

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

IN RE: RESIDENCY OF JOHN C.F.DOE

DECISION

Held: Student Doe has resided in North Kingstown since March of 1996 . Under state law and school committee policy, Student Doe was not legally entitled to attend East Providence High School during the 1996-97 school year; however, since his continued enrollment there resulted from representations of fact made by the school principal, and he relied on such representations to his detriment, the School Committee is precluded from recovering compensation from his parents for the cost of his education under the doctrine of equitable estoppel.

DATE: July 15, 1997

Travel of the Case

Initially, the Commissioner of Education received petitions filed on behalf of both parties to this residency dispute. On September 26, 1996 Student Doe, through his attorney, requested issuance of an interim order to prohibit the school department from disenrolling him. By letter of the same date, counsel for the East Providence School Committee requested the Commissioner to make a determination of school residency, and indicated in that communication that pending such determination Student Doe would continue to be enrolled and allowed to attend classes. Thereupon the request for an interim order was withdrawn, and the matter proceeded to hearing on the school committee's request that the Commissioner determine Student Doe's residency for school purposes.

On September 30, 1996 the undersigned hearing officer requested the parties to agree upon a date for hearing and was notified that the parties were attempting to resolve the matter, and were engaged in pre-hearing discovery of certain information requested by Student Doe's attorney. Student Doe's attorney objected to the scheduling of a hearing until he received the requested information from the school department. When the parties were unable to resolve the issue of what information would be provided prior to hearing, the matter was scheduled for hearing for January 7, 1997. Subpoenas for this same information were then requested and issued by the hearing officer. On December 23, 1996 documentation was provided by the school committee to Student Doe's attorney pursuant to subpoena, and all issues related to discovery were resolved.

The first hearing in this matter was held on January 13, 1997. Because Student Doe's father is employed out of state and was unavoidably detained, the matter was

continued at his request several times without objection. The second hearing was finally held on March 26, 1997. Thereafter, both parties submitted written memoranda, a process which concluded with the filing of the school committee's memo on June 17, 1997. On May 8, 1997 Student Doe's attorney requested that decision in this matter be expedited, and in accordance with the Commissioner's directive, the record in this matter was reviewed, and decision prepared, shortly after the closing of the record on June 17, 1997.

Issues

Was Student Doe a resident of East Providence for school enrollment purposes during the 1996-97 school year? If not, is the East Providence School Committee entitled to recover compensation from Student Doe's family for the cost of his education?

Findings of Relevant Facts

- Student Doe and his family moved from East Providence to North Kingstown, Rhode Island over the course of several months beginning in October 1995. By March of 1996 the entire family lived in North Kingstown and Student Doe commuted on a daily basis to East Providence High School. Tr. Vol. II pp. 73-76.
- At the time of his family's move to North Kingstown, Student Doe was a junior at the high school.
- At the conclusion of his son's junior year in June, Student Doe's father approached the guidance director, Edward L. Cronan and the school principal, Arthur Elmasian about the possibility of continuing his son in attendance at the high school for his senior year even though he no longer resided there. Tr. Vol. II pp. 56-57.
- Mr. Elmasian made a determination that the residency law was vague, and that it would be detrimental to the educational interests of Student Doe if he were required to change schools at that point in time; based on these facts, he made the decision that Student Doe would be permitted to continue in attendance for his senior year. Tr. Vol. II pp. 34-35, 40-41.
- At this meeting either Mr. Elmasian or Mr. Cronan stated to Student Doe's father that similarly situated students had been allowed to complete their senior year (in East Providence) as a courtesy. Tr. Vol. II pp. 57-58.

- Mr. Elmasian indicated at that time that it might also be necessary to “write a letter to the school committee”, but essentially, he would let Student Doe’s father know about the necessity for that at a later point in time. Tr. Vol. II p. 57.
- In late August, Student Doe’s father again met with Mr. Elmasian and Mr. Cronan concerning his son’s attendance at East Providence High School for his senior year. Tr. p. 58. At this meeting, Mr. Elmasian and Mr. Cronan confirmed that such a courtesy had been given to other students, and it would not be necessary to request this “courtesy” from the school committee. Tr. Vol. II pp. 58-59.
- One other student, the granddaughter of a member of the school committee, was permitted to attend East Providence High school, even though she had moved out of the district on June 1, 1990, during her junior year. Tr. Vol. II p. 68. This occurred by virtue of an agreement between the student’s family and the superintendent and school committee at that time. Tr. Vol. II p. 68.
- Principal Elmasian was unaware of the agreement made between the school committee and the family of the nonresident student, as well as the fact of her non-residency at that time. Tr. Vol. II pp. 31-33.
- Principal Elmasian testified that since 1979 he has made all decisions on residency issues regarding seniors in his capacity as principal. Tr. Vol. II pp. 29-30.
- Principal Elmasian could not recall one case from 1979 to the present, in which a student moved during his or her junior year and was allowed to finish the senior year in East Providence. Tr. Vol. II p. 39.
- He specifically cannot recall any students similarly situated to Student Doe who were permitted to remain enrolled for their senior year in either the 1994-95 or 1995-96 school year. Tr. Vol. II p. 33.
- The general rule followed by Mr. Elmasian in making residency determinations over the years is that seniors or students who had “left” (i.e. finished) their junior year and moved during the summer were allowed to complete their education at the high school. Tr. Vol. II p. 30¹.
- The School Committee’s written policy is to provide education only to those children “properly domiciled” in East Providence. S.C. Ex A; Policy 600a

¹ Student Doe’s counsel submitted an affidavit to supplement the record with regard to the actual practice followed at East Providence High School with regard to students who had moved during the junior year. For reasons we will discuss in the text of the decision, we accept Principal Elmasian’s testimony on the issue of the practice he followed at the high school over the years as dispositive of this issue.

- In September of 1996, after reading a newspaper article stating that Student Doe's family did not reside in East Providence, the then - Superintendent of Schools, Patricia A. Daniel, requested the Director of Attendance to look into the matter. Tr. Vol. I pp. 8-9.
- In gathering factual information requested by Superintendent Daniel, Mr. Rodericks interviewed Mr. Cronan, Mr. Elmasian, and Student Doe's father. Tr. Vol. II. p. 7.
- On or about September 19, 1996 Dr. Daniel received a report from both Mr. Rodericks and Mr. Elmasian concerning Student Doe's residency. Doe Exhibit 3.
- The report furnished to the Superintendent indicated that Student Doe and his family moved to North Kingstown in January of 1996 and that "based on our consistent application of Rhode Island Law regarding residency for school purposes, it is our decision that this student is not eligible to now attend East Providence High School". Doe Ex. 3.
- Based on the report and recommendation of both Mr. Elmasian and Mr. Rodericks, the Superintendent notified Student Doe's father that his son was ineligible to continue in attendance because of his non-residency. S.C. Ex. B. Tr. Vol. I p. 27.
- Upon receipt of the Superintendent's letter of September 20, 1996 notifying him of his son's ineligibility and contemplated disenrollment, Student Doe's father, through his attorney, appealed to Commissioner McWalters.

Positions of the Parties

Student Doe

Both of the parties submitted lengthy briefs which set forth proposed findings of fact and the legal arguments which advance their respective positions.

Student Doe's attorney argues that although the family moved from East Providence in the spring of his junior year, he nonetheless was legally entitled to attend the high school for his entire senior year. This argument rests primarily on the theory of estoppel. Counsel argues that the doctrine of promissory estoppel requires the school committee to honor the agreement entered into by its agents - namely Mr. Elmasian, Mr. Cronan and Mr. Rodericks. Counsel takes the position that the school committee has bound itself to the agreement made in June of 1996 and reaffirmed in August, i.e. that

despite his nonresidence, Student Doe would be permitted to complete his high school education in the East Providence school system.

Secondly, the theory of equitable estoppel is raised. Counsel argues that this doctrine prevents the school committee from claiming compensation for the cost of Student Doe's senior year at the high school². In reliance on statements made by Mr. Elmasian, Mr. Cronan and Mr. Rodericks to Student Doe's father, who assured him that his son's attendance would be consistent with past practice, Student Doe made no alternate plans for his education that year. Furthermore, his offer to pay tuition, if it were necessary to legitimize his son's attendance, was rejected at that time. The school administrators explicitly stated to him that, consistent with past practice, his attendance would be tuition-free. In reliance on these statements, to his extreme detriment, Student Doe and his family found themselves embroiled in controversy in mid-September, after a newspaper article brought to light both his non-resident status and his ongoing enrollment in the East Providence School system.

It was only then that the decision to let him complete his senior year was "overturned" by the Superintendent. It is argued that her decision was politically motivated. It did not take into account the past practice of the district which permitted students who moved in the second semester of their junior year to complete their education at the high school. Further, it is argued, the Superintendent was bound to honor the agreement reached with Mr. Elmasian and Mr. Cronan that Student Doe could finish out his senior year in East Providence.

² Counsel for the school committee took the position at the hearing that the remedy should not be disenrollment of Student Doe, given the point in the school year and the circumstances under which his continued enrollment came about. He took the position that Student Doe should be allowed to complete his senior year, but reimburse the school department for the cost of his education.

Another argument advanced by Student Doe is that once enrolled for his senior year, Student Doe was legally entitled to complete the year under R.I.G.L. 16-64-2. This statute provides for the continued eligibility of students to remain enrolled in their district of original residence, pending enrollment in their new district or order of the Commissioner. It is argued that this provision supports Student Doe's ongoing attendance in East Providence, without tuition obligation, until issuance of the Commissioner's decision in this matter.

Finally, Student Doe notes that Superintendent Daniel conceded in her testimony that if Student Doe and his family moved to North Kingstown during the second semester, which began on January 24, 1996, he should be entitled to complete his senior year. She further testified³ that her understanding of the residency law was that a second-semester move of a junior would entitle that student to complete not only the junior year but the senior year as well. It is argued that this testimony, coupled with the fact that it was proven that Student Doe's move actually occurred in the second semester, clearly validates Student Doe's senior year enrollment.

It is argued that the facts of this case, and the Superintendent's concession in particular, call into question whether there is any justification for the residency hearing requested by the school department. The argument is made that these proceedings constitute misuse of the legal process. Such action by the School Committee is subject to redress under the Equal Access to Justice Act, R.I.G.L. 42-92-1 et seq. Student Doe's

³ Dr. Daniel's testimony on this issue is found on pages 68-76 of Volume I of the transcript. The Superintendent made a factual distinction between Student Doe, and the student who moved in June of the junior year who was permitted to attend by agreement with a prior superintendent. Her understanding was that Student Doe had moved in January prior to the second semester.

family requests an award of costs incurred in litigating this matter pursuant to Section 42-92-3 because there is no substantial justification for the school committee's action.

The School Committee

Counsel for the school department takes the position that the facts here clearly show that Student Doe was a resident of North Kingstown for school purposes for the 1996-97 school year. Since testimony places the family's move to North Kingstown at some point during the second semester of the junior year, