STATE OF RHODE ISLAND
COMMISSIONER OF EDUCATION

DEPARTMENT OF CHILDREN, YOUTH AND FAMILIES, *Petitioner*	:	
v.	:	RIDE NO. 18-108K
PROVIDENCE PUBLIC SCHOOL DEPARTMENT, *Respondent*	:	

In re C. Doe

DECISION AND ORDER

Held: Petition by state child welfare agency to designate Respondent School Department as having financial responsibility for a child placed in a residential treatment facility that provided educational services is denied as the agency failed to establish: (a) that R.I. Gen. Laws § 16-64-1.1(c) was applicable, or alternatively, (b) that the child's parents' "last known Rhode Island residence" was located in the relevant school district; or (c) that it had made reasonable efforts to determine the location of said residence.

Date: March 8, 2021

On December 18, 2018**,** the Department of Children, Youth and Families ("DCYF" or "Petitioner") filed a petition (the "Petition") with the Commissioner alleging that the Cranston School Department ("Cranston") was responsible for a portion of the cost of educating Student C. Doe, a child under DCYF's care who had been placed in a residential treatment facility that provided educational services.

The Commissioner assigned a Hearing Officer employed by the Rhode Island Department of Elementary and Secondary Education ("RIDE") to hear the case, and the initial hearing was conducted on March 7, 2019. However, following this hearing, DCYF filed an Amended Petition on March 13, 2019 naming both Cranston and the Providence Public School Department ("Providence") as Respondents. Finally, after further discussion over several teleconferences, DCYF then agreed to dismiss Cranston from the case, and an order dismissing Cranston was entered by agreement of the parties on June 4, 2019. Providence was thus left as the sole Respondent in DCYF's Second Amended Petition.

I. JURISDICTION AND BURDEN OF PROOF

The Commissioner is required by statute "to interpret school law," RIGL §§ 16-1-5(10) and 16-60-6(9)(viii), and to "require the observance" and "enforce the provisions of all laws relating to elementary and secondary education." RIGL §§ 16-1-5(9) and 16-60-6(9)(vii). Thus, she has subject matter jurisdiction here, and DCYF has standing, under RIGL §§ 16-64-1.1, 16-64-1.2 and 42-72-5(24), as well as under RIGL § 16-39-1, which covers disputes "arising under any law relating to schools or education."

Moreover, as in most proceedings before the Commissioner, the petitioner, in this case DCYF, has the burden of proof.[1]

[1] *See Larue v. Registrar of Motor Vehicles, Dept. of Transp*., 568 A.2d 755, 758-59 (R.I. 1990), citing *Gorman v. University of Rhode Island*, 837 F.2d 7, 15 (1st Cir.1988) (general presumption in administrative proceedings

II. THE TRAVEL OF THE CASE AND THE DECISION RECOMMENDED BY THE RIDE HEARING OFFICER

Evidentiary hearings were held before the assigned RIDE Hearing Officer with respect to DCYF's Second Amended Petition against Providence on March 13, October 10 and December 19, 2019. Following the hearings, the parties submitted written closing arguments, a process that concluded on July 1, 2020, when the record in this matter finally closed. The Hearing Officer presented her recommended decision (the "Recommended Decision") to the Commissioner on February 1, 2021, a copy of which is attached hereto as Exhibit A.[2]

The Commissioner, while adopting the factual findings contained in the Recommended Decision as well as its ultimate conclusion, felt it necessary to issue this revised decision for reasons that will be explained. Preliminarily, however, it should be noted that the provisions of the state's Administrative Procedures Act ("APA"), R.I. Gen. Laws § 42-35-9 through §42-35-16, apply to hearings conducted by the Commissioner, *see Pawtucket School Committee v. Pawtucket Teachers Alliance*, 610 A.2d 1104, 1105-06 (1992), and as the Rhode Island Supreme Court held in *Envtl. Scientific Corp. v. Durfee*, 621 A.2d 200 (R.I. 1993), the head of a state agency reviewing a recommended decision by an administrative hearing officer "should give great deference to the hearing officer's findings and conclusions unless clearly wrong." *Id*. at 209.[3] Thus, in *Johnston Ambulatory Surgical Associates, Ltd. v. Nolan*, 755 A.2d 799 (R.I.

"favors the administrators" and places the burden of proof upon the party challenging the action "to produce evidence sufficient to rebut this presumption.").

[2] And then on February 17, 2021, the Hearing Officer denied DCYF's motion to re-open the record and held that DCYF had not met the standard for re-opening under R.I. Gen. Laws § 42-35-15(e) because, *inter alia*: (a) the additional evidence offered by DCYF had not been '"proffered" in the legal sense in that it [was] not described with sufficient specificity for a determination to be made that it is material to the issue of DCYF's efforts to determine the 'last known Rhode Island residence' of Doe's parent;" (b) "there [was] no adequate explanation for DCYF's failure to offer this evidence previously;" and (c) the Commissioner's holding in *DCYF v. South Kingstown,* 19-029P (December 9, 2020), was not an "announcement" of some new burden of proof, but rather a predictable statement of existing law.

[3] Although the Court in *Durfee* was reviewing a decision by the Director of the Department of Environmental Management ("DEM") and referred to the requirements of Rhode Island Gen. Laws § 42-17.7-6(1), a statute that

2000), the court explained that "in a two-tiered administrative process, the ultimate decision-maker owes deference to the recommendations of the first-tier decision-maker only if those recommendations were based on determinations of witness credibility," however the Court also made clear that "[i]f the recommendations were not based on credibility determinations, the ultimate decision-maker may review the recommendations on a *de novo* basis." *Id*. at 807; *see also Birchwood Realty, Inc. v. Grant*, 627 A.2d 827, 831 (R.I. 1993) (affirming DEM Director's additional review of evidence and additional factual findings).

Here, the Commissioner adopted the material facts found by the Hearing Officer, as well as the ultimate conclusion set forth in the Recommended Decision, thus obviating any concern that she has overstepped her authority under *Durfree* and related cases. The Commissioner felt that a revised decision was necessary because the Hearing Officer refused to remove her statement, in *dicta*, at page 11 of the Recommended Decision, that "in the event a child's placement at a residential facility is ongoing and a responsible LEA cannot be identified, DCYF must contact RIDE's Office of Student, Community and Academic Supports ("OSCAS") *for purposes of assigning educational responsibility for the student*." *See* Recommended Decision (attached Exhibit A) at 11-12 and at note 13 (emphasis added), citing *DCYF v. South Kingstown*, 19-029P at p. 7, note 22 (December 9, 2020). However, although OSCAS may be helpful to DCYF in various ways and regularly investigates certain types of alleged violations of the federal Individuals with Disabilities Education Act ("IDEA"), "assigning educational responsibility" is outside the jurisdiction of that Office (especially when, as here, the child does not even have a disability and is no longer placed at a residential facility that provides educational services).

specifically pertained to the rules of practice before DEM, the Court also noted that its decision rested upon "established tenets of administrative procedure." *See id*. at 206 and at 207-08.

