

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

IN RE: RESIDENCY OF JOHN C.A.DOE *

DECISION

Held: Student Doe is a resident of Warwick for school purposes. He lives in Warwick with his aunt, who is acting in loco parentis while his mother receives in-patient treatment at a drug rehabilitation center in Providence, R.I.

DATE: MAY 19, 1997

Travel of the Case

On February 3, 1997 counsel for the Warwick School Department requested that a residency determination be made for this student. On February 12, 1997 the matter was assigned for hearing to a hearing officer and on February 25, 1997 the matter was heard. Student Doe's aunt appeared pro se and the school committee was represented by counsel. The record closed upon receipt of the transcript on April 11, 1997.

Issue

Is Student Doe a resident of Warwick for school purposes?

Findings of Relevant Facts

- Student Doe is thirteen (13) years old and moved with his mother from Providence to Warwick in the fall of this school year. Tr. pp. 8-10.
- Student Doe understood the reason for the family's move to Warwick to be to live in a better area (Tr. p. 11), however, his aunt testified that the reason they moved to Warwick to live in her house was because they both needed a place to stay. (Tr. p. 13).
- When Student Doe and his mother moved to Warwick, they brought all of their belongings with them, except furniture which was stored in her brother's basement. Tr. p. 40.
- On October 22, 1996 Student Doe's mother enrolled him in the Warwick school system. Warwick Ex. 1.
- On the day after Thanksgiving, Student Doe's mother left her sister's home in Warwick, without indicating where she was going or when she would return. Tr. pp. 15-16 and 34.
- Student Doe continued to live at his aunt's house in Warwick; she applied to the Department of Human Services so that she could obtain welfare benefits and medical coverage for Student Doe. Tr. p. 17-21. Written authorization of her authority to receive these benefits was provided by the Department of Human Services on January 10, 1997. (Warwick Ex. 1, letter from Raymond M. Burton).

- When school officials became aware that Student Doe was living with his aunt and not his mother they immediately disenrolled¹ Student Doe for nonresidence. (Warwick Ex. 1. Incident Report dated December 10, 1996).
- School officials also contacted DCYF to report Student Doe's residency situation (Warwick Ex. 1, Incident Report dated 12/10/96); they were told the situation was a "school matter".
- Student Doe's aunt also called DCYF regarding his situation, and was told that since she was his blood relative and was taking care of him, he was not abused, neglected or abandoned and the matter was, therefore, not within their jurisdiction. Tr. pp. 17, 20.
- On January 13, 1997 the assistant principal of Gorton Junior High wrote to Student Doe's aunt requesting that she provide "written confirmation of her guardian status or a power of attorney". Warwick Ex. 1; Tr. p. 28.
- Student Doe's aunt then attempted to find her sister so that she could sign a statement confirming her custody of him and authorizing medical treatment with his aunt's permission. Petitioner Ex. A. Tr. pp. 28-32. Student Doe's mother was finally located at a friend's house and signed the statement confirming his custody with his aunt and giving consent for her to obtain medical treatment for him. Tr. pp. 28-32.
- When provided with this document, the school principal indicated it was not acceptable because it was not notarized. Tr. pp. 28-29.
- When Student Doe's aunt attempted to reach her sister to obtain a notarized statement, she learned that her sister, who has a drug problem, had admitted herself into a residential drug treatment program. She was advised that her sister was not able to accept visits from anyone for some time. Tr. pp. 32-33.
- At the time of hearing, Student Doe's aunt indicated that she was now in a position to obtain a notarized power of attorney for Student Doe's care and to act as his guardian, but she does not think this is necessary for the period of time that she will be caring for her sister's child. Tr. p. 40.
- Student Doe's aunt testified that to the best of her knowledge, Student Doe's mother will be living at the drug rehabilitation center in Providence until at least May of 1997. Tr. pp. 43-44. Additionally, she testified he has never resided with his father. Tr. pp. 42-43.

¹ School officials subsequently permitted Student Doe to remain in school pending hearing by the Commissioner; such unilateral disenrollment has been discouraged as inconsistent with state law and due process.

