

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

METROPOLITAN REGIONAL CAREER
AND TECHNICAL CENTER

v.

CHARIHO REGIONAL SCHOOL DISTRICT

Decision

Held: Students have the right to choose any RIDE-approved career preparation program in the state subject only to the three limitations set forth in Section 5.1 of the current career and technical education regulations: availability of enrollment seats, lack of transportation for programs outside the student's school transportation region, and program admission standards.

Date: April 12, 2016

Introduction

This is a request by the Metropolitan Regional Career and Technical Center (“the Met School”) that the Commissioner of Education withhold state aid from the Chariho Regional School District (“Chariho”) under R.I.G.L. 16-7-31 for the latter’s refusal to reimburse the Met School under §16-7.2-5(b) for Chariho residents attending the Met School in Providence during the 2011-12 and 2012-13 school years.

Background

Because new career and technical education regulations took effect on July 1, 2012, different regulations apply to the school years involved in the Met School’s request. Prior to full hearing on the merits of this case, the Met School filed a motion for summary judgment. On August 18, 2014, the motion was granted in part (with regard to the 2012-13 school year) and denied in part (with regard to the 2011-12 school year). The Ruling on the Motion for Summary Judgment (“the Ruling”) is attached hereto.

Chariho filed a motion for reconsideration of the Ruling with regard to the 2012-13 school year. The parties then requested leave to mediate this matter. Leave was granted and a stay of the Ruling was entered.

The mediation was not successful. On December 15, 2015, the Met School filed a memorandum in opposition to reconsideration of the Ruling with regard to the 2012-13 school year and a voluntary dismissal of its request for reimbursement for the 2011-12 school year. On January 4, 2016, Chariho submitted a reply to the Met School’s filing.

Positions of the Parties

Chariho does not object to the Met School dismissing its claim for the 2011-12 school year provided that the dismissal is with prejudice. As for the 2012-13 school year, Chariho contends that the Ruling contains errors of law because the payments sought by the Met School are not “education funding” under R.I.G.L. 16-7.2-5 and the Commissioner misinterpreted the current career and technical education regulations.

In support of its “education funding” argument, Chariho claims that the Met School does not comply with teacher certification, length of school day and coursework graduation requirements. It argues that the Met School does not provide a program which meets the definition of career and technical education. Chariho also asserts that the current career and

technical education regulations guarantee student access to programs, not particular locations. Students do not have the right to enroll in a career preparation program anywhere in the state of Rhode Island. If space is available, students are to be enrolled in local programs. The right of a student to appeal the denial of access to a program exists only for the purpose of determining whether a district program is comparable to a requested out-of-district program. The Commissioner's interpretation of the current regulations is at odds with the Council on Elementary and Secondary Education's duty under R.I.G.L. 16-60-4(14) "[t]o promote maximum efficiency and economy in the delivery of elementary and secondary educational services in the state." Finally, the Commissioner ignored the Department's own testimony before the Board of Education and subsequently-issued guidance with regard to these regulations.

The Met School asserts that the motion for reconsideration does not present any new evidence and merely advances an erroneous interpretation of the current career and technical education regulations. Since 1996, the Department of Education ("RIDE") has continuously authorized the Met School to provide its Independent Vocational Studies ("IVS") program, the only career preparation program of its kind in Rhode Island. As a RIDE-approved career preparation program, it is a program to which students shall have access pursuant to Section 5.1 of the regulations. That section provides students with access to career preparation programs "of their choice." Unlike the previous vocational regulations, the local educational agency does not have a role in choosing programs for its resident students. District approval is not required here. As clearly stated in the regulations, the right of access to approved career preparation programs is limited only by the three conditions set forth in Section 5.1, none of which apply here.

Discussion

Chariho does not object to the Met School's voluntary dismissal of its claim for payments for the 2011-12 school year.

As for the 2012-13 school year, we note that R.I.G.L. 16-45-6 authorizes the Met School to operate as a career and technical school. Costs for the education of career and technical students are to be shared by the state and the districts of residence as described in R.I.G.L. 16-7.2-5. Section(a) of that statute provides that "[t]he local share of education funding . . . shall be paid to . . . the Met Center by the district of residence of the student . . ." The IVS program offered by the Met School appears on the list of RIDE-approved career preparation programs.

