

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER
OF EDUCATION

BURRILLVILLE

V.

PAWTUCKET

DECISION

Held: The sum of \$35,956.52 will be paid over to Burrillville for the cost of educating certain children. This matter will be scheduled at a later date for a full hearing on the merits.

DATE: April 30, 1999

Background

In the present case we will avoid the temptation to recount a long tale about our extensive travels and travails in search of the “will o the wisp” known as “residency for reimbursement purposes.” It will suffice to say that under Rhode Island law it is parental residency, in one way or another, which determines which community must reimburse another community for the cost of educating non-resident children living in group homes operated or funded by the Department for Children and their Families (DCYF). (G.L. 16-64-1.2, quondam G.L. 16-7-20) The residency of parents who have lost custody of their children to DCYF has, for many understandable reasons, an evanescent “fleeting” quality which is often difficult to reify to the satisfaction of school districts and their attorneys who are contesting responsibility for reimbursement. The upshot of all this has been that many reimbursement bills have gone unpaid. To remedy this situation the General Assembly, in 1998, passed a law to clarify the law for reimbursement cases by providing that the Family Court and DCYF may make a designation of parental residency which constitutes prima facie evidence of residency in hearings conducted by the Commissioner of Education. The law states at G.L. 16-64-1.1(c):

(c) The designation of a city or town pursuant to subsection (a) or (b) shall constitute prima facie evidence of parents’ residence in the city or town and/or the city or town’s financial responsibility for the child’s education as provided in § 16-64-1.1. Pending any final decision under § 16-64-6 that a different city, town or agency bears such financial responsibility, the commissioner shall be authorized to order the general treasurer to deduct the amount owed from the designated community’s school aid and to pay such amount to the community or state agency which has incurred the educational costs.

(emphasis added)

What this law is saying is that the commissioner should take at least interim action based upon prima facie evidence in cases concerning residency for reimbursement purposes. G.L. 16-64-1.1(c) The obvious purpose of this law is to ensure that those school districts which are in fact educating children in group homes get the funds they need to provide this education. This policy promotes acceptance of group homes and helps ensure the legislative policy that children in the care of the state receive a free appropriate public education. G.L. 42-72.4-1 Since G.L. 16-64-1.1(c) is remedial and procedural in nature we believe that it is immediately effective and applicable to all cases now pending before the commissioner. We can leave to another day the substantive question of whether G.L. 16-64-1.1(a) and (b) are retroactive in effect or whether G.L. 16-7-20, now repealed in pertinent part, still governs some cases. All of this can be decided when this case is concluded.

It may seem unusual for payments to be ordered before a final determination of liability is made. But in cases of this nature there are many good reasons for applying this approach. In any event, it is the approach that the legislature has decided to use. The due process rights of government agencies are determined by statute. Brown v. Elston, 445 A.2d 279 (R.I. 1982); In Re School Committee of North Smithfield, 26 R.I. 164 (1904)

The Present Case

In the present case Burrillville has submitted evidence making out a prima facie case that Pawtucket is responsible for a sum in the amount of \$35,956.52 for 4 students who lived for various periods of time at the Tanner Hill Group Home and who were

educated in the public schools of Burrillville (See Appendix A). We therefore exercise our authority under G.L. 16-64-1.2(c) to “deduct the amount owed from the designated community’s school aid and to pay such to the community ... which has incurred the educational cost.” In this case the deduction is from Pawtucket and the payment will be made to Burrillville.

Interim Conclusion

1. The sums requested by Burrillville will be deducted from state aid due Pawtucket and paid over to Burrillville.
2. The parties to this dispute are requested and required to confer with each other and with DCYF concerning the residence of the parents during all relevant time periods. This matter will then be scheduled for a final hearing on the merits. The purpose of a hearing before the commissioner is to receive evidence. Pre-hearing discovery will therefore be authorized in this matter. Since the witnesses involved will be adults, depositions in the regular form may be appropriate.
3. The parties to this case may not be state agencies but they are agents of the state.

Cummings v. Godin, 119 R.I. 325. It is the duty of the commissioner:

(5) 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.

(G.L. 16-60-6(5))

4. “Efficiency and economy” in cases of this nature will, as a rule, be best served by requiring parties disputing a residency bill to identify the community which should be

paying the bill. It should be obvious that school districts which employ attendance officials, school social workers, and school business managers are better situated to make the required inquiries than is the Commissioner of Education. The same can be said for DCYF which employs social workers and which has access to whatever documentation exists in the case.

5. This matter will be heard on the final merits when the parties signify that a dispute still exists, that they have completed discovery and that they are prepared to demonstrate by evidence which named community owes the sums at issue. Until parties are prepared to make this showing the prima facie determination of residency will remain in effect. (G.L. 16-64-1.1(c))
6. When a final decision is made in this matter, accounts may be prospectively and retroactively adjusted.
7. The sum of \$35, 956.52 is hereby deducted from state aid due to Pawtucket and paid over to Burrillville.

Forrest L. Avila
Hearing Officer

APPROVED:

Peter McWalters
Commissioner

DATE: April 30, 1999