

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
COMMISSIONER OF EDUCATION

DEPARTMENT OF CHILDREN, :  
YOUTH AND FAMILIES, :  
                  *Petitioner* :  
                  v. :  
WARWICK SCHOOL DEPARTMENT, : RIDE No. 18-096P  
                  *Respondent* :  
(*In re K. Doe*) :

DEPARTMENT OF CHILDREN, :  
YOUTH AND FAMILIES, :  
                  *Petitioner* :  
                  v. : RIDE No. 18-104P  
PROVIDENCE PUBLIC SCHOOL :  
DEPARTMENT, :  
                  *Respondent* :  
(*In re E. Doe*) :

DEPARTMENT OF CHILDREN, :  
YOUTH AND FAMILIES, :  
                  *Petitioner* :  
                  v. : RIDE No. 18-105P  
PROVIDENCE PUBLIC SCHOOL :  
DEPARTMENT, :  
                  *Respondent* :  
(*In re M. Doe*) :

**CONSOLIDATED DECISION**

**Held:** Commissioner affirms prior precedent holding that DCYF is statutorily entitled to be reimbursed at a per-pupil special education rate for students placed in residential treatment facilities who are not receiving special education services.

Date: June 15, 2020

## Introduction

This matter concerns three petitions by the Department of Children, Youth and Families (DCYF) for residency determinations under R.I. Gen. Law §16-64-1(c) for the purpose of assigning financial and educational responsibility for children placed by DCYF in residential treatment facilities.<sup>1</sup>

## Background

In *DCYF v. Warwick School Department (In Re: K Doe)*, the parties have stipulated to the following facts:

Student K. Doe entered DCYF care on June 6, 2017;

- At no relevant time did K. Doe have an individualized educational program (IEP) or be deemed to be eligible for special education services;
- On October 2, 2017, the then-15-year-old K. Doe was placed by DCYF at JRI Pelham, a residential treatment facility in Needham, Massachusetts;<sup>2</sup>
- JRI Pelham is a facility which provides educational services;
- On the date K. Doe was placed at JRI Pelham, and at all relevant times, her custodial parents resided in Warwick, Rhode Island;
- On September 8, 2017, DCYF provided Respondent Warwick with a “Notice of Responsibility For a Child in State Care” designating it as K. Doe’s city of residency for educational purposes in accordance with R.I. Gen. Law § 16-64-1.1 and deeming it responsible for its per-pupil special education cost to be paid to DCYF;
- Respondent Warwick’s special education per-pupil rate for fiscal year 2018 was \$132.52 and for fiscal year 2019 was \$100.85;
- Respondent Warwick did not respond to the Notice and to date has not made any payment to DCYF or JRI Pelham for educational services provided to K. Doe;
- No other Rhode Island school district or other local education agency has paid DCYF or JRI Pelham any amount or otherwise assumed responsibility for the educational services provided to K. Doe at JRI Pelham; and K. Doe’s residential placement at JRI Pelham continues to this date.

In *DCYF v. Providence Public School Department (In Re: E. Doe)*, the parties have stipulated to the following facts:

- Student E. Doe entered DCYF care on November 7, 2016;
- At no relevant time did E. Doe have an IEP or be deemed to be eligible for special

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<sup>1</sup> By agreement of the parties, the three cases assigned to the undersigned hearing officer have been consolidated. Two other petitions assigned to another hearing officer raising the same issue as the cases herein also have been consolidated and decided on this date (See *Department of Children, Youth and Families v. Providence Public School Department (In Re: H. Doe)*, RIDE Case No. 19-036A and *Department of Children, Youth and Families v. Providence Public School Department (In Re: M.B. Doe)*, RIDE Case No. 19-041A).

