

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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

DECISION

Held: Student Doe is a resident of Providence for school purposes, since his mother currently resides there, having recently moved from the Dominican Republic.

June 9, 1997

Travel of the Case

This matter was appealed to Commissioner Peter McWalters on October 4, 1996, for a determination of school residency. It was assigned to a hearing officer and scheduled for hearing by agreement of the parties on November 21, 1996. Because of a number of circumstances it was not heard until December 18, 1996. The record closed upon receipt of the transcript on January 16, 1997.

Issue:

Is Student Doe a resident of Narragansett for school residency purposes?

Findings of Relevant Facts

- Student Doe is thirteen years of age and in the seventh grade in the Narragansett Pier School. Tr. pp. 8, 18.
- He was born in this country and is a United States citizen. Tr. p. 12-13.
- When he was six or seven years old he and the other members of his family went to the Dominican Republic to take up residence. Tr. pp. 13-14.
- In September of 1996, Student Doe's mother brought all three children to Rhode Island to live with relatives, in anticipation of the entire family's relocation here. She returned to the Dominican Republic to wind up their affairs there. Tr. pp. 6-7, 13-14.
- Student Doe, the oldest child in the family, expressed a preference to live with his aunt in Narragansett, while the other two children took up residence with their grandmother in Providence. Tr. pp. 7-8.
- Student Doe's mother underwent elective surgery which she scheduled while her children were in the United States so that they would be cared for during her convalescence. Tr. pp. 10-12.
- Student Doe's mother moved from the Dominican Republic to Providence after the date of hearing and before issuance of the decision in this matter. Stipulation of Fact, see letters dated April 23, 1997 and April 30, 1997.

Position of the Parties

Student Doe

Student Doe's aunt appeared on his behalf, asserting that his actual residency with her in the town of Narragansett created his entitlement to attend the district's public schools. Even though both his parents resided in the Dominican Republic she maintained his residency for school purposes was in Narragansett because he is a United States citizen and was sent to live in this country, along with his two sisters,¹ as part of the family's transition back to the United States. While the parents sell the family's home in the Dominican Republic and wind up their affairs, Student Doe and his sisters are living in this country with relatives, to re-learn the English language, and get settled in American public schools. Student Doe's mother is also utilizing this transition year to undergo elective surgery and recuperate without having to take care of her children. This surgery had just been completed at the time of hearing in this matter.

She argues that all of the above-stated reasons, and not school attendance in Narragansett have resulted in her nephew's residence with her. She also notes that the Providence School Department has accepted the residency and attendance of his two sisters even though district officials are aware of the fact the parents reside in the Dominican Republic.

Narragansett School Committee

While not wishing to be unsympathetic to the substantial demands faced by Student Doe's family in relocating to the United States, the position of school committee counsel is that Student Doe has not established residency for school purposes in

¹ Who reside with their grandmother and attend Providence schools.

Narragansett. Under school residency law a child is deemed to be a resident of the town or city where his or her parents reside (R.I.G.L. 16-64-1). Both of Student Doe's parents reside in the Dominican Republic. Although they may have a present intention to relocate to Rhode Island, until they actually do so, this child cannot be a resident of Narragansett for school purposes.

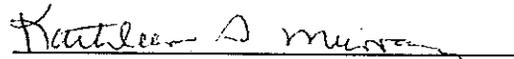
Recognizing that the statute creates a rebuttable presumption that a child resides with his parents for school purposes, counsel argues that only a substantial non school-related reason for residing apart from one's parents can rebut this presumption. In this case, the primary reason for Student Doe's residence in Narragansett is to attend the district's schools. While other factors may have made the timing of his residency with his aunt a matter of convenience, i.e. giving his mother opportunity to convalesce from surgery she had postponed, etc., there is no question that his primary reason for living with his aunt, and apart from his parents, is based on school attendance.

Decision

Prior to the stipulation of fact with regard to this child's parent's current residency in Providence, this case presented a very difficult issue of school residency law.² With the fact of the mother's current residence in Providence placed on the record, this case is quite simple. R.I.G.L. 16-64-1 is controlling – this student is deemed to be a resident of Providence, Rhode Island. With his mother's recuperation from surgery completed, there is not even an arguable reason for his presence in Narragansett except for school attendance. Student Doe is now clearly a resident of Providence for school purposes. At

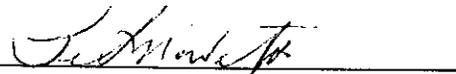
² The issue presented, if resolved in the school committee's favor, would have rendered Student Doe without entitlement to attend any school in the United States, not just Narragansett public schools.

the conclusion of this school year, some three weeks away, he is to be disenrolled from Narragansett public schools and enrolled in Providence, unless his mother establishes residency in another school district.



Kathleen S. Murray, Hearing Officer

Approved:



Peter McWalters, Commissioner

June 9, 1997