

0033-99

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER
OF
EDUCATION

IN THE MATTER OF JUSTIN E.

INTERIM ORDER

Held: There is prima facie evidence that
Central Falls is responsible for the education
of a child in DCYF care.

DATE: December 9, 1999

Introduction

This matter concerns a request by Justin E.'s educational surrogate parent for an interim protective order directing that Justin's individual education program (IEP) be implemented immediately.¹

Background

Justin has been in the care of the Department of Children, Youth and Families (DCYF) since 1991. In November 1992, parental rights were terminated. Evidence presented at the hearing shows that, at that time, Justin was living with his grandparents in Pawtucket, and his mother and father were residing in Central Falls.² Justin's residence with his grandparents later became a pre-adoptive foster placement.

In October 1995 DCYF placed Justin in the Spurwink School in Lincoln on a residential basis. Justin attended school at the Spurwink facility. Justin is a special-needs student with a behavior disability. Pawtucket has contributed its share of the cost of Justin's education at Spurwink through June 1999. Some time ago, DCYF determined that Justin's placement with or adoption by his grandparents was not appropriate. There was testimony at the hearing that Pawtucket was not informed of this determination.

Justin's latest IEP was developed in December 1998. It provides for a self-contained special education classroom. A Pawtucket school district employee attended the IEP meeting and another Pawtucket official signed Justin's IEP.

¹ The Commissioner of Education designated the undersigned hearing officer to hear and decide the request, which named the East Providence School Department and the Pawtucket School Department as respondents. Following a hearing conducted on November 22, 1999, the hearing officer ruled that the Department of Children, Youth and Families and the Central Falls School District were necessary parties to this matter. Further hearing was conducted on December 2, 1999, with all parties represented by counsel. Petitioner has also filed a request for a due process hearing regarding the implementation of Justin's IEP. That request is pending.

² There was testimony that Justin's mother continues to reside in Rhode Island.

In September 1999 Justin's threatening and dangerous behavior necessitated a residential placement at Bradley Hospital in East Providence. A treatment team determined that it was appropriate for Justin to return to Spurwink for educational services. While Spurwink remained opposed to Justin residing there, it agreed he could attend its education program as a day student. Despite numerous requests, neither East Providence nor Pawtucket would provide transportation for Justin from Bradley to Spurwink.³

Justin was diagnosed with depression when he was placed at Bradley. At the present time, Justin could be discharged from Bradley if a suitable placement were to be found. DCYF is seeking a less restrictive placement. There was further testimony that Pawtucket is reassessing its financial contribution to Justin's education in light of its newly-acquired information about Justin's background and circumstances.

Positions of the Parties

Citing the developing complications of this case, Petitioner asks that Pawtucket, which signed Justin's last IEP, be ordered to maintain the educational status quo on an interim basis.

East Providence denies any responsibility in this matter, but it is willing to provide transportation for Justin if it is reimbursed.

Pawtucket claims that it bears no statutory responsibility for Justin's education at this time. In so claiming, Pawtucket states that (1) Justin no longer has any relationship with his Pawtucket grandparents, (2) Justin's parents were living in Central Falls at the time parental rights were terminated, (3) DCYF is in effect funding part of the Bradley

³ Testimony established that an aide must accompany Justin in his transportation to Spurwink.

Hospital program by keeping Justin and other children awaiting placement there when there is no health-related need for them to be there, and (4) Justin is residing at Bradley Hospital, which is located in East Providence. Pawtucket therefore contends that DCYF, Central Falls or East Providence is responsible for Justin's transportation and education.

DCYF contends that Justin should be considered to be "enrolled" in the Pawtucket school system and therefore the responsibility of that system under R.I.G.L. 16-64-1.1(d). Alternatively, DCYF argues that Central Falls is responsible for Justin's education under R.I.G.L. 16-64-1.2(b) because both of his parents were residing there when parental rights were terminated. DCYF contends that it is not responsible for Justin's education under R.I.G.L. 16-64-1.1(c) because (1) it does not have a contract with Bradley Hospital; (2) Bradley is an acute inpatient psychiatric hospital, not a group home or community residence; and (3) Bradley's status as a psychiatric hospital is not changed by the fact that the psychiatric crisis Justin was experiencing at the time of his admission has since resolved.

Central Falls contends that there is no evidence that Justin himself ever lived in Central Falls, and the student's physical presence is the ultimate test in a residency proceeding. According to Central Falls, it would be an absurdity under the residency statute to make it responsible for Justin's education at this late date, particularly when it has not had any involvement in the development of his IEP.

