0006-01

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

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In the Matter of Charles T.

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DECISION

Held: Our examination of the facts, and the applicable law, convinces us that North Providence is entitled to receive reimbursement for Charles' placement at the St. James school for the period of time between 22 May 1998 (the IEP signing) and February of 1999 (the move to Spurwink). DCYF is responsible for this reimbursement between 22 May and June 30, 1999 (The effective date of the contract change with DCYF). Reimbursement for the period between July 1, 1999 and February of 1999 is the responsibility of Providence.

We find that Providence, as Charles's initial residence for school purposes, must "contribute to the department [DCYF]…at least its average per pupil cost for special education" as reimbursement towards the education Charles is receiving at the Spurwink School.

DATE: March 9, 2001

Travel of the Case

In this case the Department for Children, Youth, and Families (DCYF) is seeking reimbursement for the cost of educating a student---Charles T[1]---who was living at, and going to school in, the Spurwink School, in Lincoln, Rhode Island. DCYF contends that Charles is a "Seriously Emotionally Disturbed Child" covered by R. I. G. L. 42-72-5(v). This law allows DCYF to recover an educational reimbursement cost for such children.

> Each community, as defined in chapter 7 of title 16, shall contribute to the department [DCYF]…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…in a residential treatment program which includes the delivery of educational services.[2] (Emphasis added)

In fact, no one disputes that Charles is Seriously Emotionally Disturbed, and that his placement at the Spurwink School was made under R.I.G.L. 42-72-5 (5).[3] The problem in this part of the case is "simply" to identify which Rhode Island community is responsible for paying for this reimbursement.

The town of North Providence is also seeking reimbursement for the education it provided to Charles during his placement at St. Mary's Home, in North Providence between May 1998 and July 1999. During this period North Providence was funding an educational placement for Charles through the Northern Rhode Island Collaborative. This placement was at the St. James School, in Manville, Rhode Island. North Providence bases its claim for reimbursement on R.I.G.L.16-64-1.2 (d), where the law says:

> (d) All other children placed by DCYF in group homes, child caring facilities, community residences, or other residential facility …shall have the cost of their education paid for by DCYF or, if the child enrolled in a public school…by the city or town in which the residential facility is located, and 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 R.I.G.L. 16-64-1.2 Such contribution shall be at least the

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[1] A pseudonym.

[2] Students of evolutionary legal paleontology will immediately recognize R.I.G.L.42-72-5 (v) as the hardy lineal descendent of the MHSCY (pronounced Missy) program which, in a slightly altered form, survived the turbulence of the legal equivalent of the K-T boundary event. The MHSCY program itself has taxonomic roots in the "Governor's Beneficiary Programs" of the Devonian period.

[3] Transcript, 17 June 1999, page 9.

amount of the average per pupil cost for general or special education of the city or town making the contribution.

The portion of this case, which deals with the St. Mary's School placement, will require us to determine whether DCYF or a community is responsible for the reimbursement at issue.

Findings of Fact

Some of the facts relating to this case are stated in the brief of DCYF. We adopt these facts as our findings of fact:

> The child, Charles T., is a ward of the State of Rhode Island. Originally, Charles was removed from the custody of his parents in February of 1995. At the time of his removal Charles' parents resided at Alton Street in Providence, R.I. Thereafter, Charles was committed to the care, custody and control of the Director of the Department of Children, Youth and Families pursuant to an Order entered by a Justice of the Rhode Island Family Court. On March 3, 1998, the rights of the child's natural parents were terminated by Order of the Family Court. Significantly, at the time parental rights were terminated, DCYF records reveal that Charles' mother resided at Branch Street, Pawtucket, R.I.[4] and that Charles' father resided at Ford Street, Providence, R.I.
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> In September of 1995, DCYF placed Charles' in the St. Mary's Group Home in North Providence, R.I. In January of 1998, Charles was placed by DCYF with a foster family within the town of Cumberland, R.I. This placement was considered to be a pre-adoptive placement. Upon placement in foster care, Charles was enrolled in the Northern Rhode Island Collaborative program for purposes of receiving special education services. In March of 1998, Charles' pre-adoptive placement disrupted and DCYF placed Charles in a shelter facility in Woonsocket, Rhode Island. Thereafter, Charles returned to the St. Mary's Home in May of 1998. Charles remained in placement at St. Mary's Home from May of 1998 until February of 1999.
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> For the period of January of 1998 until February of 1999 Charles continued to receive special educational services through the Northern Rhode Island Collaborative Program. In February of 1999, DCYF placed Charles in the Spurwink School in Lincoln, R.I. Subsequent to

