

New Hampshire Board of Education
Student/Surry School Board

SB-FY-11-09-004

Hearing Officer Report and Recommendation After Remand

I. Introduction

This matter is between the Keene School District/Board, the Surry School District/Board and the parent. The State Board remanded this matter back to the hearing officer to allow the Surry School District/Board an opportunity to present additional evidence to the hearing officer. A hearing was conducted on December 21, 2010 where Surry presented witnesses and documents as exhibits.

After hearing this additional evidence, it still seems to me that this is a situation that is not anyone's fault, that the law does not clearly address, and that the parties should seek to resolve in some fair way amongst themselves. Based on the additional evidence present, I propose the following findings of fact, rulings of law and recommendations which are modified in some ways from the original Report and Recommendation.

II. Proposed Findings of Fact

1. At the relevant time period, students residing in Surry were tuitioned to attend elementary school in the Keene School District
2. At the relevant time period, students residing in Swanzezy attended school in Swanzezy.
3. In April 2009, the parents and student resided in Swanzezy, NH. They planned on moving to Surry in the summer of 2009 before school started.
4. The parents filled out an admission packet to an elementary school in Keene for their son to attend kindergarten at the school for the 2009-2010 school year.
5. In the admission packet, the parents noted that they planned to move to Surry in the summer of 2009. They used both their Swanzezy address and their prospective Surry address of 32 Wilbur Rd., Surry, NH.
6. The 32 Wilbur Rd. house in Surry was owned by the mother of one of the parents. As part of their admission packet, the parents provided the school a letter from the mother as the landlord of the house in Surry noting that the parents were coming to the house in Surry.
7. The 32 Wilbur Rd. house in Surry was occupied by the one of the parents' siblings in April 2009. The siblings were building another house in Surry and the plan was for that other house to be finished in time for them to move out so that the parents could move in to the 32 Wilbur Rd. house before school started in August/September 2009.

8. The parents made arrangements for the student to have a babysitter at a house in Surry that was next door to the 32 Wilbur Rd. house. The student would go to the siter's house before and after school while the parents worked.
9. For health related and other various reasons, the parents' siblings were unable to move out of the 32 Wilbur Rd. house before school started as planned.
10. On August 26, 2009, the first day of school for the 2009-2010 school year, the student's mother filled out some additional paper work for the Keene School District. One form is titled "Enrollment Verification" and it lists 32 Wilbur Road, Surry, NH as their address. The address was entered into the form by computer by the school district and the parent did not correct it when she signed the form.
11. Another form filled out at the same time by the parent is titled "Affidavit of Residency" and that form has the parent's handwriting on it noting that their current address is 128 Talbot Hill Rd., Swanzey, NH and that they are moving to the 32 Wilbur Rd address. See Surry Sch. Dist. Exhibit 6.
12. The forms establish that on the first day of school, the parents filled out paperwork with the Keene school noting that they had not yet moved to Surry.
13. From August 26, 2009 to February 2010, the student attended school in Keene even though the parents continued to reside in Swanzey. The parents took the student to the baby sitter as previously planned and the student took the bus from a stop on Wilbur Rd.
14. During this time, the parents were active in the Keene school and they did not realize that they should notify the Keene School District or the Surry School District that their plans to move into Surry were delayed.
15. The parents contend that during this time, no one said anything to them about their residency and they did not realize that there were any issues or problems with their son attending the Keene School. They contend that if someone had notified them that it was an issue that they could have taken steps to move into Surry sooner or work out some other arrangements.
16. The parents and the Keene School District never discussed tuition payments when the parents enrolled the student in school. The parents and the Keene School District did not have any agreement regarding tuition payments.
17. The Keene School District never informed the parents that they needed to tell the district if they did not move into the district by a certain time or date.
18. The Keene School District never informed the parents that they would be responsible for making tuition payments if they did not move into the district by a certain time or date.
19. The parents never agreed to pay the Keene School District tuition.

