

STATE OF RHODE ISLAND
COMMISSIONER OF EDUCATION

DEPARTMENT OF CHILDREN, YOUTH :
AND FAMILIES, :

Petitioner/Appellee, :

vs. :

RIDE No. 19-005 A

NEWPORT SCHOOL COMMITTEE, :

Respondent/Appellant :

In re P. Doe

DECISION AND ORDER FOLLOWING REMAND

Held: State child welfare agency seeking reimbursement for cost of educational services to a child in its care that were provided by an out-of-state residential facility is precluded from re-litigating evidentiary issues that were addressed by the Superior Court on appeal as it reversed a decision of the Commissioner ordering such reimbursement, and on remand: (1) the agency was ordered to refund to the school committee the amount of state education aid that had been withheld and provided to the agency pursuant to the Commissioner's reversed decision, plus interest; and (2) the school committee's motion for attorneys' fees was denied.

Date: August 18, 2020

On February 11, 2020, the Rhode Island Superior Court reversed and remanded an April 26, 2019 Decision and Order of the Commissioner (the “April 26 Decision”), which had granted the request of the Petitioner/Appellee, Department of Children, Youth and Families (“DCYF”), for an order compelling Respondent/Appellant, Newport School Committee (“NSC”), to accept financial responsibility for the cost of educating P. Doe, a child in DCYF’s custody, and to reimburse DCYF for a portion of the cost of the educational services provided to P. Doe by the residential facility where the child had been placed. *See Newport School Comm. v. DCYF et al.*, C.A. No. PC-2019-5698 (Superior Court, February 11, 2020) (Vogel, J.) (the “Superior Court Decision”).

This Decision and Order is pursuant to the Superior Court’s remand of the case, and also addresses NSC’s July 16, 2020 motion for attorneys’ fees.

I. Facts and Procedural Background

1. On January 10, 2019, DCYF filed a *Request for a Residency Determination and Designation of Party Responsible for the Education of a Youth Residing in a Residential Facility* requesting that the Commissioner order NSC to reimburse it for the statutorily-mandated portion of the cost of educating P. Doe, whom DCYF had placed in a private, out-of-state, residential facility pursuant to an order of the Family Court.

2. Counsel for NSC argued that P. Doe had attended schools both in the Providence Public School District (“PPSD”) and the Chariho Regional School District (“Chariho”), and that under the facts, it was either PPSD or Chariho, and not NSC that should be held financially responsible.

3. An evidentiary hearing was held before the undersigned Hearing Officer on March 8, 2019 (both PPSD and Chariho were provided with notice of the hearing).

4. As noted in the April 26 Decision, the result came down to a question of fact, i.e., “what was P. Doe’s mother’s last known Rhode Island residence as of November 21, 2016?”¹ DCYF attempted to answer the question through the testimony of the social worker now assigned to the case, who attempted to interpret various records maintained by the agency as part of the Rhode Island Children’s Information System (“RICHIST”). *See id.* at 9

5. The Commissioner concluded that:

although divining the meaning of RICHIST documents without the input of the individual or individuals who actually inputted the relevant data complicated the task, on balance, there was enough information in these documents, together with the testimony of the DCYF Social Worker, to enable DCYF to (just barely) meet its burden of proving that Ms. Doe’s last known residence in Rhode Island prior to the date her parental rights were terminated was located in Newport.

Id. at 12-13.

6. NSC was given thirty (30) days from the date of the April 26 Decision to either pay DCYF the amount owed – some \$54,361.14 – or reach agreement with DCYF as to a payment schedule.

7. On June 26, 2019, NSC paid the sum of \$28,752.02 to DCYF, and the remaining \$25,609.12 was paid in roughly equal monthly installments between July, 2019 and December, 2019. *See* Affidavit of Candace Andrade, NSC’s Director of Student Services, dated June 18, 2020, attached to the DCYF Mem. as Exhibit 2.

