

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

B. DOE

v.

SOUTH KINGSTOWN SCHOOL COMMITTEE

**DECISION ON
MOTION TO RECONSIDER INTERIM ORDER DECISION**

Held: The South Kingstown School Committee's Motion to Reconsider the Interim Order Decision issued on September 15, 2015 is denied. The request that the Commissioner issue a hearing decision pursuant to R.I.G.L. 16-39-2 is also denied because there is no live controversy that requires adjudication. Student Doe is not "aggrieved" by the decision of the South Kingstown School Committee because she has been permitted to enroll in the Culinary Arts program at the Chariho Career and Technical Center and the District is not seeking to displace her from this program.

DATE: October 30, 2015

Background:

On September 25, 2015 the South Kingstown School Committee, through its counsel, filed a Motion to Reconsider an Interim Order Decision issued by the Commissioner on September 15, 2015. The Interim Order Decision held that Student Doe was entitled to attend the Culinary Arts program at the Chariho Career and Technical Center because the Committee's Policy on Home Schooling permitted homeschoolers to participate in South Kingstown's public school curricular and extracurricular activities. By logical extension, Student Doe's participation in a vocational program to which South Kingstown students were provided access was found to be authorized under the School Committee's policy. On October 12, 2015, Doe's parents filed a written statement in opposition to the Motion to Reconsider.¹

The Board of Education and Council for Elementary and Secondary Education have not enacted regulations that provide for reconsideration of decisions on appeals taken to the Commissioner. The current regulations entitled "Procedures for Appeals to and Hearings Before the Commissioner of Education" are silent on a party's ability to file a motion for reconsideration or rehearing after an administrative decision has been issued. However, the Rhode Island Supreme Court has found that administrative bodies acting in a quasi-judicial capacity have the inherent power to reconsider their judicial acts.² The Commissioner has entertained such motions when one of the four traditional grounds for such a motion are alleged to exist.³

The Committee argues that the interim protective order which reversed Superintendent Kristen Stringfellow's decision denying Doe's request, is in error. Counsel for the Committee submits that not only did the Interim Order Decision issued on September 15, 2015 incorrectly find that the Committee's home school policy clearly and unambiguously entitles home-schooled students to enroll in individual courses, the decision ignored the explicit statement of intent expressed by the Committee on

¹ In its Motion, the School Committee states that it is "not seeking to stay (Doe's) enrollment at Chariho CTC or cause her to be ousted from the culinary class". We infer that Doe's ongoing enrollment and progression in this program will not be disrupted by any action of the School Committee.

² See *In Re Denisewich*, 643 A.2d 1194 (RI 1994) and *Perrotti v. Solomon*, 657 A.2d 1045 (RI 1995).

³ See *Concerned Parents and Teachers v. Exeter-West Greenwich Regional School District*, decision of the Commissioner dated November 30, 1988 and *Anastasides v. Narragansett School Committee*, decision of the Commissioner dated June 5, 1990.

September 14, 2015 when it convened to consider this matter at the direction of the hearing officer.

According to the Committee, the plain language of Policy 7710 does not support the Commissioner's reading of it. Construing the policy to permit "a la carte" homeschooling- enabling home-schooled students to take some courses in the public school while receiving instruction at home- effectively revises the policy adopted in 2000. Counsel for the Committee submits that evidence presented at the hearing established that the policy had been consistently implemented over a number of years to foreclose the relief sought by Doe's family. Dr. Stringfellow testified that "support" for home-schooled students' participation in curricular activities involves access to tutoring programs, homework clubs, and instructional materials. She testified that during her tenure as Superintendent she has never applied Policy 7710 to impose an affirmative obligation on the district to enroll a home-schooled student in a course of the student's choosing. If the policy is susceptible of more than one interpretation,⁴ then the Superintendent's interpretation of the policy should prevail because her interpretation, as the chief executive of the School Committee, is entitled to deference. Her consistent application of the policy to foreclose home-schooled students from exercising an unlimited right to attend district courses on an a la carte basis also recognizes the financial, operational, and disciplinary challenges such a policy would create. The only sensible way of reading Policy 7710 is as the Superintendent implemented it: to afford home-schooled students access to curricular support through such activities as tutoring programs and homework clubs and through the provision of instructional materials.

