

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

In Re: Residency of P. Doe

Interim Order Decision

Held: Student is a resident of South Kingstown for school enrollment purposes. He lives in a group home in South Kingstown where he was placed by the Department of Children, Youth and Families (“DCYF”) under a new program through which families of children with severe behavioral health or intellectual developmental disability conditions access DCYF-funded services and residential treatment without relinquishing custody. If a child is accepted into the Children’s Behavioral Health (CBH) program, their family enters into a Residential Treatment Agreement with DCYF. Per this agreement, the parent retains full custody and maintains full decision-making authority, including decisions on education, medical treatment, residential program admission and discharge. DCYF takes responsibility for managing the referral process, funding the child’s residential admission, and facilitating wraparound supports for the child to achieve identified goals. Under the circumstances in this case, Doe is not a child in “foster care” subject to the educational stability requirements of the ESSA amendments to Title I of the ESEA, since DCYF does not have “placement and care responsibility” for him. Thus, federal law does not apply or preempt state law. State residency rules under Title 16 Chapter 64 apply to make Doe a school resident of South Kingstown where he has been placed in a group home by DCYF and where he currently resides.

Date: February 26, 2020

Travel of the Case:

On January 29, 2020 the Commissioner received a request for hearing from P. Doe's mother. Ms. Doe indicated that there was a need to resolve a difference of opinion between Westerly and South Kingstown as to responsibility for her son's education. Doe's mother wrote that throughout the first semester of the school year, when he had resided at RITE House in Providence,¹ her son had not received a free appropriate public education. He had been placed at Sand Turn Group Home in South Kingstown on January 6, 2020, but since that time, Westerly and South Kingstown could not agree on which district was responsible for his education. The South Kingstown School Department ("South Kingstown") also filed a request for a residency determination for Student Doe on January 29, 2020 and soon thereafter, the Westerly School Department set forth its position with respect to Doe's school residency in a letter to the Commissioner dated February 4, 2020. The matter was assigned to the undersigned and a telephone conference was held on February 7, 2020. The parties agreed that information would be shared about the program in which Doe's family was participating, a relatively new DCYF program involving funding of residential treatment for children not placed in DCYF care and custody. It was also agreed that since Doe, a student with a disability, had not received FAPE in several months, the matter would attain the status of an Interim Order at the request of the hearing officer.

The parties appeared for a hearing on February 19, 2020. In appearance were attorneys representing Ms. Doe, South Kingstown, Westerly, and DCYF, which had moved to intervene as a party. Also present was the state's Child Advocate, Katelyn Medeiros. Testimony and documentary evidence were received into the record and the parties stipulated to the basic facts in this matter.

Jurisdiction to hear and decide this appeal lies under R.I. Gen. Laws §16-64-6.

Decision in this matter has been expedited to conform to the timeframe on issuance of interim protective orders needed to ensure that a student receives a free appropriate public education.

Issue:

Is Student P. Doe a resident of South Kingstown, where he resides in a group home in which he has been placed pursuant to the Children's Behavioral Health (CBH) Residential Treatment Program of DCYF or a school resident of Westerly, where his Mother resides?

¹ Operated by the Groden Center.

Factual Background:²

Student Doe is a student with a disability³, eligible to receive a special education and related services. He is fifteen (15) years old. His last receipt of a free appropriate public education pursuant to an individualized education program (“IEP”) developed for him by the Westerly School Department was during the 2018-2019 school year, when he attended the Briggs School in Warwick. Doe then underwent two separate hospitalizations at Bradley Hospital, one in June and the other in August of 2019. He then went to live at the Groden Center’s RITE house, where he stayed until January 6, 2020. On January 6, 2020 Doe was placed at the Sand Turn Group Home, operated by Perspectives, in South Kingstown, Rhode Island. This group home does not provide formal or contracted-for educational services to its residents.

Doe’s placement at the Sand Turn Group Home resulted from his family’s participation in DCYF’s Children’s Behavioral Health (CBH) Residential Treatment Program. According to the testimony of Christopher Strand, who oversees DCYF’s Community Services and Behavioral Health Division, this is a relatively new DCYF program⁴ in which families of children with severe behavioral health or intellectual developmental disability conditions can access DCYF-funded services and residential treatment without relinquishing custody. If a child is accepted into the CBH program, their family enters into a Residential Treatment Agreement with DCYF. Per this Agreement, the parent retains full custody and maintains full decision-making authority, including decisions on education, medical treatment, residential program admission and discharge. DCYF takes responsibility for managing the referral process, funding the child’s residential admission, and facilitating wraparound supports for the child to achieve identified goals. Services are provided to the child without the need for shared custody between the parent/DCYF or involvement of the Rhode Island Family Court.⁵ The child’s parent can withdraw him or her from the CBH program at any time.

