

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

 STUDENT J. DOE :
 :
 :
 v. :
 :
 :
 NARRAGANSETT :
 SCHOOL COMMITTEE :
 :
 :

DECISION

January 12, 1989

Held: Student J. Doe is a resident of South Kingstown for school purposes. It is ordered that Student J. Doe be enrolled for financial purposes in South Kingstown as of July 1, 1988. His placement at Harmony Hill School is valid until an IEP changes it under the appropriate Federal and state laws and regulations.

This matter was heard initially on September 21, 1988, and continued to September 28, 1988, in order to subpoena witnesses, and subsequently to October 14, 1988, as a result of a conflict of calendars. The issue is a request for a residency determination by the Narragansett School Committee for a student, J. Doe , son of Mrs. Doe . Since Narragansett alleged that Mrs. Doe was living in South Kingstown, the South Kingstown School Committee was invited to respond. It should be noted that the purpose of this hearing is to determine financial responsibility between the Towns concerned. The student has been attending school during the pendency of this matter.

This case is a second determination of residency hearing for the same family. The Hearing Officer notes for the record that the family was the subject of a residency decision of December 11, 1987 (originally heard August 14, 1987).

Issue of the Case

The hearing was convened for the purpose of determining the residency of Student J. Doe . The request was from the Narragansett School Committee. Using applicable law, the issue is to define the residency of the mother and child to determine which city or town will provide for the child's education.

Much testimony was offered from representatives of various state and local agencies. Such testimony spoke to the issue of residency.

Facts of the Case (By stipulation or undisputed testimony)

1. Mrs. Doe has two children - D. Doe, enrolled at the Hazard Elementary School in South Kingstown, in the special education program, and J. Doe, enrolled at the Harmony Hill School in Glocester, a residential treatment center.
2. Mrs. Doe enrolled D. Doe on July 1, 1988, and gave Peace Dale, (South Kingstown) as her address. He attends school in South Kingstown presently (October 14, 1988).
3. Mrs. Doe had been a resident of Narragansett during the 1987-88 school year, D. Doe had gone to school in Narragansett and J. Doe was at Harmony Hill School in Glocester under an IEP program.
4. J. Doe is currently enrolled at Harmony Hill School under the IEP prepared by Narragansett and will continue there without interruption until the residency issue is resolved or his IEP is changed.

Summary of Argument

The Narragansett School Committee argues that its responsibility to educate the Doe children ended on June 1, 1988, when the family was evicted from an address in Narragansett. The School Committee argues that since Mrs. Doe is no longer a resident of Narragansett, has enrolled D. Doe in school in South Kingstown

(D. Doe is attending there) and has declared her residency by word and deed to be South Kingstown, J. Doe 's educational needs also should be met by the South Kingstown School Department.

The South Kingstown School Committee argues that Mrs. Doe has not established residency in South Kingstown since she has not fulfilled the two requirements to establish residency in a community cited in numerous cases: ". . .first, the taking up of a physical abode in a given place and, secondly, an absence of any present intention to leave, or to put it in the positive, the existence of a present intention to remain there, not an intention to remain forever, but at least, to remain for an indefinite period of time however long or short that period might eventually prove to be." (South Kingstown Brief, p. 4. 11/1/88).

South Kingstown argues that much of the evidence of Mrs. Doe's 's being in South Kingstown is heresay, and that her residence is not established since her staying at that residence is according to the School Department, an illegal act. Further, the School Committee argues that her lack of testimony prevented the determination of "her intent", and as a result, no new residence has been established in South Kingstown.

Conclusion

The Doe family resided in Narragansett until June 1, 1988. At that time, Mrs. Doe left Narragansett and went, on or about that date, to the Town of South Kingstown. She has been in South

Kingstown since that time until the date of this hearing.