As an alternative to ruling on its Motion to Reconsider, the Committee requests that the Commissioner issue a "hearing decision" pursuant to R.I.G.L. 16-39-2⁵ which clarifies and supersedes the Interim Order decision. The Committee argues that the Commissioner ignored the Committee's decision in this matter after directing that they convene and consider Doe's request. The directive to the Committee was to "interpret its own policy," determine whether they interpreted it in the same way that Dr. Stringfellow

⁴ The Committee argues that the hearing officer acknowledged ambiguity in the policy at the time of the hearing.

⁵ The Committee notes that R.I.G.L. 16-39-2 provides that the Commissioner "shall examine and decide" any appeal from a school committee decision.

did, whether they wanted to keep the policy in place and whether they wanted to make an exception to the policy based on all factors present. The Interim Order Decision fails to take into account the fact that the Committee had in fact reviewed the matter and endorsed the Superintendent's decision. Further, the Decision (incorrectly) speculates on the School Committee's knowledge of Dr. Stringfellow's implementation of Policy 7710, stating: "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". In light of the fact that the Committee had actually unanimously endorsed the Superintendent's implementation of the Policy and her decision to deny Doe an exemption, the Committee views such a statement as a "stunning rebuff" to its efforts and its compliance with the hearing officer's directive.

When the School Committee acted on Doe's request, it interpreted its own policy and under applicable legal principles, this interpretation must be given great weight. When the provisions of a statute are unclear or subject to more than one reasonable interpretation, the construction given by the agency charged with its enforcement is entitled to deference, as long as that construction is not clearly erroneous or unauthorized. Here, by analogy, the Committee's explicit statement concerning the meaning of Policy 7710 is entitled to deference. Instead, the Commissioner's interpretation of the Policy did not recognize, much less defer to, the Committee's construction of its own policy. The policy has been misconstrued. If the Committee had intended to create an affirmative obligation for the district to enroll home-schooled students in any individual course per the student's request, it would have said so clearly.

Petitioner Doe

Ms. Doe argues that the basis for the Superintendent's denial of her daughter's request to enroll in the Culinary Arts program at the Chariho CTC- concerns of disruption, transportation, and lack of safety standards- are not applicable in this case. Her daughter will continue to be home schooled for all courses, save for the one or two per year that she will attend at a facility not even located in South Kingstown. The Chariho School district, which operates the Career and Technical Center, is structured

such that students from both public and home school environments are permitted to attend the district's programs.

Furthermore, the mission statement of the South Kingstown school district states that:

The mission of the South Kingstown school department, in partnership with families and the entire educational community is to educate all of our students in the knowledge and skills necessary to ensure readiness and success in college and career.

The issues raised when opposing access to vocational studies for a home-schooled student (even when such attendance does not affect any of the concerns raised by the Superintendent) are inconsistent with the mission to educate all students. In fact, this puts home schooled students at a disadvantage by denying access to resources that are readily available with the school district's portfolio. Students engaged in alternative forms of education should not be penalized by denying access to school resources.

During the School Committee's hearing of this matter on September 14, 2015, a member of the Committee stated "the Committee has no interest in making it easier for students to choose home schooling over public schools". It was further suggested that the Committee should examine its current requirements for home schooled students and explore ways to implement more rigorous testing and supervision. Such action would be inconsistent with the educational mission of the district and fails to take into account the different needs for educational support of the entire South Kingstown student population. It also assumes an implied limitation on available curricular and extracurricular support, which is not explicitly stated in the district's Policy.

Finally, in this case the Commissioner's ruling permits a home-schooled student to benefit from the district's resources without causing the district to "disrupt" its normal operations. South Kingstown would see greater benefits to its students if the district continued to model other districts that have incorporated broad access to resources to all resident students.

DECISION

Ruling On Motion to Reconsider:

South Kingstown's Motion to Reconsider the Commissioner's Interim Order Decision of September 15, 2015 is based in part on the assertion that this decision failed to acknowledge that the Committee had convened, deliberated and made an interpretation of its policy that foreclosed Doe's enrollment in the vocational program at the Chariho CTC. However, the procedural sequence in this case did not permit such information to be placed in the record, nor was there a request (by the School Committee) that the timing of the issuance of the Interim Order Decision be altered so that the Committee's decision could become part of the record of the case. The Commissioner's decision was based on a hearing record which closed days before the South Kingstown School Committee convened. Counsel for the Committee emailed the hearing officer on September 8, 2015 asking whether she planned to issue the decision prior to the Committee meeting (scheduled for September 14th) or "alternatively whether you would rather hold your decision in abeyance pending the outcome of the Committee's review of this matter".⁶ Thus, the fact that the Commissioner's decision does not mention the fact of the School Committee's meeting, or the outcome of that meeting, should not have been a surprise to anyone. It is with good reason that the Interim Order Decision "reads as if the Committee's September 14th meeting did not occur at all" (School Committee memorandum at page 4). The primary purpose of directing that the School Committee meet and consider Doe's appeal while her request for an interim order was being speedily processed within the statutory timeline was so that she would not have to bypass a forum which could potentially act favorably on her request.