The apparent statement to the contrary in *South Kingstown* that was cited in the Recommended Decision, while concededly misleading with respect to the proper role of OSCAS, was not intended to be applicable beyond the limited facts of that case, or to alter the role of OSCAS in these situations (which has been explained to DCYF). The significant point is that DCYF remains responsible in the event a child's placement at a residential facility is ongoing and a responsible LEA cannot be identified. That point will be addressed *infra* in more detail, and should not be muddled with suggestions that OSCAS could, or should, assign such responsibility.

In addition, the assigned Hearing Officer insisted on retaining certain portions of the Recommended Decision that the Commissioner found extraneous and confusing, such as the summaries of the parties' arguments with respect to issues that were never reached. Standing alone, such concerns would not normally cause the Commissioner to reject a recommended decision from a RIDE Hearing Officer. Here, however, these differences were, as noted, coupled with a more substantive disagreement with the Hearing Officer in a subject area that demands clarity and that has generated what the Commissioner has described as a seemingly never-ending series of claims by DCYF against local educational agencies ("LEAs").

III. FACTS

The following facts were taken directly from the Recommended Decision and gleaned from the evidence admitted during the hearings held before the assigned RIDE Hearing Officer on March 13, October 10 and December 19, 2019.

1. Doe was placed into the care of DCYF on December 30, 2013. At that time, his adoptive parents resided in Cranston. However, on April 29, 2014, his adoptive parents signed an agreement voluntarily terminating their parental rights.

2. On March 31, 2016, a justice of the Family Court vacated Doe's adoption, and while affirming the termination of Doe's biological father's parental rights, restored the parental rights of Doe's biological mother, who then resided in Providence. *See* Vol. II, pp. 6-7; DCYF Ex. 13.

3. Records of the Rhode Island Children's Information System (so-called "RICHIST Releases") and the testimony of a DCYF social worker indicate that Doe resided in Providence with his biological mother at 64 Waverly St., Apartment 2B, from February 26, 2016 through March 2, 2018, *see* DCYF Exs. 9 and 16,[4] after which time his whereabouts became unknown for a period. *See id*. The DCYF social worker also testified that she was not sure where Doe's mother lived at present, but believed that she was homeless. *See* Tr. Vol. I at p. 55.

4. In addition, a newly-assigned DCYF case work supervisor, while acknowledging that she had no first-hand knowledge as to the residency of Doe's biological mother, testified that based on references to the Waverly Street apartment in case activity notes (*see* DCYF Ex. 14) and other DCYF records, as well as her conversations with other DCYF social workers, her understanding was that Doe's mother lived in Providence at the Waverly Street apartment "at least until" June 11, 2018, when Doe was placed at the Harmony Hill School ("Harmony Hill"), a residential treatment facility located in Chepachet, Rhode Island. *See* Tr. Vol. III, pp. 32-34; DCYF Ex. 12.

5. Providence was identified as Doe's LEA of record prior to his placement at Harmony Hill on June 11, 2018, *see* DCYF Ex. 15, and he had spent some time at the Rhode Island Training School in Cranston, Rhode Island, where he was placed on April 21, 2018 after having been charged with First Degree Robbery. *See* Tr. Vol. III, pp. 5-6.

[4] There is also reference to a Waverly Street apartment in DCYF case activity notes made by Doe's social workers during the time he was placed with his mother. *See* DCYF Ex. 14

6. Harmony Hill had an on-grounds educational program which Doe attended during his time there, which lasted until September 16, 2019, although he was not eligible for, and did not receive, special education services. *See* Tr. Vol. III, p. 45; DCYF Exs. 3, 10 and 12.

7. It does not appear that DCYF had any contact with Doe's mother after Doe's placement at Harmony Hill on June 11, 2018. *See* Tr. Vol. III at 31 and 35.

8. As of December 19, 2019, Doe resided in an independent living program funded by DCYF. *See* DCYF Ex. 12.[5]

IV. POSITIONS OF THE PARTIES

1. DCYF

DCYF argues that it has satisfied its burden of proving that Providence is responsible for the payment of a per-pupil special education cost to DCYF with respect to the cost of educating Doe while he was at Harmony Hill under R.I. Gen. Laws § 16-64-1.2(c) since it has proven that: (a) Doe was in its care and custody at all relevant times; (b) Doe was placed in a residential treatment facility, i.e., Harmony Hill, that included the delivery of educational services provided by that facility; and (c) Doe's mother's "last known Rhode Island residence" under R.I. Gen. Laws § 16-64-1.2(c) was located in Providence.

DCYF implicitly acknowledges that it failed to prove that Doe's mother resided in Providence when Doe was placed at Harmony Hill on June 11, 2018 or throughout his stay there, i.e., through September 16, 2019, yet argues that such proof is not necessary to establish Providence's liability since it had established that Doe's mother's "last known Rhode Island residence" was located in Providence as per R.I. Gen. Laws § 16-64-1.2(c). According to DCYF, it had no reason to remain knowledgeable of Doe's mother's whereabouts after Doe was

[5] Doe was seventeen years and five months of age at that time, according to testimony received in the record on the first day of hearing. Tr. Vol. I, pp. 53-54.

placed at Harmony Hill since she had "faded from C. Doe's life," and no longer wished to reunify with her son after he had been charged with First Degree Robbery and sent to the Training School.

DCYF argues that once it established its *prima facie* case under R.I. Gen. Laws § 16-64-1.1(c), the burden of proof shifted to Providence to disprove its responsibility. Yet, according to DCYF, Providence made no attempt to prove that Doe's mother lived somewhere other than Providence during Doe's placement at Harmony Hill.

Moreover, DCYF argues that since Doe's last school enrollment was in the Providence school system, R.I. Gen. Laws § 16-64-2, entitled "Retention of Residence,"[6] mandates that since Providence was the last LEA of record, *see* DCYF Ex. 15, Providence must continue to oversee and be responsible for Doe's education. According to DCYF, this well-settled public policy ensures that every child, including those in foster care and those with disabilities, will have an LEA responsible for their education.

