

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

In Re: Residency of Student C. M. DOE

DECISION

Held: This student's residency for school purposes is Newport, the district in which she currently lives and has lived since February 11, 2013. Application of the provisions of R.I.G.L. 16-64-1.1 to the facts in this case requires that Newport be designated as the local education agency for this student. Financial and educational responsibility for Student Doe remain with Newport for the period of time in which she continues to reside in a group home there and attend a special education program at the High Road School of Providence pursuant to the order of the Family Court. Although a court-ordered educational placement has pre-empted the Newport IEP-team's decision with respect to providing Student Doe a free appropriate public education within the Newport school system, a fair construction of the statutory language of R.I.G.L. 16-64-1.1(a) and (b) nonetheless places such responsibility upon the district in which the group home is located, i.e. Newport. The Commissioner also designates Newport as the responsible school district in fulfillment of her responsibility to coordinate "the various elementary and secondary educational functions among the educational agencies of the state including local school districts" as required by R.I.G.L. 16-60-6(5). Such designation must be made in cases involving children in state care who may frequently change their residential placement and be entitled to continuity in their educational placement pursuant to the "Fostering Connections Act."

DATE: September 27, 2013

Travel of the Case

This matter was brought to the Commissioner in a petition filed by the Department of Children, Youth and Families (DCYF) on July 14, 2013. DCYF submitted a petition for a Determination of Residency and sought to have a local education agency designated to assume administrative and financial responsibility for purposes of the provision of educational services to Student Doe. DCYF sought an expedited hearing and decision, citing the existence of “conflicting recommendations” as to whether Student Doe should attend school in Newport or remain at the High Road School in Providence for school year 2013-2014. DCYF indicated that uncertainty as to Student Doe’s educational placement in the fall was creating instability for her and the prospect of further disruption would exacerbate that which had already resulted from multiple foster and group home placements.

Counsel for DCYF sent copies of its petition to the districts that it had determined to be involved in the dispute as to which school district was the responsible LEA for Student Doe. These districts are Newport and Providence.

An expedited hearing was then held by the undersigned, designated by Commissioner Deborah A. Gist to hear this matter. At the hearing on July 23, 2013 testimony and documentary evidence were taken. The parties submitted memoranda summarizing their closing arguments and requested an opportunity to submit responding memos on or before September 6, 2013. When no further memoranda were submitted, the record in this matter was closed.

Jurisdiction to hear this matter is found in R.I.G.L. 16-64-6.

ISSUE

Is Student Doe the educational responsibility of Newport, Providence, DCYF or some other agency? If an LEA is responsible for the Student Doe’s education, is it obligated to pay its per pupil special education cost or the tuition at the High Road School?

Findings of Relevant Facts:

- Student Doe is sixteen years old and has been in the custody of the Department of Children, Youth and Families for several years. Parental rights of both parents have been terminated. Tr. pp. 23; 49-50.

- Since December 20, 2012 Student Doe has been in a number of residential placements ordered by the R.I. Family Court, both in a foster home and group home setting. The Family Court placed Student Doe in a group home located in Newport, Rhode Island on February 11, 2013, and she was still living there at the time of the hearing. Tr. pp.25, 32-33; 52; DCYF Ex. A; H. O. Ex.1, Order of Bedrosian, J. dated February 21. 2013.
- Student Doe has a disability and receives special education and related services. During the time that she was residing in a foster home in Providence during the fall of 2012, an IEP team convened by Providence in September determined that she should no longer attend Mount Pleasant High School and placed her at the High Road School, a secondary-level school for students with behavioral needs located in Providence, Rhode Island. Tr. pp. 24, 50-52.¹
- Throughout the four changes in Student Doe’s placement that occurred between December 20, 2012 and February 11, 2013, each time a judge of the Family Court ordered a change in her residential placement, the Court ordered that she continue to attend the High Road School. Each time Student Doe’s residential placement changed, she moved to a different school district. Tr. pp.24-26; D.C.Y.F. Ex.A; H.O. Ex.1.
- In the Court Order dated June 4, 2013, the Judge made several findings, including that it was in Student Doe’s “best interests to maintain her stability to remain in her educational program at High Roads...” The Court further found that Student Doe was to remain at High Roads and complete her education there. H.O. Ex.1.
- Student Doe is entering her senior year of high school in September of 2013. Newport Ex.1.
- Pursuant to the Court Order of June 4, 2013 the Newport School Department was informed that it did not “need to do any further educational testing” of Student Doe. H.O. Ex. 1.
- With the educational records that it was able to obtain on Student Doe, and additional background information provided by her educational advocate and social caseworker, the Newport School Department convened three IEP meetings to determine an appropriate educational placement. After reaching consensus, the team developed an IEP for Student Doe that called for her placement in a public school setting in Newport in September of 2013. Tr. pp. 66-67; 70-76. At the time of the hearing, the Director of Student Services testified that

