

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

North Providence

v.

**Department of Children,
Youth, and Families**

.....

DECISION

Held: The North Providence School Department, and not DCYF, is responsible for the education of children placed at the Hills Program, a shelter operated by St. Mary’s Home for Children. Although St. Mary’s operates an approved on-grounds special education program, shelter residents cannot attend this school unless they have an IEP which calls for such a restrictive educational setting. Thus, unless the child’s IEP calls for placement in a special education school, residential placement at the Hills Program does not “include the delivery of educational services” as that phrase is used in R.I.G.L. 16-64-1.1. These children are to be educated by the community in which the facility is located, i.e. the town of North Providence.

DATE: January 28, 2005

Travel of the Case

On November 12, 2003 the Attorney for the North Providence School Department requested a hearing to determine whether North Providence or DCYF was responsible for the education of children placed at a short-term shelter located at St. Mary's Home for Children. The parties agreed to the entry of an Interim Order pending final resolution of this matter so that an LEA could be identified for any children at the shelter who might be eligible for, or receive, special education services. North Providence agreed to function as an LEA for such students, with the understanding that this arrangement was without prejudice to its position that DCYF had both financial and educational responsibility for these children.

The matter was heard on December 8, 2003 and post-hearing briefs were submitted by counsel on February 9, 2004 at which time the record closed.

Jurisdiction to hear this appeal lies under R.I.G.L. 16-39-1 and 16-64-6.

ISSUE

Are residents of the shelter at St. Mary's Home for Children the educational responsibility of DCYF or the North Providence School Department?

Findings of Relevant Facts:

- On July 1, 2003 an emergency shelter for children in state custody was opened by St. Mary's Home for Children. The shelter is located on the St. Mary's campus at 420 Fruit Hill Avenue, North Providence, Rhode Island. Tr.p.50-51; Joint Ex.G.
- The shelter, known as the "Hills Program" accommodates six (6) teenage girls all of whom are in the custody of the Department of Children, Youth and Families. Tr. pp.42, 45.
- Although a written contract has not yet been signed, the Department of Children, Youth and Families has a contractual agreement with St. Mary's Home to use all of the six placements at the shelter. This is referred to as a "maximum obligation contract" as opposed to a "fee for service" arrangement in which DCYF's cost is based on the actual usage of the residential and other services provided to children in state care. Tr. pp. 45, 71, 104-105, 112.
- Other than for the Mauran Unit of the Residential Treatment Center (for which DCYF has contracted for all eight (8) beds under a "maximum obligation contract") placements in the Residential Treatment Center at St. Mary's Home are on a "fee for service" basis. Tr. pp. 32,34.
- St. Mary's Home for Children is a non-profit corporation with central offices at 420 Fruit Hill Avenue in North Providence. At the Fruit Hill Avenue location St.

Mary's operates a Residential Treatment Center¹ servicing up to 76 children in seven residential units, a state-certified special education school, a foster care program and the emergency shelter licensed for up to six residents. Tr. pp.23-24. At separate locations in Cranston and Providence, St. Mary's operates an out-patient counseling center and a group home. Tr. pp.23-25. Joint Ex.C.

