

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

PATRICIA K. :
 :
 :
 :
vs. :
 :
 :
JOHNSTON :
SCHOOL COMMITTEE :

D E C I S I O N

February 27, 1991

This matter was heard on the merits on January 8, 1991. The issue is the residency of Patricia _____, currently attending Johnston High School. The officials in the Johnston school system contend that the student resides with her father in North Providence, while the mother of Patricia _____ insists Patricia lives in Johnston, Rhode Island with her and Mrs. K _____'s sister's family. The student's parents separated in 1988.

Pursuant to R.I.G.L. §16-64-6, a hearing was held, testimony taken and the parties were afforded opportunity to argue their respective positions. Counsel for the School Department submitted a written memorandum, and the record of the case closed on February 4, 1991.

Findings of Fact

After review of the entire record in this case, the factual dispute as to which parent has "actual custody" of Patricia _____ is resolved in our finding that she currently resides with her father in North Providence and not with her mother in Johnston. In so doing, we have rejected the appellant's (and student's) version of Patricia's current living arrangement.

The testimony of the student substantially conflicts with that of her mother and aunt on the point of furnishings in the living area they allegedly use at the Milner Field Road residence. Additionally, testimony of mother

1] This factual finding should not be misinterpreted as implying that under Rhode Island school law we hereby rule that a child can establish residency with only one parent when they are separated. It is quite possible that a child of parents who are separated or divorced could reside with both and argue that residency for school purposes is established in both districts. In this case, no allegation was made by either party that the student resided with both her parents. Only the student's aunt acknowledged, reluctantly, that Patricia stayed with her father overnight. The student and her mother testified that she spent a lot of time with her father, but denied that she ever stayed the night in North Providence.

and daughter was that Patricia spends every night at the Milner Field Road address in Johnston. This substantially conflicts with the aunt's testimony concerning how often Patricia stays with her father in North Providence.

Of particular significance in our rejection of the appellant's version of the facts on the issue of residency was the student's testimony that she left for school from the Milner Field Road address on the day prior to the hearing, January 7, 1991, picked up two friends and then proceeded directly to school at Johnston High School. (Tr. pp. 46-47). She was observed that very same morning, however, by a private investigator hired by the Johnston School Committee, exiting from her father's apartment at 6:45 a.m. going in her car to pick up two friends and continuing on to Johnston High School. (Tr. p. 59). We have no reason to question the credibility of Investigator Vincent O'Connell. The two accounts are unreconcilable and, coupled with the inconsistencies in testimony received from the other family members, leaves us with no choice but to reject in its entirety their factual account of the present living arrangements of

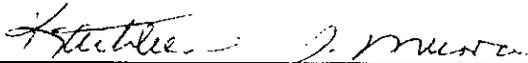
Patricia

Conclusions of Law

We conclude that since this student lives with her father in North Providence and he has actual custody of her, she is a resident of North Providence for school purposes. We express no opinion

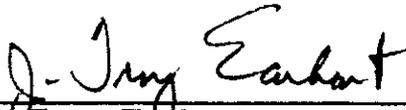
2] Again we might point out that the appellant's position was that her daughter spends every night with her, not that some type of informal joint custody arrangement existed. Therefore, one cannot reconcile the appellant's version of the facts and the observations of Investigator O'Connell that Patricia left for school at an early hour from her father's apartment on the two mornings he had occasion to observe.

and the record before us supports no finding vis-a-vis Patricia's entitlement to complete this semester under the provisions of §16-64-8. Perhaps to avoid disruption in her education, the Johnston school officials will permit her to finish out the school year at Johnston High School, if the facts are such that she is not entitled under our statute to complete the semester.


Kathleen S. Murray, Esq.
Hearing Officer

Approved:

February 27, 1991


J. Troy Earhart
Commissioner of Education