The hearing officer indicated on September 8, 2015 that the decision would be issued on Tuesday, September 15, 2015. If the School Committee had approved Doe's request on the evening of September 14th, the controversy would have been resolved. Notice of the School Committee's action to deny Doe's request was received on Monday,

⁶ See email from counsel for the School Committee dated September 8, 2015 and reply of the hearing officer of the same date, attached hereto as Exhibit A.

September 14, 2015 at 8:25 p.m. The information conveyed with respect to the action of the School Committee was that it had:

voted to uphold the recommendation of the Superintendent to retain the current operational practice and interpretation of the District's Home Schooling Policy (Policy 7710) and deny (the) appeal requesting an exception to Policy 710.

Once the "bottom line" of the Committee's decision was communicated by counsel for the Committee on the evening of September 14th, the Commissioner's already-prepared Interim Order Decision was issued on the next business day, September 15th. It is unfortunate that the sequence of events and the legal requirement that the Commissioner's decision be based exclusively upon the record are viewed as a "stunning rebuff" to the Committee's efforts and its compliance with the Hearing Officer's directive. The fact that the Committee convened on such short notice, heard and acted upon the Petitioner's request is duly acknowledged. We find, however, that there is no error in the fact that the Committee's decision is not mentioned in the Interim Order Decision issued on September 15, 2015.

The second ground of the Committee's Motion to Reconsider is the alleged error committed by the Commissioner in interpreting Policy 7710. We have thoroughly reviewed the arguments of the Committee in this regard and find them to lack merit. We continue to find Policy 7710 to be clear and unambiguous with respect to the participation of homeschoolers in South Kingstown Public School curricular and extracurricular activities. See Interim Order Decision at page 8. We find no acknowledgement of ambiguity in the hearing officer's statement at the time of the hearing:

(I)f I were to literally interpret that policy, I would come out in a different manner than the superintendent. I would interpret it from the wording that students in South Kingstown would be able to participate in curricular and extracurricular activities...

In re-reading the language of Policy 7710, we find that the clear and plain meaning of the language brings us to the same conclusion with respect to the participation of home schoolers in curricular and extracurricular activities in South Kingstown. The School Committee's argument with respect to a contrary meaning focuses on a single word - "support". The Committee's argument disregards much of the other language found in the Policy.

The Committee also fails to acknowledge the fact that South Kingstown's Home Schooling Handbook (S.C.Ex.2A) states that in South Kingstown, requests to allow a home schooled child to participate in public school programs and public school extra-curricular activities will be reviewed "on a case by case basis". This statement is inconsistent with the interpretation of Policy 7710 advanced by the School Committee in its Motion. In addition, the Motion to Reconsider does not address or explain why the medical reasons underlying Doe's parents' decision to home school their child do not establish a "case" for granting their request. We find, upon reconsideration, that Doe's medical reasons for being home schooled, together with the other factors associated with her attendance in this out of district program, establish a strong "case" when permission is granted on a "case by case basis" according to the District's own Homeschooling Handbook.

Stated another way, upon reconsideration, we find no error associated with the Interim Order Decision issued on September 15, 2015.

Ruling on Request for Issuance of a "Hearing Decision":

In the alternative, the School Committee requests that the Commissioner issue a "hearing decision" pursuant to R.I.G.L. 16-39-2, which would clarify and supersede the Interim Order Decision for the reasons set forth in its Motion. We assume that a "hearing decision" would take into account the South Kingstown School Committee's interpretation of its policy and consider the argument that the Committee's interpretation of its own policy must be accorded deference and therefore be upheld by the Commissioner.

We find, however, that at this juncture in these proceedings the prerequisites for an appeal to the Commissioner under R.I.G.L. 16-39-2 are not met. This statute requires that the Commissioner “examine and decide” appeals from school committee decisions when an appeal to the Commissioner is taken by a “person aggrieved” by the committee’s decision. In this matter, Doe and her family did not appeal the School Committee’s decision of September 14, 2015 nor are they currently aggrieved by that decision. In the Motion to Reconsider counsel for the Committee indicated that “further destabilization to (Doe’s) instructional plan is not in the interests of either (Doe) or the District” and that it does not intend to “stay” Doe’s enrollment at the Chariho CTC or cause her to be ousted from the culinary class.⁷ Thus, there is no ongoing controversy to be adjudicated between the parties as is required for the Commissioner to exercise appellate jurisdiction under R.I.G.L. 16-39-2.