Since Doe was not placed in DCYF custody and his parent retains full legal custody and all decision-making authority on his behalf, DCYF did not and does not consider him to have entered “foster care” when he was placed at the Sand Turn Group Home on January 6, 2020 and so no “best interest determination” was conducted pursuant to the educational stability provisions of the Every Student Succeeds Act of 2015. Doe’s mother testified that after his second hospitalization at Bradley, she learned of the CBH program and submitted an application. The decision to place her son there was a difficult family decision, but one

² Because of time constraints imposed on this decision, citations to the record are omitted. Most of the facts in this matter were stipulated to by all parties.

³ Doe’s mother testified that he has PDD, ADHD and ODD.

⁴ The program was established in January of 2019.

⁵ This pathway to services for a child thus differs from the filing of a “voluntary petition” in which custody is eventually shared between the parent and DCYF and ultimately the Family Court exercises its oversight. For children and families utilizing this pathway, ESSA determinations continue to be made pursuant to requirements of federal law.

necessitated by Doe's recent behaviors. Ms. Doe has attempted to enroll her son in both South Kingstown and Westerly, without success.

South Kingstown receives additional state aid for all of the "group home beds" available at the Sand Turn Group Home pursuant to R.I. Gen. Laws § 16-64-1.1 (b) (2).

Positions of the Parties:

South Kingstown:

Counsel for South Kingstown takes the position that the provisions of R.I. Gen. Laws 16-64-1 and 16-64-1.1 (a) and (b) and 16-64-1.3 (which would make children placed by DCYF in group homes school residents of the town or city in which the group home is located) are inapplicable. South Kingstown submits that the "entire construct of [this] statute," as it applies to group home facilities, is that DCYF must have "legal standing to make [the] placement". In other words, DCYF must have legal custody of the child and make the decision to place the child in the group home if the child's school residency is going to be changed from the district in which his parents reside to the town or city in which the group home is located. Under the facts here, the child's mother made the actual decision to place him in a group home in South Kingstown so that he could receive residential treatment. Parental placement of their child in a group home should not effectuate a change in school residency, South Kingstown argues. Ms. Doe's placement of her son at the South Kingstown group home is temporary, with hope of returning him to live at the family home in Westerly upon successful completion of this program. He continues to be a school resident of Westerly, where his mother resides.

Thus, as South Kingstown views the facts and the applicable law, if and only if DCYF had taken legal custody of Doe would he have attained potential school residency in the town or city in which the group home is located; but most importantly, DCYF would have first been required to make a "best interest determination" to decide if the presumption that it is in his best interests to attend his "school of origin" was rebutted after consideration of all of the relevant factors. Given that Doe's entire educational history has been in Westerly and that the South Kingstown School Department has no experience whatsoever with respect to meeting his educational needs, South Kingstown is not the most suitable LEA to continue to address Doe's behavioral issues and his educational concerns. A best interest determination would in all likelihood have maintained him in his "school of origin".

Finally, since the provisions of state law relating to children placed in a "group home" are inapplicable to Doe and others like him⁶ who are beneficiaries of the CBH program, applying other relevant provisions of state law (§16-64-1) indicates that Doe is "deemed to be a resident of the city or town where his" parent resides. This language in R.I. Gen. Laws 16-64-1 reflects the common law and its "rebuttable presumption" that a child's residence is the residence of

⁶ The testimony was that there are currently eighteen (18) children whose families parents participate in the CBH program.

his parents. See *Laura Doe v. Narragansett School Committee*, decision of the Commissioner dated April 17, 1984 and *In the Matter of Priscilla H.*, decision of the Commissioner dated September 7, 1983 for a full discussion of school residency law in Rhode Island. South Kingstown acknowledges that this is a rebuttable presumption, but insists that when there has been no modification of mother's parental rights, as there has not been in this case, the default presumption continues to govern Doe's school residency and make him a resident of Westerly where his mother continues to reside.

Westerly:

Counsel for Westerly submits that specific language in provisions of state law, particularly R.I. Gen. Laws §§16-64-1 and 16-64-1.3 (a), clearly apply to this situation. Doe has been placed in a group home (whether it be by his parent or by DCYF) and he is, therefore, clearly a resident of the town in which his group home is located, i.e. South Kingstown. The fact that Doe is not a child in "foster care" means that ESSA does not, even potentially, preempt the state law that makes him a resident of the town in which his group home is located. In addition, the record in this case indicates that additional state aid paid pursuant to R.I. Gen. Laws §16-64-1.1 (b) (2)) has been directed to South Kingstown for all of the beds at the Sand Turn Group Home. Therefore, South Kingstown is receiving additional state aid to cover part or all of the cost for Doe's education.

Even if Doe's school residency were not controlled by the specific provisions of the above-cited statutory provisions, if the common law were to control, he would still be a resident of South Kingstown. Although he may be deemed to be a resident of the town of Westerly where his mother resides, this presumption is rebutted by the fact that he is actually living apart from his mother and siblings for a substantial reason other than to attend Westerly's schools. His residence there is so that he can access residential treatment for his behavioral health conditions under this new DCYF program. Although the program may be new, the situation of children living in group homes is not unusual and is a circumstance that state law resolves in terms of the school residency of such children.

