021-15

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
COMMISSIONER OF EDUCATION

DEPARTMENT OF CHILDREN, YOUTH AND FAMILIES, *Petitioner,*	:
vs.	:
FOSTER-GLOCESTER REGIONAL SCHOOL COMMITTEE, *Respondent*	:

In re Student T.P.

DECISION

Held: School Committee required to reimburse state child welfare agency under RIGL § 16-64-1.1(c) for the cost of educational services rendered to a special education student placed by the Family Court in a private residential treatment program as the Commissioner was legally prohibited from adjudicating the School Committee's claim that the placement violated the student's rights under the federal Individuals with Disabilities Education Act, a claim which the School Committee must make in a proper forum.

December 15, 2015

I. Jurisdiction, Standard of Review, and Burden of Proof

Petitioner, DEPARTMENT OF CHILDREN, YOUTH AND FAMILES ("DCYF"), filed a petition with the Commissioner on or about June 29, 2015 pursuant to Title 16, Chapter 64 of the Rhode Island General Laws requesting that he find Respondent, FOSTER-GLOCESTER REGIONAL SCHOOL COMMITTEE (the "School Committee"), "financially and educationally responsible" for a special education student with a disability ("Student T.P.") who had been placed in a residential treatment program at the Harmony Hill School ("Harmony Hill") in Chepachet, Rhode Island pursuant to a June 29, 2015 order of the Rhode Island Family Court (the "Family Court Order").

The Commissioner has jurisdiction over the controversy under RIGL §§ 16-39-1 and 16-64-6.[1] As with respect to appeals from school committee actions under § 16-39-2, disputes under Chapter 64 are heard *de novo*, but unlike an appeal under § 16-39-2, DCYF may appeal directly to the Commissioner under § 16-64-6 without first seeking relief from the School Committee. *See id*. The burden of proof is on DCYF to prove its case by a preponderance of the evidence.[2]

[1] RIGL § 16-39-1 confers jurisdiction upon the Commissioner with respect to "any matter of dispute . . .arising under any law relating to schools or education," *id*., and § 16-64-6 confers jurisdiction with respect to disputes "when a school district or a state agency charged with educating children denies that it is responsible for educating a child on the grounds that the child is not a resident of the school district or that the child is not the educational responsibility of the state agency." *Id*.

[2] *See* 2 Richard Pierce, *Administrative Law Treatise,* § 10.7 at 759 (2002). *See, e.g., Lyons v. Rhode Island Pub. Employees Council 94*, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the "normal" standard in civil cases); *Student P. Doe v. North Smithfield School Committee,* RIDE 0027-11 (December 23, 2011) at 3 (Petitioner has burden of proof in typical residency case); *but see also* § 16-64-3 (when it is alleged that "child's residence has been changed due to break-up of a child's family . . .the party alleging the existence of these circumstances shall have the burden of proof and shall make proof by a preponderance of the evidence").

II. Facts and Documentary Evidence

Following a pre-hearing conference on July 14, 2015, the School Committee moved to dismiss. DCYF then submitted an Amended Petition along with a Memorandum in Support and in Opposition to the Motion to Dismiss ("DCYF's Mem.") on or about August 18, 2015. After several continuances, the School Committee submitted a Memorandum in Support of its Motion to Dismiss (the "School Comm. Mem.") on or about November 9, 2015.

The parties both argued that they were entitled to judgment as a matter of law. The following are the material facts, which are undisputed:

1. On June 29, 2015, Rhode Island Family Court Justice Kathleen Voccola entered the Family Court Order in an action that had been commenced by DCYF regarding Student T.P., a special education student with a disability.

2. The School Committee was not a party to the Family Court action and there was no evidence suggesting that it had received notice of the action. In addition, no testimony was elicited from any employee or representative of the Foster-Glocester Regional School District (the "School District").

3. In the Family Court Order, Judge Voccola expressly found that:

   a. Student T.P.'s parents were residents of Chepachet and thus his residence for school purposes was Chepachet, which is part of the School District;

   b. Based upon Student T.P.'s "clinical needs, safety concerns and child welfare considerations," it was in his best interest to be placed in a residential treatment facility;

   c. The Court described its decision as a "child welfare placement decision" and "specifically not an education placement decision;"

   d. DCYF was to place Student T.P. in a residential treatment program at Harmony Hill, a private institution which, as noted, is located in Chepachet, as soon as a bed was available; and

e. DCYF was to seek reimbursement through RIDE for the per pupil education funding for the Student contemplated under Chapter 64.

