

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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SOUTH KINGSTOWN  
SCHOOL COMMITTEE

vs.

PARENTS OF JOHN K.R. DOE  
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D E C I S I O N

April 26, 1990

This matter was heard on December 21, 1989 upon appeal to the Commissioner of Education by the South Kingstown School Department alleging that Student Doe is no longer a resident of the Town of South Kingstown for school purposes.

The Commissioner has jurisdiction to hear the appeal by virtue of the provisions of §16-64-1 and §16-39-1 of the General Laws of Rhode Island, as Amended. The matter was heard by the undersigned Hearing Officer under authorization by the Commissioner.

Due notice was given to the interested parties of the time and place of the hearing. The South Kingstown School Committee and the Warwick School Committee were each represented by counsel. The Groden Center was represented by its Director of Special Education, Susan E. Stevenson. The parents of Student Doe and the Department for Children and Their Families (DCF) elected not to appear and did not respond to our letters of November 14 and November 21, 1989. Testimony was taken, a transcript of which was made and evidence was presented.

The issue to be decided in this case is "Is the South Kingstown School Department responsible for paying the cost for Student Doe's educational services at the Groden Center during the period between July 1, 1989 and January 28, 1990? If not, who, if anyone, is responsible for said payment?"

The testimony in this case established the following facts:

1. Student Doe, who turned twenty-one years of age on January 28, 1990, was placed in both the residential

and school program at the Groden Center by DCF as a MHSCY student in November of 1983.

2. At the time of that placement, Student Doe was a resident of South Kingstown. His parents were residing at Old North Road in South Kingstown.
3. The Groden Center placed Student Doe in one of its group homes in Warwick where he has been and is presently residing.
4. From November 1983 to June 30, 1989, the South Kingstown School Department paid the Groden Center the per pupil educational cost for K. 's educational services and DCF paid for all other services provided to Student Doe as is covered by the MHSCY program.
5. Sometime in November or December 1988, this student's mother told one of his teachers that the family was moving "temporarily" to Virginia. She gave the teacher a Rhode Island mailing address of  

RFD #1, Saunderstown, Rhode Island.

She never notified the school or the South Kingstown School Department of the family's move.
6. On June 23, 1989, an Individual Program Plan (IPP) meeting was held at the Groden Center which was attended by Student Doe's mother.
7. Student Doe's mother signed the IPP form on June 23, 1989, listing her address as Wilmette Drive,

Burke, Virginia 22015, and her Rhode Island mailing address as

RFD #1, Saunderstown, Rhode Islan 02874.<sup>1</sup>

8. On July 13, 1989, Susan E. Stevenson, Director of Special Education at the Groden Center notified Mr. Edward McDermott, Director of Special Education for the South Kingstown School Department that Student Doe's parents "have moved their residence out of state."<sup>2</sup>
9. By letter dated June 30, 1989, the South Kingstown School Superintendent requested a hearing and ruling regarding Student Doe's residency.<sup>3</sup>
10. Student Doe's parents communicated with one of their son's teachers, Mrs. Jean DeSimone, from time to time relative to his welfare and supply Student Doe with SSI funds and pocket money through his teacher.

The Director of Special Education at the Groden Center testified that Student Doe has siblings who are younger than he and are residing with his parents in Virginia. She also testified that Student Doe does not have a guardian appointed by the courts nor does he have a foster parent assigned by DCF or any other agency. She testified that DCF has informed the Groden Center that they will continue to fund Student Doe's MHSCY arrangement through the end of August 1990, which is the end

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1] See Appellant's Ex. D.

2] See Appellant's Ex. B.

3] See Appellant's Ex. C. A copy of this letter was sent to Student Doe's parents at their Virginia address and was signed for on July 7, 1989 by his mother.

of the school year in which he turned twenty-one years of age. She further testified that Student Doe is severely autistic and although no court has so declared, it is her opinion that Student Doe is not capable of making decisions on his own although he is twenty-one years of age; that he is not self-supporting but receives support from his parents; and, that his mother communicates with teachers at the Groden Center relative to his status, the last time as recently as November 1989. In the letter to his teachers Mrs. DeSimone and Ms. Cathy Hoffman,<sup>4</sup> his mother writes that she has attempted to place her son in a group home in Northern Virginia but that they have long waiting lists. She also writes that she is attempting to obtain funding for her son from the State of Virginia. And, she closes by stating that she will be in Rhode Island in January 1990 in order to attend a meeting at Groden Center regarding her son.