2. Providence

Providence argues that DCYF failed to produce reliable and trustworthy proof that the Waverly Street address in Providence was the "last known Rhode Island residence" of Doe's mother under R.I. Gen. Laws § 16-64-1.2(c). Providence noted that DCYF presented no witness with any first-hand knowledge of the relevant events and emphasized that neither of the two

[6] R.I. Gen. Laws § 16-64-2 provides that:

> [a] child shall be eligible to receive education from the city or town in which the child's residence has been established until his or her residence has been established in another city or town and that city or town has enrolled the child within its school system, unless the commissioner of elementary and secondary education, pursuant to § 16-64-6, has ordered otherwise. Nothing contained in this section shall be construed to prohibit a city or town in its own discretion from enrolling a child within its school system before a child has established technical residency within the city or town. The commissioner of elementary and secondary education shall promulgate any rules that may be needed to implement the educational provisions of the Stewart B. McKinney Homeless Assistance Act (P.L. 105-220), 42 U.S.C. § 11431 *et seq*.

Id.

documents relied upon by DCYF – i.e., (a) the RICHIST Release submitted into evidence on the final day of hearing, which lists Doe's mother's address as 64 Waverly Street as of February 26, 2016, *see* DCYF Ex. 16; or (b) the case activity notes referencing the 64 Waverly Street address, *see* DCYF Ex. 14 – are both dated and have never been updated. In addition, Providence pointed to testimony indicating that Doe's mother later moved from the Waverly Street. *See* testimony of Ms. Betsy Aubin, Tr. Vol. I, p. 55.

Providence cites Judge Vogel's decision in *Newport v. RIDE*, 2020 WL 771155 (R.I. Super, February 11, 2020) and the Commissioner's decision in *DCYF v. North Kingstown School Committee, RIDE No.* 19-045A (April 26, 2019) for the proposition that an entry on a RICHIST Release noting a parent's address is not the type of probative, reliable and substantial evidence required to impose significant financial liability upon an LEA.

In addition, Providence argues that if DCYF had kept track of the residence of Doe's mother, it would have been able to substantiate the conclusion it wishes the Commissioner to accept. However, DCYF introduced no evidence of any efforts to locate Doe's mother and denies that it had any obligation to do so. Providence, on the other hand, argues that even though DCYF saw no reason to keep track of Doe's mother for purposes of reunification of parent and child, it was nonetheless obligated to keep updated and accurate records of Doe's mother's residence and update his intra-state identification card, as required under R.I. Gen. Laws § 42-72.4-1(b).[7]

[7] R.I. Gen. Laws § 42-72.4-1 (b) provides that this intra-state card:

> shall provide that each city or town be required to immediately enroll the child in its school system and for purposes of determining the school district financially responsible for the child's education in accordance with §16-64-1.1, (emphasis added) the parent's residence designated on the intra-state education identification card shall constitute prima facie evidence of the parent's residence in that district.

Id. Although the parties spent much time addressing whether any reimbursement order should be based upon Providence's special education per-pupil cost figure (even though Doe did not receive special education services), the issue need not be addressed here as there obviously is no need to quantify damages in the absence of liability. That being said, it nonetheless should be noted that DCYF has petitioned the R.I. Supreme Court for a writ of

V. DECISION

The first very basic but nonetheless crucial question that needs to be answered is what statutory provisions actually apply to DCYF's Second Amended Petition. Therefore, we should begin by examining the statutory provisions relied upon by both parties with an eye towards their applicability. R.I. Gen. Laws § 16-64-1.1(c) provides, in pertinent part, that:

> [c]hildren placed by DCYF in a residential-treatment program, group home, or other residential facility, whether or not located in the state of Rhode Island, which includes the delivery of educational services provided by that facility . . . *shall have the cost of their education paid for as provided for in subsection (d) and § 16-64-1.2*.

Id. (emphasis added).[8] And R.I. Gen. Laws § 16-64-1.2 provides, in pertinent part, that in the event an "initial factual determination and designation" is not made by the Family Court, *see id*. at (a), then RIDE:

> . . . shall designate the city or town to be responsible for the per-pupil special education cost of education to be paid to DCYF for children in state care *who have neither a father, mother, nor guardian living in the state or whose residence can* [*sic*] *be determined in the state or who have been surrendered for adoption or who have been freed for adoption by a court of competent jurisdiction* 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.

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certiorari to appeal a recent Superior Court decision which is at odds with the Commissioner' decisions holding that R.I. Gen. Laws §§ 16-64-1.1(c) and 16-64-1.2(c) mandate that when DCYF makes a residential placement that includes educational services, reimbursement to DCYF must be calculated based upon the special education per-pupil cost figure (rather than the lower figure otherwise applicable to general education students), even if child did not have an individualized education program, and was not eligible to receive special education services. *See Cumberland School Committee v. RIDE and Council*, C.A. No. PC-2020-0031 and *Newport School Committee v. RIDE and Council*, C.A. No. PC-2019-4024 (consolidated for appeal) (Superior Court, November 17, 2020), pet. for cert. pending, *Newport School Committee v. RIDE and DCYF*, SU-2021-0037-MP (February 15, 2021). And since Superior Court decisions do not create legal precedent that is binding upon the Commissioner – *see, e.g., Salvatore v. R.I. Council on Elementary and Secondary Education*, 2019 R.I. Super. LEXIS 91 at *42-43 (Superior Court, July 30, 2019), citing *Breggia v. Mortgage Electronic Registration Systems, Inc*., 102 A.3d 636, 641 n.6 (R.I. 2014) –she will continue to construe R.I. Gen. Laws §§ 16-64-1.1(c) and 16-64-1.2(c) in a manner consistent with her prior decisions pending possible review by the Supreme Court.

[8] The referenced subsection (d) does not apply here since Harmony Hill School is not operated by the state.

Id. at (c) (emphasis added). Thus, by its plain language, § 16-64-1.2(c) limits RIDE's responsibility for "designat[ing] the city or town to be responsible for the per-pupil special education cost of education to be paid to DCYF for children in state care" to cases involving those children:

(1) 'who have neither a father, mother, nor guardian living in the state or whose residence can be determined in the state," *id*. (quoted above); or

(2) "who have been surrendered for adoption or who have been freed for adoption by a court of competent jurisdiction." *Id*.

Thus, § 16-64-1.2(c) is not even applicable here since:

(1) there is no evidence that Doe's mother, whose parental rights remain intact, ever moved out of the state. Indeed, as noted, although DCYF had no contact with Doe's mother after he was placed at Harmony Hill June 11, 2018, *see* Tr. Vol. I at pp. 31 and 35, it was suggested by a DCYF social worker that she may currently be homeless. *See* Tr. Vol. I at p. 55; and

(2) Doe was not "surrendered for adoption" or "freed for adoption by a court of competent jurisdiction."

Moreover, the "last known Rhode Island residence" of the child's parents or guardians would only be relevant under § 16-64-1.2(c) if: (a) "the child's father, mother, or guardian . . . mov[ed] from the state, d[ied], surrender[ed] the child for adoption or ha[d] parental rights terminated," or alternatively, (b) "the child's parents [were] separated or divorced and neither parent resides[d] in the state." *Id*. Yet, here, none of the criteria triggering the "last known residence" test is applicable.

