

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....
Warwick School Committee

v.

**Rhode Island Department of
Elementary and Secondary Education and
Department of Children, Youth, and
Families**
.....

DECISION

Held: The decision of the Rhode Island Department of Elementary and Secondary Education to continue to classify Bradley Hospital’s Heritage House Program as “a group home or other residential facility that does not include the delivery of educational services” is upheld. Although state education aid paid to Warwick pursuant to R.I.G.L. 16-64-1.1(b) does not reimburse the city of Warwick for the costs of providing an appropriate education to the students who reside at Heritage House, RIDE is not authorized to distribute education aid contrary to the provisions of state law. If state policy is to better support community-based treatment programs for adolescents with developmental disabilities and serious behavioral disorders, the formula for additional state aid for “host” districts must be adjusted.

DATE: June 6, 2007

Travel of the Case

This dispute arose in 2004 when Warwick's Director of Special Services, Stephen W. Lowery, wrote to Commissioner Peter McWalters with respect to a shortfall experienced by the district because of increasing costs associated with educating residents placed at Heritage House. Heritage House is a residential program operated by Bradley Hospital for adolescents with developmental disabilities and emotional/behavioral disturbances. Mr. Lowery requested that the Commissioner review whether Heritage House was properly classified under the statute as a community-based group home, and, if it were (and the cost of educating students there remained the responsibility of Warwick) that the district be granted a hearing on the issue of obtaining additional state funding to cover these costs. The matter was assigned to the undersigned for hearing and decision on November 16, 2004. Following a prehearing conference, the parties agreed that hearing should be deferred until the Department (RIDE) had issued an administrative decision on Mr. Lowery's request.

To this end, on May 27, 2005 counsel for the Warwick School Committee submitted a letter requesting that RIDE reverse its decision to classify the children residing at Heritage House as residents of a "group home" for whom Warwick had the responsibility to secure a free appropriate education. On February 16, 2006 Deputy Commissioner David V. Abbott responded that after review of the information provided to the Department, there was no basis to change the classification of Heritage House from that of a group home that does not include the delivery of educational services. Immediately thereafter, counsel for the Warwick School Committee requested that the matter proceed to formal hearing.¹

Hearings took place on April 12, May 15, and July 19, 2006. The parties included the Warwick School Committee, RIDE, the Department of Children, Youth and Families and Heritage House. The record closed on January 2, 2007 upon the submission of the final legal memorandum in this matter.

Jurisdiction for the Commissioner to decide this dispute arises under R.I.G.L. 16-39-1.

Issues

Are the residents of Heritage House "children placed by DCYF in a group home or other residential facility that does not include the delivery of educational services" under R.I.G.L. 16-64-1.1(b)?

Considering factors such as the type of facility Heritage House is, the inter-relationship between Heritage House, The Bradley School and Bradley Hospital and the "wraparound" nature of the services provided,

¹ The fair hearing of appeals by hearing officers at RIDE, when RIDE is a party to the case, is accomplished through a strict separation of advocacy and adjudicative functions.

are the residents of Heritage House “children placed by DCYF in a residential treatment program...which includes the delivery of educational services, provided by that facility” under R.I.G.L. 16-64-1.1(c)?

Do public policy considerations warrant reversal of RIDE’s decision to impose educational and financial responsibility on the Warwick School Committee for the education of children residing at Heritage House?

Findings of Relevant Facts:

