

**STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS**

**COMMISSIONER OF
EDUCATION**

**Department of Children, Youth
and Families**

v.

**Portsmouth School Department
(In Re: Residency of C.N.)**

Held: Under applicable law the town of Portsmouth is responsible for its per pupil special education cost for Student Doe from July 2, 2013 until December 3, 2013 when she was issued a regular high school diploma. Portsmouth has been ordered to pay the amount owed to DCYF despite the lack of evidence that DCYF took steps that could have effectuated a transfer of responsibility for Student Doe to the Massachusetts child welfare agency and supervision of her case to the Massachusetts juvenile courts. We infer from the facts in this case that such steps could have been taken as early as April of 2011, when the family relocated to New Bedford, Massachusetts, thus conserving substantial state and school district funding that has been expended for her residential placement.

DATE: November 30, 2015

Travel of the Case:

On February 2, 2012 former Commissioner Deborah A. Gist issued an Interim Decision in which Portsmouth was determined to be responsible for payment of its per pupil special education cost to the residential treatment facility in which C.N. had been placed by the Rhode Island Family Court. The hearing officer in the case found that R.I.G.L. 16-64-1.2 required Portsmouth to pay for the special education costs associated with the child's residential placement even though the facility was located in Massachusetts and the parent of the student had moved to New Bedford, Massachusetts in April of 2011.¹ Portsmouth's responsibility was based on the fact that C.N.'s placement had been made or approved by the Rhode Island Family Court and Portsmouth was the "last known Rhode Island residence of the child's father, mother, or guardian prior to moving from the state." R.I.G.L. 16-64-1.2(c).

Although the determination of Portsmouth's financial responsibility was made on an "interim basis," extending only "until otherwise ordered by the Rhode Island Family Court or the Commissioner of Education," the matter did not return to the Commissioner's appeal process until almost two years later. On December 20, 2013 counsel for DCYF filed a "Petition to withhold school aid pursuant to §16-64-1.2(d)" seeking payment of special education funding for C.N. that Portsmouth had allegedly discontinued as of July 2, 2013. The petition also alleged that Portsmouth had, without notice, issued a high school diploma to C.N. on December 3, 2013 and that a due process hearing contesting the appropriateness of this action had been requested.

On February 10, 2014 counsel for the Portsmouth School Department filed a "Motion to Declare that the Portsmouth School District Is No Longer Responsible for the Education of Student" C.N. The Motion, ruling on which was deferred until resolution of the merits of the case, cited the parent's residence in Massachusetts, his two unsuccessful attempts to register his daughter in the New Bedford school system and the fact that as of December 2013 Portsmouth had reviewed C.N.'s transcript and determined that she had fulfilled the graduation requirements of the Portsmouth School District. Based on these three factors,

¹ C.N.'s mother is deceased.

counsel for Portsmouth requested that the Commissioner find that it was not responsible for the payment of “any further tuition” for C.N.

The matter was heard by the undersigned on February 11, 2014 at which time testimony was presented from C.N.’s father. Counsel for both parties entered into the record certain stipulations of fact underlying the Commissioner’s prior “Interim Decision” of February 2, 2012, as well as more recent facts relevant to the issues in the case. After some discussion, it was agreed that additional stipulations might be helpful in ensuring that the Commissioner had in the record all relevant facts pertaining to DCYF’s claim against the town of Portsmouth.² It was also agreed that closing memoranda would be submitted, summarizing the parties arguments.

Apparently because of difficulty in determining which additional facts could be agreed upon, counsel for DCYF updated the hearing officer on November 13, 2014 that counsel had not reached agreement and would probably need to place the matter back on the calendar for further hearing. The hearing officer requested that the counsel be prepared to schedule any further hearing or provide additional stipulations and closing memos by the end of 2014. On March 17, 2015 the hearing officer wrote to counsel for both parties and requested that they confer to provide an agreed-upon date for further hearing, no later than April 15, 2015. Counsel also debated whether further hearing in this matter was necessary, in light of a matter pending before another hearing officer that involved the same, or substantially similar issues. When no agreement could be reached on the issue of deferring continued hearing, the hearing officer requested an agreed-upon date for hearing no later than May 15, 2015. Thereafter, counsel for the parties submitted a set of agreed upon facts on June 22, 2015 and closing memos on September 14, 2015. The record closed as of this date.

