

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

AND

PROVIDENCE PLANTATIONS

JANE A.T. DOE

V.

FOSTER/GLOCESTER REGIONAL
SCHOOL COMMITTEE

DECISION

Held: Student Doe is a resident of Foster for school purposes. She resides in Foster with her grandparents, and not with her mother in North Scituate, for a substantial reason other than for purposes of attending Foster-Glocester schools.

DATE: FEBRUARY 3, 1997

Travel of the Case

On November 3, 1996 Commissioner Peter McWalters received a request to determine the residency for school purposes of Student Doe, who presently attends Ponaganset High School. The Foster-Glocester School Committee denied a request by Student Doe's mother that her daughter be permitted to attend Ponaganset as a tuition student on November 12, 1996.

Before the Commissioner's designee at the November 14, 1996 and December 20, 1996 hearings Student Doe's attorney took the position that although Student Doe was still willing to pay tuition to secure her attendance, even without the Committee's approval of such arrangement she was legally eligible to attend Ponaganset High School. Counsel argued that under our school residency law, she is a resident of the town of Foster. The regional school committee has not been presented the issue of whether Student Doe is entitled to attend based on her actual residency within the town.¹

The record in this matter closed upon the hearing officer's receipt of the transcript on January 13, 1997. The parties have requested that decision in this matter be expedited so that a determination of residency can be made prior to the start of the second semester, i.e. January 27, 1997.

¹Under R.I.G.L. 16-64-6 "Disputes over Residency" such matters may be brought directly to the Commissioner without prior hearing before the school committee.

Issue

Where does Student Doe reside for purposes of school attendance?

Findings of Relevant Facts

- Student Doe is presently fifteen (15) years of age and resides with her paternal grandparents in the town of Foster, Rhode Island. Tr. Vol. I pp. 12, 93 and 96.
- Student Doe previously resided with her mother in North Scituate, but in January of 1996 her mother decided that because of problems in the home, Student Doe would be better off living with her paternal grandparents, with whom she has had a good relationship. Student Doe willingly took up residence with her grandparents in January, 1996, enrolled in Ponaganset Middle School, and this year attends Ponaganset High School. Tr. Vol. I pp. 16-17, 25, 99. S.C. Ex. C and D. She continues to have a good relationship with her grandparents. Tr. Vol. I p. 25; Vol. II pp. 16-17.
- Mother and daughter are presently in counseling to address long-standing issues² between them and Student Doe routinely visits with her mother on weekends. Tr. Vol. I pp. 78-79, 100; Student Doe testified that although her relationship with her mother is better and weekend visits have been working out, she wants to continue living with her grandparents at the present time. Tr. Vol. II pp. 18-19.

Positions of the Parties

Student Doe

Mrs. Doe maintains that the only reason for her daughter's attendance in Foster-Glocester schools is the fact that Student Doe's grandparents happen to reside in Foster. Tr. Vol. I p. 176. She had experienced no dissatisfaction with Scituate schools. The change in her

²Student Doe's father was killed in a car accident when she was eight (8) years old and one issue identified in ongoing counseling over the years is her inability to adjust to a single parent family. Tr. Vol. I pp. 103-104.

daughter's residence to Foster was motivated by a need to address her serious concerns for her daughter's health and welfare which were jeopardized by the ongoing conflict in the home between mother and daughter. Residence with the grandparents is unrelated to any desire to attend Foster-Glocester Schools. She acknowledges that she did not go into great detail with the Superintendent about the personal reasons for her daughter's residence in Foster with her grandparents. She also stated that she stands ready to pay tuition and argues that this arrangement was in fact approved by members of the school committee at its October 1, 1996 meeting.

The School Committee

Counsel argues that there has never been any approval to Student Doe's attendance at Ponaganset High School on a tuition basis. Furthermore, neither the Superintendent nor any one else has misinformed Student Doe's mother or made any promises whatsoever that she could attend on a tuition basis. Such attendance is an exercise of the school committee's discretion. In this case, because of over-enrollment in the high school, and the ninth grade in particular, the school committee has exercised its discretion to deny the request.

