

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

RICHARD F.
:
:
vs. :
:
PROVIDENCE :
SCHOOL BOARD :

INTERIM PROTECTIVE ORDER
(§16-64-6)

February 8, 1991

Travel

This matter was heard on the appellant's request for an Interim Protective Order under §16-64-6. The hearing was held on February 6, 1991, at which time the Providence School Department requested two (2) working days in which to furnish support for its position in this case. The undersigned Hearing Officer was designated by Commissioner Earhart to hear and decide the issue of residency of the appellant's daughter.

Preliminary Findings of Fact

The following findings of fact are essentially undisputed:

- Richard F is a resident of Providence.
- His daughter, K , age 9, who previously resided with her mother in Warwick, Rhode Island, came to live with him in Providence, approximately three (3) weeks ago.
- To date Mr. F 's ex-wife, who was given custody of K , pursuant to a divorce decree entered by a Rhode Island court some years ago, has acquiesced in this arrangement.

- K 's mother has given all of K 's clothes, toys, etc. to Mr. F .
- Neither Mr. F nor K 's mother has filed for an amendment to the decree which gives legal custody to her mother.

Conclusion

The Providence School Department has denied admission to K because her father does not have legal custody and, to date, has been unable to demonstrate substantial steps he has taken to gain legal custody. He also has been unable to provide school officials with his former wife's written consent to the change in custody of their daughter.

While the concern of school officials as to the lack of a Family Court "imprimatur" on this child's current residence is understandable, our school residency law makes resolution of that issue unnecessary for the determination of her residency for school purposes. Our statute §16-64-1 states in relevant part:

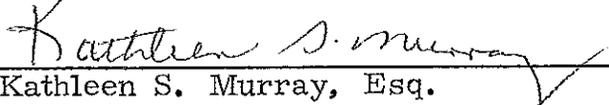
If the child's parents reside in different towns the child shall be deemed to be a resident of the town in which the parent having actual custody of the child resides (emphasis added).

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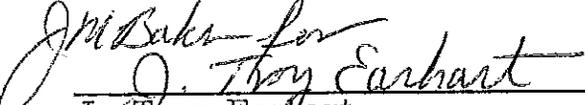
On three prior occasions the words "actual custody" in this statute have been construed to mean the parent with whom the child resides, as distinguished from the parent having legal custody of the child. As pointed out in these prior decisions the purpose of this law is to ensure that a child can enroll in school without involving school districts in custody disputes or forcing them to pry into the private lives of citizens who simply wish to enroll their child in the public schools. Since K resides with

her non-custodial parent in Providence, she is entitled to enrollment in Providence public schools.

1] See the Commissioner's decision in the Matter of Robert T. Stoico, Jr. November 19, 1985 and Diane DeSimone v. Cranston School Committee, March 7, 1989 and Finucane v. Cranston School Committee, April 10, 1987.


Kathleen S. Murray, Esq.
Hearing Officer

Approved: February 8, 1991


J. Troy Earhart
Commissioner of Education