

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

IN THE MATTER OF STUDENT JOHN C.G. DOE

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:
:

DECISION

Held: Student is a resident of
North Kingstown for school
enrollment purposes.

DATE: JULY 10, 1997

Introduction

This matter concerns a request for a residency determination pursuant to R.I.G.L. 16-64-6.¹

Background

In March 1997, the chairman of the North Kingstown School Committee received an anonymous letter stating that for the past 6 years student Doe has resided with his parents at a specified address in Cranston, Rhode Island while attending the North Kingstown public schools.

The letter was referred to the School Department for investigation, which took place in April. According to the investigator's report, student Doe and his mother were observed on 7 different mornings. On 4 occasions, they were seen arriving in a car driven by student Doe's mother at student Doe's grandparents' home in North Kingstown at approximately 7:30 a.m.² On the other 3 occasions, student Doe and his mother were observed leaving the Cranston address in the same car shortly before 7:00 a.m. and driving to the grandparents' home in North Kingstown. The School Department attempted to obtain information about the residence of student Doe's mother from her coworkers at her municipal job, but the coworkers were not responsive.

1 The undersigned hearing officer was designated to hear and decide the request. A hearing was held on June 9, 1997.

2 Student Doe had been enrolled in the North Kingstown school system at this address, from which he received bus transportation to and from school.

By letter dated April 29, 1997, counsel for the North Kingstown School Committee requested a residency determination as provided for in R.I.G.L. 16-64-6.³

The evidence presented at the hearing⁴ shows that when student Doe was 2 years old, his parents moved to an apartment at the Cranston address. Student Doe's father later became employed as a long-distance truck driver, and he would be home only 7 to 10 days a month. The father's prolonged absences also caused a financial strain for the family. Consequently, beginning in March 1990, student Doe and his mother spent significant amounts of time, including nights, at her parents' home in North Kingstown.

In April 1997, student Doe began to experience emotional problems and the family decided it would be best if he and his mother spent more time at the Cranston apartment. Student Doe's mother testified that she and her son spent many nights at the Cranston apartment in April.

In May 1997, student Doe's parents rented a house in North Kingstown. Student Doe has been living in the rented house since May 26th. He has not spent a night at his grandparents' home

3 The request to the Commissioner included a statement that "If it is shown that, in fact, this arrangement is a sham, the School intends to give notice that it is seeking to recoup tuition for the years that [student Doe] has been enrolled in the North Kingstown School System." [School Committee Exhibit 1].

4 In accordance with their wishes, two coworkers of student Doe's mother received subpoenas to testify at the hearing.

since that date.

Positions of the Parties

Counsel for the School Committee states that this hearing was necessary to resolve the residency issue raised by the letter to chairman of the Committee, the results of the ensuing investigation, and the lack of cooperation at the municipal workplace of student Doe's mother. The Committee asserts that the request for a residency determination was made in good faith and in a timely manner.

Counsel for student Doe's mother contends that the evidence in this matter clearly shows that student Doe had established a valid residency in North Kingstown prior to his enrollment in the school system. Student Doe's mother made a true home for her son at his grandparents' residence in North Kingstown while she found the stability she needed given the long-term absences of her husband and the financial pressures she faced. Counsel for student Doe's mother argues that any request for back tuition is barred by laches, and that an award of attorney's fees under R.I.G.L. 42-92-1 et seq. is appropriate in this case.

Discussion

The evidence presented at the hearing clearly shows that, as of May 26, 1997, student Doe has been a resident of North Kingstown for school enrollment purposes. The evidence also shows that, prior to May 26, 1997, student Doe had been residing at his grandparents' home in North Kingstown, and that this residence was not

for the purpose of attending school there. We therefore find that North Kingstown continues to be responsible for providing student Doe with a public education.

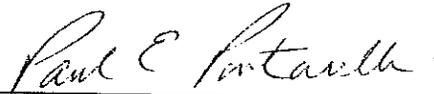
The Equal Access to Justice for Small Business and Individuals Act provides for the award of reasonable litigation expenses to prevailing parties in "adjudicatory proceedings" unless it is found that "the agency was substantially justified in actions leading to the proceedings and in the proceeding itself."⁵ While we find the language of the statute unclear as to whether it covers proceedings pursuant to R.I.G.L. 16-64-6, we shall assume arguendo that it does apply. We further find, based on the results of the School Department's investigation of this matter, that the School Committee had substantial justification⁶ to request a residency determination from the Commissioner.

5 R.I.G.L. 42-92-3.

6 We recognize that the hearing request included a statement expressing an intent to recoup back tuition from student Doe's parents if the evidence at the hearing established a sham residency arrangement. While we have previously held in cases in which tuition reimbursement was sought from parents that a child is entitled to continue to receive a free public education from the original city or town of residence until the Commissioner rules otherwise in a proceeding under R.I.G.L. 16-64-6, the facts of those cases did not present issues of fraud or misrepresentation with respect to the initial enrollment. Sullivan vs. Newport School Committee, February 10, 1986; LaFontaine vs. North Kingstown School Committee, November 30, 1988, affirmed August 24, 1989. Consequently, we are unable to say that a claim for back tuition from parents based on evidence showing fraud or misrepresentation would not be substantially justified. While such a claim would raise questions concerning our jurisdiction, we do not find it to be unjustified on its face.

Conclusion

Student Doe is a resident of the town of North Kingstown for school enrollment purposes.



Paul E. Pontarelli
Hearing Officer

Approved:



Peter McWalters
Commissioner of Education

Date: JULY 10, 1997