- License Number 35956 is issued by DCYF to St. Mary's Home For Children. It authorizes St. Mary's to provide two residential child care programs at the Fruit Hill Avenue location, i.e. the emergency shelter and the Residential Treatment Center. Joint Ex.C.
- The emergency shelter is located on the third floor of the main building of the St. Mary's campus. Tr. p.73.
- There is a central kitchen at which meals are prepared for shelter residents as well as those at the Residential Treatment Center. Tr. p.78.
- The two programs share some common protocols and policies, as well as centralized administrative and training services. Tr. pp. 83-84, 99-101.
- The staffing, programming and services of the shelter are, for the most part, separate from those of the Residential Treatment Center. Tr. pp. 48-49, 75-101.
- Although there are occasions when residents of the Residential Treatment Center commingle with residents of the shelter, e.g. awards night, for the most part the populations are kept separate. Tr. p.77.
- The Residential Treatment Program is a 24-hour a day treatment program consisting of psychiatric services, clinical social work, special education and medical services. Joint Ex. E (p.2); Joint Ex.F;Tr. pp. 35-41. Residents stay fourteen months on average. Tr. p. 37.
- The intake criteria and screening for residents of the Residential Treatment Center are extensive and include the requirement that a child have an Individualized Education Program (IEP) which calls for educational placement in a special education school. Tr. pp. 24, 49.
- The Hills Program emergency shelter provides temporary care for children in a group home, community-based setting. Joint Ex.E. p.2; Joint Ex.G; Group therapy is provided to residents twice a week, and on an individual basis, as needed. Tr. p.44. Residence at the shelter is limited to ninety (90) days. Joint Ex. 2; Tr. p.50.
- There is no screening for admission to the Hills Program beyond the requirement that the child not be actively suicidal, homicidal, or psychotic. All of the residents are in DCYF care. Tr. pp.42-44; Joint Ex.G. Although a child placed in the Hills Program shelter may have an IEP, there is no requirement that she have one. Tr. p.49.
- With the exception of one child who attends East Providence High School,² shelter residents attend North Providence public schools. Tr. p.50.
- The special education school on the grounds of St. Mary's Home is attended by children who are in the Residential Treatment Program as well as by day students who are placed in the educational program pursuant to IEP's developed by their

¹ also referred to as a Residential Counseling Center

² and for whom continuity of her high school program is an important factor, and it is anticipated she will return to East Providence in the near future.

respective communities. Tr. p. 24. To date, no residents of the emergency shelter have attended the on-grounds school program at St. Mary's Home. Tr. p.81.

Positions of the Parties

North Providence School Committee

Counsel for the North Providence school department argues that state education law clearly places financial responsibility for the education of children living at the Hills Program with DCYF. The facts cited as controlling are: (a) the existence of a state-approved, on-grounds educational program (b) the contractual arrangement between DCYF and St. Mary's to purchase all six "beds" of the shelter³ (c) the license issued to St. Mary's for both the Residential Treatment Center and Emergency Shelter. Given these facts, the language of R.I.G.L. 16-64-1.1(d) clearly applies and makes DCYF responsible for reimbursement of the North Providence school department for costs incurred by the department in educating these children.

The school department argues that despite DCYF's attempt to characterize the Hills Program as a separate and distinct entity from St. Mary's Home for Children, the shelter is merely one of the programs operated under the umbrella of St. Mary's Home. St. Mary's is a "comprehensive" treatment facility for abused and neglected children with a continuum of services available. The fact that the shelter program operates somewhat independently of the Residential Treatment Center and has separate staff and rules does not make it a separate "facility".

The most persuasive fact that the two programs are one "facility" is that the contract between the shelter and DCYF was negotiated by the administrators of St. Mary's Home for Children. If St. Mary's exerts control over the shelter program to this extent, then the shelter should be considered merely a component of the larger facility. The operation of an approved on-grounds educational program should be attributed to the shelter, and whether or not residents of the shelter attend the on-grounds school is irrelevant. Applying Section 16-64-1.1(d) to these facts, all children residing at the emergency shelter who attend North Providence public schools are the financial responsibility of the Department for Children, Youth and Families. DCYF would then be obligated to reimburse North Providence for the cost of these students' education.

Department for Children, Youth, and Families.

The DCYF counsel argues that while St. Mary's Home for Children may operate an approved educational program on the St. Mary's campus, the Hills Program emergency shelter, a separate and distinct facility, does not. He argues that the North Providence school department is attempting to take advantage of the coincidence that the emergency shelter just happens to be located on the grounds of St. Mary's Home where an approved

³ as well a unit of the Residential Treatment Center (the Mauran unit)

educational program operates for a separate population. He submits that this serendipitous event should not result in a transfer of educational responsibility to DCYF. A child's placement at the Hills Program does not include, and has never been contemplated to include, "the delivery of educational services" as that term is used in Section 16-64-1.1. Furthermore, a close examination of the language of the statute, he submits, will indicate that Section 16-64-1.1(b) is still controlling, and not subsections (c and d) as North Providence contends.