¹ That was the focus of the inquiry since under R.I. Gen. Laws § 16-64-1.1(c), the cost of educating children placed by DCYF in a residential-treatment program that includes the delivery of educational services is determined with reference to the residence of the child’s parents. *See* R.I. Gen. Laws § 16-64-1.2(d) citing § 16-64-1.1; *see also* § 16-64-1 (“A child shall be deemed to be a resident of the city or town where his or her parents reside.”). And when “children in state care who have neither a father, mother, nor guardian living in the state or whose residence can be determined in the state,” the financially responsible city or town shall be determined using the following criteria:

- (1) last known Rhode Island residence of the child's father, mother, or guardian prior to moving from the state, dying, surrendering the child for adoption or having parental rights terminated;
- (2) when the child's parents are separated or divorced and neither parent resides in the state, the last known residence of the last parent known to have lived in the state.

R.I. Gen. Laws § 16-64-1.2(c).

8. The April 26 Decision was then reversed by the Superior Court on February 11, 2020. The Court (Vogel, J.) concluded that:

DCYF relied on questionable evidence and unsubstantiated hearsay to determine Ms. Doe’s residency, and the Commissioner erred when he concluded that DCYF ‘just barely’ met its burden of demonstrating Newport was her residence. April 26 Decision at 12-13. Such conclusion was made in the absence of reliable, probative, and substantial evidence on the whole record, and as such, it was clearly erroneous.

Superior Court Decision, slip op. at 24.

9. The Court “remand[ed] the case for agency determination consistent with [its] Decision,” *id.*, slip op. at 26, and entered Final Judgment on March 9, 2020.

10. On May 21, 2020, the undersigned hearing officer conducted a telephone conference with counsel for the parties during which counsel for DCYF, although conceding that no claim remained against Chariho, argued that the Superior Court Decision did not preclude DCYF from re-litigating its claim against NSC and/or some other school committee that it might deem legally responsible. *See DCYF Memorandum on Claim Preclusion* dated June 11, 2020 (the “DCYF Mem.”) and the *Memorandum of [NSC]* dated June 18, 2020 (the “NSC Mem.”).

11. On July 16, 2020, NSC moved for attorneys’ fees, and in support filed a legal memorandum, *see Memorandum in Support of [NSC]’s Request for Attorneys’ Fees* (“NSC’s Fee Mem.”), and the affidavit of its legal counsel.

12. The next day, DCYF promptly objected to the motion. *See Objection* dated July 17, 2020 filed by DCYF (“DCYF Objection”).

II. Positions of the Parties

1. DCYF

DCYF argued that the doctrine of *res judicata* – which precludes the re-litigation of issues and claims that have been decided in another forum when there has been identity of

parties, identity of issues, and finality of judgment, *see Plunkett v. State*, 869 A2d 1185, 1188 (R.I. 2005) – did not apply here, and thus should not preclude DCYF from re-litigating its claim against NSC before the Commissioner. In support, DCYF argued that:

- (a) There was no “final judgment on the merits” because the Superior Court had “remand[ed] the case for agency determination consistent with [its] Decision,” *see* DCYF Mem. at 1-2, citing Superior Court Decision, slip op. at 26, and according to DCYF, the remand was ordered pursuant to R.I. Gen. Laws § 42-35-15(g), which DCYF characterized as “a broad grant of power . . . to remand, in a proper case, to correct deficiencies in the record and thus afford the litigants a meaningful review.” *See id.* at 2 (citation omitted);
- (b) The Court articulated a definition of parental residency under R.I. Gen. Laws § 16-64-1.1(c) which differed from the definition that had been in effect when the case was heard by the Commissioner, and thus it would be “entirely inequitable to dismiss DCYF’s case against [NSC] based upon DCYF’s failure to meet its burden of proving ‘residence’ without first giving DCYF an opportunity to present evidence to satisfy a definition that did not exist at the time of [March 8, 2019] hearing before the Commissioner.” *See id.* at 3-4, citing *Astoria Federal Savings and Loan Association v. Solimino*, 501 U.S. 104, 107 (1991); and
- (c) Applying *res judicata* here would defeat the Legislature’s intent that some school district be made financially responsible for the cost of educating foster children, “whether they be special education students or general education students.” *Id.* at 6-7, citing, *inter alia*, R.I. Gen. Laws §§ 16-64-1.1(c), 16-64-1.2 and 16-64-1.3(b).

