

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

S. Doe

v.

Pawtucket School Department
Brockton (MA) Public Schools

Interim Order Decision

Held: The Petitioner has not established that her daughter is entitled to transportation to and from the Rhode Island School for the Deaf from the home where the family is currently living in Brockton, Massachusetts under the provisions of the McKinney-Vento Homeless Education Act. However, the Petitioner and her family may soon qualify for the assistance provided under McKinney-Vento and establish such entitlement to the districts involved with the assistance of the local liaisons and State Coordinators for Education of Homeless Children and Youths. The assistance required pursuant to the provisions of the McKinney-Vento Act and the process of dispute resolution called for in the state plans of Rhode Island and Massachusetts should, if possible, be utilized to resolve any future disagreement over the Petitioner's McKinney-Vento eligibility.

DATE: October 26, 2015

Background and Travel:

The Petitioner filed a request for a hearing to obtain transportation for her daughter to and from the Rhode Island School for the Deaf (RISD) with the Commissioner of Elementary and Secondary Education. Her request was filed on October 13, 2015 and was treated as an Interim Order request as authorized under Rhode Island's Final State Regulations on the Education of Homeless Children and Youth, §L-7-11. Notices of the hearing were sent to representatives of the Pawtucket School Department and Brockton Public Schools, as well as the RISD. The hearing was convened on October 20, 2015. Interim Order decisions, according to R.I.G.L. 16-39-3.2 must be issued within five (5) working days of the completion of the hearing. Accordingly, this decision is based primarily on the hearing officer's notes and the documentary evidence submitted at the time of the hearing.

The Petitioner's daughter is eleven (11) years old and is a student with a disability. She has attended RISD for several years pursuant to an Individualized Education Program developed for her by the RISD with the input of staff of the Pawtucket School Department. On or about October 1, 2015 Doe's family was displaced from their home in Pawtucket and moved in with a family friend in Brockton, Massachusetts. The Petitioner enrolled two of her three children in Brockton Public Schools and when she did so provided Brockton with a document entitled "Residency Affidavit-Landlord/Shared Tenancies" signed by the owner of the Brockton house. The affidavit affirmed the affiant's ownership of the property and the fact that the Petitioner "leases or subleases this property as (her) principal residence... without a written lease, in a tenancy at will, from month to month".¹ Attached to the Residency Affidavit was a receipt, signed by the landlord, indicating her receipt of \$750.00 for rent for the period October 1, 2015 to October 31, 2015. The Petitioner testified that although she has paid rent for the month of October and has a "month to month" tenancy, she has been told by the owner of the property that she and her children will not be allowed to remain there after November. She has been actively looking for a place to rent in Rhode Island but she has not yet located suitable housing for her and her family.

¹ The Residency Affidavit also included a checkmark at the box indicating the owner of the property's receipt of a rental payment within the last thirty (30) days. A box was also provided on the form to indicate that the Petitioner's residence at the property was "with no payment of rent". This box was left blank. The Petitioner testified that she had paid rent for the month of October for the use of two of the rooms of the property located in Brockton.

The Petitioner seeks to maintain her daughter's enrollment at RISD, but so far her requests for transportation, made to both Pawtucket and Brockton, have been denied. She submits that she and her children are homeless and that her daughter's continued attendance at her school of origin (RISD) is in her best interests. She argues that either Pawtucket or Brockton, or both, are responsible to provide transportation until she can find suitable housing for her family in Rhode Island.

The Pawtucket School Department challenges the credibility of the Petitioner with respect to her claim of homelessness. The District submits that the Petitioner's claim of "homeless" status is a mechanism the Petitioner is attempting to use to retain her daughter in her "preferred" placement at RISD. If she were to enroll her daughter in Brockton, as she has her two other children, Brockton would develop a new IEP that would in all likelihood place her daughter at a different school. The fact that the Petitioner has enrolled two of her children in Brockton Public Schools and is paying rent to the owner of the home in Brockton is evidence that she is not homeless as defined by the McKinney-Vento Act. Her statement that she will be required to leave this home in November is also not worthy of belief. Her daughter is not entitled to transportation as homeless student and, even if she were, it is not in her best interests to commute in excess of one hour each way as would be required to continue to attend the RISD. In addition, the cost to the Pawtucket School Department to transport her to RISD would be \$468.26 per day. If Doe wants her daughter to continue to attend the RISD, state law (R.I.G.L. 16-64-8) permits her to finish the balance of the semester, but her parent must provide the necessary transportation-not Pawtucket.

Counsel for Brockton Public Schools makes a limited appearance for purposes of contesting the Commissioner's jurisdiction. In a written Motion to Dismiss filed at the time of the hearing, counsel for Brockton asserts that the Commissioner and RIDE lack jurisdiction over an out-of-state school department and exercise no legal authority whatsoever over the Brockton Public Schools. Since receiving a copy of the Petitioner's request for hearing by email on October 15, 2015, counsel for the Brockton Public Schools has not received any other documentation that would apprise it of the legal and factual questions at issue. There has been no opportunity to conduct discovery. As a result, Brockton Public Schools takes the position that it has been denied its fundamental rights to due process in connection with this matter.

