

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

DEPARTMENT OF CHILDREN, YOUTH AND FAMILIES

v.

FOSTER-GLOCESTER REGIONAL SCHOOL DISTRICT

(In Re: Student D. Doe)

**Decision**

Held: Foster-Glocester school district must pay DCYF its share of the cost of educational services for a resident student who, for non-educational reasons, was placed at the Harmony Hill School by the Rhode Island Family Court.

Date: October 21, 2016

## **Introduction**

This is a request by the Department of Children, Youth and Families (DCYF) to assign the financial and educational responsibility for student Doe during his placement at the Harmony Hill School to the Foster-Glocester Regional School Department pursuant to chapter 64 of Title 16 of the General Laws of Rhode Island.

## **Background**

Student Doe is a resident of Glocester who has been placed in the care of DCYF. He has been identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA). In the spring of 2013, the Foster-Glocester Regional School Department developed an individualized education program (IEP) for Doe which placed him in a special education class integrated in a school district building. On April 22, 2013, DCYF placed Doe at the Harmony Hill School and from April 29 to May 24, 2013, Doe attended Ponaganset High School while residing at Harmony Hill.

On May 24, 2013, the Rhode Island Family Court reviewed Doe's status and found, in part, that

[Doe's] unique behavioral, mental health and safety needs require his placement in a twenty-four hour per day residential treatment program, and; [t]hat his history of unsafe behaviors, including but not limited to jumping out of moving cars, suicidal ideation and elopement support the clinical recommendation for [Doe] to remain in treatment twenty-four hour per day milieu therapy requiring that he remain on placement grounds and therefore attend the school on-site at Harmony Hills (sic). [DCYF Exhibit 3].

The Family Court ordered that Doe remain in residential treatment at the Harmony Hill School and attend its on-site school. Despite being present, neither Doe's educational advocate nor the Foster-Glocester's special education director were allowed to participate in the Family Court review.<sup>1</sup>

As part of a special education reevaluation, Foster-Glocester received a psychological evaluation of Doe on November 25, 2013 which found that Doe made "significant emotional and behavioral gains since last May and he demonstrates more stable mental health functioning." It

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<sup>1</sup> On October 1, 2015, the hearing officer denied Foster-Glocester's motion *in limine* seeking to preclude DCYF from offering limited documentation from Doe's Family Court file.

was the opinion of the psychologist that “educating [Doe] in the least restrictive setting of a public high school should be reconsidered.” The psychological evaluation was sent to DCYF in June 2014.

Doe remained at Harmony Hill until February 18, 2014. For fiscal year 2013, Doe attended Harmony Hill 45 days and for fiscal year 2014 he attended 232 days. The Foster-Glocester per-pupil special education rate for fiscal year 2013 was \$50,729 and for fiscal year 2014 it was \$50,806.

Following the closing of the evidentiary record, Foster-Glocester filed a motion to dismiss DCYF’s request.

### **Positions of the Parties**

The Foster-Glocester Regional School Department contends that R.I.G.L. 16-64-1.1(c) as applied in this case is preempted by the “least restrictive environment” requirement of the federal IDEA and Rhode Island’s analogous special education regulation §300.114 or, alternatively, by the federal prohibition on Rhode Island using a funding mechanism which results in placements that violate the “least restrictive environment” requirement. Foster-Glocester “in no way questions the authority of the Family Court to place children wherever the Family Court deems fit . . . What [it] directly challenges is the authority of the Rhode Island Department of Education (RIDE), as a recipient of federal funds under the IDEA, by and through the Commissioner, to require Foster-Glocester, a subrecipient, to pay for an educational placement in direct contravention of the least restrictive environment requirement [of] IDEA.”<sup>2</sup>

The School Department was prepared to educate Doe in a self-contained classroom at Ponaganset High School, i.e., the least restrictive environment determined by the IEP team. DCYF is demanding that the RIDE require the exact opposite by ordering Foster-Glocester to pay for Doe to be educated at a residential facility, i.e., the most restrictive environment. This frustrates the purpose of IDEA and violates the funding assurances made by RIDE and Foster-Glocester to the United States Department of Education. In addition, §16-64-1.1(c) should be read together with state special education regulations to assign financial responsibility to local educational agencies only when the IEP team determines that the placement for a child in DCYF custody is a residential facility. In all other cases, including Doe’s, DCYF must retain financial