- Heritage House is a community-based treatment program for adolescents with developmental disabilities and emotional or behavioral disorders. WSC Ex.2.
- The Heritage House treatment program is owned, operated, professionally staffed, and clinically supervised by Bradley Hospital. Since 1999 the program has operated at 170 Heritage Park, Warwick, Rhode Island. WSC Ex.2.
- Heritage House accommodates eight children for residence. According to the program narrative describing Heritage House it is a “residential treatment program”. WSC Ex. 2 Section III.
- The program at Heritage House² is overseen by Bradley Hospital’s Developmental Disabilities unit and is designed to provide treatment services to adolescents who have “dual diagnoses” of psychiatric disorder and developmental disability. The residents at Heritage House do not require acute care inpatient hospital treatment³ but they require intensive treatment, albeit in a less restrictive, community-based setting. The residents cannot be treated safely or effectively in a home or foster home setting. WSC Ex.2
- The location of Heritage House in Warwick enables these children to have an opportunity to live in a community, close to their families and have as much of a normal adolescent life as is possible. Tr. Vol.I p. 49; the needs of the residents are “quite intense” and their residence at Heritage House is the “least restrictive treatment environment ...that meets their needs, and does so to the extent they’re able to be safe and effectively treated” Tr. Vol. III p.94.
- The referral of a child to the Heritage House program originates with DCYF (even though not all children referred to the program are in DCYF custody). Tr.Vol. III p.96. Heritage House receives a referral packet from DCYF and after clinical administrative review, determines whether or not the child will be accepted into the program. Tr. Vol. I pp.72-75;Vol.III pp. 96-97.

² As well as similar residential treatment programs at Rumford House in East Providence and Greenwich House in East Greenwich.

³ In fact many of the residents are referred to Heritage House upon their discharge from the inpatient unit of the Developmental Disabilities program at Bradley hospital. Vol.I pp.80-81.

- The placement of a child at Heritage House is on a “purchase of service” basis, meaning that DCYF does not contract for a pre-determined number of beds at the program. Tr. Vol.I.pp.71-72;Vol.III p.96.⁴
- During the process of admitting a child to Heritage House, educational information on the child such as prior IEP’s may be available and considered, but the decision as to how the educational needs of the child will be met is not made at the time of admission. Tr. Vol.I pp. 74-75.
- The treatment program at Heritage House consists of an array of services, including psychotherapy, physical and occupational therapy, social skills training, daily living skills, leisure-recreational skills training and therapeutic interventions. Tr. Vol.I pp.42-46; WSC Ex.2.
- The Heritage House program includes an “elective” special education component which, when chosen, enables a resident to be educated at The Bradley School, also operated by Bradley Hospital. There is no on-grounds educational program and educational services are not provided at Heritage House. Tr. Vol II p.26;Vol.III p.97. WSC Ex.2.
- The Bradley School is⁵ a “private, school funded, day treatment program for children and adolescents whose psychiatric and behavioral needs cannot be met in a public school setting”. The school operates a program of special education approved by RIDE. The school operates at three sites, but the one which is available to Heritage House residents is on the grounds of Bradley Hospital in East Providence, Rhode Island. WSC Ex.1 and 2.
- The decision to access, or not to access, the special education program at the Bradley School that is available to residents of Heritage House is made by an IEP team convened by the Warwick School Department. Tr. Vol.I p.63, 98; Vol.II p.78, 82-83; Vol.III p.100. In the IEP process, the recommendation of Bradley Hospital staff is given great weight because of their familiarity with the students and their “consistently appropriate overview” of the students and what is the most appropriate educational setting for them. Vol.II pp.78-80.
- If the IEP team determines that the appropriate educational placement for a Heritage House resident is the Bradley School, that placement is immediately accepted by the Bradley School. Tr. Vol.III pp. 113-116.
- At the time of hearing, five (5) of the residents of Heritage House attended The Bradley School and two (2) attended Toll Gate High School in Warwick. WSC Ex.6. The educational placements for all of these children had been determined by the district’s IEP team, with input from staff at Bradley Hospital. Vol.III pp.20-21, 100-102; DCYF Ex. 6A-6E.

⁴ The costs of the therapeutic program provided to residents at Heritage House are borne by the Medicaid program under a structured billing rate. Tr. Vol.II pp.27-28.

