

**STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS**

COMMISSIONER OF EDUCATION

.....

Residency of C. Doe

.....

INTERIM DECISION

Held: The Portsmouth School District shall remain responsible on an interim basis for the payment of a per pupil education cost to the Meadowridge school until otherwise ordered by the Family Court or the Commissioner of Education.

DATE: February 2nd 2012

Jurisdiction and Travel of the Case

This is a residency dispute. Jurisdiction is present under R.I.G.L.16-39-1, R.I.G.L.16-39-2 and R.I.G.L.16-64- 6. In this case the Rhode Island Department for Children, Youth, and their Families (DCYF) is seeking a decision from the Commissioner of Education determining that the Portsmouth School District remains responsible for the payment of a per pupil special education cost based upon a Rhode Island Family Court ordered or approved out-of state residential placement made for non-educational reasons. This matter is before the Commissioner based upon a request from DCYF for an interim protective order to govern this dispute until a hearing on the merits can be held.

Findings of Fact

1. The student in this matter, who was born in 1993, came into the care of DCYF through a voluntary care placement agreement signed by the student's father in 2008.¹ At the time of this agreement the student was a resident of Portsmouth, Rhode Island for school purposes.²
2. The student's mother is deceased.
3. The student confronts serious medical issues, behavioral issues, and an eating disorder.³
4. The student was initially placed by her father in Bradley Hospital in East Providence, Rhode Island to deal with these issues.
5. Eventually DCYF arranged to have this student placed at Meadowridge School in Massachusetts. This placement was approved by a judge of the Rhode Island Family Court on October 1, 2008. The purpose of this placement, based upon the record before the Commissioner's designated hearing officer, appears to have been to secure care and treatment for this student. Accordingly, this placement was not made by a school district for the purpose of providing the student with a free and appropriate public education (FAPE). Instead DCYF, with the approval of the Family Court, placed this student at the Meadowridge School for the purpose of providing this student with treatment. Of course these facts do not negate the student's legal entitlement to FAPE in her treatment placement.
6. The Portsmouth School District, through the Newport County Regional Special Education Program, agreed that it was responsible for paying a per pupil special education cost toward the placement of this student at the Meadowridge school. The District wrote: "This letter [dated June 30, 2008] is to confirm that the Portsmouth School Department through the Newport County Regional Special

¹ Exhibit A.

² Exhibit B.

³ Transcript, Page 7.

Education Program will be responsible for the per pupil cost of \$87.71 per day for [the student] at Meadowridge.”⁴

7. In April of 2011, the student’s father left Portsmouth, Rhode Island and moved to New Bedford, Massachusetts.⁵
8. The school district for the City of New Bedford, Massachusetts has not yet assumed fiscal responsibility for the cost of student’s special education at Meadowridge School.
9. In fact, New Bedford, while it has received notice of the pendency of this matter, has denied that the Rhode Island Commissioner of Education has jurisdiction over it. New Bedford also denies that it is responsible for the per pupil cost of this students special education at the Meadowridge school.

Conclusions of Law

Under Rhode Island law local school districts must contribute to educational cost of resident students who are placed by DCYF in residential placements:

R.I.G.L. § 16-64-1.1 Payment and reimbursement for educational costs of children placed in foster care, group homes, or other residential facility by a Rhode Island state agency. –

(c) Children placed by DCYF in a residential treatment program, group home, or other residential facility, whether or not located in the state of Rhode Island, which includes the delivery of educational services, provided by that facility (excluding facilities where students are taught on grounds for periods of time by teaching staff provided by the school district in which the facility is located), shall have the cost of their education paid for as provided for in subsection (d) of this section and § 16-64-1.2. The city or town determined to be responsible to DYCF for a per-pupil special education cost pursuant to § 16-64-1.2 shall pay its share of the cost of educational services to DCYF or to the facility providing educational services. (Emphasis added)

Rhode Island law provides a mechanism for determining which Rhode Island school district is responsible for paying the per pupil special education cost required by R.I.G.L. 16-64-1.1. The applicable law reads as follows:

R.I.G.L. § 16-64-1.2 Designation of residency of children in state care for purposes of financial responsibility under § 16-64-1.1(c) – Effect of designation of residence. –

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

⁴ Exhibit B.

⁵ Transcript, Page 12.

(b) If no factual determination and designation of the residence of the parent(s) of a child placed in the care and custody of the state is made by the family court pursuant to § 16-64-1.2(a), then the department of elementary and secondary education shall designate the city or town to be responsible for the per-pupil special education cost of education to be paid to DCYF or to the facility providing educational services for children in state care pursuant to § 16-64-1.1(c).

c) The department of elementary and secondary education shall designate the city or town to be responsible for the per-pupil special education cost of education to be paid to DCYF for children in state care who have neither a father, mother, nor guardian living in the state or whose residence can be determined in the state or who have been surrendered for adoption or who have been freed for adoption by a court of competent jurisdiction using the following criteria: (1) last known Rhode Island residence of the child's father, mother, or guardian prior to moving from the state, dying, surrendering the child for adoption or having parental rights terminated; (2) when the child's parents are separated or divorced and neither parent resides in the state, the last known residence of the last parent known to have lived in the state. This designation by the department of elementary and secondary education shall be incorporated on the child's intra-state education identification card.

(d) The designation of a city or town pursuant to subsection (a), (b), or (c) of this section shall constitute prima facie evidence of parents' residence in the city or town and/or the city or town's financial responsibility for the child's education as provided in § 16-64-1.1. Pending any final decision under § 16-64-6 that a different city, town or agency bears any financial responsibility, the commissioner shall be authorized to order the general treasurer to deduct the amount owed from the designated community's school aid and to pay this amount to DCYF.

Federal regulations for the Individual with Disabilities Act (IDEA) provide a mechanism governing the provision of special education when a parent moves to a new state:

34 § 300.323 When IEPs must be in effect.

(a) *General.* At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in §300.320.

(f) *IEPs for children who transfer from another State.* If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency). . . .

20 U.S.C. 1414(d)(2)(A) through (C)

Discussion

The parent and the student in this case no longer live in Rhode Island. They both are living in Massachusetts. If only regular school law residency issues were present in this case we would rule that the student is no longer a resident of Portsmouth for school purposes under R.I.G.L. 16-64-1 and would find that Portsmouth was no longer responsible for paying a per pupil special education cost to the Meadowridge school. 34

CFR 300.323. This case, however, involves a placement either made or approved by the Rhode Island Family Court. Therefore, under R.I.G.L.16-64-1.2 the Commissioner must take notice of the “last known Rhode Island residence of the child’s father, mother, or guardian prior to moving from the state....” in making a decision as to which Rhode Island school district is responsible for paying the per pupil special education cost of a Family Court ordered or approved out-of-state residential placement. That is to say, R.I.G.L. 16-64-1.2 does require a Rhode Island School district to pay for special education costs associated with a Family Court placement even though the parent or parents of a student no longer live in Rhode Island.

Conclusion

It is hereby determined on an interim basis that Portsmouth remains responsible for the payment of a per pupil education cost to the Meadowridge school until otherwise ordered by the Rhode Island Family court or the Commissioner of Education.

Forrest L. Avila, Hearing Officer

APPROVED:

Deborah A. Gist, Commissioner

February 2nd 2012

Date