

Special Education Due Process
Hearing Decision
"Parent v. Richmond"

February 14, 2000

CASE NO. #00.029

COUNSEL FOR THE PARENT: Parent represented himself

COUNSEL FOR THE SCHOOL: School represented themselves

HEARING OFFICER: Stephen Ulman

THIS HEARING WAS HELD AND THE DECISION WRITTEN PURSUANT TO TITLE 20-a @ 7207, et. seq., 20 USC, @ 1415 et.seq., AND IMPLEMENTING REGULATIONS.

On January 21, 2000 the Department of Education received a request for a Due Process Hearing. The Hearing Officer was appointed January 21, 2000.

A pre-hearing conference call was held February 2, 2000, with the mother, Special Education Director and Hearing Officer attending.

The Due Process Hearing was held February 9, 2000, at the Department of Human Services, Augusta. The Special Education Director, Superintendent, father, student and Hearing Officer were in attendance.

The formal hearing procedure did not lend itself to the parents or schools needs so the process was modified to allow statements by each participant in attendance and then questions by the Hearing Officer. The participants were then allowed to ask questions of each other through the Hearing Officer and when complete the hearing was recessed to allow time for submission of copies of IEP's and Administrative Procedure letters by the school. The hearing was closed February 14, 2000.

I. Preliminary Statement

The student moved to Maine with his father in May of 1999. PW-1 He had been living with his father for approximately two years prior to the move to Maine. PW-1 The student's parents were awarded joint legal custody by Massachusetts on 7/20/93. P-1

Upon moving to Maine in May of 1999 the student did not enroll in school because the father felt it to late in the 1998-99 school year. PW-1 Upon enrolling at Richmond in the fall of 1999, Richmond implemented the Missouri Individualized Educational Program (IEP) and moved toward developing a transitional IEP during the fall and early winter. SW-1 The school administration questioned the parental residency issue and asked the father to have the local probate court rule on the issue. SW-2 The parents provided a copy of the Massachusetts document, which Richmond did not accept because it lacked a signature by a judge. PW-1, P-1

Richmond suspended the student without services on January 3, 2000 and the student remained suspended until "stay put" was initiated on February 3, 2000. The student missed a total of 26 school days.

The parents have requested reinstatement and compensatory education for the days missed.

II. Issue for Hearing

1. Does the student have the right to attend the Richmond School system?

III. Finding of Fact and Stipulations

Facts

1. The student has been living with his natural father for about three years. PW-1
2. The student joined his father in the state of Missouri three years ago. PW-1
3. There was no legal change of residency made when the student joined his father three years ago. PW-1
4. The father and son moved to Maine in May of 1999. PW-1

1. The student first enrolled in Richmond during the fall of 1999. PW-1
 2. Upon entering the Richmond School in the fall of 1999 the IEP from Missouri was implemented. SW-1
 3. A transfer Pupil Evaluation Team Meeting (PET) was held October 4, 1999 at Richmond. SW-1
 4. The PET reconvened October 14, 1999 and developed a crisis intervention plan. SW-1
 5. The PET reconvened November 9, 1999 and asked for a Speech and Language Evaluation. SW-1
 6. The student continues to be identified as Multiply Handicapped. SW-1
 7. The school administration sometimes requires the parents to petition Probate Court to establish residency. SW-2
 8. The student missed 26 days of school because of this administrative suspension. SW-1
 9. The parents were awarded joint legal custody. P-1
 10. Parent is the father of the student. P-1
 11. The student did not enroll in the spring of 1999 because it was so close to the end of the school year. PW-1
- The parents provided the school with a copy of the Massachusetts Court document 93W0527 when requested by the school. PW-1

IV. Conclusion

1. Does the student have the right to attend the Richmond School system

Maine Special Education Regulations at 2.18 define Resident Student as follows:

A. Resident Student

A “resident student” is a student of eligible school age whose parent or legal guardian resides in the school unit.

Maine Special Education Regulations at 2.14 define parent as follows:

B. Parent

The term “parent” means a natural or adoptive parent, a guardian, a person acting as a parent of a child (such as a grandparent or step-parent with whom the child lives, or a person who is legally responsible for the child’s welfare) or a surrogate parent (see 2.29)

of a child who has been appointed in accordance with these rules. The term "parent" does not include the State or employees of a state department responsible for the education or care of a student.

A foster parent may qualify as a parent under this section if:

- C. The natural parent's authority to make educational decisions on the student's behalf has been terminated under State law;
- D. The foster parent has an ongoing, long-term parental relationship with the student;
- E. The foster parent is willing to participate in making educational decisions on the student's behalf; and
- F. The foster parent has no interest that would conflict with the interests of the student.

Maine Special Education Regulations at 4.8 defines the procedure for determining educational responsibility when there is a question.

4.8 Determination of Educational Responsibility.

Any interested person may request that the Commissioner determine which administrative unit has educational responsibility for a particular student.

All the necessary information was available to make a determination prior to January 3, 2000, and if a question remained, the issue should have been forwarded to the commissioner for determination.

Suspension was a direct violation of the student's right to a free and appropriate public education.

V. Order

The Richmond School Department will within 10 days of receipt of this order convene the PET and complete an appropriate IEP which will provide uninterrupted transition to school from the current "stay put" placement.

The administration will also work with the student and parents through the PET process to develop a plan to compensate the student for the 26 days of school missed during the suspension. This plan may include, but not be limited to: 1) tutoring during the school year, 2) tutoring during the summer vacation,

3) educational summer camp experiences, 4) other educational experiences designed by the PET. This compensatory programming must be something the parents and student agree to at the time it is designed and must be completed prior to the beginning of the 2000-2001 school year. All cost associated with this programming will be the responsibility of the Richmond School System.

Once the compensatory program has been designed and agreed to by the student and parents, a copy is to be forwarded to the Due Process Consultant at the Department of Education, so this action may be closed.

WITNESS LIST

SW-1	Joan Callahan	Special Education Director
SW-2	Denison Gallaudet	Superintendent of Schools
PW-1	Parent	Father

EXHIBIT LIST

P-1	Massachusetts Court Document #93W0527
P-2	Massachusetts Court Document #93W0527
P-3	Massachusetts Court Document #93W0527-PA1