

State of New Hampshire

Department of Education

IDPH-FY-06-12-038 / Inter-Lakes School District

DECISION OF THE HEARING OFFICER

I. Background

The primary parties in this matter are three school districts each of which disputes its liability for certain costs associated with the education of student In this proceeding, the Barrington School District was represented by Attorney Grant C. Rees, the Farmington School District was represented by the firm of Drummond, Woodson & MacMahon and the Inter-Lakes School District was represented by its Director of Special Education, Philip C. Sweeney. Attorney Cindy Robertson of the Disability Rights Center was counsel for the Petitioner and guardian of the student.

In a model of professional cooperativeness, the parties jointly filed a “Final Stipulated Statement of Facts” on February 13, 2006 and requested that the case be decided via cross motions for summary judgment without the necessity of a hearing. In conjunction with this process, each party filed a legal memorandum supporting its request for summary judgment and expressly waived the federal statutory time period for issuance of a decision in this matter. Having read the parties' extremely thorough and useful legal memoranda along with the applicable statutes and court opinions, the Hearing Officer issues the following findings of fact and rulings of law.

II. Findings of Fact

The parties agreed to submit this matter for a decision based upon the following stipulated facts:

1. Student is an eighteen-year-old student born on January 3, 1987 .
2. Student has been coded as MR.
3. Student's coding is not in dispute
4. Student has a current, approved IEP that runs from May 20, 2005 to May 19, 2006 ; this IEP is not in dispute.
5. Student is currently placed at the Child Development Center (CDC) in Rochester , NH as a day student. Student's placement is appropriate for ... and is not in dispute.

6. The CDC, now Monarch School of New England, is located within the geographic boundaries of Rochester School District .
7. The Child Development Center in Rochester is also known as the Foss School , and as the Monarch School . The Monarch School of New England is now the official name of the Child Development Center in Rochester . The Monarch School has two sites, Foss School and the Williams School .
8. According to student's father, he and student's mother were divorced in 1994. They were awarded joint custody and student resided with ... mother.
9. From the time ... moved to the Barrington School District in September 2002, student resided with ... mother, and ... stepfather, T.M.
10. The Barrington School District placed student at the CDC as a day student beginning in September 2002 and funded that placement.
11. In connection with ... day placement at the CDC, student lived with ... mother and stepfather within the Barrington School District until May 2005.
12. Student's mother was appointed guardian over student's Person by the Strafford Probate Court by Letter of Appointment dated February 9, 2005 .
13. Student was eighteen years old at the time the guardianship over ... person was established in favor of ... mother.
14. In late April of 2005 student's stepfather committed suicide at the family home which precipitated an inability of student's mother to continue to care for ... in the family home.
15. Student was subsequently placed at Crotched Mountain for residential respite care for approximately one month concluding on June 5, 2005 at which time student began residing in the home of Doris Young in Farmington , NH .
16. The placement at Crotched Mountain was for family respite purposes, not because student required placement at Crotched Mountain for educational reasons.
17. The Barrington School District did not fund student's respite placement at Crotched Mountain .
18. Student left the respite placement at Crotched Mountain on June 6, 2005 and went directly to reside at the home of Doris Young in Farmington , NH without returning to ... mother's home.
19. The Strafford Probate Court granted student's mother's petition to resign on July 11, 2005 and appointed student's father as successor guardian by Letter of Appointment

dated July 11, 2005 which Appointment incorporated the terms of the previous Appointment in favor of student's mother.

20. Student's father and guardian resides in Center Harbor , NH which lies with the boundaries of the Inter-Lakes School District / SAU #2.

21. Student does not and has not resided with ... father in Center Harbor , NH .

22. Student does not and has not resided with ... mother in Barrington , NH , since being placed in the Young Home in Farmington .

23. Student's placement in the Young home is not a placement made under the Foster Care system and the Young home is not a Licensed Foster Home, but rather it is a Community Living Facility.

24. Student's placement in the Young home was made under the auspices of RSA 126-A:19 and 126-A:20.

25. Student is the only person currently placed in the Community Living Facility operated by Doris Young.

26. The Community Living Facility in which student is placed obtained a temporary certification with a stated duration of August 15, 2005 to November 12, 2005 .

27. The Community Living Facility, aforesaid, subsequently received permanent certification on December 8, 2005 .

28. Since August 1, 2005 the Foster Parent has provided transportation for student to the CDC. Each round trip is 22 miles. The Foster Parent makes two round trips each day that student attends school at the CDC.

29. The parties agree that the Foster Parent provided transportation to the CDC for student each day that she was in attendance there.

30. Given student's lack of significant mental capacity she is unable to form an independent intent with regard to her domicile or residence.

31. Community Partners completed a notice of change of address for student indicating that student moved to the home of Doris Young on August 15, 2005 . Based upon the foregoing stipulated facts, the Hearing Officer finds the following additional facts:

32. Student turned 18 years of age on January 3, 2005 .

33. According to the CDC attendance record, student began attending CDC during the 2005-2006 school year on July 11, 2005 .

