

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

IN THE MATTER OF STUDENT D.H.

DECISION

Held: DCYF, with a contribution from the city of Providence, is financially responsible for the education of a child temporarily placed in a shelter in Woonsocket.

DATE: March 9, 2001

Introduction

This is a request by the Woonsocket School Department for reimbursement of the cost to educate D.H. from April to July 2000.¹

Background

D.H. was placed in the care of the Department of Children, Youth and Families (DCYF) in December 1994. Parental rights were terminated in December 1996. At that time, D.H.'s mother was a resident of Providence. His father's residence was unknown.

In February 1997, D.H. was adopted. At that time, his adoptive mother resided in Providence, and his adoptive father was in California, preparing for a new job. Following his adoption, D.H. lived with his adoptive parents in Livermore, California.

In September 1999, D.H. took up residence in Lincoln at the home of a friend of his adoptive parents. The Lincoln School Department developed an individualized educational plan (IEP) for D.H. that provided for a placement in the day program at Bradley Hospital. D.H.'s parents remained in Livermore, California. There is no evidence that they are separated or divorced.

At some point in 2000, DCYF removed D.H. from the home in Lincoln and temporarily placed him at the Paul Shelter in Woonsocket.² The Woonsocket school district honored D.H.'s IEP and maintained his enrollment in the day program at Bradley Hospital from April to July 2000.³ DCYF moved D.H. to a residential placement at the Spurwink School in Lincoln at the end of July.

No city or town has previously been designated as being responsible for D.H.'s education.

Positions of the Parties

In seeking reimbursement for the cost of the Bradley Hospital Program from April to July, Woonsocket contends that it has never had any connection with D.H.'s biological or adoptive parents. Woonsocket therefore denies any financial responsibility for D.H.'s

¹ The Commissioner of Education designated the undersigned hearing officer to hear and decide the request. Hearings were conducted on May 15 and August 1, 2000. Memoranda were subsequently submitted.

² The shelter placement was considered to be temporary because it was being used while DCYF searched for an appropriate long-term residential placement for D.H.

³ D.H.'s IEP contains an extended school year program. In funding D.H.'s education, Woonsocket reserved the right to seek a determination of financial responsibility from the Commissioner of Education.

education during his stay at the Paul Shelter. It claims that Lincoln or Providence must provide reimbursement under R.I.G.L. 16-64-1.2.

Lincoln contends that as of February 2000, D.H. did not have any ties to Lincoln. Citing § 16-64-1.2, Lincoln asserts that Providence is the financially-responsible district in view of the biological mother's residence in Providence at the time of the termination of parental rights and the adoptive mother's residence in Providence at the time of the adoption.

Citing the Commissioner's decision in Providence School Board v. Parents of John A.Q. Doe,⁴ Providence contends that Livermore, California is responsible for D.H.'s education. According to Providence, the last Rhode Island residence of D.H.'s adoptive parents became irrelevant once D.H. established residence in Livermore. Relying on the adoptive parents' continued residence in Livermore and the absence of a termination of their parental rights, Providence argues that D.H. is a resident of Livermore, California under R.I.G.L. 16-64-1.

DCYF contends that Woonsocket became responsible for D.H.'s education upon his placement into the Paul Shelter. By electing to continue the Bradley day school program, D.H. "was enrolled within the Woonsocket Public Schools" for purposes of § 16-64-1.1(d).⁵ Woonsocket therefore must pay the Bradley tuition for the period of time D.H. was living at the Paul Shelter. Under § 16-64-1.2, Providence must contribute to the cost of D.H.'s education because his biological mother resided there at the time parental rights were terminated.

Discussion

R.I.G.L. 16-64-1 creates a rebuttable presumption that a child is a resident of the town where his or her parents reside. R.I.G.L. 16-64-1.1 addresses the payment and reimbursement for educational costs of children involved in DCYF placements. Under R.I.G.L. 16-64-1.1(d), children not otherwise covered by the statute that are

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

⁴ September 22, 1993; request for reconsideration denied, September 13, 1994.

⁵ According to DCYF, the decision to allow D.H. to remain in the Bradley program was one of several options available to Woonsocket in providing D.H. with free appropriate educational services. DCYF states that Woonsocket could have developed an alternative educational plan for D.H. if it did not want to assume the costs of his educational placement in the day school at Bradley Hospital.

in a public school in Rhode Island, by the city or town in which the residential facility is located, and the city, 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.

We do not agree with DCYF's claim that D.H. was enrolled in a Woonsocket public school by virtue of that district's decision to continue D.H.'s day program at Bradley. Clearly, D.H. did not attend a "public school" in the Woonsocket school system. Woonsocket merely honored D.H.'s IEP, previously developed by Lincoln, which provided for an out-of-district placement at Bradley. Woonsocket acted appropriately in doing so, particularly given the fact that D.H.'s stay at the Paul Shelter was intended to be temporary.⁶ The mere assertion that D.H. theoretically could have attended a public school in Woonsocket does not impose financial responsibility on that city. Such an interpretation of the statute would virtually eliminate the private placement-public school distinction that is central to § 16-64-1.1(d). We therefore find the public school provision inapplicable herein, and that DCYF must bear the cost of D.H.'s education at Bradley from April to July 2000 under § 16-64-1.1(d).

Under R.I.G.L. 16-64-1.2(b), the city or town responsible for the contribution to DCYF in this case is to be determined by 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.

The John A.Q. Doe case involved a student who resided in a pediatric center in Providence. Student Doe was receiving special education services from the Providence school district. He was not in DCYF care. A controversy arose regarding the responsibility to

⁶ The Lincoln IEP must be recognized by other school districts. Had Woonsocket proposed to change D.H.'s placement, it would have had to develop a new IEP with D.H.'s advocate. In the event a disagreement arose over an appropriate placement, the Bradley program would be D.H.'s status quo placement while the dispute was resolved.

educate the student when his parents moved from Providence to Hialeah, Florida, and student Doe remained at the pediatric center in Providence.

We found no evidence to rebut the presumption in R.I.G.L. 16-64-1 that student Doe's residency for school enrollment purposes was that of his parents, i.e., Hialeah, Florida. We therefore directed his parents to request the Hialeah school district to provide student Doe with a free appropriate public education and to exercise their due process rights under the Individuals with Disabilities Education Act if Hialeah failed to do so.

Because there was no DCYF involvement in the John A.Q. Doe case, the general residency provisions of R.I.G.L. 16-64-1 governed. Here, D.H.'s entry into DCYF care earlier this year triggers the application of R.I.G.L. 16-64-1.1 and 1.2. The city or town contribution for his education from April to July 2000 following his placement by DCYF in a residential facility in Woonsocket must be determined pursuant to the criteria listed in R.I.G.L. 16-64-1.2. We find the first criterion to be applicable, with the evidence showing that the last known Rhode Island residence of D.H.'s adoptive mother prior to moving from the state was the city of Providence.

Conclusion

The financial responsibility for D.H.'s education at the Bradley day program from April to July 2000 rests with DCYF. DCYF shall reimburse Woonsocket for D.H.'s educational costs for the period of time that D.H. was residing at the Paul Shelter. DCYF is entitled to a contribution from Providence for the same period of time in the amount of Providence's average per pupil cost for special education. We hereby order DCYF and Providence to make the appropriate payments.

Paul E. Pontarelli
Hearing Officer

APPROVED:

Peter McWalters, Commissioner

March 9, 2001
Date