



Enclosure 6a2
August 9, 2016

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August 9, 2016

TO: Members of the Council on Elementary and Secondary Education

FROM: Karin Forbes, Appeals Committee Chair

RE: Appeals Committee Recommendation on the matter of DCYF v.
Foster-Glocester School Committee

The Appeals Committee of the Council on Elementary and Secondary Education met on July 19, 2016, to hear oral argument on the appeal of the following Commissioner's decision:

DCYF v. Foster-Glocester School Committee

RECOMMENDATION: THAT, in the matter of DCYF v. Foster-Glocester School Committee, the decision of the Commissioner is affirmed, as presented.

**Council on Postsecondary
Education**

William Foulkes
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Heather D. Crosby

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The Honorable Thomas Izzo

Dr. Jeffery A. Williams

STATE OF RHODE ISLAND

**COUNCIL ON SECONDARY AND
ELEMENTARY EDUCATION**

**DEPARTMENT OF CHILDREN
YOUTH AND FAMILIES**

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vs.

**FOSTER-GLOCESTER REGIONAL
SCHOOL COMMITTEE**

DECISION

This is an appeal by the Foster-Glocester School Committee (“Foster-Glocester”) from the decision of the Commissioner, dated December 15, 2015, whereby the Commissioner determined that Foster-Glocester must reimburse the Department of Children, Youth, and Families (“DCYF”) for the cost of educational services rendered to a special education student (the “Student”) placed by the Family Court in a private residential treatment program.

The facts and travel of this appeal are summarized as follows. On June 29, 2015, the Rhode Island Family Court entered a Family Court Order (“Order”) in a matter commenced by DCYF regarding a special education student with a disability. In the Family Court Order it was found that the Student’s residence for school purposes was Chepachet (a part of the Foster-Glocester School District), and that the appropriate child welfare placement decision was to place the student in a residential treatment program at the Harmony Hill School in Chepachet. Further, the Order found that DCYF was to seek reimbursement through RIDE funding under Chapter 64. The student was placed in the Harmony Hill School and DCYF notified and requested reimbursement for the cost of his education pursuant to Rhode Island General Laws (“RIGL”) §16-64-1.1(c). Foster-Glocester acknowledged the Student’s residence but nonetheless refused to accept financial responsibility and reimburse DCYF.

DCYF appealed to the Commissioner requesting that the Commissioner find Foster-Glocester financially and educationally responsible for the Student under RIGL §64-16-1.1(c) and the associated Order. In response, Foster-Glocester argued that such a finding is preempted by federal law because the Individuals with Disabilities Education Act (“IDEA”) requires that the student be placed in accordance with the “least restrictive environment” requirement. Further, Foster-Glocester argued that the Rhode Island Board of Education Regulations Governing the Education of Children with Disabilities also prohibits the relief sought by DCYF due to the same “least restrictive environment” requirement.

In a decision dated December 15, 2015, the Commissioner noted that RIGL §16-64-1.1(c) is not preempted by the IDEA since the Statutes can be read together. Further, the decision pointed out that arguments presented by Foster-Glocester under the IDEA would be appropriately raised before (1) the Family Court to amend its Order, (2) seeking an appropriate review of the Order by the Rhode Island Supreme Court, (3) with the Rhode Island Department of Education Office of Student, Community, and Academic Supports, and/or (4) by filing a due process complaint under the IDEA. Further, the decision noted that the procedural mandates of the IDEA prohibit the Commissioner from hearing claims for a “free, appropriate, public education” under the IDEA, and that such hearings must be performed in front of a hearing officer that is not an employee of the Rhode Island Department of Education. Finally, the Commissioner determined that an order shall enter for DCYF to provide proof of the cost of Student’s education and to withhold state school aid of the proven amount.

Foster-Glocester appealed the decision of the Commissioner and asked the Council on Secondary and Elementary Council for a decision on whether the Commissioner erred in determining that federal law and the Board of Education regulations prohibit a finding that Foster-Glocester is financially responsible for the cost of Student’s education. Additionally,

Foster-Glocester asks us to find that the Commissioner’s order to withhold state school aid was issued at a time that the Commissioner had no jurisdiction over the case.

The Council reviewed the briefs and considered the well-presented arguments of both parties at oral argument. We find that the decision of the Hearing Officer as adopted by the Commissioner is consistent with the law. The decision reasons that RIGL §16-64-1.1(c) can be read together with the IDEA without conflict. Further, the Commissioner points out that RIDE employee’s may not serve as hearing officers for these types of disputes, and that there are other avenues for Foster-Glocester to challenge the Family Court Order. Lastly, we point out that the order issued by the Commissioner with regard to withholding of state school aid was part of the December 15, 2015 decision and so was effectively issued in the course of hearing the appeal to the Commissioner in this case. The decision of the Commissioner is in no way “patently arbitrary, discriminatory, or unfair” which is the standard of review for Appeals brought to the Board of Education, Altman v. School Committee of the Town of Scituate, 115 (R.I.) 399, 405 (1975).

For the reasons stated herein, the decision of the Commissioner is affirmed.

The above is the decision recommended by the Appeals Committee after due consideration of the record, memoranda filed on behalf of the parties and oral arguments made at the hearing of the appeal on July 19, 2016.

Council on Elementary and Secondary Education

Daniel P. McConaghy, Chair

Karin Forbes, Appeals Committee Chair

_____, 2016