DCYF takes the position that the use of the word "facility" in R.I.G.L. 16-64-1.1 should be interpreted to refer to a particular residential program, and not to any larger facility of which the program is a part. Given the clear and plain meaning of the word facility as "something that is built, installed or established to serve a particular purpose" (Webster's definition) as well as its regulatory definition – "the physical environment used by a program" – "facility" means the shelter, rather than the umbrella facility of which it is a part – St. Mary's Home for Children.

Reference to the statute itself supports such construction of the word "facility". R.I.G.L. 16-64-1.1(d) lists the various types of residential facilities in which children are placed and in so doing actually lists several of the separate and distinct types of programs available to children in state care. The licensing scheme also recognizes that "facilities" are actually specific-purpose programs and establishes separate licensing criteria for approval of each type of program. The facts of this case demonstrate, DCYF argues, that the emergency shelter "facility" is both programmatically and operationally separate and distinct from the Residential Treatment Center, which is itself a distinct entity from the educational program separately licensed by the Rhode Island Department of Elementary and Secondary Education. DCYF argues that a logical interpretation of R.I.G.L. 16-64-1.1 requires recognition of separate programs that may operate at one geographical location. A contrary interpretation ties financial responsibility to the arbitrary factor of the physical location of a shelter, rather than to the type of residential facility that it is. This would not be a reasonable interpretation of the statute.

Finally, DCYF points to the legislative history of this section of the law and notes that in its prior version, DCYF's responsibility to fund educational services for children in its care was limited to situations in which the *residence* operated an educational program approved by the department of education. In a 1998 amendment, when "residence" was changed to "facility", there was no intent to broaden DCYF's responsibility. The entire discussion of educational and financial responsibility for children in state care was transferred to Chapter 64 of Title 16, but the intent remained to make DCYF responsible only if the residential program, and not some larger facility like St. Mary's Home for Children, operated an on-grounds educational program. If DCYF is found to be responsible for the education of children placed in emergency shelters simply because the shelter is located on the grounds of some larger facility which has its own educational program, DCYF argues that such a ruling will be a disincentive to child care agencies such as St. Mary's to offer the State assistance in providing much needed temporary shelter care to children.

DECISION

R.I.G.L. 16-64-1 clearly provides that children in DCYF care, insofar as their situation permits, retain the right to be educated as residents of the community in which they reside, whether it be in a group home, emergency shelter, community residence, or other “child caring facility”. The issue of payment⁴ for the education of these children is discussed in a rather idiosyncratic section of this same chapter, Section 16-64-1.1. In making the interpretation of the language that must be made to resolve the issue in this case, one must consider the legislative history of this section, as well as the ruling of the Rhode Island Supreme Court in the 1989 case of In re Children Residing At St. Aloysius Home, 556 A 2d 552 (R.I.1989). Much of the disputed language in this case is a direct result of that ruling.

In the St. Aloysius case, the Supreme Court ruled that certain children placed by DCYF (then DCF) at St. Aloysius Home, a residential facility for dependent and neglected children, were entitled to participate in the public school program of the town of Smithfield, Rhode Island. This ruling was made despite the fact of the availability to these children of an approved on-grounds educational program, the St. Aloysius School. The school was licensed by the Department of Education as both an elementary school and a special education program. In response, the General Assembly crafted language to relieve local districts of a perceived burden in such situations. This language, cited by DCYF in its memorandum, consisted of two separate provisions of the law. First was the language placed in R.I.G.L. 16-7-20 that “...Children...who are placed, assigned or otherwise accommodated for residence by the department for children and their families in a state-operated or supported community residence licensed by a Rhode Island state agency shall have the cost of their education paid by the department for children and their families”. With this statement of DCYF’s financial responsibility the General Assembly created a definition of “children”⁵ R.I.G.L. 16-7-16, in a newly created subsection (l) provided:

... “children” means those children...who are placed, assigned or otherwise accommodated for residence by the department for children and their families in a state-operated or supported community residence licensed by a Rhode Island state agency and said residence operates an educational program approved by the department of education.