Testimony by credible persons; i.e. state social service agency personnel (DCF and DHS), South Kingstown Police and Housing Authority officials, place her in South Kingstown. A witness who is a legal tenant at the address in South Kingstown, testified that Mrs. Doe and D. Doe have been living with her in that apartment. All agree that Mrs. Doe is either in the apartment, in her car, or near the apartment elsewhere in the Housing Authority complex.

She has been living since June 1, 1988 to this date - October 14, 1988 - variously in her car, in the apartment, or in and about the Housing Authority Complex in South Kingstown.

She has given her address to the authorities in South Kingstown several times as the apartment, i.e. the Police Department and the School Department, and each time the agency accepted it as valid. The School Department enrolled D. Doe for the 1988-89 school year from that address and the Police look for Mrs. Doe at that address first when they want to locate her.

We reject the idea that Mrs. Doe has failed to establish another residence after leaving Narragansett. She has demonstrated by word and deed her intention to remain in South Kingstown. There is no doubt that her present intent is to remain in South Kingstown. While the school district argues that Mrs. Doe is not legally entitled to remain where she is, we take no notice of this argument. The

legal disputes of a parent have nothing to do with residency for school purposes. Indeed, even children of illegal aliens have the right to attend school. Plyler v. Doe, 457 U.S. 202 (1982).

By any legal test under G.L.16-64-1, et. seq. Mrs. Doe became a resident of South Kingstown immediately after June 1, 1988. As is stated in Inhabitants of Warren v. Inhabitants of Thomaston, 43 Me. 406, 418 (1857).

When . . . person voluntarily takes up his abode in a given place, with intention to remain permanently, or for an indefinite period of time; or. . .when a person takes up his abode in a given place, without any present intention to remove therefrom, such place of abode becomes his resident. . .".

In this case, Mrs. Doe may arguably be living on property to which she does not have lawful tenure. That, however, does not change the fact that she is physically living in South Kingstown and that her children have a right to go to school in South Kingstown.

The fact that credible witnesses have testified as to Mrs. Doe's whereabouts supports the claim of residency.

Applying the law as stated, it is clear that Mrs. Doe is a resident of South Kingstown as of October 14, 1988, and has been since sometime in June of 1988. Education law as it relates to residency for school purposes does not concern itself with the quality, sufficiency, existence, or lawfulness of tenure, of some physical shelter. The test is whether the parent and the student are living in the town and that they have no intent to presently leave the town.

There is no doubt that Mrs. Doe's physical presence

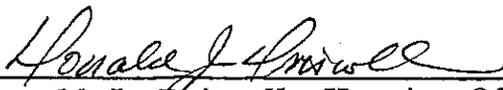
was in South Kingstown between the dates in question. There is no doubt - given the lengths she went to remain there - that her present intent is to remain in South Kingstown.

The appeal of the Narragansett School Committee is upheld.

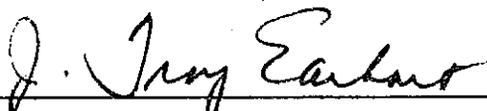
Mrs. Doe is a resident of South Kingstown as of October 14, 1988, and has been since sometime in June of 1988.

South Kingstown enrolled D. Doe without question on July 1, 1988. It is a logical extension that South Kingstown should enroll J. Doe as well. Since Mrs. Doe enrolled D. Doe on July 1, 1988, it is, therefore, ordered that J. Doe be enrolled for financial purposes in South Kingstown on the same day, nunc pro tunc. South Kingstown is ordered to complete the enrollment for J. Doe as of July 1, 1988 and pay the educational costs (a free public education) for J. Doe from July 1, 1988 until such time as another residence is established for the children of Mrs. Doe in another town or city.

In this case, J. Doe is an in-patient student under the Handicapped Education Act and an existing IEP at the Harmony Hill School. That placement is valid until an IEP changes it under the appropriate Federal and State Laws and Regulations.


Donald J. Driscoll, Hearing Officer

Approved:


J. Troy Earhart
Commissioner of Education

January 12, 1989