

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

BARRINGTON SCHOOL COMMITTEE :

vs. :

JOHN A.H. DOE :

DECISION

November 23, 1992

Held: In the particular circumstances of this case, a dispute as to the residency of Respondent's child arose on the date the School Committee filed the petition under review; from that date through the date of the hearing, the child was not a resident of the town of Barrington.

Introduction

This matter concerns a petition filed by the Barrington School Committee pursuant to R.I.G.L. 16-64-6 requesting the Commissioner to determine the residency of Respondent's son.¹

As set forth below, we hold that from June 2, 1992 through the date of the hearing in this matter Respondent's son was not a resident of Barrington.

Background

We make the following findings of fact:

Respondent's son is a special education student attending a 230-day-a-year program at Bradley Hospital in accordance with a placement by the Barrington School Department.

Sometime in August 1991 Respondent and his son moved to Respondent's parents' house in Seekonk, Massachusetts.

Respondent and his son remained in Seekonk until sometime in December 1991, when they moved to a house in Barrington.

By letter of December 19, 1991, the Barrington School Committee filed a motion with the Commissioner of Education pursuant to R.I.G.L. 16-64-6 "for a determination that the Town is no longer responsible for the funding of the education of

1 The Commissioner of Education designated the undersigned hearing officer to hear this appeal. A hearing was conducted on August 28, 1992. At that time the Emma Pendleton Bradley Hospital's motion to intervene as a party was granted. Thereafter, notice of this proceeding was provided to counsel for Respondent's wife, the Superintendent of Schools in Portsmouth, and the Superintendent of Schools in Seekonk, Massachusetts. These individuals also were provided with copies of the transcript of the August 28th hearing and were offered the opportunity to be heard in this matter. The School Committee, Respondent, Bradley Hospital, and the Portsmouth School Committee subsequently filed memoranda.

[Respondent's son], and has not been so responsible since some point during the summer of 1991." [School Committee Exhibit 8(A)].

By letter of December 20, 1991, the School Committee stated that it "has been advised that [Respondent and his son] have reestablished their residency in Barrington. Accordingly, we withdraw our request for a residency determination . . ." (School Committee Exhibit 8).

In late March 1992 Respondent notified the Barrington Special Education Office that he and his son were leaving the house in Barrington. Respondent requested that Barrington discontinue transportation for his son. At that time Respondent and his son returned to Respondent's parents' house in Seekonk, Massachusetts.

Aside from a couple of weeks in Florida, periodic visits to Hog Island in Portsmouth (mostly on weekends), and overnight visits to friends' homes, Respondent and his son have remained at the house in Seekonk up to the date of the hearing.

Since June 1991 Respondent has maintained a post office box in Barrington. His voting and automobile registration remain in Barrington, and he pays personal property taxes to Barrington. Respondent testified he intends to return to Barrington. He has never enrolled his son in any school district other than Barrington.

On June 2, 1992, the Barrington School Committee filed the petition at issue herein. The petition asks the Commissioner to determine pursuant to R.I.G.L. 16-64-6 the residency of Respondent's son "for the period September 1, 1991 through the date of the hearing." (School Committee Exhibit 1).

Contentions of the Parties

The School Committee maintains that it is obligated to educate Respondent's son only when the child lives in the town of Barrington. Relying on the Commissioner's decision In the Matter of Residency of Abercrombie Family vs. Narragansett (December 11, 1987), the School Committee argues that it is one's location "at times in a city or town," not one's intent, that is determinative of residency. The School Committee requests that it be relieved of the obligation to pay the Bradley Hospital bills for the periods in which Respondent did not reside in Barrington.

Respondent contends that the evidence does not show that Respondent's residency ever changed from the town of Barrington. It further contends that Respondent's son remained the educational responsibility of Barrington because he was never enrolled in another school district as required by R.I.G.L. 16-64-2. Respondent also argues that he is being subjected to disparate treatment in the School Committee's handling of this matter.

Bradley Hospital asserts that Respondent's residency remained in Barrington because Respondent has not shown any intent to establish residency elsewhere and he has not enrolled his son in any other school district. Bradley also argues that the Commissioner's adjudication of residency must be prospective only in order to abide by the intent of R.I.G.L. 16-64-2 and to safeguard the due process rights of the parents. Bradley further contends that the School Committee's withdrawal of its December 1991 petition to determine residency constitutes a waiver of the

School Committee's right to obtain a ruling as to Respondent's residency for the period of September to December 1991.

The Portsmouth School Committee contends that the evidence shows that Respondent is not a resident of the town of Portsmouth and that Respondent has never registered his son in a school system other than Barrington.

