplementary exhibits were submitted by both parties in the days following the hearing. The record in this case closed on Thursday, September 10, 2015.

Jurisdiction to hear this dispute arises under R.I.G.L. 16-39-3.2 and 16-39-1. The CTE Regulations require that all LEA's provide students and families an appeals process in cases where students do not gain access to a career preparation program (3.2(5)). The Regulations also provide that "any student denied access to a career preparation program shall reserve the right of appeal through policies and procedures managed by the LEA responsible for the denial of access" (5.1). In order to maintain Student Doe's right of appeal within the LEA responsible for the denial of her access to the Culinary Arts program (South Kingstown), this matter was referred to the South Kingstown School Committee for its review of the Superintendent's decision. In the meantime, the merits of the Petitioner's interim order request have been considered. Our consideration of

¹ Under the Regulations of the Board of Regents Governing Career and Technical Education in Rhode Island (effective July 1, 2012) (the "CTE" Regulations), all students have the right to request, from their resident LEA, access to a RIDE-approved career preparation program of their choice. Section 5.1.

² The letter of August 27, 2015 indicated that both South Kingstown's superintendent and Chariho's superintendent "agreed" that Doe's enrollment full-time was required in order for her to participate in Chariho's Culinary Arts program. However, testimony from both parties in this matter confirms that Chariho's superintendent has no objection to her enrollment only in the Culinary Arts program and that Chariho has a policy permitting home schooled students to enroll part-time in its programs and pro-rates the tuition charged for such students.

³ Mrs. Doe testified that she submitted a letter of "Intent to Home School" for the 2015-2016 school year (and other documentation related to Doe's home school program) to the School Department on July 3, 2015. The Superintendent testified that to date, this documentation has not been received by her or any of her staff.

the entire record in this case has been expedited in light of the time constraints imposed by R.I.G.L. 16-39-3.2 “Interim Protective Orders” and the fact that if Doe is entitled to attend the CTC program, she is missing valuable instruction time. Although citations to the record are omitted because of these time constraints, this decision is based exclusively on the record, i.e. the transcript of testimony and the documentary evidence submitted as exhibits in this matter.

Issue:

Is Doe entitled to enroll in and attend the Culinary Arts program at the Chariho CTC?

Findings of Relevant Facts:

- Student Doe is fifteen (15) years old and resides with her family in South Kingstown, Rhode Island.
- Doe attended South Kingstown High School during the first semester of the 2014-2015 school year. On December 15, 2014 her parents submitted a “Letter of Intent” to home school her. Her home instruction program was approved by the South Kingstown School Committee on January 14, 2015.
- The reason that Doe’s parents decided to home school Doe is that she has had ongoing medical issues. Documentation with respect to these medical issues has not been submitted to the South Kingstown School Department because it is not required as part of the approval process for home instruction.
- Doe submitted an application to the Chariho CTC for enrollment in its Culinary Arts program during the Spring. Her application was processed and she was accepted into the program at the end of May, 2015.
- When Chariho sent a list of South Kingstown students who would be attending the CTC to South Kingstown,⁴ the Director of Guidance wrote to Mrs. Doe requesting verification of her completion of 9th grade courses to send to the CTC. Students enter Chariho’s CTC as 10th graders.

⁴ Technically, Chariho sent Doe’s application to South Kingstown for its approval. The Regulations give students the right “to request, from their resident LEA, access to a RIDE-approved career preparation program of their choice”. The protocol followed by South Kingstown in approving enrollment in career and technical programs selected by students involves a thorough review of all relevant documentation by the Superintendent.

- Mrs. Doe and the Director of Guidance had a discussion in which Mrs. Doe indicated that she would send Doe's transcripts (verifying her completion of 9th grade work in her home instruction program) at the end of the week when she would be completing the school year.⁵
- On or about August 26, 2015⁶ South Kingstown's Director of Guidance contacted the Principal of Chariho's CTC to inquire about any "academic information" Chariho had received concerning Doe "that allowed you to accept her into the program".
- The Principal of the CTC replied by email "We accepted this student for Culinary Arts only. We do not need the academic information because she doesn't have a full schedule, just CTC. It is SK's responsibility to approve homeschooling for academics".⁷
- When the situation was brought to the attention of Superintendent Stringfellow, she immediately had a telephone discussion with Superintendent Barry Ricci and indicated to him that it was "not our practice in South Kingstown" to permit homeschooling for the entirety of the day and allow a student to attend the culinary classes only. She indicated that on this basis, she was not approving Doe's application to attend the CTC.
- Because she did not have immediate access to Mrs. Doe's telephone number, Superintendent Stringfellow asked Superintendent Ricci to have the Principal of the CTC notify Mrs. Doe of her (Superintendent Stringfellow's) decision.
- Mrs. Doe was notified by the Principal by voicemail on August 28, 2015 and in writing in a letter dated August 27, 2015 by Assistant Superintendent Pauline Lisi of the fact that Doe's application to attend the Culinary Arts program had been denied.
- Since Dr. Stringfellow assumed the Superintendent's position in South Kingstown, there has been a consistent practice of not permitting home schooled students to participate in less than a full academic program. The reason for this is that such students would be like "visitors" who would be auditing a class or classes in the school. While other types of curricular supports, e.g. textbooks and curriculum guides are provided to home schooled students as well as access to extra-curricular activities, they are not permitted to enroll in

⁵ The parties disagree on whether during this conversation Mrs. Doe told the Director of Guidance that Doe would be continuing home instruction during the upcoming school year and would therefore be attending the CTC only for its career preparation program in Culinary Arts. The parties also disagree on whether Mrs. Doe, on July 3, 2015 submitted an end of year report, Doe's transcript of grades in her home instruction courses and her Letter of Intent to Home-School her daughter during the 2015-2016 school year.