Even if the prerequisites to the Commissioner’s adjudication of a dispute under 16-39-2 were present, the task of reviewing the School Committee’s “decision” would be difficult in that we have only an email summary of what it was.. We do not find the email setting forth the vote of the South Kingstown School Committee to be an “explicit statement concerning the meaning of Policy 7710”. Perhaps a separate written decision was prepared in which the Committee made an interpretation of Policy 7710, but such written decision is not part of the record of this case. The email that is part of the record does not contain sufficient information to determine what language was reviewed by the members of the Committee and what meaning was attributed to the language.⁸ Thus, even if we were to accommodate the request to issue a “hearing decision” pursuant to R.I.G.L. 16-39-2, there is an insufficient record on which to determine whether the Committee’s interpretation of its policy was reasonable or arbitrary and capricious.

For the foregoing reasons, the request to issue a “hearing decision” pursuant to R.I.G.L. 16-39-2 is hereby denied.

Lest the procedural issues in this case cloud the substance of this ruling, if a full interpretation and analysis of Policy 7710 by the School Committee were properly before

⁷ See footnote 9 of the Committee’s Motion at page 4.

⁸ See Exhibit A of the Motion to Reconsider.

the Commissioner for a de novo review at this level, it is not likely that the “bottom line” reached by a majority of the members of the School Committee on September 14, 2015 would be consistent with our ruling in this matter. After thorough reconsideration, we affirm our finding that Policy 7710 is clear and unambiguous as to participation of home schoolers in curricular and extracurricular activities of the South Kingstown School District. Policy 7710 constitutes an exercise of the discretion accorded to the South Kingstown School Committee under state education law. If the South Kingstown School Committee does not wish to continue such a policy, then it can proceed to amend or revise it as it sees fit.

For the foregoing reasons, the Interim Order Decision is affirmed.

For the Commissioner,

Kathleen S. Murray, Hearing Officer

Ken Wagner, Commissioner

DATE: October 30, 2015

From: Murray, Kathie
Sent: Tuesday, September 08, 2015 10:51 AM
To: 'Joseph Cooper'
Cc: Sara A. Rapport; Stringfellow, Kristen; DiOrio, Vilma;

EXHIBIT A

Subject: RE: B. Doe v. Town of South Kingstown (Chariho)

Hello everyone,

I received the transcript this morning. I have not yet received the documentation ----- indicated she wished to place in the record. I believe it was her Letter of Intent to Home School for the 2015-2016 school year and a verification of her daughter's transcript for the 2014-2015 semester in which she home-schooled ----- . The decision is due 5 working days from the close of the record. If Ms. ----- does not wish me to hold the record open at this point, kindly let me know and I will close the record as soon as I hear from her.

In order to accomplish the objective of having -----appeal of the Superintendent's decision heard by the School Committee (as well as by the Commissioner), I will hold the decision in abeyance until Tuesday.

I would ask ----- let me know if the record should close without the documentation she previously referred to. If she will be submitting this documentation, kindly copy in Attorney Cooper.

I would ask that Mr. Cooper advise me of the School Committee's decision as soon as it is made.

Thank you.

Kathleen Murray

From: Joseph Cooper [<mailto:JCooper@wckslaw.com>]
Sent: Tuesday, September 08, 2015 10:28 AM
To: Murray, Kathie
Cc: Sara A. Rapport; Stringfellow, Kristen; DiOrio, Vilma; -----
Subject: B. Doe v. Town of South Kingstown (Chariho)

Dear Ms. Murray,

In accordance with your directive during last Friday's interim protective order hearing, the South Kingstown School Committee is scheduled to convene in order to review the above-referenced matter on Monday, September 14 at 5:00 p.m. This is the earliest that the Committee is able to convene. As we discussed on Friday, September 14 is also the day on which the interim decision must be issued under § 16-39-3.2. In light of the above, could you kindly advise whether you plan to issue your decision prior to the Committee meeting—in which case the Committee meeting will be moot—or, alternatively, whether you would rather hold your decision in abeyance pending the outcome of the Committee's review of this matter. Thank you.

Sincerely,
Joe Cooper