⁵ According to its web page

- The total cost incurred by the Warwick School Committee for the 2005-2006 school year to educate the residents of Heritage House was \$292,946 (tuition paid to Bradley Hospital for each of the five (5) students placed at the Bradley School was \$48, 154)⁶. WSC Ex.9; The reimbursement received by the School Committee, pursuant to statute was \$180,000 (\$22, 500, the “blended rate” for each of the 8 beds available at Heritage House). WSC Ex.9.
- The School Committee received notification on August 26, 2004 that Bradley Hospital would no longer be able to provide school transportation to the four residents of Heritage House who (at that time) attended the Bradley School⁷. WSC Ex. 4; The notice also indicated that there would be an additional two students/residents who would be “anticipated” to need transportation to Bradley over the course of the next academic year. WSC Ex.4;⁸
- The program at Heritage House is licensed by DCYF. The license is issued to “Bradley Hospital Heritage House of Bradley Hospital” and permits the operation of a “Child Caring Agency” providing group home services to eight (8) children. DCYF Ex.5.

Positions of the Parties

Warwick School Committee

In an early letter requesting reclassification of Heritage House, counsel for the School Committee succinctly stated the Committee’s position and the facts supporting that position:

Heritage House is operated by Bradley Hospital and seventy-five per cent (75%) of its residents are educated at the Bradley Day School. Given the nature of Heritage House, and the intensive special education needs of the children who live there, Warwick believes that Heritage House should be classified as a residential treatment facility which provides educational services rather than a group home which does not. (Joint Ex.2).

The reclassification of Heritage House as a “residential treatment program”, rather than a group home is supported by the characteristics and programming needs of the residents. The adolescents placed there have severe emotional and developmental problems which create intensive psychiatric and behavioral needs. The educational needs of Heritage House residents require the type of program available at The Bradley School and, for the

⁶ This rate is less than the standard rate and is based on Warwick’s special education average per pupil cost, as determined annually by RIDE. See Joint Ex. 6 and 7;

⁷ At the time of hearing, however, transportation to school was still being provided to Heritage House residents by Bradley Hospital . Tr. Vol.II p.86.

⁸ Two Heritage House residents attending Toll Gate would eventually be leaving and replaced by two students who would be “anticipated” to be placed at the Bradley School. Tr. Vol. II pp. 16-17.

most part, the less-restrictive setting of the Warwick public schools is not an appropriate educational setting for these children.

While Warwick does not question that children placed at Heritage House should have the advantages of a community-based treatment program, it argues that when that treatment program essentially incorporates educational services provided by the same entity (Bradley Hospital), the “host” community should be relieved of financial responsibility. Counsel for the School Committee points out that only when DCYF places a child in a group home or other residential facility that does *not* include the delivery of educational services does the host community bear the cost of educating such children. The applicable section of the statute does not require that the educational services “delivered by the facility” be provided on site. RIDE’s administrative decision in this matter mistakenly focuses on the absence of an on-site program in determining that educational services are not “included” in the program. The Committee submits that the fact that Heritage House students receive the educational component of their program in East Providence is merely an “accident of geography”. Although the treatment needs of these children may permit, public policy may encourage, and the law may require⁹ DCYF to provide community-based treatment, these factors should not shift financial responsibility to the Warwick school department.

There is no dispute that Bradley Hospital provides both therapeutic and educational services to the children residing at Heritage House. Moreover, according to the memo of the School Committee, the educational and therapeutic services delivered to these children are intertwined and interdependent. This is evident in the program narrative describing how the services at Heritage House can be provided and in the evidence of how the program actually functions. Therapeutic and educational functions are interdependent. In educational planning for these students, Bradley Hospital staff participate in the IEP meeting and their recommendations are given great weight in the children’s eventual placement at The Bradley School. The delivery of educational services to Heritage House residents is characterized by excellent communication between staff transporting residents from the home and staff at The Bradley School. The benefits of this interrelationship are great, and they demonstrate that the therapeutic and educational programs are thoughtfully intertwined.

There are other indications that education at The Bradley School for Heritage House residents is a component of the treatment program they receive from Bradley Hospital. Their IEP’s do not describe placement at “The Bradley Day School”, but rather make various shorthand references to placement in the Bradley Developmental Disabilities Program. The rate paid by Warwick for educational services for Heritage House residents is a substantially-reduced per diem rate that equates to Warwick’s special education average per pupil cost. A higher rate is charged for students who do not reside in a Bradley-run facility. The bills submitted to the Warwick school department for Heritage House residents educated at The Bradley School describe the services rendered as “HERITAGE RESIDENTL SCHOOL”; again, confirming that educational services are intertwined with the treatment program at Heritage House.