⁶ Evidently, Doe's name again appeared on a list of "accepted" students at the Chariho CTC.

⁷ Apparently, the Principal of the CTC did not understand that the "academic information" South Kingstown inquired about was in regard to Doe's successful completion of the 9th grade.

individual classes. Unlike students enrolled full-time, home schoolers would not be familiar with the student handbook, discipline code, evacuation and lock –down drills, and other rules and protocols that make for a safe school environment. The Superintendent testified that a “drop in” concept would be very disruptive, not only to the homeschool students, but to the regular population of students and teachers.

- On May 9, 2000 the South Kingstown School Committee adopted a policy entitled “Home Schooling” (7710) (S.C.Ex.1). This policy is still in effect and states in part as follows:

7. Upon written notification to the Superintendent’s office, the district will provide Support to homeschoolers, including (but not limited to) the following:

- a. Facilitate participation in South Kingstown Public School curricular and extracurricular activities...*

The policy goes on to describe other specific types of supports the district will make available to home schooled students and their families.

- The district has also developed a resource for home schooling families entitled “South Kingstown’s Home Schooling Handbook”.⁸ (S.C.Ex.2A) The handbook provides information about the approval process, frequently asked questions and useful websites. It does not contain a copy of or reference the School Committee’s Home Schooling policy, 7710, and varies on at least some points with the policy. The handbook states in the section entitled “Frequently Asked Questions About Home Schooling” at page 5:

Can my child take part in extra-curricular activities at school?

While the Commissioner of Education has encouraged all school districts to allow participation when space is available, each school committee has authority to decide whether or not to allow a home-

⁸Although the letter from Assistant Superintendent Lisi dated December 19, 2014 acknowledging her receipt of Mr. and Mrs. Doe’s request to home school indicates that a copy of the handbook is enclosed, Mrs. Doe stated that she did not receive this document. She testified that she was also not familiar with the district’s written policy on home schooling.

schooled child to participate in public school programs and public school extra-curricular activities. South Kingstown reviews these requests on a case-by-case basis...

Positions of the Parties

South Kingstown School Committee:

South Kingstown argues that the district has a very clear practice with respect to its policy for home-schooled students. This practice extends back at least to the time when Superintendent Stringfellow assumed the position of Superintendent, i.e. 2009. The policy and practice is that home-schooled students are not permitted to enroll in individual classes. The reasoning for this policy is sound and based on all of the factors presented by the Superintendent in her testimony. Neither the policy, nor the Superintendent's implementation of it in this case, is arbitrary. Guidance received from the Rhode Island Department of Education in 1998 is supportive of the action of the district in this case. RIDE has encouraged districts to allow home schooled students to participate in academic, extra-curricular and interscholastic activities on a space available, no cost to the district or school basis.⁹ The Superintendent has the authority and discretion to make policy decisions such as this and she must implement the policy in the way that she sees fit for the entire school community. The policy is in the best interests of all South Kingstown students and it must be consistently applied in order to be fair to all concerned.

Petitioners:

Mrs. Doe argues that the policy does not properly weigh the interests of home-schooled students. Other districts in Rhode Island, such as Chariho, have policies in place that permit home schooled students to attend curricular programs on a less than full-time basis. She does not understand why the policy excludes her daughter from the benefit of taking a career preparation program that she has always been interested in. Everything was in place until late August, when the district withdrew its support of her enrollment in the Culinary Arts program, causing great distress

⁹ RIDE issued informal guidance following a March 12, 1998 meeting of the Board of Regents in which several home-instruction issues were discussed. The guidance was issued on June 1, 1998 by then-Commissioner Peter McWalters. S.C. Ex.3.

to her and her daughter. In this case, there would be no disruption to the South Kingstown school community because her daughter would be attending classes at the Chariho CTC. Also, transportation is not at issue because it will be provided by the parents. Implicitly, Mrs. Doe argues that any confusion about the amount of tuition that Chariho would charge South Kingstown has been eliminated¹⁰. Mrs. Doe indicates that more information and medical records confirming her daughter's medical issues could be provided, if necessary. However, she does not feel that she should be required to disclose this information as part of her, and Doe's, home schooling rights.