20. On October 26, 2009, the Keene School District sent the Surry School district billing for students that were residing in Surry and attending school in Keene. The billing included the student at issue.
21. The Surry School Board was provided with the billing information at its November 2, 2009 meeting. The School Board discussed the billing at its November 19, 2009 meeting and the discussion included the student. Board members did not recognize the student's name and directed the Superintendent to contact that Keene School District about it.
22. The evidence provided does not include exactly when the Surry Superintendent contacted the Keene School district about the student. The Surry School Board met again on December 3, 2009 and the testimony at the hearing was that there was still no answer about the student at that time. The parents received a bill from the Keene School District around Christmas time 2009 and Surry contends that the bill resulted from its contact to the Keene School District.
23. At its January 14, 2010 meeting, the Surry School board discussed the student. One school board member had done some investigating by going out to the 32 Wilbur Road house and viewing the name on the mailbox and discovered that the student and his family were not currently living at the house.
24. The Keene School District sent a tuition bill directly to the parents around Christmas time in December 2009.
25. The parents asked the Surry School District administrators and Surry School Board for assistance, but the District/Board has declined to pay any portion of the bill.
26. The parents asked the Monadnock School District (Swanzey) for assistance since they lived in Swanzey during this time, but the school district has declined to assist with paying the bill.
27. The parents asked the Keene School District to waive all or part of the tuition bill. On August 10, 2010 the Superintendent of Keene schools sent the parents a letter denying the request stating that it was the parents' responsibility to notify the school district when they did not move.
28. The Keene School District has a policy permitting tuition waivers in cases where the Superintendent finds it appropriate for a non-resident student to attend Keene schools.
29. The policy allows for waivers on a case-by-case basis with three factors listed that the board may consider. Those factors are: 1) economic hardship, 2) the intention of the family to relocate to the district, 3) any other factor the board deems relevant.
30. The policy also states that if a waiver is made in conjunction with the purchase/occupancy of a residency and the residency is not subsequently established during the waiver period, tuition will be charged retroactive to the first day of school. However, in this case, there was not a required timeline for the parents to move into the district.

31. Until the state board proceeding, the parents were not provided with the Keene School Districts' policy regarding tuition waivers.
32. The Surry School District does not have any policies regarding tuition waivers.
33. The parent moved into Surry in February 2010. The Surry School District has paid for the student's tuition to attend Keene Schools since that time.
34. The tuition bill that Keene sent to the parents is in the amount of \$6,300.36 for 111 school days.

III. Proposed Rulings of Law

1. RSA 193:4 governs district liability for elementary tuition for pupils that are residents of the district, but here the issue involves a non-resident student.
2. RSA 193:12 states that a student shall not attend school in any district in which the student is not a resident without the consent of the district or of the school board. In this case, the Keene School District consented to the student attending Keene schools even though he was not a resident with the understanding that the student would become a resident.
3. School districts may enter into tuition agreements with non-resident students. Here though, there was not a non-resident agreement between the Keene School District and the parent, nor was there an agreement between the Surry school district and the parent.
4. Other than RSA 194:3-a which does not apply to this situation, New Hampshire statutes do not address whether a school district can bill parents for tuition absent some agreement between the parents and the school district.
5. RSA 21-N:11 permits the New Hampshire Board of Education to hear appeals and issue decisions regarding any dispute between individuals and school systems. This dispute involves the parents' request to have the Keene School District waive part or all of a tuition bill the district sent to the parents.

IV. Discussion and Recommendation

This case still appears to be one of those situations where no one is to blame for what happened and where the law does not provide a clear answer. The student's residency simply slipped through the cracks of the process that the Keene and Surry School Districts have in place. The system that these school districts have established allowed the student to attend school in Keene without any notification to the Surry School Board until late October/early November. Once it was aware of it, Surry took action by contacting Keene, but that appeared to be sometime in December. Again because of the system that these districts have in place, the result was that it was late December until the two school districts were able to figure things out. The problem could have been avoided if Keene provided a listing of enrolled Surry students to Surry near the beginning of the school year.

After reviewing the evidence and the live testimony of the parent at both hearings, it does not appear to me that the parents intentionally gamed the system or tried to take advantage of either school district. Rather, they notified the Keene school in all of the paperwork that they submitted that they were not yet living in Surry and that they were planning to move to Surry. This paperwork includes the residency affidavit that they filled out on the first day of school that says that they had not yet moved to Surry.