III. Rulings of Law

The ultimate legal issue to be decided in this proceeding sounds deceptively simple: Which of the three named school district respondents, Barrington, Farmington or Inter-Lakes is “the school district where the child resides” within the meaning of RSA 186-C:13? The answer to this question lies somewhere within the “statutory thicket” that is the New Hampshire special education liability legal process. *See In Re Juvenile 2004-789-A,-B*, ___ N.H. ___ (decided April 7, 2006) *quoting Manchester School District v. Crisman*, No. Civ. 97-632-M, 2001 WL 311202, at 2 (D. N.H. March 26, 2001). Applying applicable New Hampshire statutes and judicial opinions to the undisputed facts set out above results in the conclusion that the Inter-Lakes School District is the legally liable school district for student from July 11, 2005 to the present. This legal conclusion follows from the following rulings of law:

1. Student is an “educationally disabled child” within the meaning of RSA 186-C:2,I which defines this term to include “any person 3 years of age or older but less than 21 years of age”.
2. RSA 186-C:13,I provides that “all expenses incurred by a school district in relation to administering the law for education of educationally disabled children, **shall be paid by the school district where the child resides**” unless the child has been placed in “a “home for children”, “health care facility” or “state institution as those terms are defined in RSA:193:27.
3. The “Young home” where student has been placed and has lived since June 5, 2005 , is not a “home for children”, “health care facility” or “state institution” as those terms are defined in RSA 193:27, I-III.
4. As a result, the provisions of RSA 193:27,IV and RSA 193:29 are inapplicable to the liability issue presented by this case. RSA 193, *See In Re Juvenile 2004-789-A,-B*, ___ N.H. ___ (decided April 7, 2006)
5. The term “resides” in RSA 186-C:13 has been interpreted by the New Hampshire Supreme Court by reference to the definition of “residence” in RSA 21:6-a. *In Re Bryan L.* , 123 N.H. 420 (1983)
6. “The legislature has defined “residence” for purposes of statutory construction as...a person's place of abode or domicile. The place of abode or domicile is that designated by a person as his principal place of physical presence for the indefinite future to the exclusion of all others”. *In Re Bryan L.* , 123 N.H. 420 (1983), RSA 21:6-a, *see also* RSA 193:12,III (defining term “legal resident”).

7. Student became an emancipated adult on January 3, 2005 but has had a legal guardian since February 9, 2005 and, as the parties have stipulated, lacks the mental capacity to form an independent intent with regard to her domicile or residence.

8. In cases where a “child” under RSA 186-C is without a “residence” or domicile, the Supreme Court has looked to the residence of the parent or other individual with legal, as opposed to physical, custody to determine the legally liable governmental unit under RSA 186-C. *In Re Bryan L.* , 123 N.H. 420 (1983), *see In Re John M. and David C.* , 122 N.H. 1120, 1126-28 (1982).

9. From February 9, 2005 through July 10, 2005 student's mother was student's legal guardian and, as such, had legal custody over Student during this time period. *See* RSA 464-A:2, VIII; RSA 464-A:25, I(a) (2005 supp.);

10. From July 11, 2005 through the present, student's father, has been the guardian and had legal custody of student *See* RSA 464-A:2, VIII; RSA 464-A:25, I(a) (2005 supp.);

11. The fact that student has never actually lived in the Inter-Lakes School District is not determinative of the question of whether Inter-Lakes is legally liable for student's education costs. *See In Re Bryan L.* , 123 N.H. 420 (1983) (Ruling that Littleton was legally liable for child who had never lived in Littleton), *In Re John M. and David C.* , 122 N.H. 1120, 1126-28 (1982) (Ruling that Concord was legally liable for child who had never lived in Concord).

12. As student's father and legal guardian resides within the boundaries of the Inter-Lakes School District (in Center Harbor, NH) the Inter-Lakes School District is legally liable for the educational expenses of student incurred since the effective date of Father's appointment as guardian, July 11, 2005, including the costs of student's enrollment and attendance at the Child Development Center (a.k.a.Monarch School) in Rochester, NH.

IV. Order

For the reasons set forth in this Decision, the Hearing Officer issues the following Order in the above-referenced case:

A. The Inter-Lakes School District is the legally liable school district for all education expenses incurred relative to the education of student from July 11, 2005 through the present,

B. The Barrington School District 's legal liability for the costs of the education of student ended as of July 11, 2005 when legal custody of student shifted from her mother, to her father.

C. The Farmington School District is not legally liable for the education costs of student

V. Appeal Rights

Any party aggrieved by the decision of the hearing officer as stated above may appeal this decision to a court of competent jurisdiction. The Parent/Guardian has the right to obtain a transcription of any proceedings from the Department of Education. The School Districts shall promptly notify the Commissioner of Education if any party seeks judicial review of the hearing officer's decision.

SO ORDERED.

Date: July 22, 2006

Peter T. Foley, Hearing Officer