

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

.....

IN THE MATTER OF:

RESIDENCY OF STUDENT V.S.S. DOE

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**DECISION**

Having been admitted as a long-term patient at the Tavares Pediatric Center in Providence, the Student's residence for school enrollment purposes is deemed to be in Woonsocket where his mother resides.

**DATE: March 21, 2014.**

## **Travel of the Case and Jurisdiction**

This matter comes before the Commissioner of Education upon a petition dated October 3, 2013, filed by the Woonsocket Education Department (Woonsocket) requesting a determination of the lawful residence of Student V.S.S Doe (the Student) for school enrollment purposes. Jurisdiction is present under RIGL 16-39-1 and RIGL 16-64-6.

Previously, a petition entitled *Emergency Petition for Interim Order and Residency Determination* certified on September 27, 2013, had been filed by the Tavares Pediatric Center (Tavares), a medical facility serving fragile children and adults requiring twenty-four hour skilled nursing services located in the City of Providence. (Transcript page 36) In its emergency petition, Tavares alleged that the Student, being a “severely handicapped child,” is a patient admitted to its care.<sup>1</sup> Tavares further alleged that the Student had yet to receive a free appropriate public education (FAPE) since his admission to Tavares, and that the Student’s mother is a resident of Woonsocket. In addition, Tavares alleged that the Student’s “last educational placement and his placement for the 2012 – 2013 school year was Woonsocket Middle School – Villa Nova.” Following a telephone prehearing conference convened on September 30, 2013, by the designated hearing officer, Woonsocket was ordered to “immediately provide [the Student]with FAPE and [to]continue to do so until such time as it properly invokes RIDE’s jurisdiction under RIGL 16-64-6 and a determination as to residency under RIGL 16-64-1 is made.”<sup>2</sup>

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<sup>1</sup> The Student was admitted to Tavares on August 2, 2013. (Transcript, page 44)

<sup>2</sup> Though not formally entered as exhibits, both petitions of Woonsocket and Tavares and the Commissioner’s interim order entered on October 1, 2013 were taken notice of and are included in the record of this case.

## Background

This matter involves a thirteen year old student<sup>3</sup> who is entitled to special educational services pursuant to Part B of the Individuals with Disabilities Education Act (“IDEA”) and who attended the Woonsocket Middle School – Villa Nova during the 2012 – 2013 school year. Until issuance of the interim order requiring that Woonsocket immediately assume responsibility for the provision of FAPE, the Student had not attended school in the 2013 – 2014 school year. <sup>4</sup> The Student’s legal guardian is his mother; she has lived in Woonsocket for 25 years. The Student has lived with his mother and a 10-year old sibling in the City of Woonsocket for his entire life until his mother was no longer able to provide the support required due to his day-to-day custodial and medical care needs.

The Student’s mother is single and works part-time in the evenings, and his grandfather and an aunt have assisted in the care of both children. (Petitioner’s Exhibit 2, page 6) Yet, even with family support, the Student’s mother “is motivated to access services for him” and she “is anxious about placement but feels it is best for [her son] at this time.” (Ibid.) The Student’s mother testified that she was unable to care for her son due to his size and the frequency of his illnesses. (Transcript pages 16 and 32)<sup>5</sup> Beyond his physical and health issues, the Student exhibits a functional age range of 1 to 2 years, and

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<sup>3</sup> No testimony was elicited relative to the Student’s chronological years of age; however, Petitioner’s Exhibit 2, the “Bio psychosocial Assessment”, indicates how old he is in the intake data and summary.

<sup>4</sup> Tavares does in fact provide special educational services; however, because the Student’s individualized education program (IEP) prescribes a public educational environment, he was not provided any educational services at Tavares. Since the issuance of the interim order, Woonsocket has provided round-trip transportation from Tavares to Woonsocket Middle School – Villa Nova to accommodate the Student’s IEP.