[4] The testimony in this case shows that the mother's residence in Pawtucket was quite tenuous. Charles never visited his mother in Pawtucket. Testimony of PARENTEAU, 28 MAY 1999, page 4.

placement in the Spurwink School, Charles was enrolled in a special education program at Spurwink School.

We also find from the record that on February 6, 1998 Cumberland had developed an IEP for Charles that called for his placement, through the Northern Rhode Island Collaborative, at the St. James School in Manville Rhode Island. On March 18, 1998 Charles was placed by DCYF at the Paul Shelter in Woonsocket. Woonsocket provided Charles with bus transportation so that he could continue to attend St. James School. On May 15, 1998 Charles left the Paul Shelter and was placed again at St. Mary's Home in North Providence. On May 22, 1998 a representative from North Providence signed an IEP for Charles for continued implementation through the Northern Rhode Island Collaborative.

We also adopt the following proposed findings of fact found in the brief of Pawtucket concerning the contractual status of St. Mary's Home:

- At all times pertinent to this issue, St. Mary's operated an on-grounds educational program. (5/28/99 Transcript, Testimony of Carol Spizzirri, DCYF, p.21) (5/28/99 Transcript, Testimony of Suzzanne Parenteau, DCYF, p.30-32Formerly, St. Mary's operated under a contract for a specified number of beds for DCYF. DCYF children were the only placement there. (5/28/99) Transcript, Testimony of Carol Spizziri, p.21, 36.) At this time, the DCYF acknowledged St. Mary's as a state-operated/supported facility and as such, paid for the education of the children placed there. (Exhibit 11-13, March 2, 1998 Letters to School Departments from Thomas M. Bohan of DCYF).
- The DCYF has already accepted responsibility for educational expenses of children up to June 30, 1998. (Exhibit 11-13, March 2, 1998 Letters to School Departments from Thomas M. Bohan of DCYF).
- Effective January 1, 1998, DCYF's arrangement with St. Mary's changed to what is known as a "purchase of service" agreement, where the DCYF would arrange for specific placements for each individual child. (See5 /28/99 Transcript, Testimony of Carol Spizzirri, DCYF, p.21-24.) As such, the DCYF claimed that it was no longer responsible for the education of children placed there, but decided to pay for such services until July, 1998. (Exhibit 11-13, March 2, 1998 Letters to School Departments from Thomas M. Bohan of DCYF)
- As of the time the new arrangement took effect, 39 of the 63 children placed there were in fact DCYF children. (Transcript, Testimony of Carol Spizzirri, DCYF, p.39).
- At this present time, the DCYF maintains a contracted-for placement with St. Mary's for adolescent girls. (5/28/99 Transcript, Testimony of Carol Spizzirri, DCYF, p.63.)

Our own review of the record leads us to make additional findings of fact concerning Charles' odyssey through the system and the nature of the DCYF contract with St. Mary's:

- Charles lived at St. Mary's Home in North Providence and attended the on grounds school there from September 1995 through most of January 1998. At the end of January of 1998 Charles left North Providence for a pre-adoptive home in Cumberland. Cumberland enrolled him, through the Northern Rhode Island Collaborative, at the St. James School in Manville, Rhode Island.
- Within six weeks the pre-adoptive placement fell through, and DCYF moved Charles moved to the Paul shelter in Woonsocket. He continued to attend school through the Northern Rhode Island Collaborative. He remained at the Paul shelter until May of 1998 when he moved back to St. Mary's.
- While at St. Mary's Charles continued to attend school through the Northern Rhode Island Collaborative. North Providence is a member of the Northern Rhode Island Collaborative.[5] In February of 1999, Charles left St. Mary's in North Providence and was placed at the Spurwink School in Lincoln. The Spurwink School has its own on grounds school that Charles attends. [6]
- DCYF had a contract with St. Mary's Home to provide a defined number of placements at the home. This contract had a termination date on June 30th 1998.[7]
- Prior to this termination date DCYF changed its relationship with St. Mary's to a purchase of services contract. DCYF notified School Districts by letter that as a result of this change: "St. Mary's is no longer considered a state supported program, and the Department is no longer responsible for the provision of educational services. The city or town in which the child's parent(s) live will be responsible for the cost of education. …The Department recognizes the impact that this change may have on some communities during the middle of the fiscal year. Therefore, during the transition period from January 1, 1998, through June 30, 1998, the Department will bear the costs of educational programming at St. Mary's Home."[8]
- On May 22, 1998 North Providence signed an IEP for Charles to be implemented through the Northern Rhode Island Collaborative.

[5] The Northern Rhode Island Collaborative includes the following Rhode Island towns and cities: Lincoln, Cumberland, Pawtucket, Central Falls, Woonsocket, Smithfield, North Smithfield, North Providence, Johnston, Foster, Glocester, Foster- Glocester Regional School District, and Burrillville. R.I.G.L.16-3.1-8

[6] Testimony of PARENTEAU, May 13, 1999, pages 5-12

[7] Exhibit 10.

[8] Exhibit 10

Conclusions of Law

Some parties, on the basis of these facts, suggest that we should divide the cost for Charles' education between Pawtucket and Providence, or North Providence. While Solomon like, this approach, of course, would not tell us which of these communities was now responsible for writing Charles' IEP.[9] In objecting to such an approach, Pawtucket points out that no statute authorizes such a division. However, as will be developed, given our interpretation of the law, we do not have to resolve these questions.

In deciding this case we apply the residency and reimbursement laws as they now stand on the books. We regard changes in these laws to be remedial and, as such, immediately applicable to pending litigation.[10] We note that all the parties to this litigation are government entities that are funded, in one way or another, by Rhode Island taxpayers. These governmental entities have only those legal rights given to them by the Rhode Island General Assembly.[11] The General Assembly has plenary control over the funding of education in Rhode Island.[12] This authority includes complete control over the property and funds of local school committees.[13] Vested rights are therefore not much of an issue in this case.

While school committees are not state agencies they are agents of the state.[14] Of course, the state completely funds DCYF and, at least partially, and often substantially, it reimburses school committees for the education these committees provide to students. In sum, this case, is, to a great extent, about the state reimbursing itself with its own money. The complexity and the expense of this exercise should, therefore, not be needlessly increased. In fact the General Assembly has mandated that the commissioner of education is:

> To be responsible for the coordination of the various elementary and secondary educational functions among the educational agencies of the state including school districts and to encourage and to assist in the cooperation among them so that maximum efficiency and economy may be achieved.[15]

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[9] 16-64-1.3
[10] Wayland Health Center v. Lowe, 475 A.2d 1037 (1984)
[11] Brown v. Elston, 455 A.2d 279---a few "home rule issues" excepted.
[12] City of Pawtucket v. Sundlun, 662 A.2d 40
[13] In Re School Committee of Johnston, 19 R.I.279 (1885); In Re School Committee of North Smithfield, 26 R.I.164, at 167 (1904)
[14] Cummings v. Godin, 377 A2d 1071, 119 R.I. 325
[15] R.I.G.L.16-60-6(5)

More particularly, the General Assembly has mandated that regulatory constructions of the reimbursement laws shall:

> [P]rotect the educational rights of students, be fair to communities, and be designed to minimize litigation and disputes while maximizing efficiency and economy.[16]

Given these mandates of the General Assembly, we are sure that interpretations of the residency law which compound evidentiary difficulties, create confusion, protract litigation, delay reimbursement, or unnecessarily disrupt the education's of students, are not to be favored.

