



This matter was heard on July 13, 1988 and, after a challenge  
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to jurisdiction, August 2, 1988, upon appeal to the Commissioner  
of Education, under the provisions of §16-64-6 of the Rhode Island Gen-  
eral Laws. The appeal was made by Phillip L. against an  
action of the North Kingstown School Committee.

#### Facts of the Case

1. C. , in 1986-87, lived in North  
Kingstown with his mother and was enrolled in  
the North Kingstown School System.
2. In July of 1987, C. came to live with his  
father in Narragansett.
3. In September, C continued to be enrolled  
in the North Kingstown School System.
4. North Kingstown school authorities notified Mr. L.  
in late September 1987, that in order for  
his son to remain enrolled in the North Kingstown  
schools, he (Mr. L. ) would have to have  
possession of C and be a resident of  
North Kingstown.

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1] On August 3, 1988, the hearing officer ruled on a challenge of jurisdic-  
tion by the North Kingstown School Committee. The School Committee al-  
leged that since the Committee had filed in District Court for collection  
of tuition, the Commissioner did not have jurisdiction in this case. Mr. L.  
argued that the determination of residency was properly before  
the Commissioner since the determination of residency is implicit in  
§16-64-6. He stated that the issue of tuition vs. a "free education"  
cannot be resolved until the issue of residency is resolved as provided by  
educational law (§16-64). The appellant prevailed.

5. In March of 1988, Mr. L removed C from North Kingstown and enrolled him in the Narragansett School System.
6. The North Kingstown School Department billed Mr. L for C tuition from September 2, 1987 to March 3, 1988.

#### Issue of the Case

The parent in possession of C, Phillip L, alleges that he moved to North Kingstown in late November of 1987, as quickly as he could, given his lease in Narragansett. He alleges that he established residency to conform to the requirements of the North Kingstown School Department.

The North Kingstown School Committee alleges that Mr. L did not establish a "bona fide" residency, but set up a situation to appear as if residency had been established in order for his son to remain in the North Kingstown School System.

#### Applicable Law in This Case

16-64-1. Residency of Children.-- Except as otherwise provided by law or by agreement a child shall be enrolled in the school system of the town where he resides. A child shall be deemed to be a resident of the town where his parents reside. If the child's parents reside in different towns the child shall be deemed to be a resident of the town in which the parent having actual custody of the child resides. . . .

16-64-3. Burden of Proof.-- In any proceeding where it is alleged that a child's residence has been changed due to illness of a parent, the break-up of the child's family, abandonment of the child by his parents, death of the child's parents, or emancipation of the child,

the party alleging the existence of such circumstances shall have the burden of proof and shall make such proof by a preponderance of the evidence.

Summary of Argument

Mr. L, the plaintiff, has sworn under oath that he resided in North Kingstown, from late November of 1987 until March of 1988. He has also testified that he did this to comply with the residency requirement of the North Kingstown School Department. He alleges that he terminated his lease in Narragansett and moved into a house in North Kingstown. This house was leased to his cousin and his cousin's roommate. As proof, he offered an affidavit, dated July 13, 1988, from the landlord in Narragansett stating that Mr. L "vacated" the premises November 1, 1987 and paid no rent after that date."

Mr. L testified that he continued to drive his son to school because of the boy's emotional state and that he moved back to Narragansett in March and enrolled C in the Narragansett School System because of harrassment by the school authorities.

The defendant School Committee alleges that Mr. L did not establish a residence in North Kingstown. As proof they offered testimony of the Truant Officer as to his observation of the North Kingstown address and attempts to interview people at that address. Further, attempts by the Superintendent of Schools and staff to have Mr. L behave in a manner to assure C timely arrival at school and produce evidence of a "bona fide" residence in North Kingstown were not respond-

ed to in a manner to resolve the dispute.

The School Committee further offered proof of car registration as Narragansett and no visible changes in mail, etc., to substantiate a change of address.

