

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER
OF
EDUCATION

* * * * *

Residency of Stephen D.

* * * * *

DECISION

Held: This student is the educational
responsibility of North Providence.

DATE: May 8, 2000

TRAVEL OF THE CASE

This is a residency case. Jurisdiction is present under R.I.G.L.16-64-1. The Rhode Island Department for Children and Their Families is seeking reimbursement for the educational costs of a student placed at the Crystal Springs School in Assonet, Massachusetts. It is also seeking a designation of a Rhode Island school district to be responsible for providing this student with a free appropriate education (FAPE). R.I.G.L.16-24-1 and 20 USC 1415. The towns involved in this dispute are Providence and North Providence.

POSITIONS OF THE PARTIES

POSITION OF NORTH PROVIDENCE

North Providence concedes that up until the time DCYF placed this student at the Crystal Spring School it had been providing this student with educational services. These services were being provided based upon the child's residence with his grandparents in North Providence. When North Providence discovered that this student was no longer living with his grandparents in North Providence, that his mother was living in Massachusetts, and that his father's street address was really in Providence, it concluded that it had no further responsibility for the education of this student. It argues that if any Rhode Island community should be responsible for educating this student it should be Providence since that is where the student's father is living. R.I.G.L.16-64-1 and R.I.G.L.16-64-1.2 (b)

POSITION OF PROVIDENCE

The position of Providence is that this student has never lived in Providence and that Providence has never been responsible for this child's education. The position of Providence is that at all times the proper school residence of this student has been, and still is, North Providence. This argument is based on the fact that this student was living with his grandparents in North Providence at the time when he came into the custody of DCYF.

FINDINGS OF FACT

Until June or July of 1997 this student was living with his maternal grandparents at a home in North Providence. He had been living there for a number of years because his mother had health problems that prevented her from caring for him. His parents are divorced. Their parental rights have never been terminated.

The North Providence public schools were educating this special education student through the Northern Rhode Island Collaborative. Because this student's grandmother became seriously ill in June or July of 1997, this student came into the custody of the Rhode Island Department for Children and their Families (DCYF). The student's mother voluntarily assented to DCYF taking custody of this student and placing him in the Crystal Springs School in Assonet, Massachusetts. The student's grandmother died not long after this placement was made. Apparently the student's grandfather is still alive and residing in North Providence.

When this student first came to the notice of DCYF his mother was living somewhere in North Providence. By the time DCYF placed this student at the Crystal Springs School, his mother was living in Blackstone, Massachusetts. The student's father was living on Woonasquatucket Avenue on the date of placement. Whether the particular street address of the father's residence on Woonasquatucket Avenue lies in Providence or North Providence is subject to dispute. The residence has a North Providence mailing address but it is taxed in Providence. The weight of the evidence convinces us that the father's residence lies in Providence.

We summarize the *mise-en-scene* of the *dramatis personae*:

- The Grandmother – beyond the jurisdiction
- The Grandfather – North Providence (apparently)
- The Mother – Blackstone, Massachusetts
- The Father – Providence

CONCLUSIONS OF LAW

At the outset we find that this student's residence for school purposes at the time he went into the custody of DCYF was North Providence. There is no doubt that this student was living with his grandparents because his parents could not care for him. Under Rhode Island school residency law this student was therefore a resident of North Providence for school purposes. *Residency of Emily R.*, Commissioner of Education, April 5, 2000 Rhode Island law states: "In cases where a child has no living parents, has been abandoned by his or her parents, or when parents are unable to care for their child on account of parental illness or family-break-up, the child shall be deemed to be a resident of the town where the child lives with his or her legal guardian, natural guardian, or other person acting in loco parentis to the child" R.I.G.L.16-64-1 Under the Regulations to the Individuals with Disabilities Education Act (IDEA)¹ the term "parent" is defined to include: "A person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare.)" 34 CFR 300.20 (3).

The Rhode Island Department for Children and their Families (DCYF) has placed this special education student in Crystal Springs School in Massachusetts. While this placement may not have been made to provide this student with a free appropriate public education (FAPE), it is obvious that this student is entitled to receive FAPE in accordance with the Individuals with Disabilities Education Act (IDEA).² It is also obvious that DCYF, and the Rhode Island Department of Education (RIDE), are responsible for ensuring that this student receives FAPE. Massachusetts is not. The Comments to the IDEA regulations state:

Regardless of the reason for the placement, the "placing" State is responsible for ensuring that the child's IEP is developed and implemented. The determination of the specific agency in the placing State would be based on State law, policy, or practice. However, the SEA [State Educational Agency] in the placing State

¹ 20 USC 1415

² 20 USC 1415

is ultimately responsible for ensuring that the child has FAPE available.³

In the present case DCYF is the placing agency. The General Laws of Rhode Island, at R.I.G.L.42-72-5 (b)(24), state in pertinent part that DCYF is:

To be 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.

Each community, as defined in chapter 7 of title 16, shall contribute to the department [DCYF], ...in accordance with rules and regulations to be adopted by the department, at least its average per pupil cost for special education...as its share of the cost of educational services furnished to a seriously emotionally disturbed child...

The definition of “community” contained in “chapter 7 of title 16” is found at R.I.G.L.16-7-16. This definition is, for practical purposes, synonymous with the term “local school system.” At one time “chapter 7 of title 24” also contained several rules relating to the determination of which community was responsible for paying a per pupil special education towards the cost of a child’s education who had been placed by DCYF in an out of state facility. The new version of these rules is now found at R.I.G.L.16-64-1.1 and R.I.G.L.16-64-1.2 which, in pertinent part, state:

16-64-1.1. Payment and reimbursement for educational costs of children placed in foster care, group homes, child caring facilities, community residences, or other residential facility by a Rhode Island state agency. —(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 R.I.G.L. 42-72-5 (b) (24).

16-64-1.2. Designation of residency of children in state care for purposes of financial responsibility under R.I.G.L.16-64-1.1—Effect of designation of residency. —(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...using the following criteria: (1) last known Rhode

³ Appendix A to Part 300 [IDEA Regulations], Question 16

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. Such designation shall be incorporated on the child's intra-state education identification card.

A reading of R.I.G.L. 16-64-1.2 shows that it has no real relevance to the present case. This statute only becomes operative when the child has "neither a father, mother, nor guardian living in the state or whose residence can be determined in the state or who have been freed for adoption..." In fact the student has a father living in the state (Providence) and a natural guardian (his grandfather) living in North Providence. Moreover parental rights have never been terminated and the student has not been freed for adoption. Thus R.I.G.L. 16-64-1.2 is not applicable to the present case.

In fact the last known guardians of this child were not his parents but rather his grandparents. Before the illness of the student's grandmother, the student was living with his grandparents in North Providence. The student's grandparents were functioning "in loco parentis" to this student – in fact they were his natural guardians. Under these circumstances we are convinced that North Providence remains responsible for this student's education. We make this determination based upon R.I.G.L. 16-64-2 which in pertinent part states:

16-64-2. Retention of residence. – A child shall be eligible to receive education from the town in which the child's residence has been established in another town and that town has enrolled the child within its school system, unless the commissioner...pursuant to R.I.G.L. 16-64-6, has ordered otherwise.

While there are a few circumstances where DCYF itself functions as a school system (i.e. the Rhode Island Training School for Youths) this is not one of them. R.I.G.L. 42-72-5 (22) The only school system this student has ever been enrolled in is North Providence. This is the "community" which remains responsible for educating him. R.I.G.L. 16-7-16 (5).

CONCLUSION

This student is the educational responsibility of North Providence.

Forrest L. Avila, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

May 8, 2000
Date