

VERMONT STATE BOARD OF EDUCATION
In Re: L.J. Tuition Reimbursement Appeal

STATE BOARD OF EDUCATION'S FINDINGS OF FACT, CONCLUSIONS OF LAW,
and ORDER

INTRODUCTION

The above-captioned matter is an appeal pursuant to 16 V.S.A. § 828, brought by the parent of minor child L.J., following the denial by the Taconic and Green Regional School District (the "District") of parent's request that the District pay L.J.'s tuition to attend an independent school in New Brunswick, Canada.

A hearing was conducted by the Vermont State Board of Education by and through a hearing officer designated by the SBE, pursuant to the Vermont State Board of Education Manual of Rules and Practices, Series 1200, and in accordance with 3 V.S.A. Chapter 25. Following the hearing and upon due consideration of the evidence presented, the State Board of Education hereby issues the following findings, conclusions, and disposition.

FINDINGS OF FACT

The following facts are established by the record:

L.J. is the minor child of James Jones. L.J. is a high school student. Mr. Jones has requested that the District pay tuition for L.J. to attend high school at Fredericton Christian Academy ("FCA") located in New Brunswick, Canada. FCA is not a public school.

Under Canadian law, education is governed by the law of the respective provinces. Specifically, in New Brunswick, the provisions of the New Brunswick Education Act govern and are administered by and through the Province's Ministry of the Department of Education and Early Childhood Development (the "Ministry"). Under New Brunswick law, children who are New Brunswick residents are required to attend a public school *unless* the Ministry approves an exception to that requirement. Non-public schools (here, interchangeably called "independent schools" or "private schools") exist and are not required to receive any affirmative government approval in order to operate, nor is any such approval available. Rather, under New Brunswick law, approval is given to students, on a case-by-case basis, to attend a private school rather than a public school. When evaluating students' requests for approval to attend an independent school, the Ministry considers whether the proposed independent school would provide effective instruction, as indicated by factors such as the percentage of graduates



proceeding to post-secondary education, whether the independent school follows the New Brunswick public school curriculum, whether the independent school follows the public school calendar, and whether the independent school has robust extracurricular programs like sports. These factors are considered by the Ministry based on the personal knowledge of the Ministry personnel, without a formal review or audit procedure. Although the Ministry does not approve all student requests for exemptions from the public school requirement, as a practical matter, the Ministry has always approved such requests in cases where the proposed independent school is FCA.

New Brunswick law does not require foreign students to comply with public school attendance requirements and therefore does not require or approve exemptions from those requirements for foreign students.

Graduates of New Brunswick public schools receive diplomas from the Province of Brunswick, while Graduates of FCA receive diplomas from FCA, not from the Province of New Brunswick. Graduates of FCA can and often do move on to post-secondary education in New Brunswick along with their public-school educated peers.

DISCUSSION

Mr. Jones's request for tuition was denied by the District on two grounds:

"[FCA is] not an approved school with the New Brunswick Department of Education in Canada.

[FCA is] not an accredited school with the Canadian Association of Independent Schools (CAIS)." See Appellant's Exhibit 4; email of Celeste Keel dated July 14, 2022.

The record does not provide information sufficient to make findings about the Canadian Association of Independent Schools, and therefore we focus on the remaining stated basis for denial, that FCS is "not an approved school with the New Brunswick Department of Education in Canada."

16 V.S.A. § 828 provides, in pertinent part, that:

"A school district shall not pay the tuition of a student except to a public school, an approved independent school, an independent school meeting education quality standards, a tutorial program approved by the State Board, an approved education program, or an independent school in another state or country approved under the laws of that state or country..."

As a preliminary matter, we note that among the several circumstances enumerated in 16 V.S.A. § 828 which would not preclude the District from paying L.J.'s tuition at FCA, only one is at issue here: "*an independent school in another state or country approved under the laws of that state or country.*" The other likely-seeming candidates ("*approved independent school, an independent school meeting education quality standards, ... [or] an approved education program*") are subject to specific definitions in 16 V.S.A. § 11 making them not relevant to FCA.