Finally, DCYF objected to NSC’s motion for attorneys’ fees “on grounds of jurisdiction and ripeness in addition the merits,” DCYF Objection at 1, and “request[ed] leave to file a reply Memorandum at the conclusion of the proceeding or, alternatively within thirty days of any such order of the Commissioner.” *Id.*

2. NSC

NSC argued that “[t]he position taken by DCYF in its Brief is outlandish,” NSC Mem. at 1, and emphasized that the final judgment entered by the Superior Court on March 9, 2020 provided that: “ [t]he Decision of the Commissioner that made Newport financially responsible

for Student Doe’s education costs is reversed . . . ’ ” *Id.* (emphasis provided by NSC).

According to NSC, “Justice Vogel created no new definition of ‘residency’ . . . [she] . . . simply found that DCYF failed miserably to meet its burden of proof and that Newport should never have been found responsible for this student.” *Id.* at 2.

In addition, NSC argued that all three of the criteria necessary for the application of the doctrine of *res judicata* – i.e., identity of parties, identity of issues and finality of judgment in an earlier action – were present. *Id.*, citing *Plunkett, supra*, 869 A2d at 1188 (R.I. 2005). Thus, NSC concluded that:

. . . DCYF’s pursuit of [NSC] for Student P. Doe is over. Just as the Court expressed in *Plunkett*, DCYF’s opportunity to hold [NSC] responsible for Student P. Doe came and went when the original action was decided. *See Plunkett* at 1189. [NSC] has no interest in whether DCYF believes it can file a new action against another community, like [PPSD], to ascribe responsibility to that community ([PPSD] may have its own thoughts on that question). However, DCYF cannot proceed against [NSC] for this student.

Id. at 3.

As to DCYF’s argument that there was no “final judgment on the merits,” NSC responded that the “agency determination” referenced in the Court’s March 8, 2020 Final Judgment referred merely to the need to reimburse Newport for the \$54,361.14 in state education aid that had been withheld. According to NSC, it “should not be subject to having funds ordered withheld by the Treasurer even when the decision has been appealed and not then be entitled to reimbursement when that decision has been reversed on appeal.” *Id.* at 4.

In support of its motion for attorneys’ fees, NSC admitted that it would not fit within the definition of “party” under the state’s Equal Access to Justice Act (the “EAJA”), and thus the Act “would be inapplicable.” *See* NSC Fee Mem. at 4.² However, NSC argued that the

² As noted by NSC, the EAJA can only be invoked by individuals or entities “whose net worth is less than five hundred thousand dollars (\$500,000).” *Id.* at 4, citing R.I. Gen. Laws § 42-92-2(5).

Commissioner had sufficient authority to enter an attorneys' fees award separate and apart from the EAJA since, it claimed, DCYF had acted "vexatiously and/or wantonly in this matter." *Id.* at 6, citing, *inter alia*, *Giannini v. Council on Elem. and Secondary Educ.*, C.A. No. 2014-5240 (R.I. Superior Court, March 30, 2016).

III. Decision

1. *Res Judicata*

The parties agree that the doctrine of res judicata applies to administrative proceedings. See NSC Mem. at 1-2 citing *Johnston Ambulatory Surgical Assocs., Ltd.*, *supra*, 755 A.2d at 808 and DCYF Mem. at 1-2, citing *Plunkett*, *supra*, 869 A.2d at 1014.³ The parties also agree that in order for the doctrine to apply, the parties and issues raised must be identical, and there must have been a "final judgment on the merits." See DCYF Mem. at 1-2, and NSC Mem. at 2, citing *Plunkett*, *supra*, 869 A.2d 1014. As noted, however, DCYF argued that the Superior Court Decision was not a "final judgement on the merits." See *id.* at 1-2, citing *Johnston Ambulatory Surgical Assocs.*, *supra*, 755 A.2d at 808; *Foster-Glocester Reg'l Sch. Comm. v. Bd. of Review*, 854 A.2d 1008, 1014 (R.I. 2004); and R.I. Gen. Laws § 42-35-15(g).