⁹ See R.I.G.L. 42-72-5(b)(24) and (25)

An additional argument advanced by the School Committee is that categorizing Heritage House as a “group home or other residential facility” is erroneous because it is in fact a “residential treatment program”. The section of the law that allocates financial responsibility for the education of children placed in residential treatment programs is R.I.G.L. 16-64-1.1(c), a section which clearly exempts the host community from educational costs. Although Heritage House may have been a “group home or other residential facility” when it opened in 1999, it is not one now. The nature of the population it serves has changed. Children whose behavior sometimes warrants the use of physical restraints now reside there and the staffing ratio has intensified. While it was initially possible to provide appropriate educational programming within the Warwick school district for at least some of the residents of Heritage House, the intensive psychiatric and behavioral needs of the children now require placement at The Bradley Day School.

The position of the Warwick School Committee that Heritage House has been erroneously classified is supported by an analysis of the intent of the reimbursement statute and consideration of the factual assumption on which it is based. The rate (of reimbursement) is “intended to reflect the average cost per pupil based on the blend of regular education and special education students in group homes...”. The fundamental assumption was that “group homes” would include a mix of regular education students and special education students. Clearly this assumption does not hold true for Heritage House residents. The additional state aid Warwick receives toward the educational costs incurred in placing these students in the “best option” for them-The Bradley School- does not provide a reimbursement at all. It is based on an assumption with respect to group homes that does not exist at Heritage House.

Finally, the School Committee argues that public policy considerations require RIDE to reverse its decision. If alternatives to hospitalization are to flourish and children with these needs are to be moved into the community, host communities should not be unduly burdened by the high cost of out-of-district educational placements like The Bradley School. Concerns of those in the community with respect to the financial impact of such programs would be allayed if there were a reallocation of the costs, or at least a recalculation of the reimbursement rate to host communities. Although it is not suggested that Bradley Hospital chose Warwick as the site for Heritage House because of Warwick’s relatively high average per pupil special education cost (the rate charged to Warwick by Bradley Hospital), the School Committee submits that it is possible that other organizations could select their sites for group homes with the intent of taking advantage of a district’s higher average per pupil special education cost, and thus receive a higher tuition rate. Another possibility, equally undermining sound public policy, is that districts will take steps to reduce their financial exposure, lowering the amount they would have to pay for tuition at a school like The Bradley School by moving away from the inclusion model, effectively lowering average per pupil special education costs. The law on reimbursement for “group home” students should not have such undesirable implications.

Department for Children, Youth and Families and
The Rhode Island Department of Elementary and Secondary Education¹⁰

While DCYF is sympathetic to the Warwick school department's argument of economic hardship¹¹ in that the funding formula does not provide true reimbursement for the educational costs associated with Heritage House, it stresses that the remedy lies in seeking revision of the law by the General Assembly. Economic hardship is not grounds to overrule RIDE's classification of Heritage House in this dispute, and in applying the current law, RIDE has correctly determined that Heritage House is a "group home or other residential facility that does not include the delivery of educational services".

From a factual standpoint, Heritage House is a group home and is licensed as such by DCYF. Group home status, DCYF asserts, is not inconsistent with the label of "community-based residential program" or even classification as a "residential treatment program". DCYF points out that Rhode Island law does not assign financial responsibility based on the nature of the facility or the type of services which the facility provides. The determinative factor is whether the children are placed by DCYF in a residential facility that does not include the delivery of educational services. When the facility does not include the delivery of educational services (as is the case here), the law clearly states that children placed there are to be educated by the community in which the group home or other residential facility is located.