There is a great potential for educational disruption if the group home reimbursement law is not correctly construed. This is because the town, the city, or the state agency which is responsible for paying for a student's education, is also responsible for providing the student with a Free Appropriate Public Education (FAPE), and for writing the students Individualized Education Plan (IEP), if the student is in need of special education:

> **16-64-1.3. Educational responsibility of city, town or state agency responsible for payment under R.I.G.L.16-64-1.1. --**The city or town or state agency responsible for payment under R.I.G.L.16-64-1.1 shall be responsible for the free, appropriate public education, including all procedural safeguards, evaluation and instruction in accordance with regulations under chapter 24 of this title, except that where payment is the responsibility of the department of children, youth and families, the department of elementary and secondary education shall be responsible for assuring that all procedural safeguards, evaluation and instruction in accordance with regulations under chapter 24 of this title are provided.

Some of the parties to this hearing have suggested that the law requires that whenever a parent--even a non-custodial parent -- moves to a new town, the new town then is to become responsible for paying for, and designing, the education of a student living in a group home. We take notice, however, of the fact that group homes are distributed throughout Rhode Island, and that children frequently move from one group home to another. This, in itself, can cause a measure of disruption to a student's education.

[16] R.I.G.L.16-64-1.3

Disruption would be literally multiplied if we adopted a construction of the law that required a new town to become involved in a student's education each time a non-custodial parent moved to a new community. This new community would frequently never have had any involvement with the student until the non-custodial parent moved into the new community. In fact, the new community would probably not even be aware that a non-custodial parent had moved into its jurisdiction. How would this community know that it was now supposed to be writing an IEP for the student?

It is impossible to believe that the General Assembly could have intended to disrupt the education of a student in the care of the state in such a manner. Of all the students in the state, it is students in the custody of DCYF, who come from broken families, who need educational stability the most.

We are also aware that the movements of non-custodial parents--some of whom wish to minimize their contacts with governmental authorities--are often poorly documented in official records. Making educational stability hinge on the will-o'-the-wisp perambulations of non-custodial parents would be fatuous. It would also entail a huge waste of time for attendance officers, who would be diverted from ensuring that students attend school, into documenting the night time residences of non-custodial parents--- assuming that these residences can be located, and documented at all.

We think, instead, that we must adhere to what we see as the plain command of the General Assembly to use the School Residency Law [R.I.G.L.16-64-1] to determine which district is responsible for educating which child in the care of the state. We will not compound confusion by creating a new body of law based upon the non-existent "residency for school purposes" of non-custodial parents. State law is never to be construed to give an absurd result.

By adhering to the School Residency Law we will also gain the benefit of being able to rely, for the most part, on readily obtainable school records in making residency determinations. There will be a decreased need to rummage through DCYF records, and DCYF social workers will lose less time attempting to give opinions about where non-custodial parents might have been living at some particular moment.

DCYF suggests that we should ignore the rest of the School Residency Law (R.I.G.L.16-64-1) and base our ruling on residency in this case exclusively on that part of R.I.G.L.16-64-1.2, which assigns responsibility "for the costs of education… for a child in state care" to the:

> Last known Rhode Island residence of the child's father, mother, or guardian prior to…having parental rights terminated.

DCYF points out that the law at R.I.G.L. 16-64-1.2(b) states:

> (b) The department of …education shall designate the city or town to be responsible for the costs of education for children in state care who have neither a mother, father, nor guardian living in state or whose residence can be determined in the state or who have been freed for adoption by a court…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….

There are problems, however, with this suggestion, if it is taken in a very literal sense, so as to create an irrebuttable presumption, contrary to the State School Residency Law (R.I.G.L.16-64-1), that the school residence of a student is always the same as residence of the parents of the student. Such an irrebuttable presumption does not exist for children who are not in the care of the state.[17] It is hard to see why it should exist for children in the care of the state who suffer more than their share of family disruptions. For example, Charles' parents were living in different towns on the date their parental rights were terminated. His mother was living at Branch St. in Pawtucket when her parental rights were terminated. The father was living at Ford Street in Providence, or in North Providence, when his parental rights were terminated.[18] Charles was not living with either of them. What would Charles' residence for school purposes be?