The problem with DCYF's argument is that the case was not remanded under R.I. Gen. Laws § 42-35-15(g) "to correct deficiencies in the record and thus afford the litigants a meaningful review," but merely to enter an order "consistent with [its] Decision." Superior Court Decision, slip op. at 26. And the Court made clear that its Decision was premised upon its conclusion that "[t]he finding by DCYF and the Decision of the Commissioner holding [NSC] financially responsible for Student Doe's placement at Hillcrest were founded on pure

³ See also *Astoria Federal Savings and Loan*, *supra*, 501 U.S. at 107 ("We have long favored application of the common-law doctrines of collateral estoppel (as to issues) and res judicata (as to claims) to those determinations of administrative bodies that have attained finality.").

speculation and not competent, probative evidence.” *Id.* at 21. Thus, as reflected in the Court’s Final Judgment, the Commissioner’s April 26 Decision was “reversed,” *see* Final Judgment at ¶ 2, and as NSC has suggested, the only task remaining for the Commissioner was ministerial, i.e., to order that NSC be reimbursed for the \$54,361.14 in state aid that had been withheld, plus interest.

DCYF’s argument that it would be “entirely inequitable to dismiss DCYF’s case against [NSC] based upon DCYF’s failure to meet its burden of proving ‘residence’ without first giving DCYF an opportunity to present evidence to satisfy a definition that did not exist at the time of hearing,” DCYF Mem. at 3, is similarly unconvincing. Admittedly, the Superior Court’s notion that a child’s physical presence in a residence is relevant to the determination of parental residence under R.I. Gen. Laws § 16-64-1.1(c), *see* Superior Court Decision, slip op. at 17, 25, is without precedent and contrary to the definition of parental residence applied, not only by the Commissioner in the April 26 Decision and in previous decisions,⁴ but also by the Superior Court on any number of occasions.⁵ However, it also is pure *dicta* since the Court’s holding that DCYF had relied entirely upon “questionable evidence and unsubstantiated hearsay,” Superior Court Decision, slip op. at 24, evidences that DCYF not only failed to meet its burden under the Court’s new test for parental residency, but also would have failed to do so under the traditional

⁴ *See, e.g., In re Residency of L. Doe*, RIDE No. 17-006 (February 21, 2017) and *In re Residency of Student R. Doe*, RIDE No. 001-16 (January 4, 2016) quoting *In the Matter of Priscilla H.*, RIDE (September 7, 1983).

⁵ *See, e.g., DiStefano v. East Greenwich School District*, C.A. No. PC 12-4970 (R.I. Superior Court, September 30, 2013) (Carnes, J.) at 7-9, citing, *inter alia, Meyer v. Meyer*, 68 A.3d 571, 584 (R.I. 2013) (“this Court has focused on certain factual considerations as being relevant to the residency determination—such as the locations of the following: receipt of mail, voter registration, physical address, the payment of rent, bank accounts, vehicle registration, storage of clothing and personal effects, payment of taxes, and prior history of residence.”); *Parents of CD v. McWalters*, C.A. No. 04-0098, 2005 WL 1984450 (R.I. Superior Court, Aug. 15, 2005)(Dimitri, J.) at *2 -*3 (“Section 16-64-1 proscribes the manner in which a child’s residency is determined for school purposes . . . [u]nder this section, a child attends the school system located in the city or town in which he or she resides, and he or she is a resident of the city or town in which his or her parents reside.”); *Smith v. McWalters*, C.A. 00-0928, 2000 WL 1273912 (R.I. Superior Court, July 27, 2000) (Silverstein, J.) at *3 (affirming Commissioner’s definition of the term “reside” as “a factual place of abode, where one is physically living.”).

test of residency that had been applied by the Commissioner here (and previously, by both the Commissioner and the Superior Court, as noted).

