



## Introduction

This matter concerns a request by the Department of Children, Youth and Families (DCYF) for a determination of the residency of student Doe in order to identify which Rhode Island local education agency is to be involved in the funding and planning of the student's education.<sup>1</sup>

For the reasons set forth below, we find that Rhode Island law does not make any Rhode Island city or town responsible for student Doe's education at his current placement in a Massachusetts facility.

## Background

Student Doe has been in the care and custody of DCYF since June 1989.<sup>2</sup> His mother resided in Pawtucket prior to his entry into DCYF custody. DCYF placed student Doe in numerous residential arrangements in several cities and towns during the next 3 years.

On October 8, 1992, student Doe was admitted to St. Vincent's Home, a residential treatment center and special education facility located in Fall River, Massachusetts. This placement was made by DCYF with the approval of the Rhode Island Family Court. Student Doe was placed in a Massachusetts facility because of a lack of available space in appropriate Rhode Island programs. In November 1992 an individualized educational plan (IEP) was developed for student Doe by DCYF, his educational advocate, and St. Vincent's

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1 This request was assigned to the undersigned hearing officer and heard on December 11, 1992, February 22, 1993, and September 16, 1993. The record closed on October 5, 1993.

2 At that time student Doe's mother voluntarily agreed to place him in DCYF care. The Family Court subsequently granted a petition filed by DCYF committing student Doe to DCYF custody.

personnel.<sup>3</sup> DCYF has funded the St. Vincent's placement since  
October 1992.<sup>4</sup>

Student Doe has been identified as an "emotionally disturbed child" and therefore is eligible for DCYF's Mental Health Services for Children and Youth program (M.H.S.C.Y.) established pursuant to R.I.G.L. 40.1-7. Student Doe is not receiving care and treatment in the M.H.S.C.Y. program, however, because the program's funding appropriation has been exhausted.

St. Vincent's Home is licensed by the Commonwealth of Massachusetts. Its on-site special education facility is approved by the Massachusetts Department of Education.<sup>5</sup> St. Vincent's is not licensed by any Rhode Island state agency nor is its educational program approved by the Rhode Island Department of Education.

#### Positions of the Parties

DCYF contends that this is a novel issue of law not governed by any statute or precedent. DCYF argues that prior cases finding DCYF financially responsible for educating children in "closed" facilities are not applicable because residents of St. Vincent's have access to

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- 3 Although the first line of the IEP states "SCHOOL DISTRICT: Pawtucket," [DCYF Exhibit 3], Pawtucket was not involved in the IEP process nor was any evidence presented showing that Pawtucket was invited to participate.
  - 4 An October 5, 1992 letter from DCYF to St. Vincent's states that DCYF "agrees to pay for the care and treatment of [student Doe] at St. Vincent's Home" at a specified annual rate, and that "Funding will begin on his date of admission and continue until the date of his discharge." [DCYF Exhibit 3]. DCYF and St. Vincent's do not have a general agreement concerning the placement of children at the Home.
  - 5 Some residents of St. Vincent's, primarily those living in the facility's two group homes, attend Fall River public schools.

Fall River public schools, and the Home therefore is not a "closed" facility.<sup>6</sup> Because St. Vincent's is located in Massachusetts, it is not operated, supported, or licensed by the state of Rhode Island, nor is it approved by the Rhode Island Department of Education. Thus, R.I.G.L. 16-7-16 and 16-7-20 do not apply. Moreover, the Commissioner has no authority to order Fall River to pay for student Doe's education pursuant to R.I.G.L. 16-64-1. According to DCYF, the "catch-all" provision of R.I.G.L. 16-64-1 applies and, under the common law, the city or town where student Doe was residing at the time he came into DCYF care, i.e., Pawtucket, should be financially responsible for his education. DCYF maintains that fairness and equity compel this result.

The Pawtucket School Committee contends that fairness and equity demand that DCYF pay for student Doe's education because DCYF unilaterally placed the student in an out-of-state facility not licensed or approved by the state of Rhode Island. The School Committee argues that St. Vincent's is not covered by R.I.G.L. 16-7-20 and that, under the circumstances, DCYF should continue to be financially responsible for the action it has taken. It further asserts that the record shows that student Doe lived in Woonsocket immediately prior to his placement at St. Vincent's.<sup>7</sup>

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6 See In re Children Residing at St. Aloysius Home, 556 A.2d 552 (R.I. 1989).

7 Although Woonsocket received notice of this matter, the parties requested a determination of the issue of whether DCYF is solely responsible for providing educational services to student Doe. The record therefore has not been fully developed with regard to the places and times of student Doe's residence prior to his entrance into DCYF custody and placement at St. Vincent's.

## Discussion

R.I.G.L. 42-72-15(0) provides that

Every child placed in the care of the department for children and their families shall be entitled to a free appropriate education, in accordance with state and federal law. Immediately upon the assumption of that care, the department shall provide for the enrollment of each such child in a school program. During the time that such child shall remain in that care, the department and appropriate state and local education agencies shall coordinate their efforts in order to provide for the timely initiation and continuation of educational services.