It is not disputed that FCA is an “independent school” in another country. This case turns, then, on whether FCA is “approved under the laws of” its state or country.

The Vermont Legislature did not define what it meant for a school to be “approved under the laws of that state or country”. Other portions of the statute dealing with independent schools *in Vermont* provide an elaborate framework for approval, incorporating by reference the intricately-engineered 16 V.S.A. §166 and the Vermont administrative Rules that flow therefrom.

In contrast, under the laws of New Brunswick, the relevant approval for independent schooling is by student, and not by school, and there is no process available for an independent school to seek an affirmative blanket “approval” of that school.

At a bare minimum, the Vermont statute requires an *approval* (as in, an express, formal, affirmative act) of the independent *school* in question. New Brunswick’s student-by-student system affords no such approval for independent schools.

A reading of the Vermont statute’s plain language that requires an express approval of the school itself (and not merely recognition or acquiescence, or approval of students’ requests to attend) compels a conclusion that no independent school in New Brunswick is eligible for tuition under Section 828. This is not inconsistent with the manifest intent of the legislature. We presume that by requiring “approval”, the legislature intended there to be some element of oversight of the independent school in question. While New Brunswick allows its students to attend certain independent schools if they wish, the record does not reflect oversight of those schools, by the government or otherwise. In fact, the record is clear that granting waivers for students from the public school attendance mandate does *not* involve an audit of the proposed independent school.

In an email dated September 21, 2022 (See Appellant’s Exhibit 3) Monica LeBlanc, a representative of the Ministry, concluded that “FCA is approved by the New Brunswick Department of Education”, which Ms. LeBlanc clarified in a subsequent email to mean “approved, in that the Minister will grant exemptions for the students attending this independent school.” However, Ms. LeBlanc explained, “[t]here is no formal approval process for schools in New Brunswick, nor are they regulated by the Province in any way.” See District’s Exhibit A; specifically, email of Monica LeBlanc dated November 30, 2022.

At the Hearing, Ms. LeBlanc testified that, “we give the students an exemption from public school attendance to attend [FCA], so while we aren’t approving the school or regulating the school in any way, we do approve kids to go there.” See Hearing recording at 1:47.04.

We recognize that an interpretation of the statute requiring strict compliance with the requirement that the *school* be approved will yield the result that, not only does FCA not qualify, but no independent school in New Brunswick will qualify. We don’t find that to be contrary to the manifest intent of the Legislature as reflected by the statute. The common thread of each enumerated circumstance in Section 828 appears to be an



assurance of formal oversight of independent schools as a requisite for receiving Vermont's tuition dollars. New Brunswick's system does not provide for such formal oversight of its independent schools.

If the Legislature determines that schools like FCA, operating under laws like New Brunswick's, should be eligible for Vermont school-choice tuition, we encourage a revision of the statute to provide a workable pathway.

CONCLUSIONS OF LAW

16 V.S.A. § 828 prohibits a school district from paying the tuition for Vermont students to attend independent schools, except in certain exceptions contained therein. In this case, the District may pay tuition to attend FCA only if it is "approved under the laws of" the Province of New Brunswick. Because New Brunswick does not have a system of approving independent schools, and their student-by-student system does not provide the oversight implicated by 16 V.S.A. Section 828's requirement that the *school* be *approved*, the District correctly denied the request for tuition to attend FCA.

DECISION

The District's denial of L.J.'s tuition request is AFFIRMED.

Approved and entered by the Vermont State Board of Education this 14th day of April, 2023.

STATE BOARD OF EDUCATION



By: Jennifer Deck Samuelson, Chair
Duly authorized representative

Concurring: Gleason, Kolbe, Jepson, Lovett,
Lucci, and O'Farrell

AVAILABILITY OF APPEAL

Parties should consult their own independent counsel as to the availability, if any, of routes of appeal of this Decision. Reference is made, without limitation and without representations of any kind, to Vermont Rule of Civil Procedure 75. See also, e.g., Campbell v. Manchester Bd. of School Directors, 565 A.2d 1318, 152 Vt. 643 (Vt. 1989).