Without waiving its arguments as to jurisdiction and due process, the School Department submits that the Petitioner is not entitled to relief under the McKinney-Vento Act. In light of the residency documentation she provided at the time she registered two of her children in Brockton

Public Schools, it is clear that she rents and lives in a dwelling in Brockton under circumstances that do not come within the definition of “homeless” under McKinney-Vento §11302(a). Therefore, she is not entitled to relief. Brockton Public Schools stands ready willing and able to enroll Doe’s daughter and ensure that she receives the educational programming and services to which she is entitled as a student with a disability. It will not support her request for transportation services so that her daughter can continue to attend the RISD.

DECISION

The Brockton Public Schools is correct in the position it takes with respect to the lack of jurisdiction of the Rhode Island Commissioner of Education over an out-of-state school district. However, the involvement and cooperation of school districts located beyond a state’s borders² (when the situation presents itself, as it does in this case) is surely contemplated under the McKinney-Vento Act. The inclusion of the Brockton Public Schools as a party in interest, if not an actual party, arises from an allegation that a Pawtucket family’s move to Brockton rendered them homeless and that the responsible districts are not complying with federal mandates. Brockton’s participation is indispensable in the resolution of a dispute with respect to transportation as a necessary service for an allegedly homeless student who seeks to remain in her school of origin under the McKinney-Vento Act. The Motion to Dismiss of the Brockton Public Schools is hereby granted, but its participation in the hearing as a party in interest under federal law is clearly warranted.

On the merits, both of the implicated school districts argue that the Petitioner’s circumstances do not bring her and her family within the definition of “homeless”, “homeless individual”, and “homeless person” as this term is found in the McKinney-Vento Act. Based on the evidence submitted at the hearing, we find that the Petitioner has not established that she and her family fall within the definition of “homeless” at this time. Doe testified that although she pays rent and has a “month to month” tenancy at the Brockton house, the family friend who rents space to her there is requiring her to move by the “end of November”. If her testimony on this point were found to be

² Especially given Rhode Island’s small size and proximity to districts in Massachusetts and Connecticut, it should not be unanticipated that the exercise of school choice options would lead to issues with respect to transportation of homeless students.

credible³, she and her family could become “homeless” pursuant to the following language in the current definition section of the McKinney-Vento Act set forth in 42USC §11302 (a)(5). A homeless individual or family is one who:

(A) will imminently lose their housing, including housing they own, rent, or live in without paying rent, are sharing with others...as evidenced by... (iii) credible evidence indicating that the owner or renter of the housing will not allow the individual or family to stay for more than 14 days, and any oral statement from an individual or family seeking homeless assistance that is found to be credible shall be considered credible evidence for purposes of this clause;⁴

Therefore, if Doe and her family established the imminent and involuntary loss of the housing they are renting in Brockton, as the end of November approaches, she and her family could meet the definition of homeless. Contrary to the arguments of counsel for both Pawtucket and Brockton, the fact that she is currently renting part of a home so that she and her family will have a place to live does not disqualify her from homeless assistance once the date of her required departure from the Brockton home is fourteen (14) days away- if she has no subsequent residence identified and lacks the resources or support networks needed to obtain other permanent housing.⁵

Although Doe did not sustain her burden of proof at the adversarial hearing held on October 20, 2015, it is still possible that she and her family will face circumstances that fall within the definition of homeless found in the McKinney-Vento Act and that Doe will garner sufficient evidence of this fact. The instability of the family’s living situation should warrant assistance. Any future issues as to her eligibility for assistance, including transportation to

³ Doe’s testimony overall was not entirely credible, but on this point she mentioned bringing in the family friend/landlord to testify as well. If she had done so, and that person’s testimony were found to be credible, there would have been increased likelihood of her establishing her eligibility for assistance under the McKinney-Vento Act as the end of November approached..

⁴ It is not clear on what definition of “homeless”, “homeless individual”, and “homeless person” counsel for Pawtucket and Brockton rely in arguing that Doe does not come within this definition. We did not find the language cited above to be included in the definition of homeless found on the Massachusetts Department of Education website or in the definition found in Rhode Island Final State Regulations on the Education of Homeless Children and Youth. The language referencing individuals or families who will imminently lose their housing, including housing they rent, was added in a 2009 amendment to the McKinney-Vento Act made by Pub. L 111-22.

⁵ See § 11302(a)(5)(B) and (C).

her daughter's school of origin and the immediate enrollment of her other two children in the Brockton Public Schools, should be resolved through the intervention and cooperation of the State Coordinators for the Education for Homeless Children and Youths and district liaisons. Unresolved issues should be addressed pursuant to the dispute resolution processes contained in the state plans of Rhode Island and Massachusetts. If issues remain unresolved, Doe may seek relief by requesting additional hearing before the Rhode Island Commissioner of Elementary and Secondary Education.

For the Commissioner,

Kathleen S. Murray, Hearing Officer

Ken Wagner, Commissioner

DATE: October 26, 2015