

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

IN THE MATTER OF JOHN A.Q. DOE

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:
:

DECISION

Held: Request for reconsideration of
prior decision is denied; stu-
dent continues to be a resident
of Hialeah, Florida.

Date: September 13, 1994

Introduction

Student Doe and his parents request that we reconsider a previous decision in which we found that student Doe is a resident of Hialeah, Florida.¹ In the alternative, student Doe and his parents request a new residency determination pursuant to R.I.G.L. 16-64-1.²

For the reasons set forth below, we deny the request for reconsideration. We further find that student Doe's residence continues to be Hialeah, Florida, and his current educational placement is the Hialeah Middle School.

Background

In our prior decision, we found that student Doe became a resident of Hialeah, Florida for school enrollment purposes as of June 18, 1993. We directed his parents to immediately request the local school district to provide their son with a free appropriate public education, and to exercise their due process and other rights under federal law if the Florida school district failed to develop and implement appropriate educational services.³

In reaching our decision, we placed particular emphasis on the case of Lyons v. Town of Yarmouth.⁴ In that case the court ordered the new school district of residence in a different state to continue funding the student's special education residential placement pending

1 Providence School Board vs. The Parents of John A.Q. Doe (September 22, 1993).

2 This request was assigned to the undersigned hearing officer. A hearing was held on May 25, 1994, and the record closed on June 6, 1994.

3 Our decision was not appealed.

4 18 IDELR 671 (U.S. District Court, Me; 1992).

the completion of a due process hearing which had been requested by the student's parents.

The record in this matter shows that student Doe's parents continue to reside in Hialeah, Florida. Their son remains at the Tavares Pediatric Center in Providence. He continues to attend the Meeting Street School in Providence. The parents own a house in Providence and speak to their son on the telephone. Student Doe receives Medicaid assistance through the Rhode Island Department of Human Services.

The record also includes a letter from Mr. Ronald Felton, Executive Director of the Division of Exceptional Student Education for Dade County Public Schools. The letter states, in part, that

Subsequent to their move to Dade County, Dade County Public Schools was contacted by the parents of [student Doe] regarding the securement of an appropriate educational placement for him. In response to this request, student records were requested and reviewed. In addition, an administrator from the district visited [student Doe] in his current placement in Rhode Island. On October 19, 1993, a staffing conference was held to determine an appropriate placement. The staffing committee, which included [student Doe's] parents, determined that an appropriate educational program could be provided to [student Doe] in the Dade County Public Schools. An Individualized Education Program (IEP) was developed for implementation at Hialeah Middle School, with an initiation date of October 20, 1993. The IEP was signed by the parents, although they indicated that [student Doe] would not be brought to Dade County until they were able to arrange for a nursing facility for him. (School Board Exhibit 2).

Contentions of the Parties

In requesting reconsideration of our September 22, 1993 decision, Petitioners rely on two grounds: (1) the existence of new evidence, and (2) an error of law. With regard to (1), Petitioners point to the continued difficulty in locating a residential placement for

student Doe in Florida. As for (2), Petitioners contend that our decision is inconsistent with a Providence Superior Court decision issued on December 1, 1993 in the case of Barrington School Committee and Emma Pendleton Bradley Hospital v. Peter McWalters, Commissioner of Education.⁵ Relying on the Superior Court decision, Petitioners assert that student Doe continues to be a resident of Providence for school purposes because he has not established residence in any other city or town nor has he been enrolled in any other city or town's school system.

The School Board contends that we are lacking jurisdiction to reconsider a decision from which no appeal was taken. It further argues that there is no new evidence requiring a reconsideration of this matter. To the contrary, subsequent events show that Petitioners have failed to contest the educational placement that has been offered to them by the Dade County school system. The School Board claims that the Superior Court decision relied upon by Petitioners is distinguishable from this case, and that student Doe's residency continues to be Hialeah, Florida.

5 It is stated on page 8 of the Court's decision that

Student's residence, once having been established in Barrington, remains there for schooling requirement purposes "until his or her residence has been established in another town and that town has enrolled the child within the school system . . ." Sec. 16-64-2 R.I.G.L. By virtue of Sec. 16-64-2, until the Commissioner determines that Student is a resident in Town X and is enrolled in town X's school system, Student is technically and by statute a resident of Barrington and still enrolled as a student in that town's school system. (emphasis in original).