¹ There was testimony that her Providence IEP team “made a referral” to the High Road School in September of 2012 because it had determined that the local public high school could not provide the level of support that Student Doe needed. Tr.p.54. Evidently, her written IEP was not revised at that time because Newport’s Director of Student Services testified that the last written IEP developed by Providence called for Student Doe’s placement in a special education setting in a public school. Tr.p.76.

the district believes that it could provide the free appropriate public education (FAPE) to which Student Doe is entitled within the Newport school system. Tr.p.71.²

- The IEP meetings were held and the development of an IEP for Student Doe was completed prior to the district’s special education staff becoming aware of the Court Order of June 4, 2013 that directed it to refrain from further educational testing. Tr. p.70.
- The Family Court directed that the determination of “who is responsible for the funding of the High Roads School placement” be made by RIDE. H.O. Ex.1.³

Positions of the Parties:

DCYF:

DCYF submits that designation of the appropriate LEA is initially confusing from a factual standpoint because Student Doe experienced five (5) different placements in a fifty-five (55) day time period, coupled with a court order that she was to remain at the High Road School regardless of the foster or group home location. Given the short duration of the Wakefield (South Kingstown), Barrington, and West Warwick placements, it is DCYF’s position that they were effectively temporary placements, and Student Doe did not have a more permanent home until the Court ordered her placement at the group home in Newport. At this point in time, she has resided at this facility for more than six (6) months. Newport is where she has been “placed in a group home by DCYF” and her ongoing residence at the group home is the key factor in a determination of her residency for school purposes.

Counsel submits that although the facts here may be unusual, state law regarding responsibility for youths who are placed in a group home is quite clear. On the date she was placed in the Newport group home, February 11, 2013, Student Doe became a resident of Newport for the purpose of school enrollment and, as a result, R.I.G.L. 16-64-1.1(a) entitles her to the same free appropriate public education provided to all other residents of Newport. Consequently, Newport is responsible for both the cost and provision of educational services from the time of her placement there until such time as she no longer resides there.

² One reason identified in testimony for Newport’s objection to being deemed the “responsible” LEA is that Student Doe’s current placement at the High Road School is not the placement that it has developed for her pursuant to the Individuals with Disabilities Education Act (IDEA) process.

³ A draft of the Order that included a finding that Newport was not the LEA responsible for funding the educational placement of Student Doe was discussed prior to entry of the Order directing the parties to go back to RIDE for such determination. Tr. p.82; H.O. Ex.1.

Once Newport assumes the role of Student Doe's responsible LEA, the issue of the appropriateness of her current educational program at the High Road School (and the fact that it is a more restrictive setting than that which the Newport IEP would provide) can be addressed in proceedings before the Family Court. If Newport is not designated as the current LEA for Student Doe, then DCYF requests that another responsible LEA be designated to assume financial responsibility and to provide FAPE to Student Doe.

Newport School Committee:

In its memorandum, the School Committee argues that if it is found to be the LEA responsible for providing Student Doe with a free appropriate public education (FAPE), it must do so by providing Student Doe with an education pursuant to the requirements of federal and state law. Stated another way, the IEP team convened by Newport determined that Student Doe could be provided with FAPE in the least restrictive environment in her home community- not at the more restrictive setting of the High Road School. Newport's proposed educational placement resulted from a review of all records and information available, and reflected a consensus of the members of the IEP team. Newport's proposed placement was also fully supported by her educational advocate. It is this process, and the resulting IEP, by which Newport fulfills its educational obligations to Student Doe- and not otherwise. Counsel for the School Committee argues that the district cannot be held to be the responsible LEA when it is not fulfilling its obligations as an LEA, but rather is bound by the decisions of others who have made an "election" for her to complete her senior year at the High Road School or determined that, for social and/or behavioral reasons, Student Doe should remain at the High Road School.