Office of Child Advocate; DCYF; Ms. Doe:

None of these parties takes a position with respect to the identification of a responsible LEA for Student Doe. All request that the Commissioner act with urgency to designate the district responsible to provide him with a free appropriate public education as soon as possible.

DCYF emphasizes, however, that since this child is not in DCYF custody, that the educational stability provisions of ESSA do not apply and that Doe's school residency should be governed by R.I. Gen. Laws §16-64-1.

Discussion:

Apparently,⁷ information on DCYF's "Children's Behavioral Health (CBH) Residential Treatment program is just now being disseminated to those who need to know about it.⁸ The parameters of DCYF's involvement and the program elements that distinguish it from a voluntary placement were just recently made available to the parties in this matter. Although the "Residential Treatment Agreement" (RTA) mentioned in testimony and in S.K. Ex. 1 was not made part of the record in this case, testimony about what this document says is contained in the record. Testimony here confirms the exclusivity of parental control and the limitations on DCYF's role to that of a referral facilitator and funding source. Based on this record, there is no reason to conclude that DCYF actually exercises custody over children who participate in the CBH Residential Treatment program or to conclude that such children are in "foster care". Thus, the position taken by Westerly that ESSA does not apply is persuasive in this case.

Without preemption by federal law, state law's residency rules are applicable. R.I. Gen. Law §16-64-1's specific language is controlling:

...Children placed in group homes, in foster care, in child caring facilities,
or (emphasis added) by a Rhode Island state agency or a Rhode Island licensed child placing agency shall be deemed to be residents of the city or town where the group home, child caring facility, or foster home is located for purposes of enrollment and this city or town shall be reimbursed or the child's education shall be paid for in accordance with §16-64-1.1

Whether one concludes that Doe's placement at the Sand Turn Group Home was effectuated by his mother's decision to participate in the CBH program or by DCYF's funding of his residential mental health treatment, or both, the above-cited provision squarely places responsibility for his education upon the South Kingstown School Department.

Among the cases cited by South Kingstown to argue for a different conclusion, almost all pre-date the amendment to R.I. Gen. Laws §16-64-1.1 by the Public Laws of 2001, ch.77, art. 22 §3.⁹ The other case cited by South Kingstown, **In the Matter of: Residency of Student V.S.S.**

⁷ There is some evidence of recent dissemination of information on this program in the record. There was also some discussion of DCYF staff's availability to describe the CBH program in detail to counsel for the districts during a pre-hearing conference.

⁸ A pamphlet describing the program is still in the formative stages and was admitted into evidence as S.K. Ex. 1.

⁹ Subsection (d) of 16-64-1.1 provided that children placed by DCYF in group homes and enrolled in the schools of the town or city where the group home was located would have the cost of their education paid for by a "contribution" from the city or town in which the child's parent(s) or guardian live. P.L. 2001, cited above, removed language providing for this contribution and instead provided cities and towns "hosting" group homes with additional state aid directed to cover the costs of educating children placed in group homes by DCYF.

Doe¹⁰ involved a child placed at the Tavares Pediatric Center, (“Tavares”) a medical facility serving fragile children and adults requiring twenty-four hour skilled nursing services in the city of Providence. An important fact of this 2014 decision was the finding of the hearing officer that Tavares was not a “group home” or a “child caring facility” such that the child’s residence there would require him to be enrolled in Providence schools. The hearing officer found, and the Commissioner agreed, that Tavares was a “skilled nursing facility” and that his mother’s initiation of his care there, and her contemplated termination of his care at some point in the future, caused the child to continue to be “deemed to be” a resident of Woonsocket, where his mother resided.¹¹

This case is distinguishable on its facts. The Sand Turn Home is clearly a group home in which Doe has been placed by both his mother and DCYF. South Kingstown receives additional state aid to provide Doe with FAPE for as long as he continues to reside there. South Kingstown is determined to be required to enroll Doe and to provide him with FAPE forthwith.

This decision will become final thirty (30) days from the date of its issuance, unless one of the parties requests the opportunity to supplement the record.

For the Commissioner,

Kathleen S. Murray
Hearing Officer

Date: February 26, 2020

Angélica Infante-Green,
Commissioner

¹⁰Decision of the Commissioner 003-14, March 21, 2014.

¹¹ Curiously, the hearing officer found that the student placed at Tavares was a resident of Woonsocket under common law principles of school residency. Although he found that there was evidence of a substantial reason having no purposeful connection to schooling for the student’s residing separate and apart from his mother in Woonsocket, the hearing officer nonetheless concluded “Woonsocket has failed to rebut the presumption that the Student’s residence for school enrollment purposes is the residence of his mother and, as such, is responsible for providing FAPE to the Student”. See decision at page 11. If the common law of school residency were to be applied in the instant matter, we would find that Doe is living in the South Kingstown group home for a substantial reason other than to attend South Kingstown schools, i.e. for treatment of his behavioral health needs in a residential setting. Unlike the hearing officer in the Tavares case, *supra*, however, we would conclude that the presumption that he was a school resident of Westerly (where his mother resides), had been rebutted to make him a school resident of South Kingstown.