Position of the Parties

Student Doe

Student Doe's aunt testified that the reason for her sister's move to Warwick was to give her a place to live, provide her with moral support and an opportunity to "get her life together". (Tr. pp. 41-42). Upon her sister's unanticipated disappearance and subsequent admission to a drug treatment facility, she has accepted responsibility for caring for her nephew. She has not sought to be appointed his legal guardian because it is her position that this is not necessary for school attendance purposes. Also this is not necessary from a practical standpoint because she sees this situation as temporary. As soon as her sister has recovered sufficiently to care for her child, she will give up the responsibility for him which she assumed in December of last year.

Student Doe's aunt argues that the facts here clearly establish his residency for school purposes in Warwick. Further, she takes the position that the ongoing requests by school authorities for legal authorization from her sister for custody, care and treatment of her nephew are unnecessary. Because he is living with her, albeit temporarily, and his residence with her, and apart from his mother, is not for the purpose of attending Warwick schools he is a resident of Warwick for school purposes.

Warwick School Committee

Initially, the school department argues that Student Doe is living with his aunt in Warwick primarily for the purpose of attending school there. Counsel questions the motive behind his move from Providence to Warwick, and points to the fact that very few personal belonging, other than clothing were brought to the aunt's home. She also notes

Student Doe's testimony that he and his mother moved to Warwick from Providence to live in a better area.

A second argument advanced by the school department is that in the absence of notarized written confirmation from Student Doe's mother regarding his present living arrangements, school officials are unable to determine whether Student Doe's aunt is acting in loco parentis with his mother's consent. A notarized written statement from the mother confirming the aunt's authority to act and take over all matters pertaining to Student Doe's care is a prerequisite to his school attendance in Warwick.

Without this authorization school officials are unable to obtain consent regarding any "educational, medical, or other emergency issues which may arise". Tr. p. 84. Specifically Student Doe is a child with a disability and entitled to special education services. The school department argues that the present situation presents an issue of legal liability should Student Doe need consent for his educational services or medical emergencies. Tr. p. 87.

To summarize, the absence of notarized written confirmation from the mother of the aunt's authority to act on his behalf leaves school officials in doubt both as to the legitimacy of his residency and their ability to obtain the necessary consent for the provision of special education services to Student Doe.

Decision

The threshold issue in this case is whether the circumstances under which Student Doe is presently living in Warwick establish his residency there for school purposes. Although we are aware that Student Doe's aunt was not entirely truthful at the time she

was first contacted by school officials with regard to the family situation², her testimony at the hearing was entirely credible and stands uncontradicted. Based on this testimony we have found that this student and his mother were taken in by Student Doe's aunt in the fall of 1996. While the motivation to move at that time may have been based on the desire to live in a better area, this is not an unusual motivation for a family's relocation to a different city or town. It certainly does not prevent the student's acquiring residency for school purposes in Warwick, even if the living situation was temporary, or until such time as his mother could "get her life together" with her sister's support. Thus the family's initial move from Providence to Warwick established Student Doe as a resident of Warwick for school purposes. R.I.G.L. 16-64-1 clearly states that if a child's parents reside in different towns³ the child shall be deemed to be a resident of the town in which the parent having actual custody of the child resides.

The fact that his mother left this home approximately six (6) weeks after moving there, while Student Doe continued to live there with his aunt, did not have the effect of changing his school residency. There is some evidence in the record that his mother's substance abuse, and her subsequent decision to obtain treatment at a residential facility, have caused her absence from the home. Assuming this is the case, the facts would fall squarely into Section 16-64-1's provision that:

when parents are unable to care for their child on account of parental illness... 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. (emphasis added).

² Student Doe's aunt, expecting that her sister's return to the home was imminent, told school officials her sister was unavailable because she was on vacation in Florida. Tr. pp. 62-63.

³ Student Doe has not lived with his father since birth and his mother is for all practical purposes a single parent.

