

**COMMONWEALTH OF MASSACHUSETTS
SPECIAL EDUCATION APPEALS**

Randolph Public Schools

BSEA # 1606409

v.

**Department of Elementary and Secondary Education
& North Attleboro Public Schools**

DECISION

This decision is issued pursuant to M.G.L. c. 71B and 30A and the regulations promulgated under said statutes.

By agreement of the parties, this matter was decided on the documents without an evidentiary hearing pursuant to BSEA Hearing Rule 11A.

The official record consists of Randolph Public Schools' (Randolph's) Appeal of LEA Assignment Hearing Request and attached exhibits 1-8 (R-1 – R-8) and Randolph's Position Statement; the Department of Elementary and Secondary Education's (DESE's) Position Statement and attached exhibits 1-10 (D-1 – D-10); and North Attleboro Public Schools' (North Attleboro's) Memorandum in Support of Summary Decision. All Parties' submissions were received by the BSEA on or before the established deadline and the record closed on August 31, 2016.

ISSUE

Randolph challenges DESE's LEA Assignment and determination that it is solely responsible (fiscally and programmatically) for Student's educational placement.

SUMMARY OF THE EVIDENCE

1. The student (hereinafter, "Student"), who has been found eligible for special education services, is a 20 year-old residential student at the Latham School in Brewster, Massachusetts. (D-6, R-6) Student's placement is cost-shared between Student's LEA and the Department of Children and Families (DCF)¹.
2. Student's Mother's (Mother)'s Motion for Appointment of Temporary Guardian was allowed by the Barnstable Probate and Family Court on Student's eighteenth

¹ Student's IEP for the 2013-2014 school year (written by North Attleboro) indicates that Student's placement is cost-shared with DCF. (D-10) Likewise, the IEP prepared by Randolph for the 2014-2015 school year provides that the placement is cost-shared with DCF. (D-6)

birthday. On November 5, 2013, the Probate and Family Court expanded the Temporary Order of Guardianship and allowed Mother unlimited guardian authority over Student. (D-3, D-4, R-3, R-4)

3. Both Parents lived in North Attleboro until June 2014. On a Randolph Public Schools' Registration Form dated June 23, 2014, Mother indicated that she moved to Randolph pursuant to a divorce. (R-5)
4. Parents' custody agreement, signed on January 15, 2014 contains an acknowledgment that Mother has sole legal guardianship of Student through the Barnstable Probate and Family Court. It also notes that Parents share legal custody of Student's minor sibling and states that said sibling shall reside primarily with Mother. (R-7, D-7)
5. Mother wrote a letter to a member of North Attleboro's special education staff dated October 21, 2015. It included a copy of Student's guardianship documents and stated that Father has chosen not to share guardianship of Student. (D-9)
6. A February 2, 2016 e-mail from Mother to a Mr. Henderson, states that Mother retains guardianship for both of her daughters. It further states that both daughters visit their father, who lives in North Attleboro, every other weekend. (D-8, R-8)
7. On September 23, 2015, Marcia Mittnacht, State Director for Special Education, issued an Assignment of School District Responsibility in response to Randolph's request for the same. The assignment letter summarized the facts as gleaned from the information that had been provided to DESE. The factual recitation stated, "It is reported to this office that the student's mother, as of 11/05/2013, has been granted guardianship on a limited basis." Additionally, Mother's and Father's residences were noted as being within Randolph and North Attleboro, respectively. DESE applied 603 CMR 28.10(3)(b) and 603 CMR 28.10(8)(c)(4). Based upon its application of the facts to the regulations, DESE determined that programmatic and fiscal responsibility was appropriately assigned to be shared between Randolph and North Attleboro Public Schools "as this is where the student's parent(s) reside." The letter noted that move-in law did not apply. (R-2, D-2)
8. On December 11, 2015, DESE issued a Corrected Assignment of School District Responsibility. DESE explained it had initially been informed that Mother's guardianship had been granted on a limited basis. However, the documentation it received subsequent to its initial assignment showed that Mother was granted guardianship on November 5, 2013 that included all (emphasis in original) powers authorized to a guardian for an incapacitated person, and not limited guardianship. (D-1, R-1) DESE applied regulation 603 CMR 28.10(3)(b). Additionally, it noted that the "move-in law" would apply to the case because Mother became the guardian on November 5, 2013 and moved from North Attleboro to Randolph in June 2014. It explained that programmatic responsibility immediately was assigned to Randolph (guardian's residence) and fiscal responsibility was assigned to North Attleboro

through 6/30/2015. As of 7/1/2015, fiscal responsibility was assigned to Randolph alone. (D-1, R-1)

FINDINGS AND CONCLUSIONS

Randolph seeks to overturn DESE's determination that Randolph is solely responsible, both programmatically and fiscally, for Student's education due to the existence of two parents, one in Randolph and one in North Attleboro. It argues that Father's parental rights have not been terminated and he maintains a relationship with Student, and thus Father's district of residence, North Attleboro, should share responsibility for Student's education with Randolph. Its argument is not persuasive for the following reasons.