<sup>5</sup> The Student’s Bio psychosocial Assessment indicates that he was born 8 weeks premature and includes diagnoses of “global developmental delay, failure to thrive, chromosome deletion, asthma, allergies, atopic dermatitis, congenital dislocation of hip, dysphagia oropharyngeal phase. . . He is fed through a G-tube.” Additionally, the assessment indicates that he has been hospitalized in the past due to asthma and gastrointestinal issues. Also offered is a comment that “[h]e is social” and there are “[n]o behavioral issues noted.” (Petitioner’s Exhibit 2, pages 1 and 6)

his developmental disability is manifested by indication of “nonverbal, non-ambulatory, and hypotonic with intermittent spasticity.” (Petitioner’s Exhibit 2, page 4) Although the Student had been admitted to Tavares as a long-term patient,<sup>6</sup> his mother brought him home for the holidays (Transcript page 17) and she visits him almost every day. (Transcript page 34) When asked if she has any plans for him to return home, her response was conditional yet in the affirmative:

THE MOTHER: If somebody is helping me, I guess. It is just me in the house and I am not able to take care of him. . .

[OBJECTION AND COLLOQUY FOLLOWS]

MR. ACKERMAN: Who might help?

THE MOTHER: Husband. That’s it. Get married, some man being in the house to help me. (Transcript pages 32 – 33)

### **Positions of the Parties**

#### **Providence and Tavares**

Providence and Tavares<sup>7</sup> rely on the undisputed residency of the Student’s mother in the City of Woonsocket and the presumption that the Student is a resident of the city of his mother’s residence. Providence and Tavares also emphasize the fact that the Student was not “placed” at Tavares under circumstances that would determine residency on the basis of the location of residential service providers and agencies enumerated in RIGL 16-64-1, namely, placements “in group homes, in foster care, in child caring facilities, or by a Rhode Island state agency or a Rhode Island licensed child placing agency.” Based on the

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<sup>6</sup> A long term placement at Tavares may entail a period of 1 or more years. (Transcript page 43)

<sup>7</sup> Tavares has joined in the arguments advanced by Providence in its memorandum of law.

evidence, there exists no semblance of any such placement. Moreover, Providence and Tavares cite Providence School Board v. The Parents of John A.Q. Doe, Commissioner's Decision (September 22, 1993) (request for reconsideration denied September 13, 1994), holding that, as the parents' residence, Hialeah, Florida was for school purposes the residence of a severely disabled student in the residential care of Tavares. In sum, and as informed by the governing common law<sup>8</sup>, it is the position of Providence and Tavares that Woonsocket is responsible for providing FAPE to the Student.

## **Woonsocket**

The "factual place of abode"<sup>9</sup> is the touchstone of Woonsocket's position. Woonsocket underscores the mother's inability to care for the Student in light of his challenging disabilities and physical size. Woonsocket opines that the mother "has no intention of bringing [him] back to live with her," Petitioner's Brief, page 2, and also describes the Student as "a long term resident of Tavares" with the suggestion that his stay there is "not temporary." Ibid. at page 3. Diminishing the "nature of the residence" as "irrelevant"<sup>10</sup>, Woonsocket reinforces the notion that the Student's physical location is controlling in the ascertainment of his residence for school enrollment purposes. Woonsocket further argues that the Student should be deemed a resident of Providence because his mother's effort to admit him to Tavares suggests either an act of abandonment or an intention not to care for him in the future.<sup>11</sup> In rebuttal to the presumption of school residency based on parental residence, Woonsocket references Residency of Student A. H.

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<sup>8</sup>See Laura Doe v. Narragansett School Committee, Commissioner's Decision (April 17, 1984).

<sup>9</sup> Woonsocket cites *Webster's Ninth New Collegiate Dictionary* at page 2 of its Brief in adopting this definition.

<sup>10</sup> Petitioner's Brief, page 4.

<sup>11</sup> Citing RIGL 16-64-1.

Doe, Commissioner's Decision (July 13, 2006) and The Matter of the Residency of C. Doe, Commissioner's Decision (October 10, 2007), arguing that each case presents facts constituting substantial reasons other than school purposes and therefor allows each student to attend school in a school district other than that of their parents.<sup>12</sup>

## **Discussion**

The record of this case establishes that the Student's mother resides in the City of Woonsocket and that the Student has been a patient at Tavares since his admission on August 2, 2013. By this action, Woonsocket seeks a ruling as to whether the residency of the Student's mother establishes his residence for school enrollment purposes; or whether Providence, by virtue of the Student's admission to Tavares, is his residence for school purposes. RIGL 16-64-1 provides in pertinent part:

. . . A child shall be deemed to be a resident of the city or town where his or her parents reside.

