



State of Rhode Island and Providence Plantations
DEPARTMENT OF EDUCATION
Shepard Building
255 Westminster Street
Providence, Rhode Island 02903-3400

Deborah A. Gist
Commissioner

March 18, 2014

Veronica Kot, Esq.
Rhode Island Legal Services
56 Pine Street – Suite 400
Providence, RI 02903

Timothy Groves, Esq.
Taylor Duane Barton & Gilman, LLP
10 Dorrance Street
Providence, R.I. 02903

To the Parties:

Enclosed is a copy of the signed Commissioner's decision on Remand from the Board of Education in the matter, **Student G. DOE v. Cumberland School Department**. Most of the Commissioner's decisions may be appealed to the Rhode Island Board of Education, (previously the Rhode Island Board of Regents for Elementary and Secondary Education) and we have enclosed the rules for appeal in the event they apply to your case.

Other decisions of the Commissioner, such as those issued in residency disputes and out-of-district busing matters, may be appealed to the Providence County Superior Court by filing a complaint in that Court in accordance with the Rhode Island Administrative Procedures Act. See: R.I.G.L. 16-64-6, R.I.G.L. 16-21.1-5, R.I.G.L. 42-35-15 and Rule 80 of the Superior Court Rules of Civil Procedure. This complaint must be filed with the Court within **thirty (30) days** after the mailing of this decision. This decision was mailed on 3-18-14.

Please be advised that documents filed with the Superior Court are not confidential and may be reviewed by members of the public unless a request is made to the court to protect the confidentiality of the records. Therefore, if there is information in the record of this proceeding that you wish to keep confidential, you must file a motion to seal all or part of the record with Superior Court at the time of the appeal. See: Rule 26 of the Superior Court Rules of Civil Procedure. Upon receipt of the motion to seal accompanying the appeal, the Department of Education will refrain from transmitting the material in question until the motion is ruled upon or otherwise resolved. At that time the Department will transmit all materials following the directions of the court. If no copy of a motion to seal is received by the Department along with the notice of appeal, then the entire administrative record will be filed with the Court pursuant to the Administrative Procedures Act.

Sincerely,


Vilma L. DiOrto
Legal Staff Assistant

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

Student G. DOE

Vs.

Cumberland School District

.....

DECISION

Held: On remand from the Board of Education, the Commissioner of Education has been ordered to reconsider whether the Cumberland School District has the lawful authority to charge a fee to a student for summer school programs and courses in order to earn academic credits not accrued during the regular school year. Upon reconsideration of the issue, it is determined that the charging of tuition fees for summer school programs is lawful.

DATE: March 18, 2014

Jurisdiction and Travel of the Case

This matter was the subject of a decision originally issued by the Commissioner of Education (Commissioner) upon recommendation of a hearing officer on May 21, 2013, and which involved Student G. Doe's challenge to the authority of the Cumberland School District (Cumberland) to charge a fee for a summer school program. The purpose for attending the summer school program was to provide an opportunity to accrue credits not academically earned during the regular school year. Jurisdiction was present then, as it continues to be, under R.I.G.L.16-39-1 and 16-39-2.

The student's parent seeks reimbursement in the amount of \$700.00 she paid to Cumberland to enroll the student in the summer school program. As framed by the student's complaint, the issue is limited to the legality of the fee charged for the summer program. The Commissioner had previously ordered the parties to produce evidence relative to the issue of whether the summer program was legally required for purposes of providing a free appropriate public education to a student with special educational needs.¹ In its December 9, 2013 decision, the Board of Education (the Board) held that the issue found by the Commissioner under the Individuals with Disabilities Education Act, 20 USC 51400, et seq. (the IDEA) had not been raised by the parties, and remanded the case thereby instructing the Commissioner to determine "whether a school district may charge any public school student, *irrespective of special education protections*, for tuition for summer classes." (Italics added)

On remand, the parties were provided an opportunity to appear before a different hearing officer for purposes of offering additional evidence.² Both declined, having elected to rest their cases upon the submission of supplemental written arguments.

¹ Student G. Doe was provided an individualized education program during the regular school year.

² The initial hearing of January 17, 2013, was presided over by Hearing Officer Forrest Avila, who was not available when the decision and remand by the Board of Education had been rendered. The undersigned was designated as a successor hearing officer upon remand.

Findings of Fact

Both parties through their respective counsel represent that there exists no material facts in dispute.

