

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

T. :

vs. :

PAWTUCKET SCHOOL :
COMMITTEE :

DECISION

January 30, 1989

This matter was heard on December 28, 1988 upon a request from the Pawtucket School Department under Rhode Island General Laws §16-64-6 for a determination of residency for T , daughter of Mr. and Mrs. K . Notice was given and all parties had an opportunity to present evidence and cross-examine witnesses. The K 's appeared pro se and the School Department was represented by the Director of Special Education, Thomas DiPaola.

Facts of the Case

1. Mr. and Mrs. K moved from Pawtucket to Connecticut in 1986.
2. T attended school in Connecticut in the 1986-87 school year and during the 1987-88 school year until the end of the 3rd quarter.
3. T enrolled in the Pawtucket schools on March 25, 1988 under permission granted by the Deputy Superintendent of Schools.
4. T continued in the Pawtucket schools until October 6, 1988 when she was hospitalized.
5. T is about to be released from the hospital and the parents sought to re-enter her in the Pawtucket school system for the second semester of the 1988-89 school year.
6. The School Department at that point requested a determination of residency under §16-64-6.

Applicable Laws

§16-64-1. Residency of children for school purposes. -- Except as otherwise provided by law or by agreement a child shall be enrolled in the school system of the town wherein he or she resides. A child shall be deemed to be a resident of the town where his or her 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 or her parents, death of the child's parents, or emancipation of the child, the party alleging the existence of these circumstances shall have the burden of proof and shall make proof by a preponderance of the evidence.

§16-64-6. Disputes over residence - Determination proceedings. -- When a school district or a state agency charged with educating children denies that it is responsible for educating a child on the grounds that the child is not a resident of the school district or that the child is not the educational responsibility of the state agency, the dispute shall, on the motion of any party to the dispute, be resolved by the commissioner of elementary and secondary education or the commissioner's designee who shall hold a hearing and determine the issue. At any hearing, all parties in interest shall have the right to a notice of the hearing and an opportunity to present evidence and argument on their own behalf. A hearing under §16-39-2 shall not be a prerequisite to a hearing under this section. The commissioner of education shall have power to issue such interim orders pending a hearing as may be needed to insure that a child receives education during the pendency of any matter. Interim orders and all final orders shall be enforceable in the superior court for Providence County at the request of any interested party and shall be subject to review in the superior court in accordance with the Rhode Island Administrative Procedures Act, §42-35-1 et seq.

Summary of Argument

The defendants allege that they are currently living apart. Mr. K is in Connecticut and Mrs. K in Pawtucket. Mrs. K has sworn under oath that she is presently living with her sister, Miss D. in Pawtucket.

Mrs. K has sworn that she and T lived with Miss D at that address while T attended the Pawtucket schools and both of them will return to live at that address when T is released from the hospital. Miss D has sworn to this statement of Mrs. K's as true.

The K's have testified that Mr. K has remained in Connecticut and that Mrs. K, while residing in Pawtucket, commutes to her job in Connecticut on a daily basis.

The plaintiff School Department alleges that it questions the statement of the K's and Miss D concerning the residency of Mrs. K and, therefore, the residency for school purposes of T. The allegation stems from questions surrounding the hospitalization of T in Connecticut and vague references to place of residence in conversation with the K's.

Conclusion

Mrs. K has sworn under oath that she is a resident of Pawtucket and lives in Pawtucket with her sister and her daughter, T. She has sworn that she intends to maintain that residence for the future and has no present intention to change that status.

Mrs. K's testimony has been corroborated by Miss D, owner

of the house, and by Mr. K . There was no attempt by the K 's to conceal from this hearing officer, the living arrangements which they have worked out presently or the reasons for such arrangement.

The Pawtucket School Department allowed T to enroll in its school as of March 25, 1988. There was a contingency attached to continuing the permission; rules and regulations must be conformed to and regular attendance maintained.

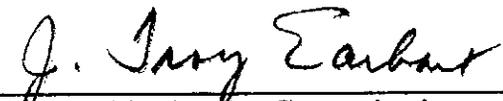
Since T entered the hospital on October 6, 1988 the Pawtucket School Department has had a question of the residency of T . The School Department offered no definitive proof to negate Mrs. K 's sworn testimony. In fact, the School Department did not make an effort to investigate this matter in such a manner as to ascertain a factual basis for non-residency. Since the School Department submitted no evidence to rebut the testimony on the record and since the testimony as given is credible, we accept this testimony.

The School Department has failed to submit any evidence tending to show that Mrs. K and T are not residents of Pawtucket. The determination of residency in this case is for Mrs. K and T as being residents of Pawtucket.



Donald J. Driscoll, Hearing Officer

Approved:



J. Troy Earhart, Commissioner

January 30, 1989