

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JANE L. DOE

vs.

LINCOLN
SCHOOL COMMITTEE

and

CRANSTON
SCHOOL COMMITTEE

D E C I S I O N

January 4, 1991

This matter was heard on October 22, 1990 upon an appeal to the Commissioner of Education by Mr. and Mrs. Doe. The appeal was requested under §16-64-6 (residency determination). The undersigned Hearing Officer, under appointment by the Commissioner, provided due notice to all parties of interest. Both parties were represented by counsel, witnesses were sworn, testimony taken and evidence presented.

In this case the issue is essentially payment of educational costs. The law, §16-7-20, provides a mechanism by which disputes over the education of pupils are resolved by assignment of local education responsibilities for program provision, payment and reimbursement.

Findings of Fact

The facts as they relate to the student are as follows:

1. Jane L. Doe is a 16 year old handicapped student.
2. There is a due process hearing, under the handicapped legislation, being held between the parents and the Lincoln School Committee.
3. In the fall of 1989 the student went to Bradley Hospital, placed by her parents.
4. On February 26, 1990 the student was discharged from Bradley Hospital to Maplewood House, a residential facility located in Cranston, Rhode Island, a placement again arranged by her parents.
5. The Lincoln School Department played a continuing role in planning her education while at Bradley Hospital and continued that involvement while she was at Maplewood House.
6. The student was at Maplewood House in Cranston from February 26, 1990 to September 10, 1990 and attended St. Mary's Day School in

North Providence under an IEP prepared by the Cranston School Department and agreed to by the Lincoln School Department.

7. The student returned to Maplewood House on September 16 and returned to Bradley Hospital on September 23 where she remains at this time.
8. On October 10, 1990 Maplewood House discharged Jane L. Doe from its program.
9. Throughout this time her parents have retained custody and they are residents of Lincoln, Rhode Island.

The facts, as they relate to Maplewood House, are as follows:

1. Maplewood House is a facility managed by Mental Health Services of Cranston, Johnston and Northwestern, Rhode Island. (MHS)
2. This private facility is funded (100%) by the Rhode Island Department for Children and Their Families. (DCF)
3. Maplewood House has several restrictions or controls on its funding and operations which weigh specifically upon this case:
 - (a) DCF approved the funding concept of a community-based intervention program. It would provide a program which was community-based and add to the community's diversionary opportunities available and perhaps, if successful, avert the necessity of state-level programming. (Tr.p. 32).
 - (b) The intake of Maplewood House is controlled by DCF. It approves all admissions and has a periodic review and approval system of the treatment plan.

- (c) The adolescents who are taken in are under contract from DCF to MHS.

INTAKE PROVISIONS (Paragraph 15 #4)

In its capacity as a Child Placing Agency, the DEPARTMENT (DCF) shall execute the placement of each youth into the PROVIDER'S (MHS) program described in the agreement. . . . All youth accepted into the program will either be in the custody or legal guardianship of the DEPARTMENT, or would be in its custody or legal guardianship if the youth was not placed in the PROVIDER'S program. (Emphasis added).

The Law in this Case

§16-64-1. Residency of children for school purposes.- Except as otherwise provided by law or by agreement a child shall be enrolled in the school system of the town wherein he or she resides. A child shall be deemed to be a resident of the town where his or her parents reside. If the child's parents reside in different towns the child shall be deemed to be a resident of the town in which the parent having actual custody of the child resides. In cases where a child has no living parents, has been abandoned by his or her parents, or when parents are unable to care for their child on account of parental illness or family break-up, the child shall be deemed to be a resident of the town where the child lives with his or her legal guardian, natural guardian, or other person acting in loco parentis to the child. An emancipated minor shall be deemed to be a resident of the town wherein he or she lives. Children placed in group homes, in foster care, in child caring facilities, or by a Rhode Island state agency or a Rhode Island licensed child-placing agency shall be deemed to be residents of the town where the group home, child caring facility, or foster home is located, and this town shall be reimbursed or the child's education be paid for in accordance with §16-7-20. In all other cases a child's residence shall be determined in accordance with the applicable rules of the common law. Where a child is a resident in a dwelling which lies in more than one municipality, the parent(s) or guardian shall choose which school district the child shall attend without payment of costs as tuition. (Emphasis added).

§16-64-6. Disputes over residency - Determination Proceedings. - When a school district or a state agency charged with educating children denies that it is responsible for educating a child on the grounds that the child is not a resident of the school district or that the child is not the educational responsibility of the state agency, the dispute shall, on the motion of any party to the dispute, be resolved by the commissioner of elementary and secondary education or the commissioner's designee who shall hold a hearing and determine the issue. At any hearing, all parties in interest shall have the right to a notice of the hearing and an opportunity to present evidence and argument on their own behalf. A hearing under §16-39-2 shall not be a prerequisite to a hearing under this section. The commissioner of education shall have power to issue such interim orders pending a hearing as may be needed to insure that a child receives education during the pendency of any matter. Interim orders and all final orders shall be enforceable in the superior court for Providence County at the request of the interested party and shall be subject to review in the superior court in accordance with the Rhode Island Administrative Procedures Act, §42-35-1 et seq.