Student Doe's aunt has clearly undertaken the responsibility to provide shelter and meet her nephew's daily living needs, as well as supervise his education. She applied for and received authority from the Department for Human Services to receive AFDC benefits for him (Warwick Ex. 1). We find that since her sister left her home she has acted in loco parentis to Student Doe. Our residency law does not require that the aunt obtain legal guardianship from the Probate Court. The aunt testified that this is a step which is not practical or necessary as her sister's period of recovery should be completed within a period of months.

Even assuming, arguendo, that the testimony in the record is found to be insufficient to establish parental illness and resulting inability of the parent to care for this child,⁴ our school residency law would establish Student Doe as a resident of Warwick by reason of abandonment. His aunt has voluntarily undertaken responsibility for him because his mother left and is not there to care for him. The aunt clearly testified as to her hope that her sister's recovery will make this a temporary situation. While these facts may not establish that Student Doe is "abandoned" as that word is used in R.I.G.L. 40-11-2 or other child welfare laws,⁵ we find that Student Doe has been abandoned as that word is used in R.I.G.L. 16-64-1. Even though the situation may be temporary, we find that Student Doe has been abandoned and is living with his aunt, who is presently acting in loco parentis. Thus, under the provision of Section 16-64-1 relating to parental abandonment, he is a resident of Warwick for school purposes.

⁴ We have taken the position that such a fact must be well documented and carefully scrutinized see Jane A.O. Doe v. Exeter-West Greenwich Regional School Committee decision of the Commissioner dated August 9, 1996.

⁵ The assumption of responsibility for him by his blood relative apparently prevents him from being "abandoned" as that word is used in R.I.G.L. 40-11-2.

Finally, Student Doe establishes residency in Warwick under the common law test of school residency. Under the facts here, there is not even an inference created that his residence separate and apart from his mother is for the purpose of attending school in Warwick. We find that the reason he is living there is so that a blood relative can care for him during his mother's absence from the home.

While we do not wish to minimize school officials' concern that Student Doe's current living situation should have his mother's consent, written confirmation of this fact cannot be made a prerequisite to his school attendance. Having reported the situation of his mother's leaving the home to the Department for Children, Youth and their Families school officials have given notice to the state agency responsible for determining if he is in jeopardy. The record contains evidence that DCYF has given at least tacit approval to Student Doe's living situation.

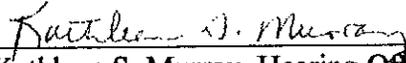
The school department asserts that the primary reason it has requested a notarized written document from Student Doe's mother is to authorize her sister's consent for his educational services and medical emergencies. Otherwise, it is asserted, his individualized education program is in a "dubious situation" (Tr. p. 88). With regard to the issue of medical treatment, the aunt's authority could become an issue to a provider of medical services; however, it is not an education issue. The absence of documentation from his mother to authorize the aunt give consent to medical treatment is not a valid reason to refuse to provide educational services.

As for the consent necessary for special education services and the requisite participation by a parent in the development of the IEP, the Regulations of the Board of Regents state:

Whenever the term "parent" is used in these regulations, it shall mean a parent, a guardian, a person acting as a parent of a student, or an educational advocate ... The term "parent" is defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom the child lives, as well as persons who are legally responsible for a student's welfare. Section One, II 10.0 of the regulations.

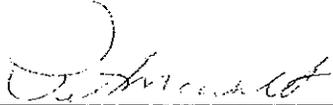
Thus, there is no impediment to Student Doe's receipt of special education services that can be premised on the aunt's failure to produce written authorization from his mother, as long as school officials have ascertained that she acts in loco parentis. As we have stated previously with regard to the issue of school residency, Student Doe's aunt is clearly acting in loco parentis under the circumstances presented in the record. She presently meets the definition of parent as set forth in regulations of the Board of Regents.

For the foregoing reasons, Student Doe is a resident of Warwick for school purposes. School officials and his aunt should cooperate to ensure that he is provided with a free appropriate public education pursuant to state and federal law.



Kathleen S. Murray, Hearing Officer

Approved:



Peter McWalters, Commissioner

DATE: MAY 19, 1997