

March 6, 2014

**COMMONWEALTH OF MASSACHUSETTS**

*Division of Administrative Law Appeals*

**Bureau of Special Education Appeals**

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**DECISION**

**BSEA # 1402607**

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**BEFORE**

**RAYMOND OLIVER  
HEARING OFFICER**

**JULIE MUSE-FISHER, ATTORNEY FOR RANDOLPH PUBLIC SCHOOLS**

**JEFFREY BECKER, ATTORNEY FOR BOSTON PUBLIC SCHOOLS**

**JOSHUA VARON, ATTORNEY FOR  
MASSACHUSETTS DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION**

# **COMMONWEALTH OF MASSACHUSETTS**

## **Division of Administrative Law Appeals**

### **Bureau of Special Education Appeals**

**Randolph Public Schools v.  
Massachusetts Department of Elementary and Secondary Education  
and Boston Public Schools**

**BSEA #: 1402607**

### **DECISION**

This decision is rendered pursuant to M.G.L. Chapters 30A and 71B and the regulations promulgated thereunder.

### **BACKGROUND**

On December 18, 2013 the Randolph Public Schools (RPS) filed an appeal of the LEA assignment made by the Massachusetts Department of Elementary and Secondary Education (MDESE), assigning RPS full programmatic and financial responsibility for Student. Given that the facts of this case are not disputed, the parties agreed to a decision based upon written submissions and oral argument. The parties submitted their exhibits and written legal arguments during January and February 2014. On February 25, 2014 the parties made their oral arguments telephonically to the Hearing Officer. The record closed on February 25, 2014.

### **STATEMENT OF FACTS**

Student is a 12 year old girl who is eligible for special education services. Student had been enrolled in the Boston Public Schools (BPS) since 2006, living with her grandmother in Boston. On June 12, 2007 the Suffolk Probate and Family Court granted legal guardianship of Student to her grandmother because mother had disappeared in 2004 and was presumed dead. In September 2013 Student began the school year at BPS' McKinley School, an intensive public school special education program. On September 24, 2013, after learning that Student was now living with her mother in Randolph, BPS discharged Student from McKinley School. Student was enrolled in RPS by her mother on October 18, 2013. On November 3, 2013 RPS requested from MDESE a clarification of school district assignment. On November 13, 2013 MDESE issued a letter assigning programmatic and financial responsibility for Student's education to RPS. RPS does not have a public special education program comparable to BPS' McKinley School. High Road School is a MDESE approved private special education day school located in East Bridgewater, MA. RPS proposed an Individual Education Plan (IEP) placing Student at High Road School. Legal guardian/grandmother accepted this IEP on December 6, 2013 and Student has attended High Road School since December 9, 2013 while continuing to reside with mother in Randolph.

## STATEMENT OF POSITIONS

RPS' position is that Student has a legal guardian living in Boston and mother is a relative with whom Student is residing in Randolph. Under such circumstances, pursuant to 603 CMR 28.10(4)(b) and (8)(c)(3), RPS has programmatic responsibility for Student but BPS has financial responsibility. RPS also argues that M.G.L.c. 71B s.5 (the "Move In Law") applies, and that BPS is financially obligated to pay for Student's private day school placement through June 30, 2014. RPS contends that MDESE erred in assigning RPS both programmatic and financial responsibility for Student.

MDESE's position is that pursuant to 603 CMR 28.10(2)(a) Student lives with her mother in Randolph – therefore its assignment of School District Responsibility finding Randolph both programmatically and financially responsible for Student was correct. MDESE contends that a court order of guardianship does not necessarily entail a termination of parental rights and that those regulatory provisions which provide for a shared responsibility for a student's education do not apply given the facts of this case. MDESE also argues that the "Move In Law" is inapplicable in the instant case.

BPS' position is essentially identical to that of MDESE. BPS contends that the court order of guardianship to grandmother did not terminate parental rights of the mother, but presumed mother was dead; that mother is alive and now caring for Student; that Student is living with mother; and that mother's parental rights are thus maintained. BPS contends that 603 CMR 28.10(4)(b) does not apply in this case because Student is not simply living with a relative but living with her mother and, therefore, 603 CMR 28.10(2)(a) applies in this case. BPS also argues that the "Move In Law" does not apply to the facts of this case.

## RULING

Based upon the undisputed facts, exhibits admitted into evidence, the written and oral arguments submitted, and a review of the applicable law, I conclude that MDESE's Assignment of School District Responsibility finding RPS both programmatically and financially responsible for Student was correct. I further conclude that the "Move In Law" is not applicable given the facts of the instant case.

My analysis follows.

Pursuant to M.G.L.c.71B s.3, a school district is responsible for the special education program of any child residing within its jurisdiction. 603 CMR 28.10 – School District Responsibility – provides the regulatory framework regarding residency for purposes of implementing c.71B s.3. 603 CMR 28.10(1) General Provisions provides that:

School districts shall be programmatically and financially responsible for eligible students based upon residency and enrollment.

