

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

AND

PROVIDENCE PLANTATIONS

IN RE RESIDENCY OF JOHN B.V.DOE

DECISION

Held: Student Doe is a resident of Jamestown for school enrollment purposes since he resides in a group home located there. The Providence School Department must pay for the cost of Student Doe's education in accordance with R.I.G.L. 16-7-20, since Student Doe's parents reside in the City of Providence.

Date: October 31, 1996

Travel of the Case

Student Doe who has been in the custody of the Department of Children, Youth and Families (DCYF) since 1983 is presently twenty (20) years old. In April of 1994 he moved from the New England Center for Autism, in Massachusetts, to a group home located in Jamestown, Rhode Island.

The issue of Student Doe's residency for school purposes was not raised until February 1, 1995 when a casework supervisor for the Department of Mental Health, Retardation and Hospitals (MHRH) wrote a letter to the Department of Education. MHRH alleged that DCYF had assumed ongoing responsibility for the cost of Student Doe's educational program, and continued to do so, despite the apparent involvement of at least two local school districts. The letter raised no issue with respect to the adequacy of Student Doe's educational program, nor did it imply that Student Doe was being denied special education services.

Since the letter clearly raised a question with regard to MHRH's standing to appeal the issue of financial responsibility for Student Doe's educational program, clarification was requested on the nature of the dispute, the parties and remedy sought on behalf of MHRH. This request was made on February 14, 1995. Several weeks passed during which follow up calls were made and a second written request for clarification was sent to MHRH on May 2, 1995. Thereafter on June 6, 1995 MHRH filed a "Motion for

Determination of Residency and Financial Responsibility", clarifying the nature of the dispute. The Motion indicated that Student Doe was eligible for a special education program "but this had not been provided to him because of the dispute over which school district is responsible for providing and paying for his special education program". (Motion of MHRH dated June 6, 1995).

The nature of the issue at that time broadened from funding to the provision of a special education program for this student. In scheduling the matter attempts were made to determine if Student Doe's educational advocate could secure legal representation. The matter was scheduled and continued for this purpose, as well as the reason of unavailability of counsel. The continuance of the November 28, 1995 hearing was conditioned on agreement by the Jamestown School Committee to plan for and provide student Doe's special education program pending a hearing.¹ An IEP was drawn up and services provided to Student Doe at that time.

The matter was finally heard on February 9, 1996, with all parties, including Student Doe, represented by counsel. The travel of this case illustrates the difficulty of ensuring that timely initiation and continuation of educational services to children in DCYF custody takes place, as required by R.I.G.L. 42-72-15.

¹This was undertaken with the proviso that Jamestown did not thereby waive its argument that it had no educational responsibility to Student Doe.

Findings of Relevant Facts

- Student Doe is presently twenty (20) years old and resides in a group home in Jamestown, Rhode Island. He has lived there since April of 1994. Tr. p. 10.
- Student Doe has a disability which makes him eligible for special education services. Tr. p. 18.
- Student Doe has been in DCYF custody since 1983, when he was removed from the home of his parents in Providence, Rhode Island. He will remain in DCYF custody until age twenty-one (21). Tr. pp. 9-14.
- MHRH provides services to adults with developmental disabilities and will become responsible for meeting Student Doe's residential and other needs when he attains age twenty-one (21). Tr. pp. 48-49, 51-52.
- From 1983 until April of 1994 Student Doe resided at the New England Center for Autism, a residential facility located in Massachusetts.²
- Pursuant to an interagency agreement DCYF refers a child to MHRH at age nineteen (19) for transitional residential planning, when it is anticipated that MHRH will become responsible for the care of such individual when he or she turns twenty-one (21). Tr. p. 27.
- Student Doe was referred to MHRH for residential planning/placement pursuant to the above-described agreement. Tr. p. 27.
- In April of 1994 a residential placement became available for Student Doe at a group home in Jamestown. The group home was operated by Bridges, Inc. (under contract with MHRH) and had both a day and residential program which would meet Student Doe's needs. Tr. pp. 28-29.
- On or about April 4, 1994 a joint decision was made by DCYF and MHRH to move Student Doe from NECA in Massachusetts to the group home in Jamestown, R.I. Tr. pp. 28, 30.
- As part of the agreement between DCYF and MHRH, DCYF funds Student Doe's placement at the group home. Tr. p. 30.

²We believe the DCYF social worker's testimony at page 10, that Student Doe was at Bradley Hospital from 1983 until November of 1993, to be a "slip of the tongue". Other testimony, as well as the memoranda, confirm that he lived at NECA from 1983 until April 1994.

- Residential placement in the state of Rhode Island enables DCYF (and ultimately MHRH) to benefit from a federal match of funds which reduces the ultimate cost to the state. If his placement were out-of-state, the federal match is not available. Tr. pp. 30-31.
- Student Doe attends a day program operated at the group home in accordance with his individualized education program(IEP). Tr. pp. 32, 46, 47.