4. On or about June 24, 2015, DCYF placed Student T.P. in a residential treatment program at Harmony Hill.

5. DCYF provided the School Committee with notice of the placement and requested reimbursement for the cost of his education pursuant to RIGL § 16-64-1.1(c).

6. The parties agree that should the School District be found liable, the actual dollar amount of its contribution would not equal the actual cost of Student T.P.'s enrollment in the treatment program, or even all the costs attributable to the educational services provided, but rather the fixed statutory amount set forth under Chapter 64.

7. The School Committee, while admitting that Student T.P. was a resident of Chepachet for school purposes, nonetheless refused to reimburse DCYF or to accept any financial responsibility for him.

8. Neither the School Committee nor Student T.P.'s parents moved to intervene in the Family Court proceeding or attempted to amend or appeal the Family Court Order.

9. The following documents were admitted into evidence without objection:

a. a certified copy of the Family Court Order (attached to the Amended Petition);

b. a signed copy of Student T.P.'s November 20, 2015 individualized education program ("IEP"), which was prepared by his IEP team at the School District and was effective through December 3, 2015 (attached to the School Comm. Mem. as Exhibit A); and

c. the Rhode Island Department of Education's ("RIDE's") May 7, 2015 application under Part B of the federal Individuals with Disabilities Education Act (the "IDEA") (attached to the School Comm. Mem. as Exhibit B).

III. The Relevant Statutes and the Positions of the Parties

1. Chapter 64 of Title 16

RIGL § 16-64-1.1(c) provides that:

> [c]hildren 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.

Id.[3]

RIGL § 16-64-1.2 makes clear that the Family Court's determination as to residency for school purposes "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*." *Id.* at (d) (emphasis added).

2. The Position of the School Committee

The School Committee's Motion to Dismiss and its refusal to reimburse DCYF or to accept any financial responsibility for the Student – despite its admission that the Student was a resident of the School District and the express findings of the Family Court – were based upon the following arguments:

a. that Student T.P.'s placement in a residential treatment program was not the least restrictive environment as his IEP called for placement in the less restrictive public school setting. Therefore, the placement did not provide him with a "free, appropriate, public education" (a "FAPE") in violation of the IDEA, and as a

[3] RIGL § 16-64-1.1(d), which concerns placements where the "entire cost" of a student's education is to be paid for by DCYF, is not applicable since it only applies if, *inter alia*, the treatment facility is operated by the state of Rhode Island, *see id.*, which is not the case with respect to Harmony Hill.

result, the School Committee was preempted by federal law from financing such a placement, and RIDE was precluded from mandating that it do so. *See* School Comm. Mem. at 4-12, citing, *inter alia*, 20 U.S.C.A. §§ 1412(a)(4) (IEP requirement), 1412(a)(5)(A) (mainstreaming, or "least restrictive environment" requirement) and the Supremacy Clause (Article VI of the U.S. Constitution);[4] and

b. that the relief sought by DYCF also was precluded by the *Rhode Island Board of Education Regulations Governing the Education of Children with Disabilities* (the "Special Ed. Regs.") implementing the IDEA's least restrictive environment requirement. *See* School Comm. Mem. at 12-13, citing, *inter alia*, *Sch. Comm. v. Bergin-Andrews*, 984 A.2d 629. 643 (R.I. 209) and Special Ed. Regs., §§ 300.112 and 300.114-120.[5]

3. DCYF's Position

For its part, DCYF argued, without benefit of any legal authority, that when enacting the funding formula under RIGL § 16-64-1.1(c) the General Assembly intended that in cases involving non-educational placements, costs were to be allocated "so that a city or town would not be obligated to fund the entire residential placement cost," but that "administrative responsibility" should remain with the city or town to prevent the "'that's not my responsibility' argument thereby leaving the child without any local oversight.'" *Id*.

In addition, DCYF argued that even if one were to assume for argument's sake that the Harmony Hill placement deprived Student T.P. of a FAPE, his parents, who retained their right to make education decisions for their child, should file a due-process complaint and demand a hearing under the IDEA. *Id*.[6]

---

[4] For those interested in a recent analysis of the relevant law and a critique of the requirement, *see* Carson, *Rethinking Special Education's "Least Restrictive Environment" Requirement,* 113 Mich. L. Rev. 1397 (2015).

