

New Hampshire Board of Education
Student/Farmington Sch. District

SB-FY-11-12-010

Hearing Officer Report and Recommendation

I. Overview

This case involves a high school student who attended Belmont High School in the Shaker Regional School District. His parents are divorced. The student lived with his mother in Belmont. In the spring of 2010, the student decided that he wanted to live with his father in Farmington. While living with his father, he continued to attend the Belmont High School during the rest of that school year and for the beginning of the of the 2010/2011 school year while the parents went through a custody dispute in court. Once custody was legally determined to be with his father, the Shaker Regional School District notified the father and student that the student could continue to attend Belmont High School as a non-resident tuition student. The tuition amount due for the remainder of the 2010/2011 school year is \$8,271.20. The father cannot afford the tuition and believes it is in his son's best interest to finish high school at Belmont, so he asked the Farmington School Board to pay the tuition. The 2010/2011 school year is the student's junior year. The Farmington School Board denied the request and the father appeals the Board's decision.

II. Proposed Findings of Fact

1. The student has attended school in Belmont since pre-K.
2. The student's parents are divorced.
3. The student's mother lived in Belmont and the student previously lived with his mother.
4. In the spring of 2010 during the student's sophomore year at Belmont High School, he decided to live with his father.
5. The student's father lives in Farmington.
6. With the permission of school officials in Belmont and the Shaker Regional School District, the student continued to attend Belmont High School while living with his father because the student's custody was still legally with his mother.
7. The student's father sought to change legal custody through the court system.
8. The student began his junior year (the 2010/2011 school year) attending Belmont High School since the student's legal custody and not yet been changed to his father.
9. In November 2010, the student's custody legally changed to be with his father.

10. Once the student's custody legally changed to his father, the Shaker Regional School district notified the father and student that the student could continue at Belmont High School as a non-resident, tuition student. The pro-rated tuition amount to finish the school year was \$8,271.20.
 11. The father cannot afford to pay the tuition.
 12. The student's mother no longer lives in Belmont.
 13. The father asked the Farmington School Board to pay the tuition amount to Shaker Regional so that his son could remain at Belmont High School.
 14. The father believes that it is in his son's best interest to finish school in Belmont since he has attended school in Belmont since pre-K, and since he only has this year and one more year to go before he graduates.
 15. The Farmington school Board denied the father's request.
 16. At the hearing before the hearing officer, the Farmington Superintendent testified that the Board denied the request to pay the tuition for financial reasons and that the High School in Farmington could meet the student's needs. The Board was also concerned with the precedent it would set if it granted the request.
 17. Shaker Regional School District allowed the student to finish the first semester at Belmont High School while the parent was seeking funds from Farmington. As of the December break, the student has not attended Belmont High School or Farmington. He is taking a couple of courses online through VLACS.

III. Proposed Rulings of Law

1. RSA 193:3(I) permits parents to seek to have their child assigned to another school or school district if attendance at the school where the student is assigned is a manifest educational hardship.
2. State regulations, Ed 320.01, note that a local school board shall issue a finding of manifest educational hardship if it determines that there is clear and convincing evidence that:
 - (1) A substantial portion of a pupil's academic, physical, personal and social needs cannot be met by the assigned school or are not found within the student body of the assigned school;
 - (2) The assigned school's failure to meet the pupil's needs will impair the educational progress of the pupil; and
 - (3) Another public school, either within the district or in another district, may reasonably meet the pupil's educational needs.
3. RSA 193:3(III) permits school districts to assign students to attend schools in other districts. It states:

...
III. (a) Each school board shall establish a change of school assignment policy, based on the best interest of the pupil, authorizing the superintendent to re-assign a pupil from the public school to which he or she is currently assigned to another public school, or to approve a request from another superintendent to accept a transfer of a pupil from a school district that is not part of the school administrative unit, provided that the following conditions are met:

- (1) The pupil's parent or legal guardian petitions the superintendent for a change of school assignment or consents to the superintendent's recommendation for such a change; and
- (2) The superintendent determines that such a change would be in the pupil's best interest; and
- (3) The total reassignments or transfers in any one school year shall not exceed one percent of the average daily membership in residence of a school district, or 5 percent of the average daily membership in residence of any single school, whichever is greater.

...

(d) A pupil reassigned under this paragraph shall be counted in the average daily membership in residence of the pupil's resident school district. The pupil's resident district shall forward any tuition payment due to the district to which the pupil was reassigned.

(e) The superintendents involved in the reassignment of a pupil shall jointly establish a tuition rate for each such pupil. Notwithstanding any law to the contrary, some or all of the tuition may be waived by the superintendent of the receiving district for the good cause shown or pursuant to school board policy of the receiving district. The cost of transportation shall be the responsibility of the parent or legal guardian.

4. Under RSA 193:3(III), the decision of the superintendent is final. The state board does not have the authority to review the decision. RSA 193:3(III)(h).

IV. Discussion

The parent asked the Board to review the Farmington School Board's decision to decline to pay the tuition charged by the Shaker Regional School district for his son to continue to attend Belmont High School. The parent argues that his son should be an "assigned" student under RSA 193:3. The parent does not specify if he is seeking that assignment under a manifest educational hardship, or under the reassignment provision in Section III of the statute.

In the hearing before me, the school district construed the parent's request as a manifest educational hardship case and the school district made arguments in a post hearing memo to me to that effect. The school district argues that the parent did not establish that the requirements in Ed 320.01 were met by the parent.

However, it does not appear that the local school board or the superintendent interpreted the parent's request as one of educational hardship when they denied the request for tuition. It does not appear that the superintendent and local board considered the factors for educational hardship noted in state law and in required local policies in its decision. Rather, the board denied the request due to financial reasons and because it was concerned about the precedent it could set.

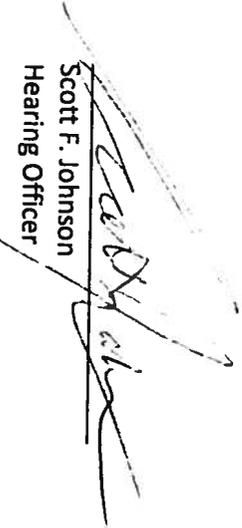
Similarly, it does not appear as if the process for assigning a student under RSA 193:3(III) was followed at the local level. In that process, the parent would petition the superintendent for a change of assignment and the superintendent would make the decision based on the local school district policy on the issue.

V. Recommendation

As a result, I recommend that the State Board remand this matter back to the local level to allow the local school board to make a determination about manifest educational hardship based on the requirements in RSA 193:3, Ed 320, and in the local school district policy required by law. If the parent is dissatisfied with the result, he can appeal that decision to the State Board.

Remand would also permit the parent to petition the superintendent for reassignment under RSA 193:3(III). The superintendent's decision on that issue would not be reviewable by the State Board.

2/13/11
Date


Scott F. Johnson
Hearing Officer