



## Introduction

Kathleen M.                    has requested the Commissioner to determine the residency of her son P                    for school enrollment purposes.<sup>1</sup>

For the reasons set forth below, we find that Petitioner's son is a resident of Smithfield.

## Background

Petitioner's son P                    is 14 years old. Petitioner and P                    father were divorced in 1989. A property settlement agreement, dated July 21, 1988, provides that

the parties shall have joint custody of the two minor children [P                    and his sister] . . . The Wife shall have the care, custody and control as well as possession of the minor children and the Husband shall have all reasonable rights of visitation with said minor children in accordance with the following schedule . . . (School Committee Exhibit 1).

Petitioner maintained her residence in Johnston after the divorce. Her ex-husband became, and remains, a resident of Smithfield.

Over the years P                    has spent more time with his father than that which is provided in the visitation schedule. In the summer of 1993, P                    spent all the days, Tuesday evenings, and Friday and Saturday nights with his father. P                    's father works the night shift during the week, from 11:00 p.m. to 7:00 a.m.

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1 R.I.G.L. 16-64-6 authorizes the Commissioner to resolve disputes concerning the residency of students. This matter was assigned to the undersigned hearing officer and heard on September 30, 1993. In accordance with R.I.G.L. 16-64-6, the Johnston School Department, as a party in interest, was provided with notice of this proceeding and given the opportunity to present argument and evidence on its own behalf. The record in this proceeding closed on October 25, 1993.

Prior to the 1993-1994 school year, P attended public school in Johnston. During the summer of 1993 he was enrolled in the 9th grade at Smithfield High School. While attending Smithfield High School this school year, P has been staying at his mother's home in Johnston 5 nights a week (Sunday through Thursday). P spends some Monday afternoons and evenings, every Tuesday evening, and every other Thursday afternoon and evening with his father in Smithfield. On Fridays P goes to his father's home directly from school, and he stays with his father over the weekend until he returns to his mother's home at about 7:00 p.m. on Sunday.

P has meals and does homework at both his mother's and father's homes.

P testified that it is his wish to spend more time with his father. He and his father are active in a church located in Smithfield. P has developed many social contacts in Smithfield as a result of his church activities. Petitioner testified that P likes to spend time with his father and she believes "[i]t's for his benefit." (Transcript, p. 41). Petitioner and P's father are in agreement that it is best for P to stay at Petitioner's home on the nights his father is working because there is no one in his father's home to take care of him overnight.

P's sister attends public school in Johnston.

#### Contentions of the Parties

In claiming that P is a resident of Smithfield, Petitioner relies on evidence showing that, of the waking hours P spends with a parent, the vast majority are spent with his father in

Smithfield. Petitioner contends that it is appropriate for P to attend school in Smithfield given the ties he has to the town and the great deal of time he spends there.

The School Committee contends that physical custody, not "quality time," is dispositive of the residency issue. The School Committee argues that P is a resident of Johnston because Petitioner has physical custody of him, which is consistent with the provision in the property settlement agreement granting Petitioner the "care, custody and control as well as the possession" of the children. The School Committee also points out that P's sister attends public school in Johnston.

#### Discussion

R.I.G.L. 16-64-1, entitled "Residency of children for school purposes," states as follows:

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.

The concept of residency for school enrollment purposes was discussed at length in the case of In The Matter Of Priscilla H., Commissioner's decision, September 7, 1983. It was stated therein that "to establish residency for school purposes, all that has to be shown is actual abode in the town, and that the move to the town was not made for the purpose of going to school in the town." (emphasis in original), Ibid., p. 17. "Abode" was defined to be "where one is physically living." (emphasis in original), Ibid., p. 10.

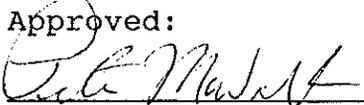
We find, in the particular circumstances before us, that P is "physically living" in Smithfield for a substantial reason other than to attend school there and he therefore is a resident of Smithfield for school enrollment purposes.

We base this finding on evidence which shows that, as P has gotten older, he has chosen to spend more time with his father, a resident of Smithfield. Petitioner has consented to this arrangement and she feels it is in P 's best interest. We do not see this development as being out of the ordinary for a child of P 's age who is in the joint custody of his divorced parents. At the present time, P spends a majority of his waking, non-school hours with his father. He stays overnight with his father in Smithfield on the nights the latter does not work. He stays with Petitioner on the other nights because there is a lack of supervision at his father's home. P regularly spends time with his father in Smithfield during the week, and he attends church services and takes part in church activities with his father in Smithfield.

Conclusion

In light of the particular circumstances of this case, especially with regard to the child's overnight arrangements, we hold that Petitioner's son P is a resident of Smithfield for school enrollment purposes.

  
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Paul E. Pontarelli  
Hearing Officer

Approved:  
  
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Peter McWalters  
Commissioner of Education

Date: December 23, 1993