

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

IN RE: RESIDENCY OF JANE A.X. DOE *

DECISION AND INTERIM ORDER

Held: Student is not a resident of Johnston for school purposes, because her move there to live with her aunt was not proven to be for some substantial reason other than for the purpose of attending school.

DATE: APRIL 25, 1997

Travel of the Case

On March 3, 1997 Student Doe's aunt filed a request for a determination of school residency with Commissioner Peter McWalters. Her request that Student Doe be admitted to Johnston High School had been denied by school officials. The matter was assigned to a designated hearing officer on March 19, 1997 and the matter was heard on March 24, 1997. Both the Johnston School Department and West Warwick School Department were notified of the hearing. The principal of Johnston High School appeared on behalf of the school department, and the West Warwick school department was not represented at the hearing. The record in the case closed on March 31, 1997 upon receipt of the transcript. Decision has been expedited because Student Doe is currently not enrolled in or attending school.

Issue

Is Student Doe a resident of the town of Johnston for school purposes?

Findings of Relevant Facts

- Student Doe presently resides in Johnston with her aunt. She is fifteen (15) years old and is presently not attending high school.¹ Tr. pp. 1-6.
- Student Doe went to live with her aunt on February 24, 1997 after a court appearance on truancy charges which had been filed by the West Warwick School Committee. Tr. p. 5.
- She had been absent from West Warwick High School, where she was a freshman approximately seventy (70) days during the 1996-97 school year. Tr. p. 37.
- Student Doe began the school year as a happy and well-adjusted child. Tr. pp.8,10-11; she then began to receive threats of physical harm from two girls who attended school with her.

¹ She is enrolled in karate classes several times a week.

- Concurrent with the receipt of those threats, she became fearful of going to school, had nightmares and complained of various illnesses.² Tr. pp. 10-11.
- On January 21, 1997 Student Doe was attacked by the same girls who had threatened her. The assault took place in the evening in Student Doe's neighborhood. Tr. p. 9. She was brought to the hospital, but was released with only minor injuries. Tr. p. 9.
- After the assault, Student Doe would leave her home only on limited occasions, and she refused to attend West Warwick High School. Tr. pp. 14-15.
- Student Doe's mother requested that home tutoring be provided to her daughter, because of her inability to get her daughter out of the house, even to school. She was told by school officials that since the child did not have a physical handicap, she was not eligible for home tutoring. Tr. p. 39.
- Truancy charges were filed by the West Warwick school department and at the hearing on the truancy complaint, a counselor advised Student Doe's mother that her daughter would be "better off" going to school in Johnston because she was concerned that Student Doe was suffering from agoraphobia. Tr. pp. 16-17.
- Student Doe's mother, accompanied by her sister, went to "sign her out" of West Warwick High School. The guidance counselor they spoke to advised that since Student Doe would soon be sixteen, it was in her best interest to quit school altogether and get her GED. Tr. p. 21.
- Since her move to Johnston to live with her aunt Student Doe has been going out regularly. She now goes to church, to the store, to karate classes and occasionally goes out with friends. Tr. pp. 40-43.
- The family's present plan is for Student Doe to live with her aunt indefinitely until her mother finds suitable housing outside of West Warwick. Tr. pp. 2, 26.

Position of the Parties

Student Doe

Implicit in the testimony of Student Doe's mother, aunt, and neighbor, who all testified at the hearing, is the argument that Student Doe's best interests are served by her continuing to reside with her aunt. The improvement in her physical and mental health while living with her aunt have enabled her to go outside on a regular basis- something she

² The cause of which could not be determined by her doctor.

did not do for several months while living with her mother in West Warwick. Her ability to attend Johnston High School is clearly at issue in her continuing to reside in Johnston with her aunt. Student Doe does not want to drop out of high school,³ but she stated she will not go back to West Warwick High School because of her fear that her physical safety would be jeopardized.

