

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

DEPARTMENT OF CHILDREN, YOUTH
AND FAMILIES

and

WEST WARWICK SCHOOL DEPARTMENT

and

PROVIDENCE SCHOOL DEPARTMENT

(In the Matter of R. Doe)

Interim Order

Held: West Warwick School Department bears immediate responsibility to implement and review homeless student's IEP.

Date: February 19, 2016

Introduction

This matter concerns a “Request for an Interim Order and Petition to Establish Residency” filed by the Department of Children, Youth and Families (DCYF) on February 12, 2016 “for purposes of enabling [Student Doe] to establish residency for educational purposes and to be immediately re-enrolled in the Eleanor Briggs School in accordance with the Order of the Rhode Island Family Court . . .”¹

Background

Student Doe is 13 years old. Prior to January 12, 2016, he resided with his mother in West Warwick. In accordance with an individualized education program (IEP), the West Warwick School Department had placed Doe at the Eleanor Briggs School, a non-public school located in Warwick. The IEP, which expired on January 20, 2016, lists “special education day school program” as Doe’s placement. The IEP calls for “a small class with explicit rules for behavior,” individual and group therapy, and door-to-door bus transportation. [DCYF Exhibit 4].

On January 12, 2016, Doe was placed in the temporary custody of DCYF. He was placed at the Turning the Corner shelter program in Providence.² His placement at the Turning the Corner shelter is temporary while DCYF searches for a long-term placement. On January 24th, a staff member at Turning the Corner enrolled Doe in the Providence school system. On January 29th, Providence placed Doe in a program at the Roger Williams Middle School. In the meantime, Doe’s education advocate filed a motion for emergency review in Family Court. The motion asserted Doe’s rights to attend the Eleanor Briggs School in Warwick and requested that DCYF be ordered to place him there immediately. At a hearing conducted on February 4th, the Family Court found that Doe is a homeless youth and it is in his best interest to remain in his school of origin, i.e., “West Warwick.” In an order entered on February 11th, the Family Court ordered DCYF to “take

¹ A hearing was conducted in this matter on February 17, 2016.

² Turning the Corner operates group homes and a shelter. The shelter is licensed for a 90-day stay. Turning the Corner is included in the “DCYF Licensed Bed Count for Group Homes, Shelters and Supervised Living Programs,” pursuant to which school districts receive \$15,000 annually in education aid for each bed in accordance with §16-64-1.1(b)(2).

all steps necessary to enroll [Doe] in the Briggs School in West Warwick.” [DCYF Exhibit 5].³ Upon learning of the Family Court order, the Providence School Department discontinued services for Doe at the Roger Williams Middle School.

In a letter dated February 12th, a clinician at the Briggs School wrote to DYCF that

Due to therapeutic concerns, [Doe] is not permitted to attend the Eleanor Briggs School at this time. I would however be happy to assist you in finding the appropriate placement for [Doe]. [Doe] is in need of a program with a significant therapeutic component to help address his social and emotional difficulties . . . [DCYF Exhibit 2].

Doe presently is not receiving any educational services.

Positions of the Parties

DCYF contends that Doe is homeless and that pursuant to the provisions of Rhode Island General Laws 16-64-5 and 16-64-6, the McKinney-Vento Homeless Assistance Act and the Family Court order, the West Warwick School Department is responsible for his education. Doe’s education advocate concurs with DCYF while noting that Turning the Corner did not have any authority to enroll Doe in the Providence school system. The Providence School Department contends that Doe’s enrollment in Providence was inadvertent because the district was unaware of the Family Court order. Doe’s enrollment in Providence was terminated because the enrollment was in violation of the Family Court order. Providence argues that West Warwick is responsible for Doe’s education under the McKinney-Vento Act, §16-64-5 and the Family Court order.

The West Warwick School Department contends that it is not the “school of origin” as that term is defined in the McKinney-Vento Act; that Doe is residing in Providence, which is receiving education aid for the bed he is occupying at Turning the Corner; that under established Rhode Island law the last school district of enrollment retains educational responsibility for a student until a residency determination is made; that there is no basis in Rhode Island law for an “inadvertent” enrollment; and that as a non-party to the Family Court proceeding, West Warwick is not bound by the Family Court order, particularly when it vaguely refers to “the Briggs School in West Warwick.” Accordingly, West

³ Doe’s status was further reviewed by the Family Court on February 11th.