With regard to the issue of whether Student Doe has established residency for school purposes in Foster, counsel notes that her mother did not fully disclose her ongoing residence outside of Foster at the time of Student Doe's

enrollment in the district's schools. There was, however, no attempt to conceal the fact of the mother's non-residence earlier in this school year when the issue was raised with her by the Superintendent.

Although the school committee does not dispute the existence of a troubled relationship between mother and daughter, counsel argues that this is not an unusual situation. He notes that there is no documentation from a health professional or doctor that establishes the necessity of mother and daughter living apart. The validity of the reason for Student Doe's residence with her grandparents is also circumspect, he argues, because at the time of enrollment Mrs. Doe did not fully disclose the fact of her non-residency. Even during her conversations with Superintendent Reilly, Mrs. Doe did not present the details on why her daughter was not living with her, casting doubt as to these being the true reasons for Student Doe's residency with her grandparents. He argues that this child has changed her residence for the purpose of attending Foster-Glocester schools. Under such circumstances, he argues that residency for school purposes has not been established in Foster.

Decision

Determinations of residency are made by applying the facts of any given case to the relevant provisions of our controlling state law, R.I.G.L. 16-64-1 et seq. The statute does enable a child to establish residency separate and

apart from his or her parent. By virtue of specific language contained in 16-64-1, a child is deemed to be a resident of the town where the child lives with a legal guardian, natural guardian, or other person acting in loco parentis when the parents have died, have abandoned the child, or are unable to care for the child on account of parental illness or family breakup. The case before us does not fit within any of the three conditions specifically described in the statute.³ However, our inquiry must extend further because the statute goes on to provide that:

In all other cases a child's residence shall be determined in accordance with the applicable rules of the common law. R.I.G.L. 16-64-1.

Common law rules do permit a child to establish school residence separate from the residence of his or her parents even when one of three stated conditions of 16-64-1 are not met. See the discussion of the common law of school residency contain at pages 3-4 of Laura Doe v. Narragansett School Committee, supra. In essence, the residence of the child apart from his or her parent must be for a substantial reason other than to attend the district's schools.

We are satisfied that the record in this case clearly establishes a substantial reason for Student Doe's move to Foster to live with her grandparents and that this reason had nothing whatsoever to do with enrollment in the

³We have interpreted the "family breakup" referred to in the statute to be the relationship between parents and not the parent-child relationship see footnote 1 page 3 of Laura Doe v. Narragansett School Committee decision of the Commissioner dated April 17, 1984.

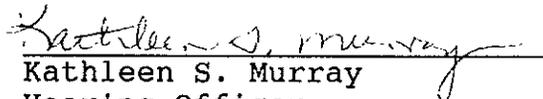
Foster/Glocester school system. Without going into unnecessary detail about the nature of the problems between mother and daughter, the record establishes that the difficulties in their relationship went beyond normal adolescent/parental conflict. Ongoing consultation with health professionals had not proven effective and a mental health professional, whose assessment is contained in the record, termed their relationship problems "chronic and pervasive." (See School Committee Ex. F). This assessment was made just three months prior to the mother's decision to send her daughter to live with the paternal grandparents, a decision which was her personal solution to the extreme difficulties persisting between them. Again without going into unnecessary personal details, the mother's decision was in response to an immediate need to provide for her daughter's safety and welfare. The seriousness of her concerns is well-documented in the record of this case.

We do not agree with counsel for the School Committee that validating Student Doe's school residence in Foster will enable parents to change school residence for reasons which are insubstantial or fabricated.⁴ Our statute creates a rebuttable presumption that a child's residence for school purposes is with the parent. A heavy burden of proof must be met by those seeking to establish a different school residence. In each case, close scrutiny of both the reason

⁴Or, implicitly, encourage parents of children in the throes of adolescence to send their children from the home to live with relatives, a situation creating chaos for school districts.

and proof submitted to establish it is made by the hearing officer.⁵ In this case the burden of proof has clearly been met.

Student Doe is a resident of Foster for school purposes.


Kathleen S. Murray
Hearing Officer

Approved:


Peter McWalters
Commissioner

Date: FEBRUARY 3, 1997

⁵An example of the level and sufficiency of proof required can be found in the recent decision of Jane A.O. Doe v. Exeter-West Greenwich Regional School Committee, decision of the Commissioner dated August 9, 1996.