Discussion

As we stated in our prior decision, the pertinent portion of R.I.G.L. 16-64-1 provides 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.

It is well established that the statute creates a rebuttable presumption that a child's residence is the residence of his or her⁶ parents.

Turning to R.I.G.L. 16-64-2, the first sentence states that

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 Sec. 16-64-6, has ordered otherwise.

R.I.G.L. 16-64-6, entitled "Disputes over residency -- Determination proceedings," 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 of elementary and secondary education or the commissioner's designee who shall hold a hearing and determine the issue.

The previous residency dispute concerning student Doe was brought to the Commissioner by the School Board pursuant to R.I.G.L. 16-64-6. Student Doe's parents disagreed with the School Board's claim of Florida residency. They maintained that the child remained the educational responsibility of Providence. As a

⁶ Laura Doe vs. Narragansett School Committee (Commissioner's decision, April 17, 1984).

consequence, the parents refused to enroll student Doe in another school system and, in accordance with R.I.G.L. 16-64-2, student Doe continued to receive an education from the city of Providence, the place in which his residence had previously been established. In the proceeding pursuant to R.I.G.L. 16-64-1, we determined that student Doe was a resident of Hialeah, Florida, not Providence, and we ordered his parents to immediately request the Florida school district to provide the free appropriate public education to which he is entitled.

We do not find any new evidence or error of law which would warrant reconsideration of our prior decision.⁷ The record in this matter shows that, just as before, Petitioners have been unable to find a residential placement for student Doe in Florida. As discussed below, the evidence with regard to events which occurred subsequent to our decision also establishes a Hialeah, Florida residence for student Doe.

Nor do we consider ourselves bound by a Superior Court decision in a different case, particularly where we respectfully disagree with the decision's interpretation of the statute.

Like the Barrington School Committee case decided by the Superior Court, this proceeding concerns a dispute between a school district and parents regarding the residence of a child for school enrollment purposes. In a dispute of this nature, the school district claims that it is not responsible for educating the child because the child does not reside in the school district. The parents deny that the student resides in another town and therefore refuse to enroll their

7 In so finding, we do not address the timeliness of the request for reconsideration.

child in another town's school system. Pursuant to R.I.G.L. 16-64-6, the mechanism for determining this "dispute over residency" is a hearing before the Commissioner or his designee.

Reading the entire first sentence of R.I.G.L. 16-64-2 in the context of a residency dispute, we find it to state that a child remains entitled to an education from the previously-established town of residence pending the Commissioner's determination of the dispute pursuant to R.I.G.L. 16-64-6. Because a residency dispute exists, residence in another town cannot be established and the child will not be enrolled in another town's school system. Yet a city or town is required to educate only its resident children. Therefore, a child's right to remain in the school system of the previously-established town of residence must yield to a contrary order of the Commissioner in a proceeding under R.I.G.L. 16-64-6.

The practical effect of ensuring that a child receives an education from the town where residency was previously established pending the Commissioner's determination of a dispute is to prohibit the student's unilateral disenrollment by a school system which believes the child is no longer residing in the district. The statute requires, in order to ensure continuity of education, that the child remain in school while the residency dispute is heard and resolved. The statute does not contemplate, however, that a parent can refuse to enroll a child in the school system of another town and by virtue of that fact keep the child in the school system of a town which the Commissioner has found is no longer the child's residence.

Even if we agreed with the Court's interpretation of the statute

in the Barrington decision, we would not find it to be controlling here in light of the facts recited in Dr. Felton's November 30, 1993 letter. According to the letter, student Doe's parents participated in the development of, and signed, an IEP for him in Florida which provides for an educational placement at the Hialeah Middle School. This, in our view, constitutes an enrollment of student Doe in the Dade County school system. It also constitutes his parents' acceptance of an educational placement in the very place in which we previously found student Doe to be resident for school enrollment purposes -- Hialeah, Florida.

For these reasons, we deny Petitioners' request for reconsideration. We further find, based on the record herein, that student Doe's residence for school purposes continues to be Hialeah, Florida.

Conclusion

There is no new evidence or error of law warranting reconsideration of our prior decision in this matter. Student Doe's residence for school enrollment purposes continues to be Hialeah, Florida.



Paul E. Pontarelli
Hearing Officer

Approved:



Peter McWalters
Commissioner of Education

Date: September 13, 1994