Discussion

Residence of children for school purposes is governed by R.I.G.L. 16-64-1 et. seq. R.I.G.L. 16-64-1 provides, in pertinent part, that

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.

Under R.I.G.L. 16-64-2,

a child shall be eligible to receive education from the town in which the child's residence has been established until his or her residence has been established in another town and that town has enrolled the child within its school system, unless the commissioner of elementary and secondary education, pursuant to 16-64-6, has ordered otherwise.

R.I.G.L. 16-64-6 states that

When a school district . . . denies that it is responsible for educating a child on the grounds that the child is not a resident of the school district . . . the dispute shall, on the motion of any party to the dispute, be resolved by the commissioner . . . 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.

In residency disputes involving students with disabilities who have been placed in out-of-district schools, the Commissioner

has in the past determined the residency of the child and apportioned the financial responsibility for the child's education among the Rhode Island cities and towns of residence during the period in dispute. See, e.g., In the Matter of Priscilla H., (September 7, 1983) and In re: Residency of Abercrombie Family vs. Narragansett School Committee, (December 11, 1987).

Priscilla H. concerned a disabled child who was a ward of the state and was placed by the Department of Children and Their Families (DCF) in a foster home in Burrillville. The child's previous educational placement at an out-of-district private school in Providence was continued by Burrillville. In November 1982 the child required hospitalization. In December 1982 DCF terminated the foster placement in Burrillville because of the child's medical condition. On January 14, 1983 the child was admitted to a nursing home in Bristol.

Burrillville declined to continue to fund the child's out-of-district educational placement upon the termination of the Burrillville foster placement. Bristol, on the other hand, refused to enroll the child in its school system because it did not feel she was a resident of Bristol.

The dispute was brought to the Commissioner who, on February 11, 1983, issued an interim order directing Burrillville to continue to fund the child's out-of-district educational placement pending a full hearing and decision on the merits.

In his decision on the merits the Commissioner stated that

. . . Priscilla is entitled to a free public education. The only question to be answered is which Rhode Island governmental entity must pay for it. Since Rhode Island has some thirty-nine cities and towns which operate

school systems, several regional school districts, and a number of state agencies which have a measure of responsibility for education, the Legislature has wisely provided a mechanism for settling the inevitable responsibility disputes which can arise between these government bodies. (Decision, pp. 4-5).

The Commissioner thereupon set forth the provisions of R.I.G.L. 16-64-6. He also noted that his earlier interim order requiring Burrillville to continue to fund the educational placement was based on R.I.G.L. 16-64-2. The intent of that section was "to create something of a relay race where a runner must pass the baton to his successor rather than simply allow the baton to drop." (Decision, p. 6).

Addressing the issue of residency, the Commissioner found that

Priscilla is physically present in Bristol and is living in a nursing home located there. Her parent (DCF) has no present intention of moving her from Bristol and she obviously came to Bristol for a substantial purpose other than to go to school in Bristol. Since she meets all the tests of residency she is obviously a resident of Bristol. (Decision, p. 12).

The Commissioner concluded in Priscilla H. that the child was a resident of Bristol for school purposes since January 14, 1983. He directed Bristol to assume responsibility for the out-of-district placement and to reimburse Burrillville for its funding of this placement from January 14, 1983.

In the Abercrombie Family case, the family lived in Narragansett until it moved to a motel in West Warwick on June 10, 1987. The family lived in West Warwick until July 17, 1987, when it moved to a temporary shelter in Pawtucket. It remained in the Pawtucket shelter as of August 14, 1987, the date of the hearing requested by the Narragansett School Committee pursuant to R.I.G.L. 16-64-6. It was noted that the parents had no intention

of remaining in Pawtucket. One of the family's children continued to attend a 230-day special education program at Bradley Hospital during June, July, and August 1987.

Citing case law holding that residency is established when a person voluntarily takes up abode in a given place with no intention to remain permanently, or for an indefinite period of time; or without any present intention to remove therefrom, the Commissioner stated that

Just because someone intends to leave as soon as possible does not mean that he/she is "presently leaving." In this case the family is actively seeking a permanent home. However, communities are not relieved of their responsibility to provide education to children whose parents reside in that town for given periods of time. (Decision, pp. 4-5).

The Commissioner concluded that the Abercrombie family residence was in West Warwick from June 10 to July 17, 1987, and in Pawtucket from July 17, 1987 to whenever the family moves. West Warwick and Pawtucket were ordered to provide and pay for the education of the children for the respective periods of residence.