The Petitioner, Student G. Doe's parent, states in her supplemental memorandum that "no outstanding questions of material fact remain to be determined." Cumberland states in its supplemental memorandum that "the essential facts of this case are undisputed."³

Position of the Parties

The Petitioner

The Petitioner cites the Commissioner's advisory opinion to the Rhode Island Interscholastic League⁴ prohibiting "pay to play" fees for student participation in interscholastic athletic programs, as well as the Commissioner's decision in Sullivan v. Cumberland School District, (January 10, 2001), which resulted in the disallowance of a \$70.00 charge assessed to students being tested for admission to advanced placement courses. In addition, the Petitioner cites the 1917 nullification by the State Board of Education of a registration fee for evening school charged to students working in the industrial mills.⁵ The Petitioner further argues that waiver of the tuition fee is warranted due to the inefficiency and inadequacy of Student G. Doe's program of learning during the regular school year under his individualized education program (IEP), thereby attributing the reasons for the recommended attendance at summer school to the neglectful implementation of his IEP.⁶

³ The Board of Education in its decision notes the semblance of a "factual dispute" between the parties that emanates from their respective briefs on appeal to the Board. Specifically, the Board notes that Petitioner argued the necessity of successfully completing summer school in order to advance to the tenth grade; the School District describes summer courses as "optional". The Hearing Officer observes no inconsistency in these two statements of fact: it may be true that summer school courses are not required but rather optional for students, including those who are failing; at the same time it may also be true that unless a student remediates his or her academic deficiencies outside of the regular school year, he or she shall not be promoted to the next grade.

⁴ Opinion Letter of the Commissioner to Thomas Mezzanotte (August 5, 2009).

⁵ Rhode Island School Reports, 1917, page 21 (Report of the State Board of Education). The Board of Education decried the exacting of such a fee as an obstruction of the path to a "free public education."

⁶ Hearing Officer Avila's decision to adjudicate the merits of this matter after an evidentiary determination of the effectiveness of Student G. Doe's IEP and its implementation was likely prompted by this argument of the Petitioner. In fact, to the extent that there are grounds supportive of the Petitioner's claim, this entire

The School District

The Respondent, relying on cases decided in Montana and Georgia, argues that since summer school is optional and outside the limits of what constitutes free public education required by law, charging a fee is lawful.

Discussion

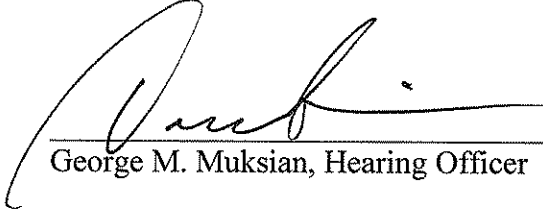
No law or regulation mandates that local educational agencies establish and implement an offering of summer programs and courses, nor is there any legal authority allowing a school district to compel its students to attend summer school. The instant case does not present the type of circumstances relied upon in argument by Student G. Doe: it does not involve Rhode Island extracurricular or interscholastic athletic programs; it does not involve the assessment of a fee similar to the testing fee for an advanced placement course offered during the regular school year; it does not concern the charging of a turn-of-the-century registration fee to allow students working in Rhode Island's industrial mills during daytime to attend school in the evening.

The summer program is at the discretion of the Cumberland School Committee and outside the scope of the regular school year, and is not subject to the standards and requirements of the BEP. In addition, it is noteworthy that the Cumberland School District does not receive state aid for the funding of the summer program. Whether to charge a fee for such optional programs is for the Cumberland School Committee to decide. To hold otherwise would invite a tangible risk of discontinuance of local school district summer educational programs, which in itself may be viewed as violative of public policy


matter is subject to resolution by means of a due process hearing under the IDEA and or a request for an extended school year (ESY) under 34 CFR 300.106 (a)(1).

Conclusion

The Cumberland School District may legally charge tuition fees for its summer programs and courses.⁷



George M. Muksian, Hearing Officer



Deborah A. Gist, Commissioner

DATE: March 18, 2014

⁷ This decision is based strictly on the facts as agreed upon by the parties. It is rendered in accordance with the directive issued upon remand by the Board of Education; namely, that a determination be made as to whether charging fees for summer school based on these facts is lawful. Accordingly, no decision is rendered relative to other circumstances, such as whether a student with an IEP has been denied a free appropriate public education during the regular school year or whether his or her inferior grades or test scores during the regular school year are the result of ineffective instruction. Factual variations in future disputes relating to the charging of fees for summer school may result in a conclusion different than that rendered in this case.