[5] The School Committee also gave lip service to the argument that the state's funding mechanism violated the IDEA's least restrictive environment requirement. *See* School Committee Mem. at 1, citing 20 U.S.C.A. § 1412(a)(5)(b)(i). However, it became apparent that the School Committee's problem was not with the funding mechanism *per se*, but rather with a specific placement decision.

[6] For an interesting analysis of the IDEA's due process procedures as implemented in another

IV. Discussion

This is not the first time DCYF has been forced to file a petition with the Commissioner to compel the School Committee to reimburse it for costs relating to the placement of a student by the Family Court,[7] and although the Committee has tweaked its legal argument, the essence of the argument, i.e., that the Commissioner should essentially ignore a Family Court placement order and then determine on his own whether a student is receiving a FAPE, remains flawed.

The School Committee claims that it "in no way questions the authority of the Family Court to place children wherever the Family Court deems fit." *See* School Committee Mem. at 2.[8] Yet, at the same time, the Committee argues that the Court's finding that the Harmony Hill placement was in Student T.P.'s best interest – a finding based upon its view of his "clinical needs, safety concerns and child welfare considerations," *see* Family Court Order, ¶¶ 3-5 at 1 – should have no legal effect upon its financial obligation to reimburse DCYF.

The argument hinges upon the School Committee's conclusion that the Family Court placement violates Student T.P.'s right to a FAPE. *See* School Comm. Mem. at 2-3. Indeed, most of the School Committee's legal memorandum addresses the self-evident point that both it and RIDE are bound by federal and state mandates that students be provided with a FAPE. *See* School Comm. Mem. at 4-12. Yet, it should go without saying that the state's statutory reimbursement formula must be construed together with applicable federal and state law. In fact, it is for precisely this reason that the Commissioner cannot make the findings relative to a FAPE

---

state, *see* Hoagland-Hanson, *Getting their Due (Process): Parents and Lawyers in Special Education Due Process Hearings in Pennsylvania*, 163 U. Pa. L. Rev. 1805 (2015).

[7] *See, e.g., DCYF v. Foster-Glocester Regional School District v. RIDE*, RIDE No. 009-14 (July 7, 2014) and *In re Residency of Student C.M. Doe*, RIDE No. 023-13 (September 27, 2013).

[8] Indeed, under RIGL § 8-10-3(a), jurisdiction is expressly conferred upon the Family Court as to "those matters relating to delinquent, wayward, dependent, neglected, or children with disabilities who by reason of any disability requires special education or treatment and other related services." *Id.*

requested by the Committee.

What the School Committee fails to mention is that RIDE is bound not only by the IDEA's substantive provisions, but also by its procedural dictates, which make clear that hearings involving a FAPE must be conducted by an impartial hearing officer *who is not an employee of RIDE, see* 20 U.S.C.A. § 1415(b) (2), a prohibition which is reiterated in the applicable state regulations. *See* Special Ed. Regs. at § 300.511(c)(i)(A).

It is evident that the parties have construed the Family Court Order as precluding Student T.P.'s attendance at Ponaganset High School, which, as the School Committee notes, is "just a few miles" from Harmony Hill. *See* School Comm. Mem. at 3. If the School Committee believes otherwise, or seeks to amend the Order, it should make its case to the Family Court before asking the Commissioner to simply ignore the IDEA's procedural dictates and applicable state law and make findings as to whether an otherwise valid Family Court placement order violates a student's right to a FAPE. Indeed, even if the School Committee was correct that Student T.P.'s right to a FAPE was being violated, it is not the Commissioner who could make that finding or provide the requested relief. [9]

In an earlier case involving the School Committee, the Commissioner affirmed the following principles, which are hereby reaffirmed:

> (1) the Commissioner of Education has jurisdiction over disputes arising under §16-64-1.1; (2) in deciding those disputes, the Commissioner will not review or re-examine a decision of the Family Court; (3) the school district's arguments with regard to FAPE and [least restrictive environment] in a §16-64-1.1 case are

[9] Even if the Commissioner had the jurisdiction to decide issues involving a FAPE (which, as noted, he does not), deference to a Family Court placement order of the type involved here would be appropriate under the separation of powers doctrine, and by analogous principles of comity. *See* note 8, *supra* (establishing the Family Court's jurisdiction); *see also Lubecki v. Ashcroft*, 557 A.2d 1208, 1212 (R.I. 1989), quoting *Fox v. Fox*, 115 R.I. 593, 350 A.2d 602 (1976) ("where the two courts' jurisdictions overlap, principles of comity shall control and the court whose jurisdiction is first invoked should resolve the issues presented to it").