In claiming that education funds under R.I.G.L. 16-7.2-5 are not involved here and that

the Met School does not provide career and technical education, Chariho is initiating a challenge to RIDE's approval of the Met School's IVS program. This is not the appropriate time or place to do so. If Chariho developed concerns about the IVS program, it needed to raise those concerns with the career and technical approval authority at RIDE in a timely fashion. The Met School followed the statutory scheme. It obtained RIDE approval for its IVS program, enrolled students in that program, and billed Chariho for the local share of education funding for its residents. The statutes are designed to provide stability with regard to student access to career preparation programs and school budgets. If a party has a concern under one of these statutes, it needs to raise the issue with the party that has the ability to resolve the issue. Otherwise, payments must be made in order to ensure student and budgetary stability. Chariho needed to bring its program-approval issue to RIDE when it arose. Instead, it raised the issue as a defense when the Met School later requested a Commissioner's hearing seeking payment of its bills. Unless previously informed of an issue, RIDE's approval of a career preparation program will be presumed to be valid in a proceeding under R.I.G.L 16-7.2-5 to collect overdue payments of local funding for career and technical educational services.

Following additional review, our interpretation of the current career and technical regulations remains the same. The program-access language in Section 5.1 is clear and unambiguous.¹ It is markedly different from the previous regulations and the position Chariho has taken in this case. It allows students to choose any RIDE-approved career preparation program in the state subject only to the three limitations set forth in Section 5.1. Those limitations do not include local availability or approval. Furthermore, "guaranteed access" to out-of-district programs is clearly envisioned by the regulations' transportation provisions. The appeal process provided for in the regulations applies to disputes relating to seat availability, transportation and admission standards. And while the Council on Elementary and Secondary Education is required to promote maximum efficiency and economy in the delivery of educational services, the current regulations integrate those considerations into an expanded education model that incorporates student and family choice as an additional influence on program options and quality.

¹ Consequently, there is no need to examine collateral material to determine its meaning.

Conclusion

The Met School's claim for payments from Chariho for the 2011-12 school year is dismissed with prejudice.

The Ruling on Summary Judgment dated August 18, 2014 is affirmed with regard to payments for the 2012-13 school year.

Paul E. Pontarelli
Hearing Officer

Approved:

Ken Wagner, Ph.D.
Commissioner of Education

Date: April 12, 2016

METROPOLITAN REGIONAL CAREER
AND TECHNICAL CENTER

v.

CHARIHO REGIONAL SCHOOL DISTRICT

Ruling on Motion for Summary Judgment

This matter concerns a request by the Metropolitan Regional Career and Technical Center (“the Met School”) that the Commissioner of Education withhold state aid from the Chariho Regional School District (“Chariho”) under R.I.G.L. 16-7-31 for the latter’s refusal to reimburse the Met School under §16-7.2-5(b) for Chariho residents attending the Met School in Providence during the 2011-12 and 2012-13 school years.¹

In furtherance of its request, the Met School filed a motion for summary judgment alleging that there are no issues of material fact in dispute in this matter and that it is entitled to judgment as a matter of law. According to the Met School, “Chariho’s obligation to pay tuition to the Met School for Chariho residents who participate in the Met School’s RIDE-approved independent vocational studies (IVS) innovation program of study is purely a question of law.”

Citing a July 7, 2011 Commissioner’s advisory opinion, the Met School argues that

Chariho residents had the right to attend the Met School under the 1990 Board of Regents Regulations Governing the Management and Operation of Area Vocational-Technical Centers in Rhode Island, which were in effect at the time [the advisory opinion] was written. Moreover, the Regulations of the Board of Regents Governing Career and Technical Education in Rhode Island that took effect in July 2012 expressly recognize that ‘[s]tudents are guaranteed access to RIDE-approved career preparation programs.’ *See §5.1(b)*. Those same regulations specifically recognize the Met School as the only RIDE-approved independent vocational studies (IV) innovation program of study in the state. *See RIDE Career and Technical Education Regulations Guidance, December 2012, Appendices, ‘RIDE Provisionally Approved Programs: March*

¹ It appears that 10 Chariho residents attended the Met School during the 2011-12 school year, and 9 attended in 2012-13.

2012;’ see also ‘RIDE Provisionally Approved CTE Center, Secondary and Charter School Programs, 2013.’ (emphasis in original).

