

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

.....

**Residency of Nicola L.**

.....

**INTERIM ORDER**  
**AND**  
**DECISION**

Held: Providence is directed to maintain this student in his current placement until this matter is decided on the merits. The Parties are directed to file memoranda in this matter within thirty days of the issuance of this interim order decision. DCYF is directed through its ICPC administrator to consult with the National ICPC administrator to determine ICPC policy concerning placements of this nature. DCYF will, in its brief in this matter, provide the parties and the hearing officer with this ICPC policy, if any policy exists. This matter will be scheduled for a hearing on the merits as soon as the memoranda are received. At the hearing on the merits the parties should be prepared to discuss whether or not a complaint with the Connecticut Department of Education should be filed in this matter.

Date: March 23, 2005

## **Jurisdiction**

Jurisdiction in this interim order request is present under R.I.G.L. 16-39-1, R.I.G.L. 16-39-2, R.I.G.L. 16-64-6, R.I.G.L.16-39-3.2 and R.I.G.L. 16-5-30.

## **Travel of the Case**

This request for an interim protective order (R.I.G.L. 16-39-3.2) was filed by the Rhode Island Department for Children, Youth, and their Families (DCYF) on behalf of a student who has been placed in an approved Rhode Island private special education program by the Providence school system in accordance with applicable State and Federal laws concerning the education of children with disabilities.<sup>1</sup> DCYF is requesting the Commissioner to order Providence to continue this placement. Providence contends that it is no longer obligated to fund this placement because the student now lives in Connecticut. In the alternative, Providence contends that North Providence should assume, or at least share, the cost of educating this student due to the residency of one of the student's parents.

## **Findings of Fact**

1. The student in this case is a ward of the Rhode Island Family Court. The student's mother has voluntarily agreed to the termination of her parental rights in relation to this 7-year-old child. The Family Court, in a contested case, terminated the parental rights of the student's father. The father has appealed this decision of the Family Court to the Rhode Island Supreme Court. While it is not possible to predict when the Supreme Court will be in a position to decide the father's appeal, able and experienced counsel for DCYF has suggested that disposition of the appeal may not occur during the next twelve months, at the earliest.
2. We preliminarily conclude for the purposes of this interim order hearing that the student's mother was living in North Providence in October of 2004 when she agreed to the voluntary termination of her parental rights.
3. We preliminarily conclude for the purposes of this interim order hearing that the father was living in Providence in December of 2004 when the Family Court terminated his parental rights.
4. In March of 2003 the Family Court placed this student with a pre-adoptive foster family. At the time of this placement this foster family lived in Providence. While this foster family has expressed in interest in adopting this student, no adoption can take place until, and unless, the Rhode Island Supreme Court affirms the decision of the Family Court to terminate the parental rights of the student's father.

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<sup>1</sup> R.I.G.L.16-24-1, *et seq.* and the Federal *Individuals with Disabilities Education Act*. 20 U.S.C. 1401-1461.

5. The Providence School Department in March or April of 2004 placed this student through the IEP process in an approved private special education day school in Providence.
6. On December 12, 2004 the foster family, along with the student, moved to Brooklyn, Connecticut, a town near Rhode Island. The father in the foster family continues to work in Rhode Island, and he has been transporting the student to the Rhode Island school placement that was arranged by Providence.
7. DCYF has represented on the record before us that the public school authorities of Brooklyn, Connecticut have declined to enroll this student in the Brooklyn public schools, or to assume financial responsibility for the student's Rhode Island placement.<sup>2</sup> It would seem that the Brooklyn public school authorities have concluded that under the Interstate Compact on the Placement of Children (ICPC)<sup>3</sup> Rhode Island, and not Connecticut, is obligated to provide this student with a free appropriate public education.

### **Issues Presented**

- Is DCYF, on behalf of this student, entitled to an interim order directing a Rhode Island school district to maintain this special education student in his current placement?
- If DCYF is entitled to such an order which Rhode Island school district or districts is responsible for this student's placement?

### **Positions of the Parties**

- DCYF submits that either providence or North Providence is responsible for the maintenance of this student's placement.
- Providence submits that this student is now a resident of Connecticut and that Providence therefore has no responsibility for maintaining this student's placement.
- North Providence submits that this student has never been a resident of North Providence for school purposes and that, in any event, the student is now a resident of Connecticut and that the student is entitled to a free appropriate public education from Connecticut.

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<sup>2</sup> It would appear that in fact Brooklyn purchases many educational services from Danielson, Connecticut.

<sup>3</sup> See: R.I.G.L. 40-15-1

## Conclusions of Law

1. Rhode Island, along with the other 49 states and the District of Columbia, participates in the *Interstate Compact for the Placement of Children* (ICPC). (R.I.G.L. 40-15-1)
2. For present purposes it will suffice to describe the ICPC as a Compact that allows a *sending state agency*<sup>4</sup> to place a child who is a ward of the sending state with a foster family living in a *receiving state*, provided that the sending state follows certain procedures, and accepts certain responsibilities.
3. Under the ICPC the sending state must obtain the permission of the receiving state before a placement is made.<sup>5</sup>
4. **The ICPC states:** “The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. *The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement....*”
5. **Regulations to implement the ICPC state:** “A placement initially intrastate in character becomes an interstate placement subject to the Interstate Compact on the Placement of Children (ICPC) if the child's principal place of abode is moved to another state.”
6. Rhode Island has a statute (R.I.G.L.16-64-1.2) which deals with the authority of DCYF to receive a *per pupil* cost payment from a school district, designated through the statute, to be applied to the educational costs of a DCYF placement in a treatment facility. On an interim basis we conclude that this statute has no application to the matter at hand. We reach this conclusion because we are not dealing here with a *DCYF arranged placement in a facility made at DCYF cost*. We have other reasons for doubting the applicability of R.I.G.L.16-64-1.2 to this matter, but the press of time forces us to reserve discussing them until this matter can be fully briefed and heard on the merits.

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<sup>4</sup> ICPC (b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state. In Rhode Island this is DCYF. R.I.G.L.40-15-4.

<sup>5</sup> *In Re Paula G.*, 672 A.2d 872 (R.I. 1996)

7. **Appendix A in the IDEA Regulations provides this question and answer at Paragraph 16:** “For a child placed out of State by an educational or non-educational State or local agency, is the placing or receiving State responsible for the child's IEP?” **Answer:** “Regardless of the reason for the placement, the "placing" State is responsible for ensuring that the child's IEP is developed and that it is implemented. The determination of the specific agency in the placing State that is responsible for the child's IEP would be based on State law, policy, or practice. However, the SEA in the placing State is ultimately responsible for ensuring that the child has FAPE available.”
8. **IDEA Regulations state at 300.661 that:** (a) General. Each SEA [State Educational Agency] shall adopt written procedures for— (1) Resolving any complaint, including a complaint filed by *an organization or individual from another State*, that meets the requirements of §300.662 by—(i) Providing for the filing of a complaint with the SEA....
9. **Rhode Island law states at: R.I.G.L. 16-64-2 Retention of residence.** – A child shall be eligible to receive education from the city or town in which the child's residence has been established until his or her residence has been established in another city or town *and that city or town has enrolled the child within its school system, unless the commissioner of elementary and secondary education, pursuant to § 16-64-6, has ordered otherwise....* (Emphasis added.)

### **Discussion**

We have stated in other interim order decisions concerning residency and student placements that the “ stay-put” provision of R.I.G.L. 16-64-2 will usually suggest that we should require the district which made the placement at issue to maintain that placement until the matter can be adjudicated on the merits. This position seems particularly advisable in a multi-party case such as this one that may involve some very complex legal issues or great importance. We therefore conclude that Providence should remain responsible for this student’s placement until this matter can be heard on the merits.

### **Conclusion**

1. Providence is directed to maintain this student in his current placement until this matter is decided on the merits.
2. The Parties are directed to file memoranda in this matter within thirty days of the issuance of this interim order decision.
3. DCYF is directed through its ICPC administrator to consult with the National ICPC administrator to determine ICPC policy concerning placements of this nature. DCYF will, in its brief in this matter, provide the parties and the hearing officer with this ICPC policy, if any policy exists.

4. This matter will be scheduled for a hearing on the merits as soon as the memoranda are received.
5. At the hearing on the merits the parties should be prepared to discuss whether or not a complaint with the Connecticut Department of Education should be filed in this matter.

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Forrest L. Avila, Hearing Officer

APPROVED:

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Peter McWalters, Commissioner

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March 23, 2005  
Date