### Conclusion

Phillip L was not a resident of North Kingstown from November of 1987 to March of 1988. We do not find the proof offered by the appellant, i.e., direct testimony and an affidavit to be credible in the light of the contrary evidence submitted by the School Committee.

Further, Mr. L's affidavit from the landlord in Narragansett failed in that he admitted under cross-examination that he continued to pay the heat for the house in Narragansett and re-  
turned (emphasis added) there in March of 1988 to live in order to avoid harrassment.

The burden of proof in this case rested with Mr. L

. He did not carry this burden of proof in the face of the contradictory evidence submitted by the School Committee.

The School Committee did offer a credible case of attempts to ascertain residency by the appellant. The Committee did not, however, move to establish residency through a hearing before the Commissioner of Education under R.I.G.L. §16-64-6. The failure to move for a hearing under §16-64-6 moves the case to another level and renders the question of tuition moot.

Although the appellant moved for a residency hearing under §16-64-6 and did not request a decision on the tuition bill sent by North Kingstown, the Commissioner will rule on that issue based upon Garrett & Laura Sullivan vs. Newport School Committee, Commissioner of Education, February 10, 1986.

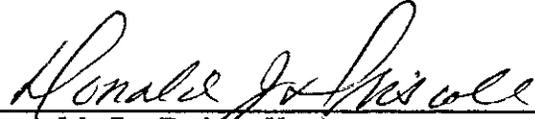
In Sullivan, supra, the petitioning parent lived with her two children in Middletown from September 1983 through January 1984 while the children were enrolled in school in the Newport School System. Subsequently, the family moved to Newport. Thereafter, Newport demanded compensation for the period of time that the children were enrolled in the Newport School System and were living in Middletown. The Commissioner of Education found that "Newport took no steps to have the Commissioner rule (R.I.G.L. 16-64-6) that the two children became residents of Middletown for school purposes when they went to live in that town. . . . The problem in this case is that the children never enrolled in Middletown, and Newport never took the step of having the Commissioner rule that the children were now residents of Middletown for school purposes. Until one of these two events took place the children, under the statute (§16-64-2)

remained eligible to receive educational benefits from Newport." R.I.G.L. §16-64-2 states: "A child shall be eligible to receive education from the town in which his residence has been established until his residence has been established in another town and that town has enrolled the child within its school system, unless the commissioner of education, pursuant to §16-64-6, has ordered otherwise."

In the instant case, the residency issue is moot. C

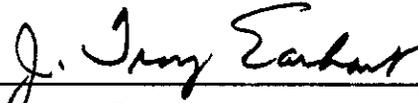
was a student in the North Kingstown School System (1986-87) when he lived with his mother. He continued in the North Kingstown School System when he lived with his father. He became a student in the Narragansett School System (March 3, 1988) after the period in question in the instant case. When C was a student in North Kingstown during September 1977 - March 3, 1988, North Kingstown took no steps to have the Commissioner rule that he was a resident of Narragansett for school purposes, and he was never enrolled in the Narragansett School System during the period in question. The Superintendent testified that she never at any time petitioned the Commissioner of Education to determine residency, and, it is an undisputed fact that C was never enrolled in Narragansett during the period in question and had attended North Kingstown schools continuously from before this case through March 3, 1988. As stated in Sullivan, supra, "until one of these two events took place, the (child) under the statute §16-64-2 -- "Retention of Residence" remained eligible to receive educational benefits from (North Kingstown) [paren substitution added]."

The appellant has not established by evidence that he was a resident of the Town of North Kingstown from November of 1987 to March 3, 1988 and the appeal is hereby denied; however, as above, C was entitled to education in North Kingstown until March 3, 1988 when he enrolled in the Narragansett School System; therefore, tuition is not billable.



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Donald J. Driscoll  
Hearing Officer



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J. Troy Earhart  
Commissioner of Education

November 30, 1988