Massachusetts law assigns responsibility for students' special education services based upon the district where a student resides. G.L. c. 71B, § 3. As correctly noted by the Parties, the controlling regulation which assigns responsibility in the case at hand is 603 CMR 28.10(3)(b)². The regulation states that "The school district where the parent(s) or legal guardian resides shall have both programmatic and financial responsibility under the following circumstances: ... (b) When a student whose IEP requires an out of district placement lives and receives special education services at a special education residential school." First, the plain language of the regulation indicates that either the district where the parent(s) **or** legal guardian resides shall have responsibility for the student at issue. The language of this section does not contemplate a situation where both a parent **and** a legal guardian would be jointly responsible. As Randolph persuasively argued, under M.G.L. ch. 231 § 85P, an individual who has reached the age of 18 is "deemed to be of full legal capacity unless legally incapacitated for some reason other than insufficient age." Both state and federal special education law contain provisions whereby a student, if competent, is entitled to decide who will make educational decisions on his/her behalf, unless a court has appointed a legal guardian for the student. 20 U.S.C. § 1415(m); 34 CFR 300.520, and 603 CMR 28.07(5)(a). Under 603 CMR 28.07(5)(a) a parent who has sought and received guardianship from a court of competent jurisdiction retains full decision-making authority. Mother petitioned the probate court and became Student's Temporary Guardian on October 3, 2013. On November 5, 2015, Mother's authority was expanded and she was granted all powers and duties authorized to a guardian for an incapacitated person under G.L. c. 190B, Article V, Part III. Her powers were not limited. Additionally, Parents' custody agreement acknowledges that Mother has sole guardianship of Student. Thus, as Student has reached the age of majority and has a legal guardian, Mother, only Mother's residence is relevant for purposes of assigning fiscal and programmatic responsibility.

In this case, Father, although involved in Student's life, does not have any legal authority to act on Student's behalf. His parental rights, although not terminated by any court order, have been superseded by Mother's appointment as guardian. Only Mother,

² See *George H. & Irene L. Walker Home for Children v. Town of Franklin*, 416 Mass. 291 (1993) Where a student's residence is not "obviously self-defining," DESE regulations govern the assignment of district responsibility.

Student's legal guardian, has a "legal" relationship with Student. Thus, Father's residence is not relevant for purposes of determining fiscal and programmatic responsibility for Student's educational services.

DESE's initial assignment letter was based upon misinformation it had received from Randolph, namely, that Mother's guardianship powers were limited. Therefore, DESE applied not only 603 CMR 28.10(3)(b), but also 603 CMR 28.10 (8)(c)(4) to the facts as they were then understood. 603 CMR 28.10 (8)(c)(4) states The Department shall use the following criteria to assign a city, town or school district responsibility for a student in a living situation described in 603 CMR 28.10(3) or (4):

(c) The Department shall use the following criteria to assign a city, town or school

(4) If the legal guardian is an agency or organization or the legal guardian has been appointed on a limited basis such as a guardian ad litem, or a guardian appointed solely to monitor medications or finances, the school district where the parent(s) lives or last lived shall be responsible.

Based upon its reliance on the information supplied by Randolph, DESE applied the above section to the facts and determined that the school districts of both Mother's and Father's residences were responsible for Student's education. Thus, it assigned both Randolph and North Attleboro to share responsibility.

Upon receiving information that in fact, Mother's powers as guardian were not limited, DESE rightly re-analyzed the facts and determined that 603 CMR 28.210(8)(c)(4) did not apply. It then determined that in accordance with 603 CMR 28.10(3)(b), Student had a legal guardian living in Randolph, Mother. Thus, it rightly issued its Corrected Assignment of School District Responsibility.

DESE applied the "move-in-law" (Chapter 71B, § 5) to the facts and determined that because Mother became Student's guardian in November 2013 and moved from North Attleboro to Randolph in June 2014 programmatic responsibility immediately was assigned to Randolph and fiscal responsibility was assigned to North Attleboro through June 30 2015. As of July 1, 2015, fiscal responsibility was assigned to Randolph alone. Neither Randolph nor North Attleboro challenges DESE's application of Chapter 71B, § 5 in the Corrected Assignment.

ORDER

DESE's determination that Randolph is fiscally and programatically responsible for Student is upheld.

By the Hearing Officer,

Catherine M. Putney-Yaceshyn

Dated: September 29, 2016