Moreover, although the U.S. Supreme Court noted in *Astoria Federal Savings and Loan, supra*, that the suitability of administrative estoppel “may vary according to the specific context of the rights at stake, the power of the agency, and the relative adequacy of agency procedures,” 501 U.S. 109-110, the issue on remand does not even involve administrative estoppel, but rather the preclusive effect of a judicial decision. In any event, none of the factors cited by the Court in *Astoria Federal Savings and Loan* are present here.

DCYF’s argument that precluding it from re-litigating its claim for reimbursement against NSC would somehow defeat the Legislature’s intent that some school district be made responsible for reimbursing DCYF for some portion of the cost of educating foster children, *see* DCYF Mem. at 6-7, citing, *inter alia*, R.I. Gen. Laws §§ 16-64-1.1(c), 16-64-1.2 and 16-64-1.3(b), is perhaps its least persuasive argument. The fact that the General Assembly established a statutory scheme to reimburse DCYF for the cost of educating certain children in its care does not somehow relieve DCYF of its obligation to prove what the General Assembly also expressly required, i.e., that the parent’s child actually resided in the school district against which DCYF seeks reimbursement.

Indeed, compelling a school committee to reimburse DCYF in the absence of proof that the child resided in the district under § 16-64-1.1(c) would be a violation not only of presumed legislative intent, but also (and more to the point), of clear and explicit statutory language. Moreover, the fact that DCYF is precluded from re-litigating its claim against NSC and Chariho does not preclude it from making a separate claim against another district in the event that it can prove its case.

Finally, NSC is entitled to statutory interest at twelve per cent (12%) per annum on the principal amount it paid to DCYF (\$54,361.14),⁶ from the dates paid to the date that it actually receives reimbursement from DCYF.

2. Attorneys' Fees

As noted, NSC admits that the EAJA does not apply. *See* note 2, *supra* and accompanying text. Moreover, the Commissioner need not revisit here whether she has some reservoir of authority apart from the EAJA to support an award of attorneys' fees. Even if she had such authority – and she has concluded otherwise in at least one decision⁷ – such an award would not be justified here. Although the Superior Court made clear that it believed that DCYF had erred by making a claim on the basis of “questionable evidence and unsubstantiated hearsay,” Superior Court Decision, slip op. at 24, it does not follow that DCYF acted “vexatiously and/or wantonly,” as argued by NSC. No evidence has been introduced suggesting that it did so, and the cases relied upon by NCS, *see* NSC's Fee Mem. at 5-8, were either decided under the EAJA or simply do not address the Commissioner's authority apart from the EAJA.

IV. Order

For all of the above reasons:

1. DCYF shall forthwith reimburse NSC in the principal amount of \$54,361.14, plus interest at twelve per cent (12%) per annum from the dates paid by NSC to DCYF; and
2. NSC's request for interest and motion for attorneys' fees are denied.

⁶ *See, e.g.,* *Quattrucci v. EST Providence School Committee*, RIDE No. 0025-07 (October 17, 2007) at 11; *Chadwick v. Pawtucket School Committee*, RIDE No. 0005-89 (February 27, 1989) at 3; and *Linda Ann D'Ambra v. North Providence School Committee*, RIDE No. 0027-94 (July 7, 1994) at 5-6 citing *Paola v. Commercial Union Assurance Cos.*, 461 A.2d 935 (R.I. 1983); *See also Jolicoeur Furniture Co., Inc. v. Baldelli*, 653 A.2d 740, 755 (R.I. 1995) (plaintiffs may recover statutory prejudgment interest against the state in contract actions).

⁷ *See* the consolidated supplemental decision in *Student H. Doe v. Chariho*, RIDE No. 016-16 and *Narragansett School Committee v. Chariho*, 18-070A (December 19, 2018) at 13-17.



ANTHONY F. COTTONE, ESQ.,
as Hearing Officer for the Commissioner



ANGÉLICA INFANTE-GREEN,
Commissioner

Dated: August 18, 2020