The net effect of these provisions was to limit the financial responsibility of DCYF to those situations in which the child’s *residence* operated an on-grounds educational program. Implicit was the notion that the child could, but need not, attend the on-grounds educational program, but its operation would nonetheless trigger DCYF financial responsibility. This statutory scheme generated confusion and controversy.

⁴ or reimbursement

⁵ the meaning of which was apparently doubtful

In 1998, amendments to R.I.G.L. 16-7-16 and 16-7-20 transferred the discussion of financial responsibility to a new section, R.I.G.L. 16-64-1.1. Language was developed which clarified and made explicit that which had previously been confusing and implicit. Again, DCYF's financial responsibility for educating children in state care was limited to children placed in a specific type of residential facility. The concept of a "state supported" community residence was clarified with reference to facilities which "have a contract with DCYF to fund a pre-determined number of placements or part of the facility's program". This language was placed in Subsection 16-64-1.1(c). Also made explicit was that the operation of an on-grounds educational program triggered DCYF's responsibility, whether or not the child attended the on-grounds program.

It is the change in language from "residence" to residential "*facility*" made by Chapter 68 of the Public Laws of 1998 which gives rise to this dispute. The reference to the operation of an on-grounds educational program by the "facility" is the premise for the School Committee's argument that all three conditions set forth in the law for DCYF's financial responsibility have been met and that the facts of this case are controlled by R.I.G.L. 16-64-1.1(d)⁶. The argument is that the shelter at which these children reside is merely a program operating at the St. Mary's Home "facility". DCYF submits that the word "facility" should be interpreted to mean "program" and notes that the shelter does not operate its own on-grounds school. Further, DCYF argues, placement at the Hills Program shelter does not "include the delivery of educational services". In fact the understanding (soon to be in the form of a written contract) between DCYF and St. Mary's Home is that residents will attend the community's public schools.

Given the legislative history of R.I.G.L. 16-64-1.1 there is consistent evidence of legislative intent to make DCYF responsible for the educational costs of children in state care when they are placed at a state-operated or supported residential facility which has an on-grounds educational program accessible to them, whether or not they attend the on-grounds program. When a child is placed in a residential program which is located on the grounds of and as a component of a larger facility and the facility's on-grounds educational program is accessible to them, the provisions of R.I.G.L. 16-64-1.1(d) should apply. We are assuming the facility is state operated or supported and licensed, as required by subsections (1) and (2) of 16-64-1.1(d). However, the single fact of geographical location of the child's residential program on the grounds of a larger facility (with an on-grounds program) should not trigger DCYF's responsibility. The accessibility of the on-grounds program to the child should. Thus, depending on the factual context, "facility" could mean the residential program or the larger "facility", as long as the on-grounds educational program is accessible to the child.

Our findings of fact indicate that the on-grounds program operated by St. Mary's Home is not accessible to residents of the Hills Program. Participation in the on-grounds special education program is possible if a child has an IEP and only if it calls for placement in a special education school. Placement in a restrictive educational setting is authorized under the Regents' Regulations Governing The Education of Children With Disabilities

⁶ In 2001 this law was further amended to add a new subsection (b) which caused subsection (c) to become (d).

only by written consensus of an IEP team.⁷ Without such an IEP, attendance in the on-grounds school would be inappropriate and illegal. Evidence in this case indicates that residents of the shelter undergo no screening in terms of their disability status or IEP provisions, unlike residents of the Residential Treatment Center. They may or may not have an IEP, and, even if they do, to date, all of the residents have been able to be educated in a general education setting.

Thus, with the exception of residents who have an IEP which calls for placement in a special education school, the on-grounds program is inaccessible. Stated another way, their placement at the shelter does not “include the delivery of educational services, provided by that facility” (16-64-1.1(c)). Therefore, the North Providence School Department retains educational and financial responsibility for these children. However, residents of the shelter for whom attendance in the on-grounds special education school would be in conformity with their IEP’s will be the financial responsibility of DCYF, whether or not such child actually attends the on-grounds program.

Kathleen S. Murray, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

January 28, 2005
Date

⁷ See Regents’ Regulations Section 300.550 regarding Least Restrictive Environment (LRE).