Indeed, even if one were to assume, for argument's sake, that § 16-64-1.2(c) was applicable, DCYF has failed to meet the requisite burden of proof under that provision. As the Commissioner recently noted, it is the residence of the parent at the time of (and during the subsequent course of) the residential placement that determines responsibility under § 16-64-

1.2(c), or alternatively, if the parents have moved out of state, it is the last known Rhode Island residence prior to the move. *See South Kingstown* at p.p. 6-7.[9]

DCYF argues that the 64 Waverly Street address in Providence was Doe's mother's "last known Rhode Island residence" under § 16-64-1.2(c) because this was her address according to DCYF records at the time DCYF's contact with her ceased, which was prior to Doe's placement at Harmony Hill. This explanation might make sense from a social work perspective, but it makes absolutely no sense from a legal or financial perspective. After all, Doe was in a presumably expensive residential facility and the applicable statutory scheme expressly based any potential reimbursement for a portion of this cost by a "designated" LEA upon a factual finding involving residency. Thus, the importance of maintaining accurate information as to Doe's mother's residence during the period of time he was at Harmony Hill should have been obvious to DCYF.

DCYF also maintains that it lacks the resources to utilize "extraordinary means" to track the whereabouts of parents of children placed in its care, especially when reunification with the parent is not relevant to the goal of the child's DCYF casework. However, the burden on DCYF is not to demonstrate that it took *extraordinary* measures to keep track of a child's parent, but merely that it has made *reasonable* efforts to do so. The fact that the General Assembly mandated by statute that DCYF provide some factual basis for re-allocating a part of the cost of residential placements to an LEA is itself evidences of its intent that DCYF remain responsible for such costs when it is unable to provide any factual basis, a conclusion which is reinforced by the statutory requirement that DCYF update a foster child's intra-state education identification

[9] In addition, since § 16-64-1.1 makes clear that children placed at a residential facility and receiving educational programming provided by that facility "shall have the cost of their education paid for as provided for in subsection (d) and § 16-64-1.2," *id*. (emphasis added), it is clear that R.I. Gen. Laws § 16-64-2 (quoted at note 7, *supra*) is not applicable, DCYF's argument to the contrary notwithstanding.

card on an annual basis. *See* note 7, *supra* (quoting R.I. Gen. Laws § 42-72.4-1(b)). Thus, as the Commissioner recently noted:

> [i]n order to conclude that a particular residence is a parent or guardian's 'last known Rhode Island residence' a party must show the basis of that conclusion. It must produce evidence of its efforts to find a later residence and the result of those efforts. DCYF cannot simply declare that the last address in RICHIST is the parent's 'last known Rhode Island residence.' It must demonstrate the effort it undertook to determine a subsequent residence for the parent. If credible evidence of an unsuccessful attempt to find a subsequent residence is provided, then DCYF may claim that the parent's residence cannot be determined to be in the state and that the last address in RICHIST, provided it has an accurate basis in fact, is the parent's 'last known Rhode Island residence.'

DCYF v. South Kingstown at pp. 6-7. Yet here, there is no evidence that DCYF made *any* effort to ascertain Doe's mother's whereabouts after Doe was placed at Harmony Hill,[10] and the imposition of financially significant liability should not hinge upon whatever evidence DCYF may happen to have with respect to the residency of a parent or guardian, regardless of its time frame or reliability.

If DCYF is concerned that there is no LEA ultimately responsible for providing Doe with a FAPE under the IDEA and corresponding state Regulations Governing the Education of Children with Disabilities (the "Disability Regs."), 200 R.I. Admin. Code 20-30-6, it should take whatever action it deems appropriate to address that issue, but that issue is distinct from the cost reimbursement issue that it has raised here. As was noted by the New Hampshire Supreme Court in this context, "[a]lthough requiring that such education be 'free,'" the IDEA "leaves to each State the decision where responsibility for funding that education lies." *Ashland School Dist. v. New Hampshire Div. for Children*, Youth and Families, 141 N.H. 45, 50, 681 A.2d 71, 75

[10]Indeed, the placement of a call to the telephone number listed for Doe's mother (referenced on DCYF Ex. 16) may have produced updated information with respect to her current residence.

(1996), citing 20 U.S.C. § 1412(2)(B) (1994).[11] And as has been discussed, under applicable Rhode Island law, DCYF remains responsible for providing children in Doe's situation with a FAPE in the absence of evidence sufficient to identify a responsible LEA.

VI. ORDER

For all the above reasons:

> The Department of Children, Youth and Families' Second Amended Petition requesting that the Providence Pubic School Department be designated as the LEA financially and otherwise responsible for C. Doe for the period of his residential placement at the Harmony Hill School is hereby denied and dismissed.

A. Infante

Angélica Infante-Green,
Commissioner

Dated: March 08, 2021

[11] *See, e.g., M. S. v. Los Angeles Unified School District*, 2019 WL 334564 (C.D. Calif., January 9, 2019), aff'd., 913 F.3d 1119 (9th Cir. 2019), quoting *Clovis Unified Sch. Dist. v. Cal. Office of Admin. Hearings*, 903 F.2d 635, 643 (9th Cir. 1990) (state child welfare agency 'had an independent obligation to "ensure that a continuum of alternative placements [was] available to meet [M.S.'s educational] needs' 34 C.F.R. § 300.115(a)—and to consider whether a residential placement was '[ ] necessary for educational purposes' and not merely 'necessary quite apart from the learning process."').

EXHIBIT A

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

DEPARTMENT OF CHILDREN, YOUTH AND FAMILIES

v.

RIDE NO. 18-108K

PROVIDENCE SCHOOL DEPARTMENT
(In Re: C. Doe)

DECISION

Held: DCYF's request to designate the Providence School Department as having educational and financial responsibility for this student is denied. DCYF failed to establish that Doe's mother resided in Providence during the period of time that this student was placed in a residential treatment facility or that it had made reasonable efforts to determine her "last known Rhode Island residence."

Date: February, 2021

Travel of the Case:

On December 18, 2018 counsel for the Department of Children, Youth and Families ("DCYF" or "Petitioner") filed a request for a residency determination for the purpose of assigning financial and educational responsibility for a child it had placed in a residential treatment facility (the "Request").[1] DCYF alleged in its Request that Cranston was the city responsible for the education of C. Doe (and therefore that the Cranston School Department was the responsible local education agency ("LEA"). Doe has been a child in DCYF care and custody since December 30, 2013. His adoptive parents lived in Cranston, Rhode Island at the time they signed an agreement voluntarily terminating their parental rights (April 29, 2014). At the time DCYF filed its Request, Doe was living at Harmony Hill School, a residential treatment facility in Chepachet, Rhode Island where he had been placed by DCYF on June 11, 2018.