Student Doe did not enroll in Newport until February 28, 2013, well after the start of the second semester (the first semester in Newport public schools ended on January 29, 2013). Assuming that her educational advocate had previously made an election for Student Doe to complete her junior year at the High Road School, such an election was clearly made at a time when she was enrolled in some other district-either South Kingstown or West Warwick- but clearly not Newport. Assuming an election was then made by her educational advocate that she would complete her senior year at the High Road School, the statute providing such an election (R.I.G.L. 16-64-8) states that "No school district shall be required to pay tuition for a student who exercises the option allowed in this section." (R.I.G.L. 16-64-8)

Thus, if Student Doe’s educational advocate has made an election, available under Rhode Island education law, for Student Doe to complete her senior year at the High Road School, this same statute would clearly remove from Newport any obligation to pay tuition for her continued attendance at a school which is not part of the Newport school system.⁴

The district argues that there is only one other scenario in which Student Doe may be continued in her educational placement at the High Road School. This is if DCYF has determined that such placement is necessary for social or behavioral reasons “in which case the provisions of the McKinney Homeless Assistance Act could be construed to have been triggered”. (Newport memorandum at page 3) The district asserts that Student Doe’s frequent changes in placement would qualify her as a “homeless” student and that in such circumstances it is up to the Commissioner to determine which community or agency should bear the cost and be responsible for Student Doe’s education. Newport argues that, based on the record in this case, this responsibility should be allocated to DCYF since it was DCYF that persuaded the judge of the Family Court that maintenance of a stable educational environment was of paramount importance to Student Doe. Counsel notes that there has been no process by which Newport has had an opportunity to demonstrate that Newport would also be a stable environment for Student Doe- and provide her with special education in the least restrictive environment.

If the Commissioner rules that Newport is the LEA that is responsible for Student Doe, the School Committee requests that such order also indicate that Newport is not responsible for the payment of tuition at the High Road School, since this is not the placement that it has determined will provide her with FAPE and her maintenance at the High Road School is either pursuant to the election of her educational advocate or a decision initiated by DCYF to provide her with the stability that her residential placements have not provided.

Providence School Board:

Counsel for the School Board succinctly argues that a fair reading of both R.I.G.L. 16-64-1 and 16-64-1.1 would indicate that Providence is not the LEA responsible for Student Doe’s education. The law clearly states that when a child is placed in foster care or in a group home, he or she shall be deemed to be a resident of the city or town where the group home is located. Such children are entitled to the same free appropriate public education provided to all other

⁴ Newport does not indicate which district or other entity would then be obligated for the payment of such tuition.

residents of the city or town where the child is placed. The city or town shall pay the cost of the education of the child during the time the child is in foster care in the city or town. Such clear provisions of the statute cannot be interpreted to make Providence responsible for providing a free appropriate public education to Student Doe.

The evidence shows conclusively that Student Doe has not been a school resident of Providence since December 20, 2012. This fact is supported by the intra-state education identification card issued for Student Doe which identifies Newport as her district of residence for school purposes as of February 11, 2013. (Tr. p.40) Since the intra-state education identification card constitutes prima facie evidence of a city or town's financial responsibility for a child's education and since there has been no evidence that would implicate any other district as her residence, Providence is clearly not the responsible LEA for this student.

DECISION

The record in this case demonstrates that the Family Court has grappled with difficult issues regarding Student Doe's health, education and welfare over the last several months, as she has been moved from one residential setting to another, from one end of the state to the other. She was referred to as "a complicated young lady" and we infer from the evidence that her psychological needs have made maintenance of a stable living situation quite challenging.