ISSUE

Did the Portsmouth School Department continue to be responsible for payment of its per pupil special education cost to the Latham School in Brewster, Massachusetts after July 2, 2013, when it ceased making

² It was noted that although C.N.’s father had twice attempted to enroll her in the New Bedford school system and on one of the occasions was accompanied by C.N.’s DCYF caseworker, there was no evidence that New Bedford had formally indicated the reason for refusing C.N. enrollment in New Bedford. Also, there was no indication that the child welfare agency in Massachusetts had been contacted about C.N. or had any input into her care or welfare even though C.N.’s father had relocated to New Bedford in April of 2011.

payments to this facility for the educational costs of Student C.N.?

Findings of Relevant Facts:³

- On February 2, 2012 an Interim Decision was issued by the Commissioner directing Portsmouth to pay special education costs associated with the Rhode Island Family Court’s placement of C.N. at an out of state residential treatment facility that included the delivery of educational services.⁴ The order was to be effective “until otherwise ordered by the Rhode Island Family Court or the Commissioner of Education”.
- C.N. was committed to the care and custody of the Department of Children, Youth and Families (“DCYF”) in 2008 and remained in DCYF care until November 26, 2014 when she became eligible and began receiving adult services through the Department of Behavioral Health, Developmental Disabilities and Hospitals.
- At the time that C.N. came in to the care of DCYF, her father was a resident of Portsmouth, Rhode Island. In the Spring of 2011 he moved from Portsmouth to New Bedford, after notifying both his daughter’s school and her DCYF caseworker of his impending move.
- In the fall of 2011, C.N.’s father attempted to register her in the New Bedford School system on two occasions; a DCYF social caseworker accompanied him on his second attempt. These attempts at registering C.N. were not successful and New Bedford has not assumed administrative or financial responsibility for the cost of C.N.’s education.⁵

³ Findings of Fact are based on the signed Stipulation of Facts submitted on June 22, 2015, the stipulations read into the record at the hearing on February 11, 2014 and the testimony received on that date. Where there is a conflict, the hearing officer has accepted the written Stipulations as more accurate.

⁴ See Decision of the Commissioner dated February 2, 2012 Residency of C. Doe. At the time of the hearing, C.N. had been placed at the Meadowridge School in Swansea, Massachusetts. On January 18, 2012, C.N. was placed at the Latham Center in Brewster, Massachusetts, where she remains. Both of these facilities are residential treatment programs that include the delivery of education services. C.N. is a student with a disability who has been committed to the care and custody of DCYF for a number of years. Her placements at both the Meadowridge School and the Latham Center are for treatment purposes, not because of her educational needs.

⁵ Surprisingly, there has apparently been no written communication between the New Bedford School Department and either of the parties to this case. The precise reason for this district’s refusal to enroll C.N. remains unclear, however her father testified that the Director of Special Education of New Bedford called him and indicated that they were not allowing his daughter to be registered in New Bedford, mentioning a law that C.N.’s father had heard referenced in prior meetings about his child. Tr. pp. 7-8.

- The Portsmouth School Department, through the Newport County Regional Special Education Program, had been funding the per pupil special education rate to the Latham Center from February, 2012 to July 2, 2013 at which time Portsmouth discontinued funding of the placement.
- Portsmouth's Superintendent, in conjunction with the high school administration, reviewed C.N.'s educational record in December of 2013. They determined that C.N. had completed her educational requirements and issued a diploma to C.N. on or about December 3, 2013. Tr.p.11. Portsmouth informed DCYF that it had issued a high school diploma to C.N. on or about December 3, 2013.
- In a separate forum, C.N.'s educational advocate challenged the school department's decision to issue a diploma to C.N.
- On or about December 9, 2013 a judge of the Rhode Island Family Court ordered C.N. to remain at the Latham Center until further order of the Court.
- DCYF continued to fund the residential portion of C.N.'s placement at the Latham Center.
- On November 26, 2014 C.N. attained the age of twenty-one (21) years of age, placing her beyond the jurisdiction of the Rhode Island Family Court and rendering her ineligible for juvenile services through DCYF. On attaining age twenty-one (21), C.N. became eligible and began receiving adult services through the Department of Behavioral Health, Developmental Disabilities and Hospitals.⁶

