

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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IN RE RESIDENCY OF JANE A.Q DOE  
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DECISION

Held: Student is the  
educational responsibility of  
Newport.

DATE: DECEMBER 3, 1996

A school residency reimbursement case involving a student, a local school district, and DCYF is analogous to the classical "three body problem" in celestial mechanics. In the end, in most cases, no solution is possible. "Chaos theory" provides the only vehicle for dealing with problems of this nature, but chaos theory can only provide insight, and gives no predicative certainty. The profound complexity inherent to most of these cases is the result of the law which governs the field, along with the difficulty, or perhaps impossibility, of gaining exact information about the alleged "determinative" facts of any particular case. Still, we must decide the case before us. We therefore must go where d'Alambert and Poincare feared to tread.

The child in this case was placed for "social work" reasons by the Department for Children, Youth, and their Families in the Bennington School in Bennington, Vermont. DCYF is seeking an order which would direct Newport to assume financial responsibility for the educational component of this child's program at the Bennington School. It also seeks to require Newport to continue to supervise the student's education. DCYF bases its claim on G.L. 16-7-20 which will be discussed below.

The law divides the State of Rhode Island into a checker board of 39 separate towns and cities. It further specifies that when a state agency places a child in a "child caring facility", the town where the child's parents are presently residing is responsible for paying to the town

where the child is now going to school the cost of the child's education. The town where the child's parents are presently living is also supposed to be responsible for preparing the child's Individual Education Program and any due process proceeding resulting from this program if the child is a special education student. The law states at R.I.G.L. 16-7-20 in pertinent part:

"...and provided further, 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 in group homes, child caring facilities, independent living accommodations, supervised apartments or other community residencies, or other residential 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. The cost of the child's education shall be paid to the town where the child's group home, child caring facility, independent living accommodation, supervised apartment or community residence, or other residential facility is located..."(bold print indicates amended language)

Now in the normal case there is immense controversy about where in Rhode Island's 39 communities the child's parents are presently living, assuming that they are living in Rhode Island at all. Indeed controversy even developed about who a child's parents are, since frequently a child has been living with an aunt, grandparents, or someone else acting as a parent before the child came into the custody of DCYF. Of course at any given time there may be changes in

custody which compound the complexity present. Indeed reflection will cause the realization that if, in fact, a child had two parents in a stable household in a particular community, it would be unlikely for the child to have come into the custody of DCYF. In fact we are dealing with a population, which for various reasons, transits through a number of communities. These movements are not well defined or documented. We are fortunate however that in this particular case, we find a unique exception to the rule. For once mirabile dictu, all parties agree that the parent of the child concerned is now living in Newport. No other Rhode Island community is alleged to be involved in this matter in any way. The case would therefore appear to be simple. Unfortunately, reimbursement residency law is never simple.

As the attorney for Newport points out, that part of R.I.G.L. 16-7-20 which has been quoted above does not deal with the situation we are confronted with. The law in R.I.G.L. 16-7-20 deals with a situation where DCYF has placed a child in a child caring facility and the child attends the public school of the town (presumably a Rhode Island town) where the child caring facility is located. In this case we are dealing with, the child has been placed by DCYF in a private residential facility located in Vermont. The student attends the private school located on the grounds of the residential facility. There is no "town"(R.I.G.L. 16-7-20) providing education to this

student. Under the law it is only "towns" which, are entitled to receive reimbursement.

We note for the sake of completeness that this particular placement is not covered by R.I.G.L. 16-24-13, which would require DCYF to provide for this child's education if the facility was a "closed" facility located in Rhode Island.

We also point out that G.L. 40.1-7-1, et seq. (Services for Emotionally Disturbed Children) which provides for school districts to pay a per pupil special education cost for students placed through this particular program, is not applicable here. This is because all parties agree that this child was not placed through this program.

In fact, this placement came about as a normal DCYF placement. That is to say it was made for "social work" reasons rather than "special education" reasons. Therefore, quite properly, no special education rules were followed in making this placement.

In sum then, there is no specific statute which addresses the problem we are dealing with. Still, we are of the opinion that DCYF "Social Work Funds" should be used for "social work" purposes, and that educational funds should be used for educational purposes. Under Rhode Island Law(G.L. 16-60-6), the Commissioner of Education has the authority:

To be responsible for the coordination of the various elementary and secondary educational functions among the educational agencies of the state including local school districts and to

encourage and to assist in the cooperation among them so that maximum efficiency and economy may be achieved.

Moreover, to the extent that this student is arguably a special education student, the Special Education Regulations of the Board of Regents state (One, Sec. III):

III. Establishment of Special Education Programs.

1.0 Responsibility. The school committee of each school district shall establish within its school district the special education required by these regulations and/or it shall provide for the free education of all resident students with disabilities either through these programs or in other special education programs approved by the Rhode Island Commissioner of Elementary and Secondary Education. (Whenever a responsibility is placed on a school district by these regulations, it shall be the responsibility of the school committee to carry out these regulations.)

2.0 Unusual Situations not specifically provided for in these regulations will be evaluated by the Rhode Island Commissioner of Elementary and Secondary Education who shall prescribe a program designed to meet the needs of each individual case.

We conclude that under the Commissioner's authority to coordinate educational functions and along with the Commissioner's authority to deal with special education cases not specifically provided for is sufficient authority for us to rule that the educational cost of the program for this child, who is a resident of Newport for school purposes, must be paid for by Newport. G.L. 16-64-1. Newport is also required to provide supervision of this student's education program.

Our conclusion on this point is strengthened by the "prime directive" of Rhode Island Special Education Law(G.L. 16-24-1) which reads as follows:

16-24-1 Duty of school committee to provide special education.- In any city or town where there is a child within the age range as designated by the regulations of the state board of regents for elementary and secondary education, who is either mentally handicapped to such an extent that normal educational growth and development is prevented, the school committee of the city or town shall provide the type of special education that will best satisfy the needs of the handicapped child, as recommended and approved by the state board of regents for elementary and secondary education in accordance with its regulations.

In the present case it is also clear that under R.I.G.L. 16-64-1 this child is a resident of Newport for school purposes. We therefore cannot go far wrong by requiring Newport to provide for this student's education in accordance with R.I.G.L. 16-24-1 and R.I.G.L. 16-64-1.

While our solution to this conundrum is perhaps less than elegant we hope it will suffice to keep this student on the correct trajectory. After all, even NASA finds simple perturbation theory adequate to get astronauts back from the moon. Vermont is a lot closer then that.

#### CONCLUSION

Newport is to pay the educational cost for this child's placement and is to supervise this child's educational placement.

*Forrest L. Avila*

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Forrest L. Avila  
Hearing Officer

Approved:

*Peter McWalters*

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Peter McWalters  
Commissioner

Date: December 3, 1996