Position of the Parties

Educational Advocate

Counsel argues that DCYF exercised its statutory authority and responsibility here to secure an appropriate residential placement for Student Doe. His return to the state of Rhode Island and Jamestown in particular was not an educational placement³, but rather a step to take advantage of an opening at a group home. At some later point in time, an appropriate placement which would meet Student Doe's special needs might not be available in the state of Rhode Island.

Since he resides in a group home in Jamestown, this student is entitled to enroll in the Jamestown School System, pursuant to R.I.G.L. 16-64-1. However, given the severity of Student Doe's disabilities, "enrollment" does not mean attending the local school. For him, it involves the district's taking responsibility for assuring that his

³Which is the position taken by counsel for the Jamestown School Committee and Providence School Board. They argue that such a unilateral decision on the part of the state without utilizing the IEP process or even consulting the local school district, prevents either DCYF or MHRH from shifting any liability to them with respect to Student Doe's education.

IEP is up to date and that any necessary support services, such as transportation or recreation, are in place.

Counsel argues that since Student Doe's parents live in Providence, R.I.G.L. 16-7-20 places financial responsibility for the costs of the educational component of his program with the City of Providence. This entity also has oversight responsibility to ensure that special education and related services are provided in accordance with state law. The fact that Student Doe has not resided in the City of Providence for several years, nor had any contact with his parents, does not relieve Providence of this obligation.

MHRH

Student Doe remains in the custody of DCYF despite the fact that he has been accommodated for residence in a group home operated by an MHRH-provider. DCYF reimburses MHRH for the entire cost of the program at the group home, minus the federal match. This situation creates no duty on the part of MHRH to be responsible for Student Doe's education.⁴ State law imposes no obligations on MHRH until Student Doe attains twenty-one (21), counsel argues.

Providence School Board

Counsel for the School Board argues that DCYF and/or MHRH cannot claim that Providence is responsible for Student Doe's education simply because Providence was the residence of this child's parents. He notes that the child has had no

⁴Except we would assume, that as the contracting entity MHRH must ascertain that the services contracted for are provided.

contact with his parents over the past thirteen (13) years and, for practical as well as legal purposes, these two state agencies have acted in loco parentis.

Additionally, Student Doe's removal from the New England Center for Autism and placement in the group home in Jamestown were steps taken without consultation with either Providence or Jamestown. The Providence School Department characterizes his removal from the residential facility and placement in the group home as a unilateral change in placement, accomplished without compliance with applicable procedures required by state regulations. If Providence is to be charged with the cost of the educational component of Student Doe's program, counsel argues that it should have participated in this decision. The failure of DCYF and MHRH to follow required procedures in changing Student Doe's placement operates to estop them from invoking the residency statute to shift the cost of the educational program to Providence.

Lastly, the Providence School Board argues that Student Doe's parents have abandoned him, and therefore R.I.G.L. 16-64-1 does not apply. Therefore the provisions of Section 16-7-20 which are incorporated by reference in 16-64-1 and which would operate to shift the educational cost to Providence are also inapplicable.

Jamestown School Committee

Counsel for the School Committee argues that educational responsibility for this student rests with

either DCYF or, in the alternative, the City of Providence. The School Committee cites R.I.G.L. 16-7-20⁵ as the basis for its position.

In addition to this statutory citation, counsel argues that the record is:

"devoid of any evidence from which this hearing officer can conclude that (Student Doe) has been placed in a group home which is not a closed facility".

Counsel directs us to the Rhode Island Supreme Court's ruling in In Re Children Residing at St. Aloysius Home, 556 A.2d 552 (R.I. 1989), wherein the Court stated that the community in which the group residence is located retains educational responsibility only if the facility was not "closed". Counsel argues that evidence the group home is a closed facility is contained in the testimony that the program meets Student Doe's needs twenty-four (24) hours a day. Since this student is in a closed facility, under both Section 16-24-13 of the General Laws, and the court decision in St. Aloysius Home, counsel argues that DCYF remains responsible for Student Doe's education.

Assuming, arguendo, that the group home is not a closed facility, Jamestown argues that Providence is responsible for Student Doe's education, as the city in which Student Doe resided at the time he entered state care. Until his placement at the group home, Student Doe clearly had no connection to the town of Jamestown. The law therefore does

⁵Prior to its 1995 amendment.

not impose any obligation on Jamestown -- either programmatical or financial -- with respect to this student's educational program.

Decision

This is a case in which we are required to determine which state and/or local agencies are responsible for Student Doe's education. Before applying state law to the facts to make such determination, the Providence School Board asks that we consider its argument that the residency law should not be applied in this case. It argues that DCYF/MHRH are estopped from invoking state law since the Providence School Department was not consulted or involved in the placement decision. The School Board views this student's move from the out of state facility⁶ to an in-state group home as a unilateral change of placement, outside of the IEP process. Therefore, the School Board argues, no claim for reimbursement should be entertained by the Commissioner.