On May 15, 2013, a motion filed by her guardian ad litem for emergency review was heard by the chief judge of the Family Court. The judge determined at that time that Student Doe had "stabilized" at the High Road School. Her treating psychiatrist and counselors were available to her at High Road, and she benefitted from the ongoing support of teachers, school staff and other students, including her boyfriend. The judge found, based on a host of factors that it was in her "best interests" to remain in attendance at the High Road School. The Court ordered that she remain at the High Road School and complete her education there. Although Newport submits that this decision was not made by an IEP team pursuant to the process required by IDEA and that it does not provide Student Doe with FAPE in the least restrictive environment, we must consider Newport's arguments in this respect only as they relate to the issue of educational and financial responsibility for this child. The Commissioner has no authority to review a decision of

the Family Court⁵ and it would not be appropriate for the Commissioner to re-examine the decision of the judge presiding in Student Doe’s case.

We infer that the judge’s decision in this matter was a “school stability” decision required by the “Fostering Connections Act”.⁶ In complying with the Fostering Connections Act, the Court could not defer the educational stability decision to the IEP team and was required to consider a broad range of factors, including Student Doe’s progress in her current educational placement, before ordering that Student Doe’s educational placement at the High Road School be maintained. Decisions complying with one federal law (Fostering Connections Act) should, when at all possible, be harmonized with the requirements of another, equally binding federal law (IDEA). We will discuss both RIDE’s and the LEA’s responsibilities in this regard at a later point in this decision.

The Court also directed the parties to request that RIDE determine “who is responsible for the funding of the High Roads School placement”. This recognizes the Commissioner’s authority over school residency issues even when the child’s special education placement comes about as the result of a court order, rather than as a result of the IEP process.⁷

Despite the creative arguments advanced by counsel for the Newport School Committee, we find that Newport is this student’s residence for school purposes and will continue to be until she no longer lives there. R.I.G.L. 16-64-1.1 (a) and (b), read together, cause us to conclude that Newport is responsible to pay for Student Doe’s tuition⁸ at the High Road School. Student Doe has been placed by DCYF in a group home in the city of Newport and her residential placement “does not include the delivery of educational services”. We recognize that the facts here do not fit neatly into the language of 16-64-1.1 (a) or (b). Newport stands ready to provide what it has determined to be FAPE for this student- “the same free, appropriate public education provided to

⁵ See Student C.A. Doe v. Johnston School Department, decision of the Commissioner dated February 9, 2010; Charlho Regional School District v. R. Doe, decision of the Commissioner dated September 1, 2010;

⁶ 42 USC Sec. 675 (1) (G)(ii). This law requires the child welfare agency to create a plan for ensuring the educational stability of the child while in foster care, including remaining in the school the child was attending at the time of placement unless a school change is in the child’s best interests. In this case, the evidence demonstrates that Student Doe’s changes in residential placement were court-ordered, bringing before the Court the issue of educational stability, rather than this being an independent decision made by DCYF, “[t]he child welfare agency.”

⁷ See Residency of C. Doe, decision of the Commissioner dated February 2, 2012, a case in which the Commissioner was called upon to determine which Rhode Island school district was required to pay for special education costs associated with a Family Court-ordered out of state placement at a residential school. The student’s mother was deceased and her father had moved to New Bedford, Massachusetts.

⁸We note that this is not a case in which a child has been placed by DCYF at a residential facility “which includes the delivery of educational services, provided by that facility...” a scenario which is covered by subsection (c) of R.I.G.L. 16-64-1.1 This section makes the responsible LEA in such situations obligated to DCYF for only a “share” of the educational cost, i.e. its per-pupil special education cost.

all other residents of the city” at a school within the Newport public school system. Yet, subsection (a) nonetheless obligates Newport to “pay the cost of the education of the child during the time the child is in foster care in Newport.”⁹

Subsection (b) of R.I.G.L. 16-64-1.1 applies to children placed by DCYF in a group home or other residential facility “that does not include the delivery of educational services”. This provision goes on to require that these children be educated by the community in which the group home or other residential facility is located and be entitled to the same free appropriate public education provided to all other residents of the city or town in which the child is placed. This provision creates an inference that the district in which the group home is located will be providing, either directly or indirectly, a “free appropriate public education” to such group home children.¹⁰ However, in this case, Newport will be fulfilling its statutory obligation by paying for the tuition for Student Doe at a court-ordered educational placement- a placement which its IEP team did not determine was appropriate for Student Doe based on the information available at the time the IEP team was convened. Despite the lack of congruence between the facts of this case and the provisions of R.I.G.L. 16-64-1.1, we determine that these provisions are applicable to the facts here and that they do place educational and financial responsibility for Student Doe on the city of Newport and the Newport School Department.