School Committee

While sympathetic to Student Doe's plight, the Johnston School Department, represented by the high school principal, argues that Student Doe is not a resident of Johnston for school purposes. Citing the decision of the Commissioner in In The Matter of Jane A.K. Doe (March 6, 1996), the principal argues that the West Warwick School Department was and continues to be obligated to provide this student with a safe school environment. Under Rhode Island law, Section 16-2-17, the West Warwick School Department, along with local police, were required to take steps to provide for Student Doe's safety in school, and going to and from school. She argues that the failure to take those steps, or respond appropriately to the situation which then developed, i.e. Student Doe's unwillingness or inability to leave her home⁴ resulted in Student Doe's loss of a significant portion of this school year. The solution chosen by the family, for lack of any other alternative, was to send her to live with her aunt in Johnston. However, since the primary purpose of her move to Johnston was so that she could attend high school there, she is not a resident of Johnston for school purposes.

³ Her long-term ambition is to become a police officer.

⁴ Johnston argues that a crisis intervention plan should have been developed. This plan should have included counseling services as needed for this child to return to school. Tr. p. 19, 38.

Although school officials stand ready to welcome Student Doe should the Commissioner determine that she is nonetheless a Johnston resident, they take the position that she resides in the district primarily for school attendance purposes.

Decision

R.I.G.L. 16-64-1 provides the context into which we place the facts in a school residency dispute. In situations not specifically covered by the language of R.I.G.L. 16-64-1,⁵ the statute provides that school residency will be determined in accordance with the applicable rules of common law. Under the common law, a child living apart from his or her parents can establish residency for school purposes by (1) actually residing in the town and (2) demonstrating that the move to the town was not made for the purpose of going to school there.⁶ Many times the focus of our inquiry in school residency matters is to determine if there is a substantial reason, other than school attendance, which prompted the child's residence within the district. See Jane A.O. Doe v. Exeter-West Greenwich, decision of the Commissioner dated August 9, 1996. In the case before us, several of our findings of fact document that this student's move to her aunt's house addressed problems that arose in September, 1996 and escalated over the course of the school year. Among the problems were concern for her physical safety, her deteriorating mental health and her declining school attendance. We do not have the ability on this record to determine the precise interrelationship of the problems which precipitated her move to Johnston. While it would appear that a mental health concern became the primary motivating factor rather

⁵ entitled "Residence of Children for School Purposes".

⁶ In the Matter of Priscilla H., decision of the Commissioner dated September 7, 1983 at page 17.

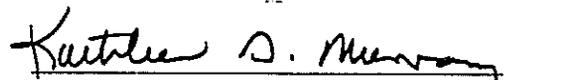
than school attendance, we do not have appropriate documentation of this student's psychological state at the time her mother sent her to live with her aunt in Johnston. Without documentation by a mental health professional, we are unable to find that this reason was substantial and superceded the school-related reasons.⁷ A hostile and threatening school environment, the nonresponsiveness of school officials to her situation, and declining school attendance clearly motivated her move to Johnston. Thus, on this record, we are unable to conclude that Student Doe's primary reason in moving to Johnston was a substantial one other than for purposes of attending school.

Student Doe is a resident of West Warwick for school purposes. As we did in the case of Jane A.K. Doe, decision of the Commissioner dated March 6, 1996, we order the West Warwick School Department to make available immediately home tutoring services upon her return to West Warwick. The school department shall evaluate this child to determine if she has a psychological disability which would interfere with her ability to attend school in West Warwick. If she is found to have such a disability, her educational program shall be developed under applicable state and federal law. If she suffers from no disability which would impede her ability to attend West Warwick High School, she may return there upon the development of a plan which ensures her safety.⁸ We would suggest that school officials participate with local police and Student Doe's mother in the development of an appropriate plan for ensuring her safety. We also request that the Superintendent investigate the circumstances under which this student was signed out of

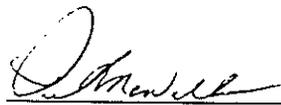
⁷ If such documentation were submitted, the reason for this student's move would be tied more closely to medical treatment than to school attendance and Johnston school officials would be presented with a different case

⁸ Consistent with Jane A.K. Doe, supra we hereby issue an interim order in conjunction with this decision..

West Warwick High School to determine if compensatory educational services are in order.


Kathleen S. Murray, Hearing Officer

Approved:


Peter McWalters, Commissioner

DATE: APRIL 25, 1997