DECISION

Counsel for the district has correctly pointed out that there is no statewide policy on participation of home-schooled programs in curricular or academic public school programs in Rhode Island. The June 1, 1998 guidance issued by then-Commissioner Peter McWalters advised local school officials that "...the Department encourages you to allow home schooled students to participate in academic, extra-curricular and interscholastic activities on a space available, no cost to the district or school basis". South Kingstown is also correct that the admission of home schooled students to individual classes within the district or to career and technical programming located outside the district is a matter of district-level policy. This is a dispute to which a duly-enacted policy of the South Kingstown School Committee directly applies. The policy could best be described as very supportive and inclusive of home-schooled students who are South Kingstown residents. The policy describes specific supports that the district "will provide" upon written notification to the Superintendent's office and goes on to state that the types of support listed in the Policy are not all-inclusive. There is no condition of "space available" or "no cost" attached to the obligation "to facilitate participation" of such students in "South Kingstown Public School curricular and extracurricular activities".

R.I.G.L. 16-2-9 (a) vests the "entire care, control, and management of all public school interests of the several cities and towns" in school committees. The power (and duty) of school committees is "to develop education policies to meet the needs of the community". R.I.G.L. 16-2-9-(a) (2). Equally important is the duty of the Superintendent to implement policies established by the school committee. R.I.G.L. 16-2-11(a) (1). On appeal to the Commissioner in a de novo review, our obligation is to hold an evidentiary hearing, make

¹⁰ The tuition would be pro-rated for the one or two courses in which Doe would be enrolled.

findings of fact and determine whether there has been a violation of statewide education policy or an arbitrary and capricious decision at the local level.¹¹

In this case, the record shows that on May 9, 2000 the South Kingstown School Committee adopted policy 7710 “Home Schooling”. This policy remains in effect today. It has not been repealed. Although there is evidence that indicates for a number of years, the practice has been at variance in some respects with adopted policy, it is unclear as to whether the School Committee is aware that the policy is not applied with respect to requests for home schooled students to enroll in individual courses. We find the policy to be clear and unambiguous with respect to the participation of homeschoolers in South Kingstown Public School curricular¹² and extracurricular activities. The policy permits home-schooled students to participate in curricular and extra-curricular activities. All South Kingstown students are entitled to attend career and technical programs at the Chariho CTC. Therefore, under the Policy this entitlement would be extended to home-schooled students residing in South Kingstown. Student Doe’s request to attend the Culinary Arts program at the Chariho CTC, a program to which all South Kingstown students are provided access, is governed by the terms of Policy 7710 and it is authorized.

If there were no school district policy (which there is), South Kingstown’s Home Schooling Handbook might be considered an informal policy.¹³ This document indicates that requests to “participate in public school programs and public school extra-curricular activities” will be reviewed “on a case-by-case basis”. No standards are set forth in the Handbook to govern when such requests will be approved or not approved. In this case, the evidence in the record is that Doe’s parents are home-schooling her for medical reasons. She has requested to participate in a culinary program that meets her needs and interests.

Students who reside in South Kingstown have access to the Chariho CTC and its programs.

¹¹ In *Concerned Parents & Teachers v. Exeter-West Greenwich Regional School District*, decision of the Board of Regents dated August 24, 1989 the Board of Regents remanded a decision to the Commissioner because he had misconstrued his role as limited to a determination of whether the School Committee’s action had been arbitrary or capricious. The case was remanded for the hearing officer to make an “independent judgment” based on the facts of the case. The Commissioner has, since the *Concerned Parents & Teachers* remand, exercised restraint in exercising his independent judgment. Traditionally, the Commissioner will refrain from substituting his judgment for that of the school committee and will overturn their decision only if the action violates statewide education policy or is arbitrary and capricious. See *Spohn v. Newport School Committee*, decision of the Commissioner dated October 7, 1998 and *Lusignan et al. v. East Providence School Committee*, June 17, 1999.

¹² Webster’s New Collegiate Dictionary defines “curricular” to mean “of or relating to a curriculum”.

Curriculum is defined as the courses offered by an educational institution or one of its branches

¹³ We would note that the practice currently followed would also be at variance with this informal policy statement as it pertains to requests to participate in curricular programs.

Chariho's own policy permits her to attend the Culinary Arts program while she continues to be home schooled. South Kingstown will be billed for a pro-rated tuition for this program¹⁴ and the parents will provide transportation for their daughter. Aside from the minimal cost, a determination made on a "case-by-case basis" would be balanced heavily in favor of granting Doe's request.

Although the Superintendent described a host of factors that might form the basis for a different local policy, should the South Kingstown School Committee decide to alter its present policy, the factors she describes and her legitimate concerns for the South Kingstown school community do not apply to a situation in which the student would attend an out of district career and technical program.

For the foregoing reasons, the appeal is sustained and an Interim Protective Order is hereby entered permitting Doe's immediate enrollment and attendance in the Culinary Arts program at the Chariho CTC.

The district's concern for the status of approval of her home instruction program is well-founded. District staff and Mrs. Doe should immediately confer and, if she has not already done so, she must provide staff with oversight responsibility for home-schooled students with all documentation that will enable them to review and approve her home instruction program for school year 2015-2016.

For the Commissioner:

Hearing Officer

Ken Wagner, Commissioner

DATE: September 15, 2015

¹⁴ The parties agreed that this year's cost for Doe's attendance would be approximately \$6,000.