The Met School refers to decisions of the Commissioner, most recently in *E. Doe v. East Providence School Department*, which affirm a student’s right to attend a state-approved career-technical program outside the district in which the student resides provided that the program is not available in the district.² Students have a right of access to state-approved career-technical programs under §16-45-1.1(d)(1)(I).

Chariho contends that it has not been established that Chariho students had a right to attend the Met School. Citing Section IV(c)(7) of the Board’s 1990 vocational-technical Regulations in effect for the 2011-12 school year, Chariho argues that “a student’s right to an education at a vocational-technical center was limited to ‘the center nearest to the student’s legal residence offering the program which has an opening for which he/she is qualified.’” It is not alleged that comparable career and technical programs in Chariho, Cranston, Warwick, Coventry and Newport did not have suitable openings nor is it alleged that the Met School’s own program in more-proximate Newport did not have openings.³

With regard to the 2012-13 school year, Chariho cites the provision in section 5.1 of the regulations that took effect on July 1, 2012 which states that a student has “to request, from their resident LEA [Local Education Agency], access to RIDE-approved career preparation program of their choice.” None of the students at issue herein made such a request and if they had, “it is up to the local educational agency, not the parent, to determine what program meets the student’s need.” Testimony and guidance offered by the Department of Education show that “the 2012 Regulations refer to a right to a course of study, i.e., culinary arts or automotive, not a particular location . . . the new regulations did not create a system of school choice.” According to Chariho,

In this case, had the students applied to Chariho, Chariho could have determined in the first instance whether it offered a RIDE-approved career preparation program of the student’s choice. If Chariho did not offer such a program, Chariho could then have ascertained where such a program was offered, including, but not limited to any career and technical program in the state.

² Decision No. 24-11, October 11, 2011 and Decision on Remand No. 13-12, August 27, 2012.

³ Citing *In re Joseph S.*, Chariho argues that a comparison of the programs at these schools would have to be undertaken (Decision No. 28-02, July 26, 2002).

Chariho further contends that evidence related to offerings at the Met School and the career-technical programs available throughout the state will have to be examined before Chariho can be assessed its local share of education funding under §16-7.2-5.

Section IV(C)(7) of the Board's Vocational-Technical Regulations in effect for the 2011-12 school year is as follows:

Alternate Area Center Programs

If a particular program has no openings or is not available at a student's area center, he/she shall have the right to attend the programs in the center nearest to the student's legal residence offering the program which has an opening and for which he/she is qualified. Tuition and transportation expenses must be provided by the community where the student legally resides.

Section IV(H)(6) of the Regulations states, in part, that

Whenever more students have been accepted into a specific program at an area center than there is space available, the following options will be available to students:

- A. First, students shall have the opportunity to enroll in other programs of their choice for which they are qualified at their area vocational-technical center;
- B. Second, students shall have the right to attend the program of their choice in the nearest center to the student's legal residence offering the program and which has an opening.

The Regulations quoted above refer to availability in "a particular program" or "a specific program." The program involved here, i.e., "independent vocational studies," is listed by this description on the RIDE list of provisionally-approved CTE programs.⁴ By contrast, the programs available at the Jacqueline M. Walsh School for the Performing and Visual Arts in Pawtucket, the subject of the *E. Doe v. East Providence School Department* case cited by the Met School, are listed as "Dance," "Music," "Theater" and "Visual Arts." A review of the RIDE list reveals programs described with similar specificity throughout the state. We do not find that "independent vocational studies" is a complete definition of a student's program at the Met School nor is it sufficiently specific for purposes of the Regulations cited above. Accordingly, we deny the Met School's Motion for Summary Judgment as it pertains to the 2011-12 school year and we shall reconvene the hearing to take additional evidence about each student's specific

⁴ <http://www.ride.ri.gov/StudentsFamilies/EducationPrograms/CareerTechnicalEducation.aspx>

Met School program in order to perform the comparison carried out in *In re Joseph S.*

The Met School's claim for the 2012-13 school year requires a different analysis. New Board of Education career-technical education Regulations took effect on July 1, 2012. Section 5.1, entitled "Access to Career Preparation Programs," provides the following:

All students shall have the right to request, from their resident LEA, access to a RIDE-approved career preparation program of their choice. This right of access shall be limited only by the following three conditions:

- (1) *Availability of enrollment seats:* In the event that a student requests access to a RIDE-approved career preparation program that is fully enrolled, the resident LEA shall make every effort to identify and enroll the student in another RIDE-approved preparation program of the student's choice.
- (2) *Geographic Location:* Students are guaranteed access to RIDE-approved career preparation programs. Students requesting access to RIDE-approved career preparation programs outside their established school transportation region may enroll in such programs, but the resident LEA shall not be responsible for the costs of the transportation. Students enrolled in career preparation programs between March 1, 2009 and September 1, 2012 shall maintain the transportation rights set forth under the 1991 (sic) Regulations of the Rhode Island Board of Regents Governing Career and Technical Education for the duration of their continuous enrollment in the career preparation program.
- (3) *Fair, equitable and reasonable admission standards:* LEAs operating RIDE-approved career preparation programs are authorized to set reasonable, fair, equitable, and program-appropriate admission standards in accordance with section 5.3 of these regulations.

The language in Section 5.1 is clear and unambiguous: the only limitations on a student's choice of a RIDE-approved career preparation program are enrollment availability, lack of district transportation for programs outside the student's school transportation region (if the enrollment occurs after September 1, 2012) and program admission standards. Not only is the language clear, but it represents a conscious departure from the type of access provided in Section IV of the Board's previous Regulations. The new Regulations transformed the scope and procedure of student access to career preparation programs. In taking this approach, the Board acted in total opposition to the interpretation advanced by Chariho in this matter. Effective July 1, 2012, students were permitted to choose any RIDE-approved career preparation program in the state. Their choice is not affected by the presence of in-district programs or

the preferences of their resident school districts. Students have the right to choose any RIDE-approved career preparation program in the state subject only to the three limitations set forth in Section 5.1(2) of the new Regulations.

Based on the language used in Section 5.1(2), the need for a student to request access from his or her resident LEA applies only when the student chooses a fully-enrolled program. In that instance, the student's request triggers the resident LEA's duty to find another RIDE-approved program that has available seating. The student request to the resident LEA is not a blanket requirement for enrollment in RIDE-approved preparation programs. It is necessary when the chosen program is full, but otherwise it is no more than a procedural expectation. Under the clear language of the new Regulations, a student may directly access any RIDE-approved career preparation program in the state provided there is space available, any admission standards are met and, if outside the student's transportation region, the student is able to arrange his or her own transportation.⁵ We therefore grant the Met School's Motion for Summary Judgment as it pertains to reimbursement for the 2012-13 school year and we shall order Chariho to pay its local share per §16-7.2-5.

Conclusion

The Met School's Motion for Summary Judgment is denied in part and granted in part. The Motion is denied as to payment for the 2011-12 school year and further evidentiary proceedings to compare programs will be scheduled. The Motion is granted as to payment for the 2012-13 school year and Chariho is hereby ordered to pay its local share in accordance with §16-7.2-5 for resident students who chose to attend the Met School in Providence.⁶ If such sum

⁵ Because the language of the new Regulations is clear and unambiguous, there is no need to discuss Chariho's contention that RIDE guidance and testimony at Board of Education meetings and a Commissioner's hearing suggest a contrary conclusion. If we were to consider this extrinsic evidence, we would include (1) a March 1, 2012 Department of Education news release entitled "Regents Expand Student Access to Career-Technical Education Programs," which states that "students will have greatly expanded opportunities to participate in career awareness, exploration, and preparation programs as a result of new regulations on Career and Technical Education that go into effect in July" and "[u]nder the new regulations, students will have access to any approved career-preparation program in the state, not only to those in their district of residence," and (2) the minutes of the March 11, 2013 Board of Education meeting in which the Report of the Commissioner of Education includes the statement "[t]he Career and Technical category includes new regulations approved last year, providing students access to any approved program in the state rather than just the one closest to the student's residence."

⁶ The question of student transportation rights under Section 5.1(2) of the new Regulations will be addressed in the further proceedings in this matter.

is not paid within 30 days from the date of this decision, the Commissioner will request the General Treasurer to deduct the amount from Chariho's state aid.



Paul E. Pontarelli
Hearing Officer

Approved:



Deborah A. Gist
Commissioner of Education

Date: *August 18, 2014*