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<sup>2</sup> Foster-Glocester Memorandum of Law, p.2.

responsibility subject to the right of the child’s parent or educational advocate to challenge the IEP team’s determination. Finally, the School Department requests reconsideration of the denial of its motion *in limine* regarding the Family Court file, repeating its preemption argument and also arguing that the Family Court order placing Doe at Harmony Hill cannot be given full faith and credit because the School Department and the educational advocate were not afforded due process and the latter was excluded from the proceeding in violation of a federal consent decree which the Commissioner is obligated to enforce.<sup>3</sup>

DCYF contends that the only matter properly before the Commissioner is Doe’s residency for school purposes, which indisputably is Gloucester. The Commissioner therefore should enter an order pursuant to §16-64-1.2(d) directing the General Treasurer to deduct the statutorily-required amount from Foster-Glocester’s state aid and pay it directly to DCYF. The due process challenges raised by the School Department are outside the scope of this proceeding. Neither the School Department nor the educational advocate requested a special education due process hearing to challenge the educational services Doe received at Harmony Hill, and the educational advocate did not object to or appeal the Family Court decree placing Doe there. There is no need for the Commissioner of Education to revisit the Family Court’s non-educational placement of Doe at Harmony Hill.

## **Discussion**

We deny Foster-Glocester’s motion to dismiss and find for the reasons set forth in the Commissioner’s decision in *Department of Children, Youth and Families v. Foster-Glocester Regional School Committee and North Providence School Committee (In Re: Student N.M.)*,<sup>4</sup> and the decisions cited therein,<sup>5</sup> that the Foster-Glocester school district is financially and educationally responsible for student Doe during his placement at the Harmony Hill School. The Family Court placed Doe in a 24-hour-per-day residential treatment program at Harmony Hill because of his “unique behavioral, mental health and safety needs.” It was a non-educational

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<sup>3</sup> *Office of Child Advocate, et al, v. Earhart, et al*, District Court of the United States for the District of Rhode Island, C.A. No. 82-0091P. In the consent decree, RIDE and DCYF agree to provide for the appointment of surrogate parents for children placed in DCYF care, and DCYF agrees to allow surrogate parents to participate in the administrative case plan review process with regard to educational matters.

<sup>4</sup> Decision 015-16, June 22, 2016.

<sup>5</sup> *Department of Children, Youth and Families v. Foster-Glocester Regional School District v. Rhode Island Department of Education*, 009-14, July 7, 2014 and *Department of Children, Youth and Families v. Foster-Glocester Regional School Committee (In Re: Student T.P.)*, 021-15, December 15, 2015.

placement. It did, however, dictate Doe’s living arrangement which needed to be recognized by a Foster-Glocester IEP team in determining appropriate educational services for Doe. As noted in the *Student N.M.* decision, this is the way we “accommodate students’ mental health and safety needs with rights under the IDEA.”<sup>6</sup>

## Conclusion

Based on Doe’s residency, the Foster-Glocester school district is responsible under Rhode Island General Law 16-64-1.1(c) for payment of its per-pupil special education cost to DCYF for the period of time Doe was placed at the Harmony Hill School. In accordance with §16-64-1.2(d), the Commissioner shall order the General Treasurer to deduct \$38,547.39 from Foster-Glocester’s school aid and pay that amount to DCYF.<sup>7</sup>

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Paul E. Pontarelli  
Hearing Officer

Approved:

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Ken Wagner, Ph.D.  
Commissioner

Date: October 21, 2016

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<sup>6</sup> *Ibid.*, p. 13. For the reasons previously provided regarding the full faith and credit afforded to court orders and the correlation of Family Court non-educational placements with IDEA requirements, we affirm our denial of Foster-Glocester’s motion *in limine* concerning documentation from the Family Court file.

<sup>7</sup> The total amount consists of \$6,254.26 for fiscal year 2013 and \$32,293.13 for fiscal year 2014.