We think that while the General Assembly used the phrase "last know residence of the parent or guardian" in R.I.G.L.16-64-1.2 (b), the meaning the General Assembly intended to assign to this phrase was: "last known residence of the parent or guardian" *when, and if, this residence establishes the residency of the child for school purposes, as defined by the School Residency Law (R.I.G.L.16-64-1.)* That is to say, we think the General Assembly here was making a shorthand, non-technical reference to the School Residency Law, in which a child's residence for school purposes is usually, but not always, the residence of his or her parents. When the residence of the parent is not the residence of the student for school purposes we think we must then look to the School Residency Law (R.I.G.L.16-64-1) for guidance. It must be

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[17] Laura Doe v. Narragansett School Committee, Commissioner of Education, April 7, 1984.

[18] Unfortunately, as we have seen, the exact position of the father's dwelling, in reference to city boundaries, is disputed.

recalled that R.I.G.L.16-64-1.2 (**b**) is, itself, embedded in the School Residency Law found at R.I.G.L.16-64-1. There is no reason why these statutes should not be construed in *pari materia.*[19]

Any other construction of the law leads to so many antinomies, and contradictions, that it would make the reimbursement statute, in a practical sense, unusable. Of course, in many cases, the last known *school residence* of the child will be the *same* as the last known *residence of the parent*--but this will not always be the case. The School Residency Law (R.I.G.L.16-64-1) takes this fact into account. The construction of the law proposed by DCYF does not.

Moreover, the construction of the law proposed by DCYF would leave us in the dark about which community is now responsible for writing Charles' IEP---the parents in this case were living in two different communities when they lost parental rights. Which community is responsible for Charles' IEP? The legislature, according to DCYF, has left us without an obvious solution to this problem. We think, instead, that General Assembly intended for us to turn to the School Residency Law (16-64-1) to decide this question. The School Residency Law, enacted by the General Assembly, has comprehensive provisions to govern such situations. Are we to believe that the General Assembly, after carefully considering all contingencies in one part of a law, became afflicted with amnesia concerning these contingencies when it enacted another part of the same law? The Rhode Island Supreme Court has written:

> If a mechanical application of a statutory definition produces an absurd result or defeats legislative intent, this court will look beyond mere semantics and give effect to the purpose of the act.[20]

We think that the common sense intent of the General Assembly was to make a child's "home community" responsible for paying for the child's education, if DCYF moved the child into a new community. We think, in sum, that the intent of the General Assembly was to have one school residency law for all children, including children who are in the custody of DCYF. A careful examination of the applicable law supports this conclusion.

The law at R.I.G.L.16-64-1.2 (**a**) refers to R.I.G.L.33-15.1-2 [**Guardianship for education**]. This **Guardianship for education** law in turn, requires the Family Court to use the School Residency Law (R.I.G.L. 16-64-1) in making school residency decisions for children who come into the care of DCYF. The law at R.I.G.L.16-64-1.2(**c**) makes these school residency decisions *prima facie* evidence before the

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[19] Nascimento v. Phillips Petroleum Co., 346 A.2d 657, 115 R.I. 395.
[20] Matter of Falstaff Brewing Corp., 637 A.2d 1047 (R.I.1994)

commissioner, who also is to use the School Residency Law (R.I.G.L.16-64-1), in making residency decisions. The construction of R.I.G.L.16-64-1.2 (**b**) we adopt has the virtue of assigning the same construction to similar terms in the same statute---that is to say, it is the sort of *pari materia* construction that is favored by the law. It also runs true to our own precedents in similar matters.

In the present case we conclude that at the time Charles came into the custody of DCYF his residence for school purposes was clearly Providence. At that time both his father and mother was living in Providence. After DCYF obtained custody over Charles his parents went to live in different communities. Under the School Residency Law (16-64-1) these changes in residence could have no effect on Charles' residency for school purposes. The law at R.I.G.L.16-64-1, in pertinent part, says:

> A child shall be deemed to be a resident of the town where his or her parents reside. If the 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.* (Emphasis added)

Under this provision of the law the new residencies of Charles' parents could not change either Charles' residence for school purposes, or which district was responsible for providing reimbursement for Charles' education. This is the true because nether parent, ever again, had "actual custody" over Charles. It is only such "actual custody" which would have made Charles a school resident of the town where the parent having "actual custody" was living.

