

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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EAST PROVIDENCE SCHOOL COMMITTEE

vs.

WILLIAM AND GINA K.  
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INTERIM ORDER

Held: Student is a resident  
of Barrington for school  
enrollment purposes; no  
ruling on request for  
interim order is necessary.

June 7, 1993

## Background

A decision issued in this matter on May 4, 1993 finding that Respondent's daughter was not a resident of East Providence and should be attending school in Barrington. (copy attached).

On May 17, 1993, the Barrington School Committee filed a Petition to Intervene, Reopen the Record and for an Interim Order Restoring and Maintaining the Status Quo Ante.

An interim order hearing was held on May 28, 1993. The Barrington School Committee intervened as a party in interest and the record was reopened. The East Providence School Committee and Mrs. K also participated in the hearing.

The evidence presented at the hearing shows that Respondents' daughter is 8 years old. She has attended East Providence schools since pre-school. Respondents currently live in Barrington. They have lived at the same Barrington address since late 1990. Prior to moving to Barrington in late 1990, Respondents and their daughter lived in East Providence. They lived part of that time in East Providence with Mrs. K 's mother.

Mrs. K testified that ever since the family moved from her mother's home, her daughter "wanted to be with grandma, she always stayed with my mother." (Transcript, p. 15). Respondents have experienced marital problems over the years, but Mrs. K testified that "I've been in the house more frequently than I have in the past and I'm back at the house now." (Tr. p. 16).

Mrs. K further testified that her daughter has recently been staying at the grandmother's home in East Providence on Monday, Tuesday, Wednesday, and Thursday nights, and generally

staying with Respondents in Barrington on Friday, Saturday, and Sunday nights. On the nights when the child stays with her grandmother, the child will be picked up at the grandmother's home after school by one of her parents returning from work, driven to the home in Barrington, have dinner if she did not like the meal her grandmother prepared, do homework, play with the family pets, and take a bath. At about 9:00 p.m. the student will be driven back to the grandmother's home where she will sleep.

When asked the reasons why her daughter stays at the grandmother's house, Mrs. K mentioned the problems in her marriage and added that

she's happy there, and I think that's best for her. I mean, she's my child, that's where her friends are and that's where she wants to be, she wants to sleep over her grandma's house in her king-size bed. I don't have a problem with that. My daughter is old enough to know where she wants to be. (Tr. pp. 39-40).

Mrs. K further testified that she and her husband are able to provide their daughter with food, clothing, and shelter at their home in Barrington. Mrs. K noted that "I'm not an unfit mother, [my daughter] just likes to be with my mother." (Tr. p. 40). Mrs. K also stated that she signs her daughter's report cards.

#### Positions of the Parties

The Barrington School Committee contends that an interim order directing that the student remain in school in East Providence is warranted in this matter given that there is less than one month of school remaining and it is the clear intent of the school residency laws to minimize disruption in students' academic lives. The Barrington School Committee

further argues that the student's residency for school purposes is East Providence because the student lives primarily with her grandmother in East Providence and the record does not show that this arrangement is for the purpose of attending school in East Providence.

The East Providence School Committee contends that the evidence establishes that the student is a resident of Barrington. It argues that the burden of proving residence in a town other than that of the parents' residence has not been met in this matter. The East Providence School Committee is willing to permit the student to complete the school year in East Providence as a Barrington resident without charging tuition.

#### Discussion

R.I.G.L. 16-64-1, entitled "Residency of children for school purposes," provides 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 wherein 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. In cases where a child has no living parents, has been abandoned by his or her parents, or when parents are unable to care for their child on account of parental illness or family break-up, the child shall be deemed to be a resident of the town where the child lives with his or her legal guardian, natural guardian, or other person acting in loco parentis to the child. . . . In all other cases a child's residence shall be determined in accordance with the applicable rules of the common law.

In Laura Doe vs. Narragansett School Committee, April 17, 1984, the Commissioner found that the "deeming" provision of the second sentence of R.I.G.L. 16-64-1 creates a rebuttable presumption that

a child's residence is the residence of his or her parents. The issue thus presented is whether sufficient evidence exists to rebut the presumption that the student's residence for school purposes is Barrington, given that her parents reside there.

In light of the evidence previously set forth, it is clear that this is not a case where the parents have abandoned the child or are unable to care for the child because of parental illness or family break-up. To the contrary, Mrs. K testified that she and her husband are able to provide for and take care of their daughter.

Mrs. K 's testimony is also consistent with what we perceive to be a significant difference in the type of time the student spends with her parents and her grandmother. The student is in school or sleeping for most of the time that she is in the care of her grandmother, whereas she is with her parents every evening at the Barrington home, plays and does her homework with her parents, and generally spends the entire weekend with her parents. We find this distinction, together with the fact that Mrs. K signs her daughter's report cards, to be persuasive evidence of a Barrington residence for school purposes.

Moreover, it is well settled that residence for school enrollment purposes cannot be established by a child's living in a school district for the purpose of attending school in the district. Inquiry is often made in residency disputes as to whether a student is living in a district for a substantial purpose other than to go to school in the district. We find that Mrs. K 's testimony regarding the reasons for her daughter's

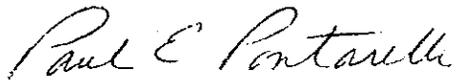
staying at the grandmother's home do not constitute a substantial purpose sufficient to establish an East Providence residency for school purposes

Accordingly, we find that the record fails to rebut the presumption that the student's residence for school enrollment purposes is Barrington.

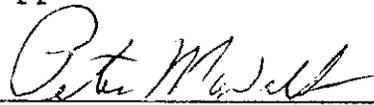
Conclusion

Respondents' daughter is a resident of Barrington for school enrollment purposes. In view of the willingness of the East Providence School Committee to permit the student to complete the school year in East Providence, we need not address the student's enrollment for the remainder of the 1992-1993 school year.<sup>1</sup>

Absent any change in Respondents' residence, the student's public school enrollment must be in Barrington for the 1993-1994 school year.<sup>2</sup>

  
Paul E. Pontarelli  
Hearing Officer

Approved:

  
Peter McWalters  
Commissioner of Education

Date: June 7, 1993

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- 1 We further find it unnecessary to rule on the Barrington School Committee's request for an interim order maintaining the status quo ante.
  - 2 If no further hearing or argument is requested, this interim order decision shall also constitute the Commissioner's decision in this matter.

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DECISION

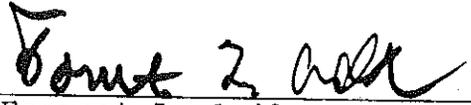
HELD: Student is not a  
resident of East  
Providence for  
school purposes.

The evidence in this case shows clearly that this student is not a resident of East Providence for school purposes. This conclusion is supported by the testimony of the East Providence Attendance Officer and by documentary evidence.

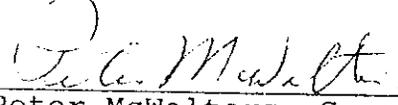
This matter was continued a number of times at the request of the respondent. She has not appeared to defend this matter.

CONCLUSION

This student is not a resident of East Providence for school purposes. We request East Providence to work cooperatively with Barrington to effect an orderly transition of responsibility for the education of this student.

  
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Forrest L. Avila  
Hearing Officer

Approved:

  
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Peter McWalters, Commissioner

May 4, 1993  
Date