The parents genuinely thought that since they disclosed this information that there was not any problem as long as they continued to make efforts to move into the district as soon as possible, which they contend they did. The parents always intended to move to Surry and did in fact move to Surry in February 2010. The tuition bill at issue is for September 2009 - January 2010.

The Keene School District never informed the parents that if they were not in the district by a certain time that they should notify the district. The Keene School District never informed the parents that the parents would have to pay a certain sum of money if they did not move into the school district by a certain date or timeframe. The parents never agreed to pay any tuition amounts to the Keene School District.

The Surry School Board contends that the under RSA 193:12, the burden of residency falls on the parent and that the school is not required to take any actions. As noted in my proposed rulings of law, RSA 193:12 states "Notwithstanding any other provision of law, no person shall attend school, or send a pupil to the school, in any district of which the pupil is not a legal resident, **without the consent of the district or of the school board...**" Here, the Keene School District consented to the student's attendance when it allowed the student to attend school knowing that the student did not reside in Surry.

Thus, the issue appears to be what steps these school districts can now take against the parent for tuition payments after Keene originally consented to the student's attendance without being a resident of Surry and without establishing any limits on how long the student could attend.

Additionally, RSA 193:12 does not say anything about parents being required to pay tuition to attend a school if they are found to be not be residents. Rather, it would seem that the remedy for unintentionally violating the law would be that the student could no longer attend the school, not that the parent would have to pay some tuition amount that they were never informed of.

As I stated in the initial recommendation, the parents have indicated that they are willing to accept some responsibility for what happened and make some financial payment, but that the full amount is simply more than they can afford and more than they feel is fair for them to pay given the circumstances.

The Surry School Board has declined to make any payment and feels that it should not have to pay any amount because it did not do anything wrong and took action as soon as it was aware of the student. The evidence at the second hearing did establish that they took action when they found out about the student.

The Superintendent for the Keene School District has denied the parents request for a waiver.

I still recommend that since all of the parties had some role in creating this circumstance, that the parties share in remedying the situation. The evidence presented at the second hearing established that Surry seems to have had less of a role since it did not know about the issue until November and took action when it found out about the student. As a result, it should pay something less than the other parties.

The bill is for \$6,300.36. I recommend that the Surry School District pay \$1,100, the Keene School District waive \$2,600.18 of the bill, and the parents pay \$2,600.18 of the bill.

My finding is not based on Surry (or anyone else) doing anything wrong, or not taking action it should have taken when it received the bill regarding the student. It is based on trying to find resolution to a situation that occurred because of the system that the school districts have in place and where the law does not provide a clear answer.

I also recommend that the parents be permitted to pay their amount in six equal monthly payments, or come to some other payment arrangements with the Keene School District so that they do not have to make on lump sum payment that they cannot afford.

Alternatively, another way to look at it would be for the State Board to find that the Keene School district waived the residency requirements for the student when it allowed the student to attend Keene schools knowing that the student was not yet living in Surry. By doing so, the Keene School District consented to the non-resident student attending the Keene school under RSA 193:12. As part of the consent, Keene did not set any time limits for the parents to move into the district. Keene did not have the parents enter into any form of tuition agreement, nor notify them that they would owe tuition if they did not move into the district by a certain time.

Under this approach, since Keene did not set any time limits on the waiver period, nor have any tuition agreement with the parent, the parent would not be obligated to pay tuition. The matter of any unpaid tuition would be between the Surry and Keene school districts. The question would be if the Surry School District is obligated to pay the Keene School District any of the claimed tuition given that the student did not reside in Surry at the time and that Keene waived the residency requirements for the student without Surry's knowledge.

I would recommend that the Board find that this dispute between the districts be resolved by the districts' tuition agreement. The tuition agreement does not address that specific situation, but it does have a process for resolving disputes between the districts that requires the Superintendents for Keene and Surry to try and resolve disputes. If that is not successful, the matter goes to the Keene School Board, and after that any dissatisfied party may appeal to the State Board. See Surry School District Exhibit 7.

Date

12/13/10


Scott F Johnson
Hearing Officer