Positions of the Parties:

DCYF:

In her December 20, 2013 Petition to the Commissioner, counsel for DCYF requested that the Commissioner order the General Treasurer to deduct at least the amount of \$28,912.41 from Portsmouth's school aid to pay what was then the outstanding balance owed to the Latham Center. In her Closing Argument submitted on September 14, 2015 counsel for DCYF

⁶ In light of the stipulated fact that C.N. continues to reside at the Latham Center, we infer that the Department of Behavioral Health, Developmental Disabilities and Hospitals funds her ongoing treatment at this facility.

seeks a determination of the “amount in controversy” based on the date that Portsmouth ceased making payments to the Latham Center (July 2, 2013) and ending on “the official date of (C.N.’s) graduation from high school”. Although it was stipulated that Portsmouth had informed DCYF that it had issued a high school diploma to C.N. on or about December 3, 2013, it was also stipulated that the issuance of a regular high school diploma had been challenged by her education advocate in a separate forum. Therefore, DCYF seeks a determination from RIDE of the official date of C.N.’s graduation from high school so that the exact amount owed by Portsmouth can be deducted from the district’s education aid.

DCYF submits that Portsmouth is responsible to DCYF⁷ for these costs because the Commissioner’s Interim Decision dated February 2, 2012 correctly applied the law to the facts in this case. R.I.G.L. 16-64-1.2(c)(1) fixed the last known Rhode Island residence of the child’s father, prior to his moving from Rhode Island to Massachusetts, as the responsible LEA. The February 2, 2012 decision was premised on the salient facts that in 2008 C.N. had been placed by DCYF for treatment purposes in a court-approved residential facility located outside the state of Rhode Island; C.N.’s father had moved from Portsmouth, R.I. to New Bedford in 2011; and C.N.’s father unsuccessfully sought to enroll his daughter in that school system on two occasions. Portsmouth’s responsibility under the law and the Commissioner’s ruling are not altered by the fact that C.N. has since been moved to another court-approved placement, also located in Massachusetts.

DCYF points out that Portsmouth did not appeal the Interim Decision and did not seek to have the matter reviewed and decided on a permanent, rather than an interim, basis after issuance of the Commissioner’s 2012 decision. Portsmouth also did not invoke the Commissioner’s authority to re-determine its financial responsibility for C.N.’s educational costs due to an alleged change in residency at any later date. Instead, the district acted unilaterally and stopped paying its special education per pupil cost to the Latham Center in July of 2013.

DCYF also relies in part on R.I.G.L. 16-64-2 “Retention of Residence”. Counsel argues that C.N. remained eligible to receive education (or in this case payment for the cost of educational services provided to her at the Latham Center) from the district in which her residence had

⁷ We infer that subsequent to its filing of the Petition, DCYF paid the Latham Center directly for C.N.’s education during the disputed period.

been established (Portsmouth) until her residence has been established in another city or town and that city or town has enrolled her in its school system. It is clear on the record of this case that the City of New Bedford has not considered C.N. to be a “resident” and has certainly not enrolled her in the New Bedford school system. Prior to her attaining age twenty-one (21) no other agency accepted responsibility for her placement at the Latham Center. No agency (other than DCYF) has paid for the costs of educational services provided to her there since Portsmouth unilaterally discontinued its educational funding. Therefore, C.N.’s residency in Portsmouth was “retained” under R.I.G.L. 16-64-2 and this community is liable for payment of a per pupil educational cost from July 2, 2013 up to the date that C.N. “officially” received her high school diploma.⁸

Portsmouth School Department:

Counsel for the School Department points out that this dispute is for tuition unpaid for the period July 3, 2013 through December 3, 2013 when Portsmouth issued a high school diploma to C.N.⁹

The interpretation of R.I.G.L. 16-64-1.2 made by the Commissioner in the Interim Decision of February 2, 2012 is in error because it overlooked the fact in this case that C.N.’s parent never gave up guardianship of his daughter nor did he give up any right to make educational decisions. Furthermore, the attempts C.N.’s father made to register her in the New Bedford school system indicate that “he moved to New Bedford with (C.N.)”. Under these circumstances, DCYF should have notified the Court that both parent and child had moved to New Bedford and had the case transferred to Massachusetts. Instead, DCYF continued to look

⁸ Both parties are in agreement that no school district would be responsible for educational costs after C.N. attained the age of twenty-one (21) or received a regular high school diploma. See Section 300.101 and 300.102 of the Regulations Governing The Education Of Children With Disabilities (effective October 9, 2013). Evidently, they also agree that C.N. received a regular high school diploma at some point. Portsmouth submits that this occurred on December 3, 2015.