The Commissioner, acting through the Department of Elementary and Secondary Education ("RIDE"), has jurisdiction to make determinations and designations pursuant to R.I. Gen. Laws §16-64-1.2(b).

This Request was initially heard on March 7, 2019 at which time DCYF proceeded to present testimony and documentation to support its request that Cranston be designated as the responsible LEA based upon the fact that at the time Doe's adoptive parents voluntarily terminated their parental rights in 2014, they resided in Cranston. Testimony from Doe's case work supervisor and documentary evidence submitted at the hearing established these facts. More specifically, the evidence indicated that Doe's adoptive parents had voluntarily terminated their parental rights on April 29, 2014 and that on that date they resided in Cranston.. As it turned out, however, additional facts then came to light that ultimately would erode DCYF's claim against the Cranston School Department.

In the course of his cross-examination of DCYF's witness, an experienced case work supervisor familiar with Doe's case, counsel for the Cranston School Department inquired as to the identities of both of Doe's biological parents. After testimony was elicited identifying Doe's biological mother by name, he directed the witness to DCYF Ex. 9, a RICHIST record providing information on Doe's living arrangements from 2015 up to the present. In response to further questioning, DCYF's witness acknowledged that Doe had in fact been placed with his biological mother for a period of two years beginning on February 26, 2016 and ending on March 2, 2018. Further testimony on cross-examination established that the witness "believed" that Doe's biological mother lived in Providence, Rhode Island during this period of time.

When these facts came to light at the time of hearing, counsel for the Cranston School Department prudently requested that DCYF produce any and all records that would establish the

[1] Although DCYF's pleading claims that the requested order to designate Cranston as the responsible LEA stems from R.I. Gen. Laws § 16-64-1.3 (entitled "Educational Responsibility for Children in Group homes and Other Residential Placements"), it is § 16-64-1.1 (c), not § 16-64-1.3, that provides the statutory basis for RIDE's authority to make residency determinations and designations of responsible LEA's for children placed by DCYF in residential facilities that include the delivery of educational services provided by the facility It has been the Commissioner's practice to provide parties with an evidentiary hearing prior to making such determinations and designations when financial and educational responsibility is in dispute.

facts surrounding Doe's placement with his biological mother in 2016. There was a potential set of facts that could, under the statute, place educational responsibility for Doe upon Providence, rather than Cranston.[2] After further discussion at the hearing, testimony of DCYF's witness was completed and the hearing was adjourned in order to permit additional records to be located and shared, and to permit DCYF to file an Amended Request, if it found this to be appropriate.

On March 13, 2019 an Amended Request was filed by DCYF naming both Cranston and Providence as Respondents. After further discussion by the parties during several teleconferences, counsel for DCYF and the Cranston School Department agreed that there was no basis upon which DCYF could continue to assert that Cranston was the LEA responsible for Doe's education. An order dismissing Cranston from the case was entered by agreement of the parties on June 4, 2019. Providence remained as the sole Respondent in the case based upon DCYF's "information and belief" that Doe's biological mother resided in Providence[3] as of February 26, 2016.

Two additional days of hearing were held on October 10, 2019 and December 19, 2019. Thereafter, the parties submitted written closing arguments, a process that concluded on July 1, 2020. The record in this matter closed at that time.

Jurisdiction to hear this matter arises under R.I. Gen. Laws §16-64-1.2 (b) which authorizes the Department of Elementary and Secondary Education to designate the LEA responsible for the education of children in state care who are placed in residential facilities that include the delivery of education provided by that facility.

ISSUES:

- Did DCYF establish by a preponderance of the evidence that the Providence School Department was responsible for Doe's education during the time he was placed at a residential facility in Chepachet, Rhode Island based on the fact that (a) his biological mother resided in Providence during the time of his residential placement; or that (b) Providence was her "last known Rhode Island residence"?

- If the Providence School Department is responsible for Doe's education during the time he was placed at the residential facility, is it responsible to reimburse DCYF at a per pupil special education cost or a per pupil general education cost pursuant to the applicable statute?

FINDINGS OF RELEVANT FACTS:

[2] It was unclear at the time of the hearing on March 7, 2019 whether Doe had merely been "placed" with his biological mother or whether there was an order of the Family Court effectively reunifying the parent and child. See Tr. Vol. I, pp. 55-71. Counsel for DCYF, after reviewing the Family Court file with respect to this case, came upon a previously-unknown and rather unusual Order of the Family Court dated March 31, 2016 that vacated the adoption of Doe as to his biological mother, "restored" her parental rights and "reinstated" her as Doe's parent. See Vol. II, pp.6-7; DCYF Ex. 13.

[3] The Amended Request filed by DCYF incorrectly listed Doe's biological mother's address on this date as 84 Waverly Street, Providence, Rhode Island, not at 64 Waverly Street, the address noted on the attached RICHIST Release 17.19.1.04.

- C. Doe is a child in DCYF care and custody who was placed at Harmony Hill School, a residential treatment facility in Chepachet, Rhode Island, on June 11, 2018 and remained there until September 16, 2019. Tr. Vol. III, p. 5; DCYF Ex. 12. Harmony Hill has an on-grounds educational program which Doe attended during his time there. He was not eligible for, and did not receive, special education services during this time. Tr. Vol. I, p. 45; DCYF Ex. 3 and 10.

- Doe resided in Providence with his mother from February 26, 2016 to March 2, 2018 at which time his whereabouts became unknown.[4] On April 21, 2018, he was placed at the Rhode Island Training School in Cranston, Rhode Island. After his release from the Training School he was placed at Harmony Hill School for the period of time indicated above. Tr. Vol. III, pp. 5-6. At the time of the last hearing in this case, Doe resided in an independent living program funded by DCYF. DCYF Ex. 12.[5]

- Doe's biological mother resided in Providence on March 31, 2016, the date a justice of the Family Court vacated his adoption,[6] restored her parental rights and reinstated her as his parent. DCYF Ex. 13 and 16. There is no dispute that during the period of time that Doe lived with her (February 26, 2016 - March 2, 2018) she exercised full parental rights. *See* Providence Public School Department's Memorandum of Law dated March 5, 2020 at page 1.

- DCYF RICHIST records relating to Doe's living arrangements were introduced to prove Doe's mother's residency during the relevant period of time. DCYF Ex. 9 established that Doe lived with his mother from February 26, 2016 to March 2, 2018. DCYF Ex. 16 established that Doe and his mother lived in Providence at 64 Waverly St., Apartment 2B during this same timeframe. There is also reference to the Waverly Street apartment in DCYF case activity notes made by his social workers during the time Doe was placed with his mother. *See* DCYF Ex. 14.