Warwick asserts that the Providence School Department bears educational responsibility for Doe.

Discussion

We conducted an interim-order hearing in this matter because Doe, a child with a disability whose IEP has expired, is not receiving educational services. Our immediate goal in this proceeding is to determine which local education agency (LEA) is responsible for implementing Doe’s IEP at this time.⁴

We start with the fact that Doe is homeless. Section L-7-6 of Rhode Island’s Education of Homeless Children and Youth Regulations, entitled “Stay-put placement,” provides that

If a student becomes homeless during an academic year, or between academic years, the student's school of origin must—taking into account the best interests of the student—to the extent feasible, keep [the student] in the school of origin, except when doing so is contrary to the wishes of [the student's] parent or guardian."¹ The student may stay in his or her school of origin "for the remainder of the academic year, [even] if the [student] becomes permanently housed during an academic year."

* * * * *

¹See: § 722 McKinney Act. The term school of origin means "the school that the [student] attended when permanently housed or the school in which the [student] was last enrolled."

We find the Eleanor Briggs School to be “the school of origin” in this case. It was the school Doe attended when permanently housed and the school in which he was last validly enrolled. We agree with Doe’s education advocate that there was no authorization of a parental nature to enroll Doe in the Providence school system. Doe’s brief attendance at Roger Williams Middle School, at the same time the Family Court was considering his advocate’s request to remain at the Eleanor Briggs School, did not divest Doe of his school-stability rights as a homeless student.

⁴ Section L-7-11 of the Rhode Island Education of Homeless Children and Youth Regulations states that “[t]he commissioner has authority to issue interim protective orders to ensure that a homeless student is allowed to continue to attend school. [R.I.G.L.16-64-6].”

As of February 12th, however, Doe apparently cannot attend the Eleanor Briggs School. The fact that Doe may have lost ties to his “school of origin” does not mean that he also was separated from the LEA in which his permanent housing was located. Doe was enrolled in the West Warwick school district. He attended an out-of-district school by virtue of a district IEP placement. The Homeless Regulations are replete with references to “school district” responsibilities to homeless students. Under Rhode Island law, schools that comprise public school districts are not autonomous entities. Final decisions about school enrollments and student transportation are made at the district level, in accordance with district policies. In fact, the next pertinent section of the Homeless Regulations focuses on the “school district” or “LEA”:

L-7-24. Handling Enrollment Disputes. — If a dispute arises between a school district and parents or guardians over school selection or enrollment or other issues, such as transportation, the LEA must immediately enroll the child or youth in the school in which the parent or guardian seeks enrollment and immediate (sic) provide for other services, such as transportation, pending resolution of the dispute by the commissioner.

This matter clearly presents a dispute with the West Warwick school district. Although enrollment in the actual “school of origin” may not be possible at this time, the district is being asked to provide appropriate educational services to Doe. Those educational services are set forth in the IEP that the district developed for Doe. Pursuant to the IEP, West Warwick placed Doe at the Eleanor Briggs School in Warwick. The subsequent unavailability of that placement does not extinguish Doe’s “origin” rights as a homeless child or special-education rights as a child with a disability.⁵ As we recently stated, “[a]n ‘educational placement’ under the Individuals with Disabilities Act is not a place or location, but a program of services from which the child can obtain some educational benefit.”⁶ The West Warwick school district is familiar with Doe. It has his

⁵ Nor does Doe lose these rights merely by temporarily sleeping in a bed in a shelter for which another school district is receiving \$15,000 per year.

⁶ *E. Doe v. West Warwick School Department*, 011-15, September 11, 2015, footnote omitted.

records. It needs to capitalize on the continuity that is provided by the McKinney-Vento Act to quickly determine another way to provide Doe with the program of services that is set forth in his IEP and to undertake the annual review of that IEP.

Conclusion

For the reasons set forth above, the West Warwick School Department is hereby ordered on an interim basis to implement Student Doe's IEP and conduct the annual review of that IEP pending further action in this matter. Additional hearing on the merits may be requested by any party herein.

Paul E. Pontarelli
Hearing Officer

Approved: _____

Ken Wagner, Ph.D.
Commissioner

Date: February 19, 2016