R.I.G.L. 16-64-1, entitled "Residency of children for school purposes," states in pertinent part that

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. . . 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 Sec. 16-7-20. In all other cases a child's residence shall be determined in accordance with the applicable rules of the common law.

R.I.G.L. 16-7-16(1) defines "Department for children and their families" as that department created pursuant to R.I.G.L. 42-72.

It further provides that

For purposes of this section, Sections 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 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 educational program approved by the department of education.

R.I.G.L. 16-7-20(a) states in pertinent part that

all other school-age 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 shall have the cost of their public school education paid for by the city or town wherein the child's residence as determined by Sec. 16-64-1 had been established immediately prior to the child's entry into the state-operated or supported community residence. . . 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 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.

R.I.G.L. 40.1-7-7 provides for a community contribution to DCYF for educational services rendered to emotionally disturbed children under this statute.

In view of the circumstances of this case, we find that neither of the provisions of R.I.G.L. 16-7-20(a) quoted above is dispositive of the issue before us. We base this finding on the following facts: (1) student Doe is not receiving care and treatment at St. Vincent's pursuant to the M.H.S.C.Y. program under R.I.G.L. 40.1-7 ; (2) St. Vincent's, a Massachusetts child-caring facility, is not licensed by any Rhode Island state agency; (3) St. Vincent's educational program is not approved by the Rhode Island Department of Education; and (4) student Doe is not attending public school. Consequently, R.I.G.L. 16-7-20(a) does not specify who is to pay the cost of student Doe's education at St. Vincent's.

R.I.G.L. 16-64-1 also fails to support DCYF's claim in this matter. That statute states that children placed in child-caring facilities or by a Rhode Island state agency are deemed to be residents of the town where where the child-caring facility is located. Although it appears that this portion of R.I.G.L. 16-64-1 assumes that the "town" would be one located in the state of Rhode Island, the evidence in the record nevertheless shows that student Doe currently is a resident of Fall River, Massachusetts.

As mentioned previously, student Doe is in the custody and care of DCYF, not his mother. An educational advocate has been appointed for him. Student Doe is physically present in Fall River with no present intention of leaving. He did not take up residency in Fall River solely for the purpose of attending public school there. The conclusion we reach under the common law is therefore consistent with the "deeming" provision of R.I.G.L. 16-64-1 referred to above: student Doe is a resident of Fall River, the site of the child-caring facility in which he was placed by DCYF. Fall River, being a Massachusetts city, is not obligated by Rhode Island law to provide educational services to student Doe.

We realize that this matter is in a statutory vacuum by virtue of the fact that DCYF, because of student Doe's special needs and the lack of available space in appropriate Rhode Island programs, had to place the child in an out-of-state facility. The record clearly shows that DCYF made this placement with the child's best interests in mind. We do not believe that anyone could quarrel with DCYF's reasons for placing student Doe at St. Vincent's. However, the fact remains that DCYF placed student Doe in an out-of-state

facility and agreed to pay for his care and treatment there without contacting the school district it believed is financially responsible for the child's education. As a result, the dispute over the financial liability for student Doe's education did not arise until after the placement, and no opportunity to discuss and possibly resolve this issue during the time that the child's placement was being considered ever existed.

Our review of the pertinent statutes shows that, while student Doe is entitled to a free appropriate education, the cost of his education at St. Vincent's Home is not the responsibility of any Rhode Island city or town. We have no basis to interpret the specific language of R.I.G.L. 16-7-20(a) as requiring Pawtucket or any other Rhode Island school district to pay for student Doe's education at St. Vincent's. Our application of R.I.G.L. 16-64-1 shows that student Doe is a resident of Fall River, Massachusetts, over which we have no jurisdiction or authority. Consequently, DCYF is responsible for providing student Doe with an appropriate education at St. Vincent's pursuant to R.I.G.L. 42-72-15(0) and federal regulations.<sup>8</sup>

Therefore, turning to the issue which we have been asked to decide, we hold that, in the circumstances of this case, no Rhode

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<sup>8</sup> Regulations promulgated pursuant to the Individuals with Disabilities Education Act (formerly known as the Education for All Handicapped Children Act) state that one of the purposes of 34 C.F.R. Part 300 is "To insure that all handicapped children have available to them a free appropriate public education which includes special education and related services to meet their unique needs." (Part 300.1) Part 300.2 further provides that "Each public agency in the State is responsible for insuring that the rights and protections under this part are given to children referred to or placed in private schools and facilities by that public agency."

Island city or town is required under Rhode Island law to provide or fund educational services for student Doe at St. Vincent's Home.

Conclusion

Rhode Island law does not hold Pawtucket or any other Rhode Island city or town responsible for providing educational services to student Doe following his placement by DCYF in a Massachusetts child-caring facility. DCYF must continue to provide student Doe with an appropriate education during his stay at the Massachusetts facility.

*Paul E. Pontarelli*

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Paul E. Pontarelli  
Hearing Officer

Approved:

*Peter McWalters*

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Peter McWalters  
Commissioner of Education

Date: July 11, 1994