Counsel for the Warwick School Department argues that DCF should be responsible for the per pupil educational cost because apparently through its lack of action, Student Doe has been allowed to continue at the Groden Center even though DCF knew since November or December of 1988 that his parents had moved to Virginia. They also knew since June of 1989 that the South Kingstown School Department would not pay for his educational services at the Groden Center after June 30, 1989. Counsel further argues that if the Hearing Officer does not agree that DCF should bear the entire funding responsibility, then, the Groden Center itself should assume the cost of Student Doe's educational services because they have known

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4] See Appellant's Ex. E.

full well since November or December of 1988 that the parents had moved to Virginia and did nothing with regard to determining who would pay the costs for Student Doe's educational services, or seeking guardianship through the Probate Court or otherwise and, as a result, allowed a de facto situation to occur. In effect, counsel states, they are acting in loco parentis. Counsel also argues that if the provisions of §16-64-1 are applied relative to placement in a child caring facility by a state agency, then the Providence School Department is responsible for the payment of Student Doe's educational services because the Groden Center is located in Providence. And, finally, counsel for the Warwick School Department argues that under §16-64-2, Student Doe's parents show no permanent intention of abandoning Rhode Island and that under §16-64-5, South Kingstown has the continuing responsibility to pay for Student Doe's educational services.

Counsel for the South Kingstown School Department agrees with counsel for the Warwick School Department that either DCF or the Groden Center should bear the responsibility for paying for this student's educational services. Counsel also argues that in accordance with common law, guardianship follows with the parents unless there is some interjection of a guardian or foster parent appointed by proper authorities and/or procedures, which was not so in this case. Therefore, counsel argues that the parents and/or the State of Virginia are responsible for providing and/or paying for this student's educational services at the Groden Center at least from July 1, 1989 through January 28, 1990. Counsel argues further that

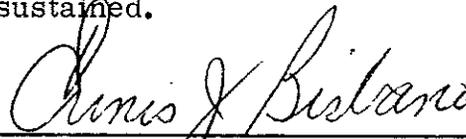
Student Doe is in fact not a resident of Rhode Island but a resident of Virginia, where his parents and siblings reside.

This has truly been a perplexing case for this Hearing Officer to make a determination. Section 16-64-1 establishes the rebuttable presumption that "a child shall be deemed to be a resident of the town where his parents reside". Section 16-64-1 then goes on to say that "in cases where a child has no living parents, has been abandoned by his parents, or when parents are unable to care for their child on account of parental illness or family breakup, the child is deemed to be a resident of the town where he lives with his legal guardian, natural guardian, or other person acting in loco parentis to the child". None of these conditions are applicable to Student Doe, at least as best can be determined from the testimony and evidence presented. Section 16-64-1 continued by saying that "an emancipated minor shall be deemed to be a resident of the town wherein he lives". The evidence shows that Student Doe is not an emancipated child as defined by the Commissioner of Education in David M. Bowen vs. Newport School Committee, February 1983. And, §16-64-1 states that "children placed in group homes, in foster care, in child caring facilities, or by a Rhode Island licensed child-placing agency shall be deemed to be a resident of the town where the group home, child caring facility, or foster home is located". Clearly, Student Doe falls into this category because he was placed at the Groden Center for residential and educational purposes by DCF, and if we apply this provision of the law, either Providence or Warwick would be responsible for paying for his educational services.

However, in the opinion of this Hearing Officer it is the final provision of §16-64-1 which must be applied in this case. That provision states "in all other cases, a child's residence shall be determined in accordance with the applicable rules of common law". We think that under the common law this student is now the responsibility of Virginia since the student's parents are now living in that state. It does not appear to be the intent of the General Assembly to burden local Rhode Island communities by requiring them to pay for the educational services of children who are not residents of Rhode Island. (It would be a bizarre situation indeed if a parent could take up temporary residence in Rhode Island for a few days and obligate Rhode Island to meet the student's school needs for the rest of the student's academic career.)

It is our decision that Student John K.R. Doe is not a resident for school purposes of either the Town of South Kingstown or the City of Warwick and, therefore, neither community is required to pay for his educational services at the Groden Center for the period between July 1, 1989 and January 28, 1990.

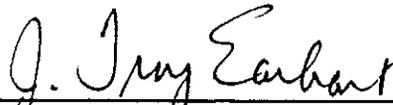
Accordingly, the appeal is sustained.



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Ennis J. Bisbano  
Hearing Officer

Approved:



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J. Troy Earhart  
Commissioner of Education

April 26, 1990