> to be considered only as they relate to the issue of educational and financial responsibility of the student; and (4) to ensure that children in DCYF custody do not lose their entitlement to FAPE, the school district of residence must raise any questions in this regard with the Family Court and RIDE's Office of Student, Community and Academic Supports [("OSCAS")].

DCYF v. Foster-Glocester Regional School District v. RIDE, RIDE No. 009-14 (July 7, 2014), citing *In re Residency of Student C.M. Doe*, RIDE No. 023-13 (September 27, 2013).

Like the parents and school committees in these earlier decisions, Student T.P.'s parents and the School Committee remain perfectly free to move to amend the Family Court Order in Family Court, to appeal the Order to the Rhode Island Supreme Court, to raise the issue with OSCAS, and/or to file a due process complaint under the IDEA.

The School Committee's claim that it has no standing to file a due process complaint under the IDEA, *see* School Comm. Mem. at 7, n. 1, is simply wrong. The United States Supreme Court has made clear that "school districts may also seek [due process] hearings." *Schaffer v. Weast*, 546 U.S. 49, 53 (U.S. 2005), citing S. Rep. No. 108-185, p. 37 (2003). As noted in the cited legislative history, the Act was revised "to clarify that local educational agencies, as well as parents, have the right to present complaints." *Id*. Thus, the Special Ed. Regs. make clear that "a parent *or a public agency* may file a due process complaint" with respect to "the provision of FAPE to the child." *Id*. at § 300.507; and *see also* § 300.507 (including a local educational agency like the School District within the definition of a "public agency").[10]

[10] Aside from being rendered moot by the clear law to the contrary, the School Committee's policy argument against school committee standing – i.e., that it would turn the IDEA adjudicatory process into "an alternate forum for LEAs to resolve funding disputes with DCYF," *see* School Comm. Mem. at 7, n. 1 – is less than compelling. The fact that the vindication of a student's right to a FAPE might, as an ancillary matter, also result in the resolution of a funding dispute between DCYF and a school committee is all to the good. And the Commissioner does not subscribe to the cynical belief that school committees would groundlessly invoke the IDEA

The School Committee has emphasized that as part of its application for federal funds, "RIDE commits to ensure that all students in Rhode Island are afforded [a FAPE] pursuant to an IEP in the least restrictive environment." School Comm. Mem. at 3. Thus, although, as noted, RIDE is precluded from adjudicating the issues involving a FAPE raised by the School Committee and it would be inappropriate for the Commissioner to comment upon the merits of the claim, it nonetheless should be stressed that the School Committee is required to take whatever action it deems effective to protect Student T.P.'s right to a FAPE, whether in the form of a motion in Family Court, an appeal to the state Supreme Court, contacting OSCAS, filing a due process complaint under the IDEA, or some other action.

In short, the School Committee's election to eschew appropriate measures to vindicate what it construes as Student T.P.'s right to a FAPE in favor of a misguided request that the Commissioner ignore applicable federal and state law and adjudicate the claim, is not an effective defense to DCYF's statutory claim for reimbursement.

V. Conclusion

For all the above reasons,

1. DCYF's Amended Petition is granted;

2. Student T.P. is found to have been at all relevant times resident in the School District under RIGL § 16-64-1.2;

3. The School District is found to be financially responsible for the cost of Student T.P.'s education, as per RIGL §§ 16-64-1.1(c) and (d); and

---

adjudicatory process to delay and/or avoid making statutorily required payments (if, in fact, that is the basis of the School Committee's policy argument). *See also* Special Ed. Regs. at § 300.148(b). ("Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures").

4. Following satisfactory proof by DCYF as to of the cost of Student T.P.'s education at Harmony Hill, the Commissioner shall enter an order pursuant to RIGL § 16-64-1.2(d) requesting that the General Treasurer deduct the statutorily required amount from the total amount of state school aid provided to the School District.

For the Commissioner,

_____
Anthony F. Cottone, Esq.
Hearing Officer

Dated: December 15, 2015

_____
Ken Wagner,
Commissioner