

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER
OF
EDUCATION

SMITHFIELD SCHOOL COMMITTEE

V.

PROVIDENCE SCHOOL COMMITTEE

DECISION

Held: We find, on the basis of *prima facie* evidence, that Providence owes Smithfield \$60,615.83 for the cost of educating 8 students who were school residents of Providence before they were moved to a group home in Smithfield by DCYF. We will direct the General Treasurer to make the appropriate transfer of funds in the next, or next several, distributions of state education aid. This matter will be scheduled for a full hearing on the merits once the parties have completed discovery. We urge the parties to work together to try to settle this matter.

DATE: March 9, 2001

Travel of the Case

This is a group home reimbursement case from the town of Smithfield. Jurisdiction is present under R.I.G.L. 16-64-6, R.I.G.L. 16-39-1, and R.I.G.L.16-39-2. Smithfield has submitted a reimbursement claim against Providence for the cost of educating 8 children who are living in a group home in Smithfield. Smithfield alleges that the law makes Providence responsible for reimbursing Smithfield for the cost of the education provided to these children.¹ The amount claimed is \$60,615.83--an amount equal to "...at least the amount of the average per pupil cost for general or special education of the city or town making the contribution. " ²

The Statutory Basis of the Claim

At R.I.G.L. 16-64-1.2 (a) the General Laws of Rhode Island require the Family Court to *designate* the residency of a child's parent(s), when the child comes into *the care and custody* of the Department for Children Youth and their Families (DCYF):

(a) An initial factual determination and *designation* of the residence of the parent(s) of a child placed in the care and custody of the state shall be made *by the family court* in accordance with R.I.G.L. 33-15.1-2. The director of the department for of children, youth and families shall incorporate such designation of the parent's residence on the child's intra-state education identification card and thereafter update the designation pursuant to R.I.G.L. 42-72.4-1(b).³ (emphasis added)

The purpose of this *designation* is to fix responsibility on a Rhode Island community for paying for the cost of the child's education if DCYF, as it usually does, moves the child to a group home in a new community. In pertinent part the law goes on to 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 R.I.G.L. 16-64-1.1. (Emphasis added)

This *designation* is of great importance, even though it is only constitutes *prima facie* evidence, since the same law provides that:

¹ See: R.I.G.L. 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 the designation of residency.**

² R.I.G.L.16-64-1.1 (d)

³ The law, in pertinent part, at R.I.G.L.42-72.4-1 [**Children under state care---Admission to public schools---Intra-State education---Identification card.**] states at (b): "

Pending any final decision under R.I.G.L. 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.

As we have seen the law requires the Family Court to make a residency *designation* "in accordance with R.I.G.L. 33-15.1-1." The law at R.I.G.L.33-15.1-1, not surprisingly, relies on the state's school residency law (R.I.G.L.16-64-1, "**Residence of Children for School Purposes**") as the source of the "rules of decision" that the Family Court is to use in making what becomes a *prima facie designation* of residency. The law at R.I.G.L.33-15.1 states that the Family Court:

Shall make a factual determination pursuant to R.I.G.L. 16-64-1 as to the residence of the child's parent(s) or guardian on the date that the child is placed in the care and custody of the state, subject to R.I.G.L.16-64-6. [R.I.G.L.16-64-6 is the statute giving the Commissioner of Education authority to resolve residency dispute]

The law at R.I.G.L. 16-64-1, which provides the rules of decision for residency *designations* states:

16-64-1. Residence of children for school purposes. ---Except as otherwise provided by law or by agreement, a child shall be enrolled in the school system of the city or town wherein he or she resides. A child shall be deemed to be a resident of the town where his or her parents reside. If the child's parents reside in different towns the child shall be deemed to be a resident of the town in which the parent having actual custody of the child resides. 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. An emancipated minor shall be deemed to be a resident of the town wherein he or she lives. Children placed in group homes, in foster care, in child caring facilities, or by a Rhode Island state agency or a Rhode Island licensed child placing agency shall be deemed to be residents of the town where the group home, child caring facility, or foster home is located for the purposes of enrollment, and this town shall be reimbursed of the child's education be paid for in accordance with R.I.G.L.16-64-1.1. In all other cases a child's residence shall be determined in accordance with the applicable rules of the common law. Where a child is a resident in a dwelling which lies in more than one municipality, the parent(s) or guardian shall choose which school district the child shall attend without payment of costs as tuition.

We read this ensemble of statutes to mean that the Family Court is to use the state school residency law (R.I.G.L.16-64-1) to determine, at the time a child comes into *the care and custody* of DCYF, which school district is responsible for educating a student. It is this district, which will usually be the school district the child is presently enrolled in, which becomes *prima facie* responsible for paying for the cost of educating the child, if the child is moved by DCYF to a group home in a different community. In most, but not all cases, this residence will be synonymous with the residence of the student's parents since, in most, but not all, cases: "A child shall be deemed to be a resident of the town where his or her parents reside." ⁴

In fact, although the law refers to the "residency of the parent(s) or guardian" it is obvious that the General Assembly is referring to the entire school residency law as constituting the rules of decision for determining which community is responsible for paying for the cost of a child's education. While the General Assembly could, perhaps, have used more apt and artful language the intent of the Assembly to refer to the school residency law is plain.⁵ In fact it is explicitly stated at R.I.G.L. 33-15.1-1 that Chapter 64 of title 16, entitled "Residence of Children for School Purposes," in the law to use in making the statutorily required *designation* of residency.⁶

Therefore, in a technical sense, the Family Court is not designating the residence of the *parent* for school purposes, but rather it is designating *the residence of the child for school purposes*. This, in most cases, may well be same residence, but there will be times when this will not be the case. Still, R.I.G.L.16-64-1 is capacious enough to cover all residency situations, thus protecting the rights of all students *in the care and custody of the state* to have an easily *designated* "home" school district.

⁴ R.I.G.L.16-64-1

⁵ We reject any strained interpretation of the law that would absolutely equate the *school residency* of a child *in the care of the state* to the often ill defined, poorly documented, and transitory abode of parents who have lost custody their child to the state. Any such rule would have the bizarre effect of involving a new school district in a group home child's education each time a custody-less parent moved to a new community, even though the child stayed in the same group home. This new community would often have no knowledge of the child or the course of the child's education; but it would suddenly oust the jurisdiction of the school district which had been responsible for preparing the child's IEP for implementation in the town where the child's group home was located. This would compound confusion and facilitate wasteful and difficult litigation. We therefore follow R.I.G.L.16-61-1 as our cynosure.

Findings of Fact

The facts of this case, at least at this stage of the hearing, are not in much material dispute. Smithfield has submitted copies of DCYF *Intra-State Education Identification Cards* concerning 8 students:

1. Student PS [DOB 9-7-86]
2. Student MS [DOB 8-29-86]
3. Student JP [DOB 12-15-84]
4. Student VE [DOB 2-6-81]
5. Student AM [DOB 2-15-83]
6. Student FS [DOB 8-25-86]
7. Student KB [DOB 7-19-81]
8. Student RB [DOB 6-03-85]

These *Intra-State Student Identification Cards* are accompanied by an affidavit signed by the Smithfield superintendent of school claiming reimbursement for the cost of the education of these students. The amount claimed, as amended at the initial hearing of this matter, comes to \$60,615.83. Accounting work sheets for each student are included to show how this sum was calculated. We accept this sum as being correctly computed. We also find, as we must, that the *Intra-State Student Identification Cards* submitted constitute *prima facie* evidence that Providence is responsible for paying for the cost of the education of these students.

The only card requiring closer examination is the card that relates to Student FS [DOB 8-25-86]. This card indicates that Burrillville, not Providence, was the last school district to enroll FS, before FS enrolled in Smithfield. This card, however, bears a hand written notation indicating that Providence was the address of the parent of Student FS on the date of *termination of parental rights*. At R.I.G.L. 16-64-1.2(b) the law states:

(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. *Such*

designation shall be incorporated on the child's intra-state education residency card. (Emphasis added)

We suspect that the "residence of the parent" discussed in R.I.G.L.16-64-1.2(b) is simply an awkward way of indicating "the residence of the child for school purposes." We, however, do not have to decide this point now. We simply read the card as indicating that a determination has been made by the Family Court that Providence has *prima facie* responsibility for the cost of the education of FS, based upon the termination of parental rights. At this stage of the hearing we have no warrant to look behind the card itself. We therefore find that there is *prima facie* evidence indicating that Providence is responsible for paying for the cost of FS's education.

Position of Providence

Providence concedes, as it must, that the *Intra-State Education Cards* submitted in this case must be taken as *prima facie* evidence of Providence's responsibility for the education of the students in this case. Providence argues, however, that Smithfield's claim is premature because the law at R.I.G.L. 45-15-5 requires all money claims made against the city to be first submitted to the city council. We think that the legislative scheme for dealing with school reimbursement was intended to be complete and comprehensive, and that this legislative scheme was intended to preempt any other legislation relating to the subject matter. We, therefore, do not believe that R.I.G.L. 45-15-5 has any applicability to this case.

Providence also suggests that the Family Court may not, in fact, have fulfilled its duty under R.I.G.L. 33-15.1-1 to make a determination concerning the residency issues relating to the students in this case. But, once again, we note that, at this stage of the hearing, we have no warrant to look behind the *Intra-State Student Identification Cards* that have been placed into evidence. We, of course, do not preclude Providence from determining whether or not the Family Court has made the requisite designations. In fact we have issued subpoenas for DCYF records and testimony to determine this issue, when this matter is heard on the merits. At this stage of the hearing we feel that we must rely on the *prima facie* evidence which is before us in deciding whether to transfer school funds to Smithfield.

It may seem unusual for a hearing to result in a transfer of money before all the evidence is in, before a final hearing decision is issued, and before all appeals to the Board of Regents, the Family Court, the Superior Court, and the Supreme Court are completed. But this is exactly the procedure called for in the statutes we are dealing with. It must be remembered that all the parties to this

proceeding are either state agencies or agencies of the state.⁷ We are aware that the purpose of this legislation is to ensure that communities welcoming group homes within their boundaries will not be placed in a situation of fiscal distress. The purpose of this legislation is also to minimize wasteful litigation, carried on at the expense of Rhode Island taxpayers, between Rhode Island governmental agencies. As government agencies these entities have only the procedural due process rights given to them by the state.⁸

Conclusion

We find, on the basis of *prima facie* evidence, that Providence owes Smithfield \$60,615.83 for the cost of educating 8 students who were school residents of Providence before they were moved to a group home in Smithfield by DCYF. We will direct the General Treasurer to make the appropriate transfer of funds in the next, or next several, distributions of state education aid. This matter will be scheduled for a full hearing on the merits once the parties have completed discovery. We urge the parties to work together to try to settle this matter.

APPROVED:

Forrest L. Avila, Hearing Officer

Peter McWalters, Commissioner

March 9, 2001

Date

⁷ *Cummings v. Godin*, 119 R.I. 325

⁸ *Brown v. Elston*, 445 A.2d 279