Once DCYF took custody of Charles and placed him in a group home which sent its residents to the public schools of the town where the group home was located Charles became a school resident of that town. (R.I.G.L.16-64-1) In turn the public schools of the receiving town, where the group home was located, became entitled to seek reimbursement from the town or city which was Charles' original residence for school purposes:

> **16-64-1. Residency for school purposes. ---** *** Children placed in group homes, in foster care, in child caring facilities, …by a Rhode Island state agency or a Rhode Island licensed child placing agency *shall be deemed 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 or the child's education be paid for in accordance with R.I.G.L. 16-64-1.1. (Emphasis added)

When we examine R.I.G.L. 16-64-1.1 we find that it creates four of types of reimbursement (**a,b,c, and d**) which depend on the type of placement the child is in. If the child is in *foster care* (**a**) the only reimbursement a receiving community is

entitled to the same state aid reimbursement it receives from the state for educating any child in the public schools. (R.I.G.L. 16-64-1.1(**a**)) Thus, for children in foster care no additional reimbursement from a "sending" community, or from the state, is available.[21]

At R.I.G.L.16-64-1.1 (**b**) the law discusses a category of reimbursement for certain "SERIOUSLY EMOTIONALLY DISTURBED CHILDREN" placed by DCYF in certain specialized placements. This category will become important at a later point in this decision, when we discuss Charles' placement at Spurwink---but we do not have to discuss it now, in reference to the St. Mary's placement.

A further type of reimbursement (**c**) found at R.I.G.L.16-64-1.1 (**c**), which covers reimbursement for certain students in state operated--- or contracted for--- facilities. Certain parties to this dispute point to R.I.G.L.16-65-1.1(**c**), and argue that this law makes DCYF responsible for paying reimbursement for Charles' education. The law, in pertinent part, states:

> (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 has a contract with DCYF to fund a pre-determined number of placement or part of the facility' program[St. Mary's had such a contract] ; and
> (2) The facility is state licensed[St. Mary's is licensed]; and
> (3) The facility operates an approved on-grounds educational program [St. Mary's does, whether or not the child attends the on-grounds program [Charles attended St. James school in Manville].

It is therefore argued that since DCYF had a contract with St. Mary's for a "predetermined number of placements" "the entire cost" of the education of students at St. Mary's should fall on DCYF. In fact, the record shows that DCYF did have such a contract with St. Mary's Home. The record also shows that this contract was changed to a "purchase of services contract. Our findings of fact state:

> DCYF had a contract with St. Mary's Home to provide a defined number of placements at the home. This contract had a termination date on June 30th 1998.[22]
>
> Prior to this termination date DCYF changed its relationship with St. Mary's to a purchase of services contract. DCYF notified School

[21] R.I.G.L.16-64-1.1 (**a**)
[22] Exhibit 10.

> Districts by letter that as a result of this change: "ST. MARY'S IS NO LONGER CONSIDERED A STATE SUPPORTED PROGRAM, AND THE DEPARTMENT IS NO LONGER RESPONSIBLE FOR THE PROVISION OF EDUCATIONAL SERVICES. THE CITY OR TOWN IN WHICH THE CHILD'S PARENT(S) LIVE WILL BE RESPONSIBLE FOR THE COST OF EDUCATION. …THE DEPARTMENT RECOGNIZES THE IMPACT THAT THIS CHANGE MAY HAVE ON SOME COMMUNITIES DURING THE MIDDLE OF THE FISCAL YEAR. THEREFORE, DURING THE TRANSITION PERIOD FROM JANUARY 1, 1998, THROUGH JUNE 30, 1998, THE DEPARTMENT WILL BEAR THE COSTS OF EDUCATIONAL PROGRAMMING AT ST. MARY'S HOME."[23]

We take DCYF at its word, as expressed in Exhibit 10, and find that DCYF is responsible for paying North Providence for Charles' education between May 22, 1998 and June 30, 1998. (R.I.G.L.16-64-1.1(c)) It is now time to determine which community, under R.I.G.L.16-64-1.1 (**c**) is responsible for the rest of the reimbursement to North Providence.

We find that Providence is responsible for paying North Providence for the cost of Charles' education from July 1, 1998 until Charles' move to Spurwink in February of 1999. Providence was Charles' last established residency for school purposes when he came into the care and custody of DCYF.