By its terms, this statute creates a rebuttable presumption of residency for school enrollment purposes predicated upon the residence of a student's parents. In addition to the foregoing provision of RIGL 16-64-1, the Rhode Island legislature has further provided that:

. . . In cases where a child has no living parents, has been abandoned by his or her parents, or when parents are unable

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<sup>12</sup> Woonsocket while failing to specifying factual details notes that Residency of Student A.H. Doe involves a finding of residency "in Cranston for a substantial reason other than to attend the public schools of Cranston"; and in some detail that The Matter of the Residency of C. Doe involves a determination by the Commissioner that a student's move from his parent in Providence to relatives in South Kingstown re-established residency for school purposes due to "a problem in the Providence home 'related to the mother's single parent status, her work schedule, and the needs of Doe's siblings.'"

to care for their child on account of parental illness or family break-up, the child shall be deemed to be a resident of the city or town where the child lives with his or her legal guardian, or other person acting in loco parentis to the child.

Woonsocket misconstrues the Student's family situation as fitting one of the foregoing statutory categories referred to in RIGL 16-64-1. In reviewing this record, it is clear that none of these categories are reflective of the family's situation. The only apparent reason for the Student's admission to Tavares is the mother's inability to provide *at this time* custodial and medical care. Other aspects of Woonsocket's view of the Student's future living arrangements, namely, that "the mother has no intention of bringing him back to live with her," Woonsocket's Brief at page 2, is ill-informed and not supported by the record.<sup>13</sup> Woonsocket argues that the City of Providence is the residence of the Student for school enrollment purposes, and that the obligation to provide FAPE to the Student belongs to Providence. The Commissioner's decisions of Residency of A.H. Doe, supra, and The Matter of the Residency of C. Doe, supra, are inapposite and do not promote Woonsocket's position.<sup>14</sup> The Student and his mother are indissolubly linked as parent and child. Woonsocket's position reflects an unfounded reduction of the mother's status as legal guardian and its residency implications solely on the basis of geographic location without regard to motivations driven by the Student's custodial and medical

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<sup>13</sup> To the contrary, the mother has consistently maintained her parental rights to the student and indicated that if "somebody is helping me," it would be her intention to have her son return home. Moreover, the mother has visited her son "[a]lmost every day" at Tavares. Transcript, pages 32 – 34.

<sup>14</sup> Residency of Student A.H. Doe involves an undocumented immigrant student who came to Cranston in order to live with her sister. The Matter of the Residency of C. Doe involves a Providence student who was sent by his mother to live with relatives in South Kingstown for reasons primarily related to his physical safety. In both cases it was held that the new residences were permissible for school enrollment purposes.

needs.<sup>15</sup> Woonsocket correctly points out that “[f]or school enrollment purposes there is no evidence that VSS was placed in Providence to attend schools in Providence.”<sup>16</sup>

However, Woonsocket continues: “Alternately VSS should be enrolled in the Providence school system because he lives in Providence with the person (Tavares) acting in loco parentis, or because he was placed in a child caring facility located in Providence.”<sup>17</sup>

Woonsocket misconstrues the nature of the relationships defined by the facts of this case: Tavares does not exercise parental authority over the Student. The Student was admitted to Tavares for specific custodial and medical service by this mother; and, as his legal guardian, his mother has the option of either continuing his treatment and care at Tavares or of ending it and bringing him home. Her son’s life is entrusted entirely to her and her engagement of Tavares for the delivery of needed custodial and medical care is based exclusively on her parental judgment and discretion. Moreover, contrary to Woonsocket’s depiction, Tavares is not a child caring facility; rather, it is a “skilled nursing facility” that provides custodial and medical care to persons ranging in age from six months to 35 years of age. Additionally, those who require such care are referred by hospitals, doctors, schools, the state, or *parents*. In this case, it was the Student’s parent who initiated his admission to Tavares. (Transcript, pages 36 – 37) And it was also his mother who investigated and decided upon the most appropriate educational environment for her son when she, with the accompanying support of Barbara Smith, Tavares’ special education director, visited Providence to discuss whether FAPE might be afforded to him in its school

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<sup>15</sup> Woonsocket argues, “That VSS lives in Providence at the Tavares facility and not with a relative is immaterial to the issue to be decided. The nature of the residence is irrelevant. The actual place of abode, and the reasons VSS resides therein, control.” Woonsocket’s Brief at page 4.

<sup>16</sup> Woonsocket’s Brief at page 5.