On the record created in this case, we are unable to make a determination of whether Student Doe's move to the group home from a residential facility constituted a change in his educational placement. The case presented here documents that the primary reason for his removal from the New England Center for Autism was to meet his ongoing needs for residential care in an appropriate and cost efficient

⁶Where for several years Providence was relieved of the cost of the educational program under state law. See DCYF v. Pawtucket School Committee, decision of the Commissioner dated July 11, 1994.

manner. It was not motivated by DCYF's or any other entity's decision to change his educational program.

We do not have Student Doe's present or previous Individualized Education Program in evidence, nor any details concerning the nature of his educational program while at the Massachusetts facility. We do not have in evidence the IEP provided to him at the group home. While it is certainly possible that the change in Student Doe's residence also operated as a change in his educational placement, we do not have sufficient facts in the record to make this finding.⁷

Even if the record supported a finding that Student Doe has had a change in his educational placement, it is not clear that the law would confer standing on Providence, or Jamestown, to object to this change. The basis of the objection raised by Providence is not the inappropriateness of Student Doe's present program, but the fact that he now resides in state, a situation which no longer relieves the School Board of funding and oversight responsibilities. It would be against public policy to permit a school district to raise this simply to avoid the legal consequences of a student's change in residence. None of the parties has questioned the appropriateness of the present individualized education program.

⁷We have ruled that placement at an out-of-state residential facility for purposes of psychiatric treatment also operated as an educational placement, even though the placement was not motivated by educational needs and not made by an educational agency pursuant to the IEP process.

Here, the testimony demonstrates that given the lack of involvement of Student Doe's parents for over a decade, they were not notified prior to his move to the group home in Jamestown. His duly-appointed special education advocate fully supports his relocation, noting that DCYF must make such decision based on the fact that there are a limited number of residential openings which will meet Student Doe's needs. Given that this Student's educational advocate does not raise the issue of possible non-compliance with procedures that may have been required prior to Student Doe's move to Jamestown, it would be inappropriate to permit Providence or Jamestown to do so.

Applying state law to the facts here we find that the provisions of 16-64-1 make Student Doe a resident of the Town of Jamestown for school enrollment purposes. R.I.G.L. 16-64-1 states:

...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.

Thus, for school enrollment purposes, this Student is a resident of the Town of Jamestown.

Referring to the relevant provisions of R.I.G.L. 16-7-20, as amended by the General Assembly in 1995:

...all other school-age children, except those children receiving care and treatment in accordance with chapter 7 of Title 40.1, who are placed in group homes, child caring facilities, independent living accommodations, supervised apartments or other community facility by a Rhode Island state agency or a Rhode Island licensed child-placing agency shall have the cost of their education paid for by the city or town in which the child's parent(s) or guardian live as determined by Section 16-64-1.

Unrebutted on the record is the fact that this Student's parents reside in the City of Providence. Thus, the City of Providence is responsible for funding the educational component of Student Doe's program. The Providence School Board is also responsible to oversee the delivery of special education services, and compliance with all procedural safeguards by virtue of Section 16-7-20's provision that:

the city or town or state agency responsible for payment shall be responsible for the special education and related services

We will respond briefly to the Jamestown School Committee's argument that DCYF is responsible for Student Doe's education. First, there is no evidence that the group home is a closed facility. On the contrary, the record would suggest that some residents leave the group home to receive off-site services (Tr. p. 32). Under present law, however, the issue of DCYF responsibility is not resolved simply by a determination of whether the residential facility is open or closed. Because of the 1989 amendments

to Section 16-7-20⁸ (Chapter 126 Article 39 of the Public Laws of 1989, effective July 1, 1990) the analysis of financial responsibility for children who are placed by DCYF in a community residence centers on whether the children are 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. 16-7-16(1).

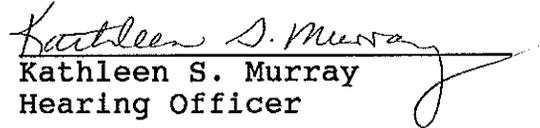
See also Jane L. Doe vs. Lincoln School Committee and Cranston School Committee, decision of the Commissioner dated January 4, 1991 citing Section 16-7-20, and 16-7-16 (1) as amended by P.L. 1989. The record does not establish that the group home is a community residence which, although open, meets the specific requirements established by Section 16-7-20 and 16-7-16 (1). Thus, our residency law does not make DCYF responsible for this student's educational program, as contended by the Jamestown School Committee.

Per the foregoing analysis, both the Jamestown School Committee and Providence School Board are responsible for developing and providing Student Doe with a special education program under federal and state law. Financial responsibility rests with the City of Providence, which must oversee the provision of services to this Student.

We are confident that any lapse in the provision of required services because of this dispute will be addressed

⁸Passed in response to the court's decision in the St. Aloysius Home case.

by Student Doe's educational advocate along with the local educational agencies identified in this decision.


Kathleen S. Murray
Hearing Officer

Approved:



Peter McWalters
Commissioner

Date: October 31, 1996