We are aware that the record shows that in March of 1998, Charles' pre-adoptive placement in Cumberland disrupted and that DCYF placed him in Paul's shelter in Woonsocket. After this shelter placement, Charles returned to the St. Mary's Home in May of 1998. Charles remained in placement at St. Mary's Home from May of 1998 until February of 1999. Under the statute (R.I.G.L.16-64-1) children placed in "foster care, group homes, and child caring facilities" become residents for school purposes of the town where the placement is located. We think that under the statute the obligation of the original town of residence to pay tuition is abated, but not extinguished, when a child is placed in foster care. That is to say, that while a foster care community may not to entitled to receive reimbursement from the child's original town of school residence, the foster community, itself, does not become liable to pay reimbursement, if a child is moved to a new community---that obligation remains with the child's original town of school residence. We are sure that the same rule, *mutatis mutandis*, applies to group home placements

It makes little sense to interpret a reimbursement statute in a way that creates a continual procession of communities whose reimbursement obligations (and continuing IEP obligations) would only spring into being at the moment the child left

[23] Exhibit 10

the community---surely this need to happen only once.[24] Occam's Razor has its use in reimbursement law just as it does in logic---"entities should not be multiplied unnecessarily." We also ground our ruling here on the alternate premise that no parties have named Cumberland or Woonsocket as parties to this litigation. We therefore take it that all claims have been waived against these communities have been waived.

We therefore conclude that Providence is obligated to pay North Providence a per pupil special education cost for the time Corwin was at St. Mary's Home and attending St. James School, at the expense of North Providence.

Conclusions--The Spurwink Placement

DCYF, itself, is seeking a per pupil reimbursement for the time Charles attended the Spurwink School. DCYF suggests that the law governing Charles' placement at the Spurwink School is found at R.I.G.L.16-64-1.1 (b) and R.I.G.L.16-64-1.1(c):

> (b) Children placed by DCYF pursuant to R.I.G.L. 42-72-5(b)(24) [i.e. The Program for Seriously Emotionally Disturbed Children, *quondam* MHSCY, *quondam* Governor's Beneficiary Program--see foot note 1] in a residential treatment program…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) The city or town shall pay its share of the cost of educational services to DCYF or its contracted agent.

In pertinent part the law at R.I.G.L.42-72-5 (b)(24) says:

> Each community, as defined in chapter 7 of title 16 [*i.e. The general state school aid formula, which we, for what seems to us obvious reasons, take as an oblique reference to the School Residency Law (R.I.G.L.16-64-1)*] shall contribute to the department [*DCYF*]…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 pursuant to this section in a residential treatment program which includes the delivery of educational services.

DCYF therefore contends that under these statutes it is entitled to receive a per pupil special education reimbursement from a Rhode Island School district. We have

[24] For example, Providence, Pawtucket, Lincoln, North Providence, the village of Manville, Cumberland, and Woonsocket, are all involved in this case---so are two transient parents, a set of pre-adoptive foster parents, St. Mary's Home, St. James School, the Paul Shelter, Spurwink School, DCYF, and DCYF as operator of the state's program for Seriously Emotionally Disturbed Children. Did the General Assembly intended for all of these entities to chase each other, *seriatim*, for reimbusement?

concluded that Providence was Charles' original residency for school purposes. It is, therefore, Providence that is obligated to provide this reimbursement to DCYF.

Conclusions

(1) Our examination of these facts, and the applicable law, convinces us that North Providence is entitled to receive reimbursement for Charles' placement at the St. James school for the period of time between 22 May 1998 (the IEP signing) and February of 1999 (the move to Spurwink). DCYF is responsible for this reimbursement between 22 May and June 30, 1999 (The effective date of the contract change with DCYF). Reimbursement for the period between July 1, 1999 and February of 1999 is the responsibility of Providence.

(2) We find that Providence, as Charles's initial residence for school purposes must "contribute to the department [DCYF]…at least its average per pupil cost for special education" as reimbursement towards the education Charles is receiving at the Spurwink School.

Forrest L. Avila, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

March 9, 2001
Date