Despite Warwick's attempts to demonstrate that a child's placement at Heritage House "includes the delivery of educational services" the facts in this record do not support such a conclusion. The decision to authorize placement at The Bradley School for a resident of Heritage House is made separately, after the acceptance of a child into the Heritage House program. The decision is made by the Warwick school department through the IEP process. There is no requirement that a Heritage House resident attend The Bradley School and alternative placements are available. References in the program narrative of Heritage House to its "educational program" are not consistent with the actual operation of the Heritage House program as demonstrated in the record of this case. The educational program is not a component of the child's treatment program at Heritage House. Although both programs benefit from the communication that exists between and among staff, the programs operate separately and independent from one another. Evidence on which the Warwick school department relies in arguing that the

¹⁰ RIDE indicated that it joined in the arguments advanced by DCYF.

¹¹ DCYF argues, however, that the extent of any hardship is reduced by "savings" Warwick realizes through the manner of delivery of educational services at another group home in Warwick, the Oakland Beach Group Home. For Oakland Beach residents, Warwick receives the "blended rate" reimbursement for 8 beds available at this facility, a total of \$180,000. The educational costs associated with the program are greatly reduced by virtue of a contractual arrangement Warwick has entered into with the operator of Oakland Beach Group Home, the North American Family Institute (NAFI). NAFI procures a tutor (a special education teacher) to work on-site at the group home. The Warwick school department reimburses NAFI \$43,263.00 per year for the costs of this tutoring. Since almost all Oakland Beach residents spend at least six months receiving on-site tutoring before transitioning into Warwick public schools, this arrangement actually "offsets" excess costs involved with Heritage House students.

residential and educational programs are integrated- the differentiated rate structure, billing statements and references in the residents' IEP's to "Bradley DDP" do not rebut other evidence that these are two separate and distinct programs.

Finally, DCYF is clearly not responsible for the costs of educating children in places at Heritage House. The preconditions set forth in the statute are not present, i.e. Bradley Hospital does not have a contractual relationship with DCYF for a pre-determined number of beds at Heritage House. DCYF does not fund a part of the facility's program. There is also no "approved on-grounds educational program" at Heritage House. The status of this facility as a licensed group home and the absence of an on-site educational program clearly place the educational responsibility for the children at Heritage House with the Warwick school department.

DECISION

An exhaustive review of R.I.G.L. 16-64-1.1 has been made in order to decide this case. Such process produces an overall sense that the statute (as well as those in the field who work with it every day) would benefit greatly from legislative review. As important as the need to address the public policy issues¹² raised by this appeal is the need for the law to clearly allocate financial responsibility in the various residential situations currently available to children in state care. Enlightened and creative ways of providing for the residential, treatment and educational needs of children in state care should not be hampered by a law that invariably produces confusion and uncertainty.

The 2001 amendments to R.I.G.L. 16-64-1.1 added certain provisions for payment of additional state education aid to districts "hosting" group homes. This payment replaced the many times elusive¹³ "contribution" available to host districts from the town or city in which the child's parent or guardian lived. According to Warwick, this change apparently¹⁴ altered other language in an existing legislative scheme which had, prior to 2001, produced no claim that Warwick was responsible for the educational costs of Heritage House residents who were placed at The Bradley School. Since the year in which there was an appropriation of funds to reimburse host districts under the 2001 legislative amendment, Warwick has had the benefit of being determined eligible for the additional state education aid under R.I.G.L. 16-64-1.1 (b) but also the "burden" of being held responsible for the tuition for Heritage House residents. Given that future residents of Heritage House are anticipated to be placed at The Bradley School, as well as the fact that Bradley Hospital has indicated that it will no longer provide transportation for these children, Warwick seeks to challenge RIDE's interpretation of the statute.

¹² For example, whether the "blended rate" was intended as reimbursement to districts "hosting" group homes or merely to provide some relief from the financial implications of the location of a group home within a certain town or city

¹³ Because of the difficulties in determining, and collecting from, the district of residence of the child's parent.

¹⁴ It is unclear exactly what interpretation had been made of the law from 1999-2001 as to the classification of Heritage House and whether DCYF or the district of the parent's residence had paid the tuition for children attending The Bradley School.