In the Priscilla H. and Abercrombie cases prompt use was made of R.I.G.L. 16-64-6 to resolve residency disputes involving children with out-of-district special education placements. The necessity of the timely use of the statutory mechanism has been emphasized in other cases in which school districts have attempted to charge parents tuition for portions of the school year they did not reside in the district. The Commissioner has held that, absent a prior request and ruling under R.I.G.L. 16-64-6 determining the child's residence, children who have not been enrolled in another school system remain entitled under

R.I.G.L. 16-64-2 to receive a free public education from the school district in which their residence was previously established. Sullivan vs. Newport School Committee, February 10, 1986; La Fontaine vs. North Kingstown School Committee, November 30, 1988; affirmed by Board of Regents, August 24, 1989. Under these cases, school districts may not seek to avoid the financial responsibility of educating children for lack of residency without first establishing such lack of residency pursuant to R.I.G.L. 16-64-6.

It is therefore clear that if a school district seeks to deny educational responsibility for a child on residency grounds, it must first invoke the procedure set forth in R.I.G.L. 16-64-6. It is also clear that the educational "relay race" envisioned by the statute best occurs when the school district promptly requests a residency determination under R.I.G.L. 16-64-6 at the outset of the dispute.² This is particularly true in cases where the child is being educated pursuant to an out-of-district placement.

As discussed in Priscilla H., a child's individualized education plan (IEP) "is entitled to a measure of "full faith and credit" and, in most cases this IEP should become the status quo placement [in the new district] under 20 U.S.C. 15(e)(3) if such is the desire of the parents or surrogate parents." (Decision, p. 23). Priscilla H. also recognized the possibility that a "receiving" school district may be able to implement the IEP of the "sending" district within the receiving district's system, thus eliminating

2 In our view, the manner in which R.I.G.L. 16-64 is designed to operate is not affected by the fact that, in this case, a locale outside the state of Rhode Island is involved.

the need for an out-of-district placement. Even if the receiving district is unable to implement the IEP within its system, fairness requires that the district receive notice of the dispute and a proceeding under R.I.G.L. 16-64-6 as soon as possible. Fairness also dictates that the child's parents and educational provider be given prompt notice that the educational responsibility for the child is in dispute and being submitted to the Commissioner for resolution.

As previously noted, R.I.G.L. 16-64-6 was invoked at the outset of the disputes in the Priscilla H. and Abercrombie cases. The interested parties, having received timely notice of the residency dispute, were able to assess the circumstances and proceed with an understanding of the issues and risks that applied. Given this scenario, the Commissioner was able to address the dispute in its entirety under R.I.G.L. 16-64-6 and determine the educational and financial responsibilities of the parties.

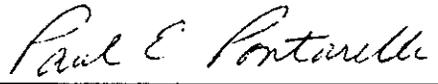
Applying the cases and considerations discussed above to the particular circumstances of this case, we find that a dispute under R.I.G.L. 16-64-6 regarding the residency of Respondent's son arose as of June 2, 1992, the date the School Committee filed the petition at issue. We are unable to find that a residency dispute arose any earlier in view of the School Committee's previous withdrawal of its December 19, 1991 petition and its subsequent failure to invoke R.I.G.L. 16-64-6 prior to June 2, 1992 despite its awareness in late March 1992 that Respondent and his son were leaving the school district. In reaching this finding, we rely on our understanding of the purpose and intended operation of

R.I.G.L. 16-64, and the resulting need for timely notice to the interested parties.

We further find that, from June 2, 1992 through the date of the hearing, Respondent's son was not a resident of the town of Barrington. The record shows that Respondent and his son were physically present in Seekonk, Massachusetts, not Barrington, during this time. The record does not establish that Respondent had any present intention of leaving Seekonk as of the date of the hearing nor do we find that the School Committee is estopped from questioning Respondent's residency because on one occasion in the past it allowed 2 children to remain in Barrington schools while their family searched for housing to relocate in the town. Accordingly, we find that the Barrington School Committee is not responsible for the education of Respondent's son from June 2, 1992 until such time as the child may reestablish residency in the town of Barrington.

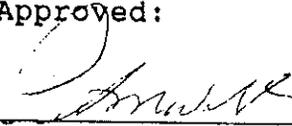
Conclusion

Respondent's son was not a resident of the town of Barrington as of June 2, 1992. The Barrington School Committee is therefore not responsible for the education of Respondent's son from that date until such time as he may reestablish residency in the town of Barrington.



Paul E. Pontarelli
Hearing Officer

Approved:



Peter McWalters
Commissioner of Education

November 23, 1992