- A DCYF case work supervisor familiar with Doe's case testified at the March 7, 2019 hearing. Referring to DCYF Ex. 9, she testified that DCYF records showed that Doe lived with his mother from February 26, 2016 - March 2, 2018. She believed that they lived in Providence during this time. She also testified that she was not sure where Doe's mother lived at present and believed that she was homeless at that time. Tr. Vol. I, p. 55.

- A newly-assigned case work supervisor who testified on December 19, 2019 had no first-hand knowledge of Doe's mother's residency. She testified that based on references to the Waverly Street apartment in case activity notes (DCYF Ex. 14), other DCYF

[4] RICHIST records refer to this status as "AWOL". *See* DCYF Ex. 9 and 16
[5] Doe was seventeen years and five months of age at that time, according to testimony received in the record on the first day of hearing. Tr. Vol. I, pp. 53-54.
[6] The decree entered by a justice of the Family Court continued in effect the termination of parental rights of Doe's biological father.

records and her conversations with other DCYF social workers, her understanding was that Doe's mother lived at the Waverly Street apartment "at least until" Doe was placed at Harmony Hill School on June 11, 2018. Tr. Vol. III, pp. 32-34. She testified that DCYF had no contact with Doe's mother after his placement at Harmony Hill School.[7] Tr. Vol. III, pp. 31 and 35.

POSITIONS OF THE PARTIES:

DCYF:

In its written argument, counsel for DCYF takes the position that there are three elements of a *prima facie* case to support the designation of a responsible LEA under the statute, i.e., that: (a) Doe was in the care and custody of DCYF at all relevant times; (b) Doe was placed in a residential treatment facility that included the delivery of educational services provided by that facility; and (c) Doe's parent lived in Providence prior to his placement at Harmony Hill. Providence is, therefore, responsible for the payment of a per-pupil special education cost to DCYF under the statute.

In its responsive memorandum, DCYF addresses Providence's argument that it produced little or no evidence of Doe's mother's residence in Providence during the time in which he was placed at Harmony Hill School. DCYF implicitly acknowledges this by arguing that in the alternative it has established that Providence was Doe's mother's "last known Rhode Island residence" under R.I. Gen. Laws § 16-64-1.2(c). According to counsel's argument and testimony received, DCYF had no reason to remain knowledgeable of her whereabouts after Doe was placed at Harmony Hill. Her relevance from a social work perspective "diminished" and she "faded from C. Doe's life" after indicating to DCYF social workers that she longer wished to reunify with her son. He had been charged with 1st Degree Robbery and sent to the Training School.[8] DCYF argues that she effectively surrendered her parental rights (again) at this time and Doe's case plan was changed to reflect that reunification with his mother was not in his future. This situation both explains and justifies the fact that DCYF had no further contact with Doe's mother. The evidence shows that to the best of DCYF's knowledge and information she last resided at the Waverly Street apartment in Providence. This is her "last known Rhode Island residence" per R.I. Gen. Laws §16-64-1.2 (c) and Providence must therefore be designated as the LEA responsible for Doe's education.

Upon designation under the statute, pursuant to § 16-64-1.2 (d) a *prima facie* case of both residency and financial responsibility has been made and, DCYF argues, the burden of proof shifts to the designated LEA to disprove its responsibility. Providence has made no attempt to prove that Doe's mother lived somewhere other than Providence during Doe's placement at Harmony Hill or that her last known address was in a different city or town in Rhode Island. Providence could have joined any other district it believed was responsible for Doe's education at Harmony Hill, but chose not to do so. Since Providence has not met its burden to disprove the

[7]The case work supervisor explained that Doe's mother had no interest in reunifying with him because of his "behaviors" and that his case plan goals were then changed to reflect this fact.

prima facie case made by DCYF on this record, the Commissioner must direct Providence to reimburse DCYF per the statute.

DCYF also argues that the Commissioner is obliged to maintain Doe's last established school residency under R.I. Gen. Laws §16-64-2 entitled "Retention of Residence". The evidence in this case shows that Doe's last school enrollment was in the Providence school system. In cases such as this in which no definitive proof is available that another district has become responsible for the child's education, the last LEA of record must continue to oversee and be responsible for the child's education. This well-settled public policy ensures that every child, including those in foster care and those with disabilities, will have an LEA responsible for their education. The evidence here shows that Doe was last enrolled at Mount Pleasant High School in Providence. Providence is identified as his LEA of record as of June 11, 2018 when he was placed at Harmony Hill. (*See* DCYF Ex. 15[9]). DCYF argues that R.I. Gen. Laws §16-64-2 applies here and that Doe remains a Providence student until another LEA has been designated by the Commissioner and he is enrolled in a new school system.

If the Commissioner finds that DCYF has been unable to prove that another district has become responsible for Doe's education and yet does not maintain Providence's continuing obligations under §16-64-2, such ruling will leave him, and similarly situated children in state care, without an LEA. The precedent set by such a ruling would undermine public policy that is protective of the educational rights of all children in state care. Furthermore, Rhode Island's statutory scheme is designed to ensure that "child find" obligations with respect to students with disabilities are met under the IDEA (and state regulations) and the identification of a responsible LEA is necessary for state compliance to be maintained.

With respect to the amount of Providence's financial responsibility to DCYF, counsel for DCYF points to well-established precedent that a designated district is responsible for its per pupil special education cost for the period of time the student is placed at a residential facility. DCYF urges the Commissioner to reject Providence's argument that the Commissioner should reconsider Commissioner Wagner's ruling in *DCYF v. Newport School Department*, RIDE No. 19-006A and subsequent decisions upholding the level of reimbursement at the designated district's "per pupil special education cost" regardless of whether the student at the residential facility actually receives special education. The Commissioner's decision in *DCYF v. Newport*, *supra*, has been reconsidered in several recent cases cited in DCYF's memorandum and has been affirmed because it was properly decided.[10] R.I. Gen. Laws §16-64-1.1 (c) is not ambiguous and must be applied as written to make the designated district responsible for a "per pupil special education cost" to be paid to DCYF or the facility providing educational services to the child in state care. This financial obligation is the same regardless of whether the designation of the responsible LEA is made by the Family Court or RIDE. There is no conflict with the authority of IEP teams to determine the special education placement of a foster child, especially in this case because Doe does not receive, and is not eligible to receive, special education services.

[9] DCYF Ex. 15 shows Providence as Doe's LEA of record at the time of his June 11, 2018 placement at Harmony Hill.