Discussion

R.I.G.L. 16-64-1.1 includes the following provisions:

- (b) Children placed by DCYF pursuant to §42-72-5(b)(24) in a residential treatment program, whether or not located in the state of Rhode Island, which includes the delivery of educational services, shall have the cost of their education paid for as provided for in §42-72-5(b)(24). The city or

town shall pay its share of the cost of educational services to DCYF or its contracted agent.

- (c) Children placed by DCYF in group homes, child caring facilities, community residences, or other residential facilities shall have the entire cost of their education paid for by DCYF if:
 - 1) The facility is operated by the state of Rhode Island or the facility has a contract with DCYF to fund a pre-determined number of placements or part of the facility's program; and
 - 2) The facility is state-licensed; and
 - 3) The facility operates an approved on-grounds educational program, whether or not the child attends the on-grounds program.
- (d) All other children placed by DCYF in group homes, child caring facilities, community residences, or other residential facilities, whether or not located in the state of Rhode Island, shall have the cost of their education paid for by DCYF or, if the child is enrolled in a public school in Rhode Island, by the city or town in which the residential facility is located, and the city or town or DCYF, shall receive a contribution from the city or town in which the child's parent(s) or guardian live as determined by §16-64-1.2. Such contribution shall be at least the amount of the average per pupil cost for general or special education of the city or town making the contribution.

R.I.G.L. 42-72-5(b)(24) makes DCYF responsible for “the delivery of appropriate mental health services to seriously emotionally disturbed children. Appropriate mental health services may include hospitalization, placement in a residential treatment facility, or treatment in a community based setting.” The statute further provides that:

Each community, as defined in chapter 7 of title 16, shall contribute to the department, at least in accordance with rules and regulations to be adopted by the department, at least its average per pupil cost for special education for the year in which placement commences, as its share of the cost of educational services furnished to a seriously emotionally disturbed child pursuant to this section in a residential treatment program which includes the delivery of educational services.

R.I.G.L. 16-64-1.2 includes the following provisions:

- (b) The department of elementary and secondary education shall designate the city or town to be responsible for the cost of education for children in state care who have neither a

father, mother, nor guardian living in the state or whose residence can be determined in the state or who have been surrendered for adoption or who have been freed for adoption by a court of competent jurisdiction using the following criteria: (1) last known Rhode Island residence of the child's father, mother, or guardian prior to moving from the state, dying, surrendering the child for adoption or having parental rights terminated; (2) when the child's parents are separated or divorced and neither parent resides in the state, the last known residence of the last parent known to have lived in the state. . .

- (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.

Turning to R.I.G.L. 16-64-1.1, we find subsection (d) to be applicable here. Subsection (b) is inapposite because Justin's educational services are not to be delivered at Bradley Hospital. Subsection (c) does not apply because DCYF does not have the requisite contract with Bradley. Justin therefore falls within the "all other children" language of subsection (d). Because Justin is not enrolled in a "public school," subsection (d) mandates that DCYF is entitled to a contribution from the city or town in which his "parent(s) or guardian live as determined by §16-64-1.2."⁴ The outcome of that determination under subsection (b) of that statute is Central Falls based on the evidence that Justin's parents resided there at the time parental rights were terminated.

Under subsection (c) of R.I.G.L. 16-64-1.2, our designation of Central Falls constitutes prima facie evidence of the parents' residence there and the city's financial

⁴ We note that the statute differs from the remainder of R.I.G.L. 16-64 in that it refers to the residence of the parents, not that of the child. We therefore apply the statute consistent with this clear distinction.

responsibility for Justin's education.⁵ Central Falls may request further hearing in this matter to present evidence that Justin's parents resided elsewhere and that financial responsibility should be reassigned accordingly. In the meantime, an interim order shall be entered directing Central Falls to contribute to DCYF the amount of its average per pupil cost for special education and to assume educational responsibility for Justin pursuant to R.I.G.L. 16-64-1.3.

Conclusion

We hereby order the Central Falls School District, on an interim basis, to assume financial and educational responsibility for Justin as of this date. In doing so, it shall contribute to DCYF the amount of its average per pupil cost for special education, on a pro-rated basis for the current school year. DCYF shall immediately arrange for transportation to the Spurwink School. Central Falls remains responsible for Justin's free appropriate public education in accordance with R.I.G.L. 16-64-1.3.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date: December 9, 1999

⁵ Pursuant to the IEP executed in December 1998, Pawtucket remains responsible for any educational services owed to Justin to the date of this order.