<sup>2</sup> Official notice is taken of JRI Pelham’s location.

education services;

- On April 2, 2018, the then-16-year-old E. Doe was placed by DCYF at Harmony Hill School, a residential treatment facility in Glocester, Rhode Island;<sup>3</sup>
- Harmony Hill School is a facility which provides educational services;
- On the date Doe was placed at Harmony Hill School, and at all relevant times, his custodial parent resided in Providence, Rhode Island;
- On December 27, 2017, DCYF provided Respondent Providence with a “Notice of Responsibility For a Child in State Care” designating it as E. Doe’s city of residency for educational purposes in accordance with R.I. Gen. Law § 16-64-1.1 and deeming it responsible for its per-pupil special education cost to be paid to DCYF;
- Respondent Providence’s special education per-pupil rate for fiscal year 2018 was \$89.39 and for fiscal year 2019 was \$47.32;
- Respondent Providence did not respond to the Notice and to date has not made any payment to DCYF or Harmony Hill School for educational services provided to E. Doe;
- No other Rhode Island school district or other local education agency has paid DCYF or Harmony Hill School any amount or otherwise assumed responsibility for the educational services provided to E. Doe at Harmony Hill School; and
- E. Doe’s residential placement at Harmony Hill School continued through February 12, 2019.

In *DCYF v. Providence Public School Department (In Re: M. Doe)*, the parties have stipulated to the following facts:

- Student M. Doe entered DCYF care on December 16, 2016;
- At no relevant time did M. Doe have an IEP or be deemed to be eligible for special education services;
- On July 10, 2017, the then-12-year-old M. Doe was placed by DCYF at Fall River Deaconess Home, a residential treatment facility in Fall River, Massachusetts;<sup>4</sup>
- Fall River Deaconess Home is a facility which provides educational services;
- On the date M. Doe was placed at Fall River Deaconess Home, and at all relevant times, his custodial parent(s) resided in Providence, Rhode Island;
- On May 12, 2017, DCYF provided Respondent Providence with a “Notice of Responsibility For a Child in State Care” designating it as M. Doe’s city of residency for educational purposes in accordance with R.I. Gen. Law § 16-64-1.1 and deeming it responsible for its per-pupil special education cost to be paid to DCYF;
- Respondent Providence’s special education per-pupil rate for fiscal year 2018 was \$89.39 and for fiscal year 2019 was \$47.32;

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<sup>3</sup> Official notice is taken of Harmony Hill School’s location.

<sup>4</sup> Official notice is taken of Fall River Deaconess Home’s location.

- Respondent Providence did not respond to the Notice and to date has not made any payment to DCYF or Fall River Deaconess Home for educational services provided to M. Doe;
- No other Rhode Island school district or other local education agency has paid DCYF or Fall River Deaconess Home any amount or otherwise assumed responsibility for the educational services provided to M. Doe at Fall River Deaconess Home; and
- M. Doe’s residential placement at Fall River Deaconess Home continued through June 17, 2019.

### **Positions of the Parties**

Based on the residences of the respective custodial parents, Respondents concede that they bear the educational and financial responsibility for the students in these cases. However, Respondents challenge DCYF’s request for reimbursement at the special education daily rate. As Respondents put it, “[t]he only issue before the Hearing Officer is what rate, whether special education or general, DCYF is entitled to for these general education students.”<sup>5</sup> Respondents acknowledge that this issue has previously been decided by the Commissioner, “but maintain that the reasoning in the prior decisions is legally flawed and that the cases themselves were wrongly decided.” Respondents urge the Commissioner “to reconsider the Department of Education’s interpretation of the relevant statutory provisions.”<sup>6</sup> Specifically, Respondents argue that R.I. Gen. Laws §§16-64-1.1 and 16-64-1.2 require school departments to pay only for the education that each child actually receives. Citing language in the statute referring to “the cost of the education,” Respondents assert that, in cases involving students who are not entitled to special education, that cost amounts to the number of days in placement multiplied by the general education rate. The statute should not be read to require school districts to subsidize DCYF or residential placements by paying the higher rate. In interpreting the statute, the Commissioner has overlooked the Family Court residency designation provision in §16-64-1.2(a), which does not make any reference to reimbursement at the special education daily rate. Because the statute allows school districts to make education payments to the residential facility providing the educational services, the Commissioner’s absurd interpretation of the statute allows facilities to overcharge school districts for the education of general education students. Finally, the Commissioner’s interpretation overrides the mandate of the federal Individuals with Disabilities Education Act that IEP teams determine students’ eligibility for special education

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<sup>5</sup> Respondents’ Memorandum of Law, p. 2.

<sup>6</sup> *Ibid.*

services and their educational placements.