603 CMR 28.10(2) provides:

(2) School district responsibility based on student residence. The school district where the student resides shall have both programmatic and financial responsibility under the following circumstances:

(a) when students live with their parent(s) or legal guardian.

603 CMR 28.10(3) and (4) delineate the special circumstances and exceptions to the above stated statutory and regulatory mandates. No party has argued that (3) is applicable to the facts of this case. 603 CMR 28.10(4) provides, in relevant part as follows:

(4) Shared school district responsibility. The school district where the parent(s) or legal guardian resides shall have financial responsibility and the school district where the student resides shall have programmatic responsibility when a student is in a living situation other than that described in 603 CMR 28.10(2) or (3) including but not limited to a relative's home that is not funded by the Department of Social Services...

603 CMR 28.10(8) gives MDESE the authority for the assignment of school district responsibility. Pursuant to 603 CMR 28.10(8)(c)(3):

(c) 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):

(3) If the parents' rights have been terminated and the Probate Court or the Juvenile Court has appointed a legal guardian for a minor student, the school district where the legal guardian resides shall be responsible.

M.G.L. c.71B s.5 – the Move In Law – provides that if a student who is in a special education private day school or residential placement and his parents or guardian move to a new school district after July 1 of any fiscal year, the former school district shall remain financially responsible for such private day school or residential placement for the balance of such fiscal year.

Factually, this is a most unusual case. The Probate Court appointed Student's grandmother to be her legal guardian based upon the presumption of the mother's death. However: 1) Student's mother is alive; 2) Student is now living with her mother in Randolph; and 3) legal guardian/grandmother apparently approves given that mother has enrolled Student in RPS and legal guardian has accepted RPS' IEP placing Student at High Park School in East Bridgewater while student continues to live with mother in Randolph.

Legally, for purposes of school district responsibility, this case is relatively straightforward. The clear intent and purpose of M.G.L. c.71B s.3 and 603 CMR 28.10 is for school districts to be both programmatically and financially responsible for children who reside therein. In this case, Student resides with her mother in Randolph and has been enrolled by mother in RPS. Clearly 603 CMR 28.10 (1) and (2), cited above, apply in this situation. Therefore, I find that RPS is both programmatically and

financially responsible for Student's special education and conclude that MDESE's Assignment of School District Responsibility was correct.

I find RPS' argument that BPS is financially responsible for Student's education because her legal guardian resides in Boston to be unpersuasive for several reasons. To accept RPS' position that 603 CMR 28.10(8)(c), cited above, applies would require that mother's parental rights had been terminated by the Probate Court. However, there is nothing in the Probate Court's legal guardianship order of June 12, 2007 to support that conclusion and it is certainly far outside of the authority of the BSEA to presume to do so. In re: *Adoption of Gillian* 63 Mass. App Ct 398, 403 (2005) specifies:

In termination proceedings a judge must decide whether a parent is capable of assuming the duties and responsibilities expected of a parent and if the termination of parental rights would be in the child's best interests. The judge is required to articulate specific and detailed findings in support of a conclusion that termination is appropriate, demonstrating that [the judge] has given the evidence close attention. Such detailed findings are required because the termination of parental rights is an extreme step.

Later at 405-406 *Gillian* the Appeals Court notes:

Guardianship and termination of parental rights are discreet issues; evidence that is relevant to one issue may or may not bear on the other. See also *Adoption of Nancy* 443 Mass 512, 514-515, 822 N.E. 2d 1179 (2005).

While the Probate Court in the instant case made specific findings against the father justifying legal guardianship to the grandmother, it only presumed that the mother was dead and made no specific findings that mother was unfit or that her parental rights had been terminated.

Second, to accept RPS' argument that 603 CMR 28.10(4) cited above, applies would be to convert "mother" into "relative." 603 CMR 28.10(4) clearly contemplates a situation where a student's parent or guardian lives in one location but the student lives with some other relative, not a parent or guardian, in a different location. I cannot contort 603 CMR 28.10(4) to mean what RPS contends that it means. Mother is Student's mother, not some other relative simply because Student has a legal guardian who was appointed at a time when mother was presumed dead.<sup>1</sup>

I conclude that the "Move In Law" does not apply to the facts of this case. Here, Student was in a public school placement in BPS prior to her move to Randolph. She only began attending a private day school after she had moved to and was enrolled in RPS. The "Move In Law" applies only when a student was in a private day or residential school prior to a move from one LEA to another after June 30 of the fiscal year.

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<sup>1</sup> In its argument that guardian's residence is financially responsible for Student's education, RPS relies on *School Committee of Stoneham v. Antonucci* 1996 WL 1186844 (Mass. Super. 1996). Such reliance is misplaced. First, *Antonucci* is an unpublished, non-binding Superior Court decision which is nearly 20 years old. Since *Antonucci*, both c.71B and its regulations have substantially changed. Further, the facts in *Antonucci* are clearly distinguishable from those of the instant case.

By the Hearing Officer,

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Date: \_\_\_\_\_