<sup>17</sup> ibid.



system.<sup>18</sup> Providence advised “that Tavares is a hospital and that [it] would not acknowledge [the Student] was a resident . . .” (Transcript page 56) With both Woonsocket and Providence disavowing any responsibility for providing FAPE, the Student’s educational interests were neglected until Tavares intervened *in loco parentis*<sup>19</sup> with an emergency petition to alter the dormant state of the Student’s education.<sup>20</sup>

RIGL 16-64-1 pertains to the issue of school residency, and as to the instant matter, particular focus is correctly placed on that portion of RIGL 16-64-1 which states: “In all other cases a child’s residence shall be determined in accordance with the applicable rules of common law.” The common law test of residency for school enrollment purposes requires a determination as to whether there exists a “substantial reason” for a student to live apart from his parents in a different community other than for the purpose of attending school in that community. Being under the lawful guardianship of his mother, an application of the common law test clearly yields a finding that the Student’s admission to the Tavares Center in the City of Providence is motivated by a “substantial reason” having no purposeful connection to schooling. His mother did not admit him at Tavares so that he would attend Providence schools; she admitted him to Tavares to meet his custodial and

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<sup>18</sup> Though not offered as documentary evidence, the Student has an IEP requiring his education to be in a public school setting. (Transcript pages 53 – 55) Student Doe’s mother reinforced the priority of an education in a public classroom: “I got a tour of the school in [Tavares]. Then I knew it is not -- I don’t want my son to go to the building because my son is more active. There are people in there, like the kids in there, they are not doing anything. My son is more active. That is why I decide to go to public school.” (Transcript pages 22 – 23)

<sup>19</sup> Tavares stylized its emergency petition for an interim order and residency determination as *in loco parentis*; however, neither the evidence nor argument by counsel suggests that Tavares has legal standing to take legal action on the Student’s behalf in a parental capacity.

<sup>20</sup> RIGL 16-64-2 provides that “[a] child shall be eligible to receive education from the town in which the child’s residence has been established until his or her residence has been established in another town *and that town has enrolled the child within its school system*, unless the commissioner . . . pursuant to RIGL 16-64-6, has ordered otherwise.” (Emphasis added) Clearly, given that Providence had never enrolled the Student, it was Woonsocket’s continuing duty to meet the Student’s educational needs until such time the Commissioner’s jurisdiction was invoked to determine otherwise. The situation should never have reached such a level of indifference to the educational needs of the Student only to be remedied by Tavares’ voluntary intervention.

medical needs. His mother's decision to admit him to Tavares cannot be viewed in any way as altering the status quo of his enrollment status in Woonsocket given the many years that his mother has resided there as well as his enrollment status through the 2012 – 2013 school year. Under the Rhode Island Board of Education's *Regulations Governing the Education of Children with Disabilities*, the Student is entitled to FAPE until his twenty-first year. More specifically, Section 300.100(a) of Subpart B, entitled *Local Educations Agency General Requirements*, provides:

. . . . [FAPE] must be available to all eligible children residing in the LEA, between the ages of 3 and 21, inclusive (until the child's twenty first birthday or until the child receives a high school diploma). . . . (Emphasis added)

The Student's day-to-day needs include services for addressing issues related to his disabilities and medical needs, and this record clearly establishes that his living at the Tavares Center in the City of Providence is solely intended for meeting those needs. This case is plainly consistent with our previous decisions that have found the responsibility for the education of a hospitalized student to be determined by the residence of his or her parents. See J.B. v. Woonsocket and Cranston, Commissioner's Decision (December 17, 1999) (Woonsocket is required by an interim order to develop an IEP and provide educational services to student hospitalized at the Eleanor Slater Hospital in Cranston). Moreover, Providence directs our attention to Providence School Board v. The Parents of John A.Q. Doe, Commissioner's Decision (September 22, 1993), which found that the parents' residence in Hialeah, Florida was determinative of the residency of their child who

was living at Tavares for reasons that are similarly reflected in the challenges facing the Student. Woonsocket has failed to rebut the presumption that the Student's residence for school enrollment purposes is the residence of his mother and, as such, is responsible for providing FAPE to the Student.

### **Conclusion**

The student in this case is entitled to FAPE which is to be provided by the district of residency for school enrollment purposes. Accordingly, as the district of residence, the Woonsocket School Department has the singular responsibility of providing FAPE to the Student.

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George M. Muksian  
Hearing Officer

Approved:

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Deborah A. Gist  
Commissioner of Education

Date: March 21, 2014