Even if the provisions of R.I.G.L. 16-64-1.1 were not applicable to the facts of this case, we would note that “school stability decisions” under the Fostering Connections Act may require that the Commissioner allocate educational and financial responsibility pursuant to her statutory authority in R.I.G.L. 16-60-6(5). Pursuant to this law, the Commissioner has the responsibility to coordinate “the various elementary and secondary educational functions among the educational agencies of the state including local school districts...” In cases in which state education law may not explicitly resolve issues of educational and financial responsibility for children who are in the custody of DCYF, the Commissioner must do so in a logical and fair manner and in a way which ensures that children in state custody will continue to have all the educational entitlements that children who are not in state custody have. In exercising this authority, the Commissioner finds that Newport continues to be responsible for Student Doe’s

⁹ Although “foster care” is not defined by Chapter 16-64, for purposes of Chapter 40-11, “entering foster care” is defined as placement of a child in the temporary custody or custody of the department in a foster family home or in a private or public child care facility which is licensed by the state. R.I.G.L. 40-11-12.1(h)

¹⁰ We would note that R.I.G.L. 16-64-1.1 (b) does provide annual state funding to districts “hosting” such group homes based on the number of beds in such group homes or other residential facilities.

education during the period of time that she continues to live there and is placed at a private school for children with disabilities per order of the Family Court.¹¹

The district's argument that Student Doe's continued attendance is pursuant to an election made on her behalf by her educational advocate to "complete her senior year" there is not consistent with the facts. Similarly, although DCYF may have weighed in in favor of maintaining Student Doe's placement at the High Road School, the facts are not, as Newport has asserted, that DCYF "initiated" this placement. Even if DCYF had "initiated" this placement for social or behavioral reasons, we do not understand the district's argument that this situation triggers the provisions of the McKinney Homeless Assistance Act and thereby makes some other district responsible for Student Doe. Based on the record in this case, Student Doe is not "homeless"¹² and, even though she has experienced frequent changes in placement, she has at all times relevant to this case resided either in a foster home or a group home.

Children who are in DCYF care and custody do not lose their entitlement to a free appropriate public education in accordance with state and federal law (R.I.G.L. 42-72-15 (o)). The Commissioner must ensure that school stability decisions under the Fostering Connections Act do not have the effect of depriving students with disabilities of their rights to FAPE under IDEA and state law. Stated another way, RIDE must do what it can to ensure that these two provisions of federal law are harmonized. Newport is the LEA and retains educational responsibility for this student. As such, Newport is directed to take appropriate steps to raise any concerns that it may have as to Student Doe's placement at the High Road School, the need for the development of a current IEP, transition planning and services, etc. before the Family Court, if it has not already done so. If Newport continues to take the position that Student Doe's placement does not provide her with FAPE, a report describing the factual and legal basis for such position must be submitted to RIDE's Director of the Office of Student, Community and Academic Supports so that he can determine what additional steps, if any, RIDE must take in this matter.

As Student Doe's LEA, Newport is responsible for Student Doe's tuition at the High Road School. Funding for transportation may be made available to DCYF under the Fostering

¹¹ We do not decide the issue of which district is responsible for the cost of education when a school stability decision under the Fostering Connections Act maintains a child in his or her public school setting.

¹² Both the social caseworker and the supervisor of Student Doe's educational advocate answered in the negative when asked if children in DCYF care could be considered "homeless". Tr. pp. 33-35, 59.

Connections Act. DCYF is directed to explore the availability of federal funding to offset the costs of transporting Student Doe to and from the High Road School.

For the Commissioner,

Kathleen S. Murray, Hearing Officer

Deborah A. Gist, Commissioner

Date September 27, 2013