We agree with DCYF's position that it matters not whether Heritage House is classified as a residential treatment program or a group home under the current law. There is no statutory definition for either term, but it is evident that Heritage House is both a group home and a residential treatment program. It is licensed as a group home by DCYF and is described in testimony as a group home, even by staff of the Warwick School Department.¹⁵ Yet, it is clear that Heritage House is also a comprehensive residential treatment program, serving adolescents who have dual diagnoses of developmental disability and psychiatric disorder. Because Heritage House has characteristics of both a group home and a residential treatment program, the provisions of both subsection (b) and (c) of R.I.G.L. 16-64-1.1 are initially implicated. Stated another way, the program or facility's "classification" does not answer the question of financial responsibility. The determinative language is that which appears in both of these subsections with respect to whether or not the facility "includes the delivery of educational services".

For children placed at Heritage House the educational program at The Bradley School is an elective component of their program. The manner in which this election is made is by the decision of the IEP team convened by the Warwick school department. It is possible¹⁶ that a child admitted to the Heritage House program will be able to have his or her educational needs met within the Warwick school system. According to the evidence in this case, the decision on educational placement is deferred until after the child is accepted into Heritage House¹⁷. Once this elective component of the program has been put in place, a Heritage House resident receives educational services from the same facility that provides the residential treatment program, i.e. Bradley Hospital. The School Committee has demonstrated that Bradley Hospital operates the residential treatment program at Heritage House and if the election is made by the IEP team to place the child at The Bradley School, it is Bradley Hospital that provides educational services to that child. What has not been proven is that a child's residence at Heritage House necessarily "includes the delivery of educational services". Thus, RIDE's conclusion that the Warwick School Committee is responsible for the education of students placed at Heritage House is correct because it is a:

group home or other residential facility that does not include
the delivery of educational services (R.I.G.L. 16-64-1.1(b))

We should point out that there is no evidence in this case that DCYF and/or Bradley Hospital have structured the decision-making process with respect to children placed at Heritage House¹⁸ just so that the legal requirement for host district responsibility will be met. Although the record does not contain evidence as to the rationale for making the educational component of the Heritage House treatment program "optional" or for

¹⁵ Transcript, Vol.II p.39

¹⁶ But evidently increasingly unlikely

¹⁷ Mr. Mercurio, Assistant Director of the Developmental Disabilities Program at Bradley, which operates Heritage House, testified that when a child is evaluated for the program at Heritage House, the meeting does not necessarily refer to or cover, meeting the educational needs of the child. Vol. I pp. 74-75.

¹⁸ Or the other two group homes / residential treatment programs operated by Bradley Hospital

deferring the educational placement decision, we assume that there is a legitimate reason. The inference we draw from this record is that this process enables a Heritage House resident to be placed in the least restrictive educational environment – in the community’s public school – when appropriate. There is no evidence that the deferral of such decision to the IEP team is structured simply to shift financial responsibility to host districts such as Warwick. If there were, the decision in this matter would be different.¹⁹

Our reasoning in this decision differs from that of the department in its February 16, 2006 denial of Warwick’s request to “reclassify” Heritage House, but our conclusion with respect to the Warwick school department’s responsibility under the statute is the same.

RIDE has no authority to award additional state education aid based on the disparity between the “blended rate” reimbursement and the higher costs incurred by Warwick because of the intensive needs of the residents of Heritage House. Warwick’s decision to avail these children of the best educational programming available to them at The Bradley School should certainly be supported and encouraged by state policy. If the assumption of the General Assembly in enacting the provision for reimbursement to host districts was that residents would present a mix of general and special education needs, this assumption does not hold true with group homes/residential treatment programs such as Heritage House. If the provision at issue is to operate as a true reimbursement in such situations, the blended rate would not apply to facilities which are residential treatment programs such as Heritage House. These issues should be resolved by the General Assembly.

Kathleen S. Murray, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

June 6, 2007
Date

¹⁹ We should note that one of the problems with the current language of 16-64-1.1 is that it omits the language that previous to 2001 clearly identified the district of parental residence as the responsible entity in such situations.