Chapter 126 of the Public Laws of 1989, Amended, G.L. 16-8-20 to read as follows:

§16-7-20. Determination of state's share [Effective until July 1, 1990.]

. . . and provided further, that all other exceptional children, except those children receiving care and treatment in accordance with chapter 7 of title 40.1 who are placed, assigned, or otherwise accommodated for residence by a Rhode Island state agency in a state-operated or supported community residence licensed by any Rhode Island state agency shall have the cost of their public school education paid for by the city or town wherein the child's residence as determined by §16-64-1 had been established immediately prior to the child's entry into the state-operated or supported community residence. The cost of the child's education shall be paid to the town where the child's group home or community residence is located and the town making the payment shall be reimbursed by the state in the same manner as previously described in this section, except in the case of handicapped children who are appointed

state beneficiaries under chapter 25 of this title, in which case the reimbursement shall be in the manner described in §16-24-6. The city or town or state agency responsible for payment shall be responsible for the special education and related services including all procedural safeguards, evaluation, and instruction in accordance with regulations under chapter 24 of this title.

The law further provides that after July 1, 1990 the following language shall prevail:

§16-7-20. Determination of state's share [Effective 7/1/90.]
. . .and provided further, that all other school-age children. . .who are placed, assigned, or otherwise accommodated for residency by a Rhode Island state agency in a state-operated or supported community residence licensed by any Rhode Island state agency shall have the cost of their public school education paid for by the city or town wherein the child's residence as determined by §16-64-1 had been established immediately prior to the child's entry into the state-operated or supported community residence. The cost of the child's education shall be paid to the town where the child's group home or community residence is located and the town making the payment shall be reimbursed by the state in the same manner as previously described in this section, . . . Children . . .who are placed, assigned or otherwise accommodated for residency by the department for children and their families in a state-operated or supported community residence licensed by a Rhode Island state agency shall have the cost of their education paid by the department for children and their families. The city or town or state agency responsible for payment shall be responsible for the special education and related services including all procedural safeguards, evaluation, and instruction in accordance with regulations under chapter 24.

In 1989, §16-7-16, Definitions. [Effective July 1, 1990.] was amended by Public Laws 1989, Chapter 126, Article 39 as follows:

The following words and phrases used in §§16-7-15 to 16-7-34, inclusive shall have the following meanings:

(1)"Department for children and their families" shall mean that department created pursuant to title 42, chapter 72. For purposes of this section §§16-7-20, 16-24-2 and 42-72-5(b)(22), "children" means those children, except those children receiving care and treatment in accordance with title 40.1, chapter 7, who are placed, assigned or otherwise accommodated for

for residence by the department for children and their families in a state-operated or supported community residence licensed by a Rhode Island state agency and said residence operates an education program approved by the department of education.

In view of the facts and the law, we find as follows:

Jane L. Doe, the student, is a resident of Cranston for school purposes. She was accommodated by DCF (a Rhode Island state agency) in a residence funded completely by DCF with covenants sufficient to make our determination that the residence - - although managed by a community group, controlled by DCF - - is a state-supported community residence. Under §16-64-1 Cranston is to be reimbursed for the child's education in accordance with §16-7-20.

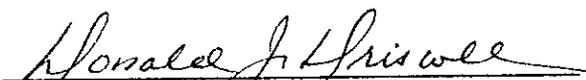
To determine reimbursement Section 16-7-20 has to be read in its entirety as amended. Because of the time span in this case, it is our finding that the Town of Lincoln is responsible for reimbursing Cranston for the cost of the student's education between February 26, 1990 and June 30, 1990 inclusive. The parents are and have been residents of Lincoln. Clearly, the student's residence had been established in Lincoln immediately prior to the entry of the child into the state-supported community residence.

Further, the Town of Lincoln is responsible for the education costs after July 1, 1990. While the amendment effective July 1, 1990 of §16-7-20 appears to place the responsibility for payment of educational costs on DCF, when read in concert with the definitional amendment (§16-7-16(1)) effective July 1, 1990, it is clear that the definition makes DCF responsible for payment only when the "residence operates an educational pro-

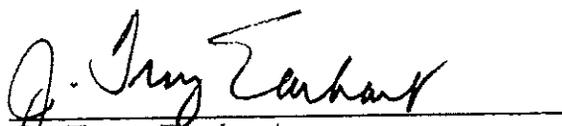
gram approved by the Department of Education."(Emphasis added).

Mental Health Services and Maplewood House do not operate an educational program. In the case of this student, she attended a private school away from the residence which was operated by another entity.

This decision also affirms the responsibility of the Town of Lincoln to continue the due process hearing underway. We do, indeed, urge that given the needs of this child all diligence be applied to resolve that process.


Donald J. Driscoll
Hearing Officer

Approved: January 4, 1991


Troy Earhart
Commissioner of Education