DCYF contends that Respondents' analysis of §§16-64-1.1 and 16-64-1.2 requires a reversal of the previous-Commissioner's decision in *Department of Children, Youth and Families v. Newport School Department (In re A. Doe)*<sup>7</sup> and, by implication, the undersigned-Commissioner's decisions in *Department of Children, Youth and Families v. Cumberland School Department (In re M. Doe)*<sup>8</sup> and *Department of Children, Youth and Families v. North Providence School Department (In re F. Doe)*.<sup>9</sup> Respondents' arguments herein were rejected in these previous decisions, and their references to §16-64-1.1(a) are misplaced because that provision applies to foster children placed by DCYF in the particular city or town from which payment is sought. R.I. Gen. Law §16-64-1.1(c) repeatedly uses the term "per-pupil special education cost." Its language is plain and unambiguous. Reading the individual sections in the context of the entire statutory scheme, it is clear that §16-64-1.1(c) requires the school district "determined to be responsible" under §16-64-1.2 to pay its "share" of the "per-pupil [special education] cost" to DCYF. The Commissioner did not address §16-64-1.2(a) in the *DCYF v. Newport* case because there was no residency determination made by the Family Court in that case. R.I. Gen. Law 16-64-1.1(c) does not distinguish among residency determinations made under §16-64-1.2(a), (b) or (c). Under any of the sections, the designated school district is "responsible to DCYF for a per-pupil special education cost." Lastly, the Individuals with Disabilities Education Act has no relevancy to this matter because the students did not receive special education services.

## **Discussion**

Shortly after the parties submitted their memoranda in this matter, the Commissioner issued her decision in *Department of Children, Youth and Families v. Burrillville School Department (In Re: Student S. Doe)*.<sup>10</sup> Presented with the same rate-of-payment issue that has been raised here, the Commissioner affirmed her predecessor's ruling in *DCYF v. Newport (In re A. Doe)*, holding that the language of §§ 16-64-1.1 and 16-64-1.2 requires school districts to reimburse DCYF for the cost of educating children placed in private residential facilities at the district's special education per-pupil rate even if the child is a general education student who is

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<sup>7</sup> RIDE No. 19-006A, March 8, 2019.

<sup>8</sup> RIDE No. 19-034A, May 21, 2019.

<sup>9</sup> RIDE No. 18-098A, July 8, 2019.

<sup>10</sup> RIDE No. 19-051K, February 12, 2020.

not eligible to receive special education services. In so holding, the Commissioner concluded that when interpreting a statute, the Commissioner engages in “administrative rulemaking,” and that in the context of adjudication, there is a presumption that an agency will adhere to its settled rule. Finding no substantial reason to depart from the construction of §16-64-1.1(c) made in *DCYF v. Newport*, the Commissioner affirmed this “adjudicative rule” as well as the *DCYF v. Newport* ruling itself, finding it to be “a correct, well-reasoned interpretation of the statute, consistently applied in numerous other cases subsequently adjudicated in this forum.”<sup>11</sup>

### **Conclusion**

In accordance with *DCYF v. Burrillville*, we grant Petitioner’s requests for reimbursement at Respondents’ respective per-pupil special education rates.<sup>12</sup> In the case of *E. Doe* (No. 18-104), Providence is directed to reimburse DCYF in the amount of \$18,786.74 forthwith. In the case of *M. Doe*, (No. 18-105), Providence is directed to reimburse DCYF \$48,479.48 forthwith. In the case of *K. Doe*, (No. 18-096), Warwick is directed to reimburse DCYF \$72,723.17 forthwith and, upon presentation of the remaining balance owed for K. Doe, pay that amount to DCYF. In lieu of payment in full at this time, the parties may agree upon a reimbursement schedule. The Commissioner will retain jurisdiction of these cases to ensure prompt implementation of the remedies ordered herein. A hearing to address any remedial issues is hereby scheduled for July 20, 2020 at 2:00 p.m.

/s/ Paul E. Pontarelli  
Paul E. Pontarelli  
Hearing Officer

Approved:



Angélica Infante Green  
Commissioner

Date: June 15, 2020

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<sup>11</sup> *DCYF v. Newport*, p. 5.

<sup>12</sup> Respondents’ acceptance of educational and financial responsibility for these students eliminated the need for residency determinations in these cases.