



This matter was heard on December 14, 1989 upon appeal to the Commissioner of Education under the provisions of §16-64-6 of the General Laws of Rhode Island. The appeal was made by Mrs. Ramona P because the Johnston School Department notified her of her child's ineligibility to attend Johnston High School.

Mrs. P appeared pro se and the Johnston School Committee was represented by counsel. Witnesses were sworn and testimony taken.

T, her daughter, has remained enrolled in the Johnston Public Schools until resolution of this case.

#### Facts of the Case

- o T is the child of Mrs. P
- o T is a student enrolled in the Johnston Public Schools.
- o Mrs. P has custody of her daughter.
- o Mrs. P has a joint lease with her husband of property at River Farm Road in Cranston, Rhode Island.

#### Issue of the Case

The Johnston School Department alleges that Mrs. P's daughter T (Johnston High School) is attending school in Johnston illegally since Mrs. P is a resident of Cranston. The Johnston School Department argues that pursuant to §16-64-1 ". . . the child shall be deemed to be a resident of the town in which the parent having actual custody of the child resides."

The custodial parent, Mrs. P, asserts that she is a resident of Johnston and lives at Borden Avenue in Johnston with T and

her friend, Mrs. B P , who is the rentor of the property at Borden Avenue in Johnston.

Mrs. P appeals a decision of the Johnston School Department to remove her daughter from enrollment in the Johnston Public Schools.

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

Mrs. P has sworn under oath that she resides with her daughter at Borden Avenue in Johnston. She states she separated from her husband during the last week of August 1989 and left River Farm Road in Cranston at that time. At the time of the hearing in December she stated that she had not resolved what course her marriage will take and all decisions were on hold as a result.

The Johnston School Committee alleges that Mrs. P actually is a resident of Cranston and that she resides at River Farm Road. As proof, the Johnston School Department offers a certified letter sent to

and received at River Farm Road dated October 14, 1989. Johnston further presented an affidavit by Dennis A. , owner of the apartment house at Borden Avenue, Johnston.

The Johnston School Department conducted an investigation by its Truant Officer, Charlotte Manella, who testified concerning her investigation which included visits to Borden Avenue and River Farm Road, telephone conversations and an interview with T . She testified that her conclusion was that Mrs. P did not reside at Barton Avenue in Johnston.

#### Conclusion

Mrs. P is presently, i.e.; date of hearing, a resident of Johnston. She has sworn under oath that she is a resident of Johnston and has reasonable explanation of such residency of a nature stronger than the questionable evidence of the Johnston School Department, i.e.; letter, affidavit and investigation were not substantial enough to refute Mrs. P 's sworn statement.

It is well established ". . .when a person takes up his abode in a given place, without any present intention to remove therefrom, such place of abode becomes his residence. . . ." Inhabitants of Warren v. Inhabitants of Thomaston, 43 Me., 406, 418 (1857).

In Martinez vs. Bynum, 103 S.Ct. (1983) the Court reiterated the principle that ". . .the residency standard does not apply an intention never to leave. . .changing a place of residency is commonplace."

We are persuaded that Mrs. P , at the time of hearing, is a

resident of Johnston and lives at Borden Avenue.

The Johnston School Department testimony that Cranston is the town or city of residence was not sufficient to convince this Hearing Officer that Mrs. P lived (resided) presently at River Farm Road in Cranston.

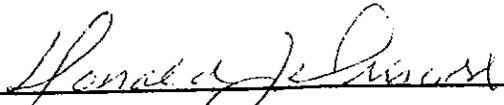
The Johnston School Department did prove that she jointly signed a lease (or has an interest) in the house at River Farm Road. However, being a lessee of property is not synonymous with residency. Johnston further proved that she formerly lived there and she admitted she sometimes visits there, but its investigation fell far short of a goal of a proof of present residency by unrefuted testimony of fact.

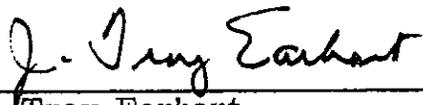
The investigation of this case by Johnston was most incomplete. The "evidence" gathered was incomplete and lacking in organization and cross-reference. The "burden of proof" clearly rested with the Johnston School Department and in this instance was insufficient to support its contention of a Cranston residency by Mrs. P .

There is, however, a caution to the parties. While this Hearing Officer has found in favor of the plaintiff, one must be warned that the decision rests on the record compiled at the hearing. We are not free to go beyond the record.

Persons who purport to reside in a place do so at risk of proof. Unless that person can prove normal household activity and be convincing in his/her everyday life to support the contention, there

will naturally be a question as to sincerity of purpose. While we are not alleging that the plaintiff is insincere or not truthful, indeed, finding was in her favor, we caution that continued enrollment of her daughter, T. in the Johnston Public Schools demands consistent residence of the mother in a residence in Johnston.

  
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Donald J. Driscoll  
Hearing Officer

Approved:   
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J. Troy Earhart  
Commissioner of Education

February 27, 1990