In conclusion, DCYF submits that its mission is focused on the social plight of abused and neglected Rhode Island children and agency resources are directed to efforts to improve the lives of these children and their families. DCYF cannot always track the whereabouts of parents of children in state care and sometimes loses track of parents, especially when the child's case plan does not call for reunification and/or when the parent becomes homeless, as evidently happened in this case. Acceptance of Providence's arguments in this matter would require the Commissioner to "pin administrative and financial responsibility on DCYF instead of school districts" when state law clearly provides otherwise. If the Commissioner accepts Providence's arguments in this case, in situations where DCYF cannot establish parent residency, children in state care who are placed in residential facilities will be denied the benefit of LEA oversight and may not be provided with a free appropriate public education. Rhode Island's statutory scheme is designed to provide for the educational needs of foster children without exception and the Commissioner should ensure that their needs are provided for without exception. There is both sufficient evidence in this record and adequate legal support to designate Providence as Doe's responsible LEA for both financial and educational purposes.

PROVIDENCE SCHOOL DEPARTMENT:

Counsel for Providence also submitted both an initial and responsive memorandum in this case. In the initial filing counsel was not yet aware of DCYF's argument that the Waverly Street address was the "last known Rhode Island residence" of Doe's mother, rather than her address throughout the June 11, 2018 – September 16, 2019 period of time that Doe was placed at Harmony Hill School. For this reason, Providence initially argued that DCYF had failed to meet its burden of proof that Doe's mother lived in Providence during the entire fifteen-month period he was placed at Harmony Hill. There is no dispute on this point as there clearly was no testimony or documentation establishing Doe's mother's residence in Providence at any point in time after June 11, 2018. DCYF witnesses acknowledged that there was no contact with the mother after this point in time.

In response to the argument that the Waverly Street address in Providence is the "last known Rhode Island residence" for Doe's mother, Providence submits that there is insufficient reliable and trustworthy proof of this fact. There are only two documents in evidence that are directed at Doe's mother's residency. The first document, DCYF Ex. 16, is a RICHIST record submitted into evidence on the final day of hearing. DCYF Ex. 16 lists Doe's mother's address as 64 Waverly Street as of February 26, 2016. This information was never updated. The witness authenticating this record had no first-hand knowledge of this information and was newly-assigned to supervise Doe's case. The second document, DCYF Ex. 14 consists of case activity notes with references to the 64 Waverly Street address that are even more dated than the February 26, 2016 RICHIST record. Counsel for Providence submits that this is slim evidence that Doe's mother's last known address is Providence and, without some verification, is simply not reliable or trustworthy. Providence cites Judge Vogel's decision in *Newport v. RIDE,* 2020 WL 771155 (R.I. Super) and the Commissioner's decision in *DCYF v. North Kingstown School Committee* (19-045A) for the proposition that a RICHIST entry noting a parent's address is not the type of probative, reliable and substantial evidence required to impose significant financial

liability upon a district. Further casting doubt on any conclusion that Waverly Street is Doe's mother's last known address in Rhode Island is testimony that Doe's mother later moved from this address. (*See* testimony of Ms. Betsy Aubin, Tr. Vol. I, p.55).

Secondly, Providence argues that if DCYF had kept track of the residence of Doe's mother, it would have been able to substantiate the conclusion it wishes the Commissioner to accept: that 64 Waverly Street in Providence is the "last known Rhode Island residence" of Doe's mother. DCYF has introduced no evidence of any efforts it made to locate Doe's mother. In fact, it denies that it had any obligation to do so. Counsel submits that even though DCYF saw no reason to keep track of Doe's mother for purposes of reunification of parent and child, it was nonetheless obligated to keep updated and accurate records of Doe's mother's residence. Annual updates to a foster child's intra-state identification card are required under R.I. Gen. Laws §42-72.4-1(b). This law creates a legal duty of the director of DCYF:

> … to update the intra-state education identification card for each child in order to provide current information regarding the residence of the parent or guardian … on an annual basis prior to and each time the child transfers to another school district.

See R.I. Gen. Laws §42-72.4-1(b). Yet, in DCYF's memorandum it dismisses the notion that it has any obligation to update a student's card. (*See* DCYF Memorandum of Law, p.5).

The insubstantial and outdated evidence DCYF has presented on this record, coupled with DCYF's failure to make any efforts to locate Doe's mother during the relevant period of time, indicate DCYF's casual indifference to its responsibilities. Yet it requests that the Commissioner rely on this record to impose significant financial obligations upon the Providence School Department. This Request should be dismissed. DCYF has failed to meet its burden of proof.

If, however, the Commissioner finds that DCYF has established that Doe's mother's last known residence in Rhode Island was in Providence, Providence argues that the applicable statutory framework requires only that a school department pay for the education that the child actually receives, no more, no less. Re-framing many of the textual arguments made by other school districts in other cases on this issue (all of which have been rejected by the Commissioner) Providence argues that a fair and reasonable interpretation of the language found in R.I. Gen. Laws §§16-64-1.1 and 16-64-1.2 is that the responsible school district pay the "cost" of the child's education to DCYF or the residential facility. In cases involving students who are not entitled to special education services, that cost amounts to the number of days in placement, multiplied by the general education rate of the responsible district. In prior interpretations made by the Commissioner, references to "cost" have been disregarded for a misguided focus on inapplicable language relating only to educational services provided to special education students. This has resulted in an absurd result- a dichotomy of financial obligation dependent upon whether the designation is made by the family court under subsection (a) of 16-64-1.2 or by RIDE under subsections (b) or (c).

The Commissioner's prior erroneous interpretation of the applicable statutes has also enabled DCYF to collect a much higher rate for general education students than it is entitled to, an amount determined without reference to the level of services required by the particular student. Providence submits that the statute must not be interpreted in a way that condones the overcharging for a level of services not provided. The statute was intended to provide a mechanism to determine which school district would be responsible for the education of students in foster care and not as a boon for DCYF and/or the residential placement to profit on the unfortunate circumstances of these children.

Lastly, the Commissioner's prior interpretation of the statutory framework also conflicts with the federal Individuals with Disabilities Education Act ("IDEA") as it overrides the authority of the IEP team that is charged under the Act with determining eligibility for special education services and placement, not to mention the IDEA's requirement that children be educated in the least restrictive setting. For all of these reasons, RIDE and the Commissioner should reconsider prior interpretations of the cited statutes, deny DCYF's request for reimbursement at the special education daily rate for this student and determine that Providence's responsibility (if the Commissioner finds that Providence has responsibility with respect to Doe's education) is limited to the general education rate for the time Doe has been placed at Harmony Hill School.

DECISION

R.I. Gen. Laws § 16-64-1.1(c) provides, in pertinent part, that:

> [c]hildren placed by DCYF in a residential-treatment program, group home, or other residential facility, whether or not located in the state of Rhode Island, which includes the delivery of educational services provided by that facility . . . shall have the cost of their education paid for as provided for in subsection (d) and § 16-64-1.2.

Id.[11] And R.I. Gen. Laws § 16-64-1.2(c) provides, in pertinent part, that RIDE:

> . . . shall designate the city or town to be responsible for the per-pupil special education cost of education to be paid to DCYF for 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 or who have been surrendered for adoption or who have been freed for adoption by a court of competent jurisdiction 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.

Id.

[11] The referenced subsection (d) does not apply here since Harmony Hill School is not operated by the state.

There is clearly no evidence in this case of Doe's mother's residence in Providence during his residential placement at Harmony Hill. Furthermore, DCYF has not met its burden of proof that Providence was her "last known Rhode Island residence" under R.I. Gen. Laws § 16-64-1.2(c) or that this subsection of 16-64-1.2 is even applicable to this case. Thus, the request of DCYF to designate the Providence School Department as the LEA responsible for C. Doe's education for the period of time that he was placed at Harmony Hill School must be denied.

DCYF argues that the 64 Waverly Street address in Providence became Doe's mother's "last known Rhode Island residence" because this was her address according to DCYF records at the time DCYF's contact with her ceased. The explanation for DCYF's decision to terminate contact with Doe's mother makes sense from a social work perspective, but it makes absolutely no sense from a legal or financial perspective. In light of the fact that Doe was in a presumably expensive residential placement and our statutory scheme provides for DCYF to be reimbursed for a portion of this cost by a "designated" LEA, it was very important for DCYF to maintain accurate information on Doe's mother's residence during the period of time he was in this residential placement. It is the residence of the parent at the time of (and during the subsequent course of) the residential placement that determines responsibility under the statute. *See DCYF v. South Kingstown*, RIDE No 19-029P (December 9, 2020).

The statutory provision requiring the director of DCYF to update a foster child's intra-state education identification card on an annual basis reinforces the importance of DCYF's maintenance of accurate information on parents' residency:

> … This card shall provide that each city or town be required to immediately enroll the child in its school system *and for purposes of determining the school district financially responsible for the child's education in accordance with §16-64-1.1,* (emphasis added) the parent's residence designated on the intra-state education identification card shall constitute prima facie evidence of the parent's residence in that district.

See R.I. Gen. Laws § 42-72.4-1 (b).

Without updated information or records, (including an updated intra-state education identification card) to prove Doe's mother's address during the period of time he was placed at Harmony Hill, DCYF understandably sought to establish Providence as the responsible LEA by virtue of its being her "last known Rhode Island residence" under §16-64-1.2 (c). However, all that this record (DCYF Ex. 16) indicates is that 64 Waverly Street in Providence was Doe's mother's address at the time the agency determined it need have no further contact with her or become knowledgeable of a different Rhode Island address for her. There is no evidence in this record of any attempt whatsoever made by DCYF staff to ascertain Doe's mother's subsequent whereabouts or determine whether she resided in Rhode Island or elsewhere. DCYF admittedly lost contact with Doe's mother at the time he entered the residential facility in Chepachet.

Yet, as the Commissioner has recently noted:

> In order to conclude that a particular residence is a parent or guardian's 'last known Rhode Island residence' a party must show the basis of that conclusion. It

> must produce evidence of its efforts to find a later residence and the result of those efforts. DCYF cannot simply declare that the last address in RICHIST is the parent's 'last known Rhode Island residence.' It must demonstrate the effort it undertook to determine a subsequent residence for the parent. If credible evidence of an unsuccessful attempt to find a subsequent residence is provided, then DCYF may claim that the parent's residence cannot be determined to be in the state and that the last address in RICHIST, provided it has an accurate basis in fact, is the parent's 'last known Rhode Island residence.'

DCYF v. South Kingstown, supra, at 6-7. When one applies the principles above to the facts here it becomes apparent that DCYF has not met its burden of proving that the RICHIST address for Doe's mother at 64 Waverly Street, Providence is her last known Rhode Island residence. There is no evidence of any efforts to learn of a more current address in Rhode Island for Doe's mother or that such efforts proved futile.

DCYF argues that it lacks the resources to utilize "extraordinary means" of tracking the whereabouts of parents of children placed in its care, especially when reunification with the parent is not the child's casework goal. However, the burden on DCYF is not to demonstrate that it took extraordinary measures to keep track of the child's parent, but merely that it made *reasonable* efforts to do so.[12] DCYF's concern that such evidentiary requirements will result in burdening it with a cost more appropriately placed upon LEA's does not call for the Commissioner to arbitrarily place financial responsibilities on LEA's by default or without a legally-established basis for doing so. And if DCYF is concerned that there is no LEA ultimately responsible for providing Doe with a FAPE, it should take whatever action it deems appropriate to address that issue, but that issue is distinct from the cost reimbursement issue that it has raised here.

Title 16, as currently drafted, requires DCYF to demonstrate a factual basis for re-allocating part of the cost of residential placements to the appropriate school district and implicitly makes DCYF responsible for such costs when it is unable to meet its burden of proof. The provisions of R.I. Gen. Laws §16-64-2 cited by DCYF relate to a child's ongoing eligibility to "receive education" from a Rhode Island city or town and are simply not applicable to the determination of educational and financial responsibility under §16-64-1.1 when a child is placed at a residential facility and receiving educational programming provided by that facility.

Because Doe is no longer placed at Harmony Hill School, the impact of this decision upon him is not such that he is in a residential placement without an LEA responsible to oversee and ensure his receipt of a free appropriate public education pursuant to R.I. Gen. Laws §16-64-1.3 (b). However, as DCYF points out, this could be a potential consequence for other children in state care for whom a responsible LEA cannot be established. The Commissioner in *DCYF v. South Kingstown, supra*, anticipated and addressed this issue at page 7 of the decision.[13] As indicated by the Commissioner in *South Kingstown,* in the event a child's placement at a

[12] In this case, the placement of a call to the telephone number listed for Doe's mother on DCYF Ex. 16 may have produced updated information with respect to her current residence.
[13] *See* footnote 22 at page 7 of the decision.

residential facility is ongoing and a responsible LEA cannot be identified, DCYF must contact RIDE's Office of Student, Community and Academic Supports for purposes of assigning educational responsibility for the student.

For the foregoing reasons, the request for designation of the Providence School Department as the responsible LEA for C. Doe for the period of his residential placement at Harmony Hill School is denied and dismissed. Any other issues raised in this case need not be reached or addressed.

For the Commissioner,

_____
Kathleen S. Murray
Hearing Officer

_____
Angélica Infante-Green,
Commissioner