

ITEM: Will the State Board overturn the decision of the Montpelier-Roxbury School District Board of School Commissioners and order the payment of tuition for student J.N.?

SECRETARY'S RECOMMENDED ACTION:

- 1. That the State Board decline to order payment of tuition, because the request is not within the State Board's jurisdiction.**

STATUTORY AUTHORITY: 16 V.S.A. § 828

BACKGROUND INFORMATION:

This appeal comes to the State Board on the request of Roxbury residents Duane and Rachel Natvig. They request that the State Board overturn the June 6, 2018 decision of the Montpelier-Roxbury School District Board of School Commissioners denying payment of tuition for the Natvigs' minor child J.N. The District Board's decision was based on its own interpretation of the District's voter-approved Articles of Agreement.

I. Montpelier-Roxbury Articles of Agreement

The District Board determined that J.N. did not qualify for tuition payment under a grandfathering provision of the new unified district's Articles of Agreement. That provision extends tuition payment for Roxbury students who, prior to merger, were attending their school of choice on a tuition basis in grades 7-12. Post-unification, non-grandfathered 7-12 grade resident students of the Montpelier-Roxbury School District will attend the district's middle and high schools in Montpelier.

The question of interpretation raised in this appeal relates to the meaning of "enrolled" within Article 4(d): "Roxbury students who were enrolled as of May 1, 2017, in grades 7-12 in a school system other than Montpelier may choose to complete their education in that school/school district with tuition paid for by the Unified District beginning in the 2018-19 school year."

J.N. was a resident student of the Roxbury School District before the district merged to create the Montpelier-Roxbury School District. During the 2017-2018 school year, J.N. was in seventh grade at the Lake Champlain Waldorf School, an approved independent school. During the 2016-2017 school year, J.N. was enrolled in sixth grade in the Lake Champlain Waldorf School; on May 1, 2017 J.N. was a sixth grade student.

Mr. and Mrs. Natvig asserted that J.N. was enrolled in seventh grade at Lake Champlain Waldorf effective upon completion of paperwork relating to J.N.'s seventh grade attendance at the school. This paperwork was filled out in March 2017, while J.N. was in sixth grade. The District Board disagreed with the Natvigs.

II. Tuition Payment

Generally, tuition payment is not available to students who live in a district operating a school for the grade the student attends. In a limited exception to the general rule, there are two tuition statutes that allow a student to request payment of tuition in certain circumstances, which are grade-dependent. Elementary education is defined as the first six grades; secondary education or high school is defined as grades 7-12. 16 V.S.A. § 11.

For elementary students, 16 V.S.A. § 821(c) provides that tuition may be paid if, in the judgment of the local school board, geographic considerations would make education in another public elementary school more convenient. The appeal in § 821(c) is to the Secretary of Education, whose decision is final.

Secondary students may request tuition under 16 V.S.A. § 822(c) and the school board may grant tuition payment in certain circumstances.¹ For tuition to an approved independent school, such as the Lake Champlain Waldorf School, the local school board may consider whether the tuition payment is warranted by unique educational needs that cannot be served within the district or at a nearby public school. Under § 822(c) the decision of the local school board is final.

A third and catchall provision is 16 V.S.A. § 828. That section states, in relevant part, “[u]nless otherwise provided, a person who is aggrieved by a decision of a school board relating to eligibility for tuition payments, the amount of tuition payable, or the school he or she may attend, may appeal to the State Board and its decision shall be final.”

III. State Board Authority

Duane and Rachel Natvig request the State Board to overturn the decision of the Montpelier-Roxbury School District Board of School Commissioners and order the payment of tuition for J.N. The request is based on, in the words of the petition, the State Board’s “umbrella responsibility to enforce in its quasi judicial capacity rule of practice by a lower board.” Petition at ¶ 4. The Natvigs ask that the State Board rule the local school board’s interpretation of its own Articles of Agreement regarding the definition of “enrolled” to be invalid.

The State Board does not have general authority to review decisions of local school district boards, absent statutory direction. The State Board is created by statute to exercise specific authorities delineated in 16 V.S.A. § 164. It is a statewide education policy body; local school district boards are municipal bodies. The State Board lacks judicial authority to interpret a union school district’s articles of agreement, just as it would lack authority to interpret a constitutional provision or a state or federal law.

¹ For tuition to a public high school, the local school board may consider whether the tuition payment is in the best interest of students. This statute works in concert with 16 V.S.A. 822a (public high school choice).

Mr. and Mrs. Natvig request the State Board to consider their appeal under § 828. They do not, in their petition, make an argument related to the secondary tuition statute, § 822(c). That section, as stated above, requires consideration of unique educational needs that cannot be served within the district or at a nearby public school. It is not clear on the record whether the Montpelier-Roxbury School District Board of School Commissioners considered § 822 in their June 6, 2018 decision. Setting aside the absence of such an argument in the appeal, the State Board should not rule under § 822(c) because that section does not provide a right of appeal to the State Board of Education.

Mr. and Mrs. Natvig invoke the authority of the State Board under § 828 to review a decision of a local board “relating to eligibility for tuition payments.” The State Board should decline to rule on this as a § 828 appeal for two reasons. First, the requested application of § 828 is not appropriate here, based on direction in the statute itself. § 828 states that it is available as a remedy “unless otherwise provided.” Other provision for secondary tuition claims is expressly made, however, in § 822(c), where the statute dictates that the local district board’s decision shall be final.

Second, while the Natvigs argue that their appeal relates to “eligibility for tuition payments,” and is proper for consideration under § 828, the outcome of the appeal could be determined only through interpretation of the grandfathering provision in the Articles. As stated above, the State Board should refrain from engaging in judicial interpretation of voter-approved articles of agreement.

The appropriate venue for the parties to obtain a ruling interpreting the grandfathering provision is the civil courts system. The Natvigs are permitted to challenge a final school district action in superior court. V.R.C.P. 74.

STAFF AVAILABLE:

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