⁹ Portsmouth acknowledges that a due process hearing on this issue was requested, but submits that it was later dismissed, making December 3, 2013 the date C.N. received her high school diploma. DCYF, in its memorandum, submits that C.N.’s education advocate “did eventually accept the diploma on behalf of” C.N. There is no evidence in the record as to the outcome of the due process hearing. The parties have stipulated only that a due process hearing was requested to challenge the issuance of the diploma. There is also no evidence that the education advocate accepted her high school diploma at a date later than the record would indicate it was issued to C.N., i.e. December 3, 2013.

to a Rhode Island district to fund C.N.'s education and relied on R.I.G.L. 16-64-1.2 (c) to assert that Portsmouth had ongoing financial responsibility, despite the fact that both parent- and child- had moved to New Bedford. R.I.G.L. 16-64-1.2 (c) applies to children whose parents have deserted or abandoned them and moved out of state. C.N.'s parent has not abandoned her and R.I.G.L. 16-64-1.2 should not apply.

Rhode Island should not be responsible for funding her placement at the Latham Center and Portsmouth should not be responsible for payment of educational costs generated at such facility because parent and child became residents of Massachusetts in 2011.

DECISION

DCYF's claim for payment of the town of Portsmouth's per pupil special education rate for the period July 2, 2013 through December 3, 2013 has been supported by the evidence in this case. Although DCYF seeks to extend Portsmouth's liability beyond the date of issuance of a regular high school diploma to C.N., there is no evidence of a later "acceptance" of the diploma by his education advocate. While there is mention of a due process hearing to challenge issuance of the diploma in the stipulated facts, there is no evidence of a ruling or outcome in that forum that would affect, or invalidate, the district's issuance of the diploma to C.N. on December 3, 2013. Absent a ruling that her receipt of the high school diploma was invalid or that she was entitled to compensatory educational services after its issuance, it is at this point that her entitlement to FAPE ends. Therefore, Portsmouth's financial obligation also terminated as of December 3, 2013.

Portsmouth argues that our statute (R.I.G.L. 16-64-1.2) should be interpreted to impose responsibility for funding and educational oversight on Rhode Island school districts only when parents of children in DCYF custody have moved from Rhode Island and abandoned their children. We would note that our statute does not distinguish the situation when a parent moves out of state under circumstances that would constitute "abandonment" from those such as we have here, with C.N.'s father remaining involved in her life and seeking to have his local district take over the responsibilities for his daughter's education. The fact here is that this child continued in the care and custody of DCYF, a Rhode Island state agency. Her placement for treatment purposes was approved or ordered by the Rhode Island Family Court, not a

Massachusetts court. These Rhode Island ties must be viewed as providing some underlying rationale for our law's allocation of ongoing costs to a Rhode Island school district.¹⁰ The interpretation of law made by the Commissioner in 2012 remains correct and operative to fix financial responsibility for a per pupil cost on the town of Portsmouth, up to December 3, 2013

It may not be necessary to order a deduction from Portsmouth's school aid. The Portsmouth School Department is ordered to pay the monies owed to DCYF forthwith. If this is not accomplished within sixty (60) days of the date of this decision, counsel for DCYF should notify the Commissioner and an appropriate Order will be prepared and served upon the General Treasurer.

For the Commissioner,

Kathleen S. Murray, Hearing Officer

Ken Wagner, Commissioner

DATE: _____

¹⁰ We are without information as to what laws, regulations and policies would have governed the transfer of jurisdiction to a Massachusetts court and custody of C.N. to a Massachusetts' child welfare agency. Similarly, we do not know if the Rhode Island Department of Behavioral Health, Developmental Disabilities and Hospitals, through which C.N. currently receives adult services, should be responsible for her ongoing care and treatment, rather than the counterpart of such agency in Massachusetts. These are matters within the purview of DCYF and the R.I. Family Court.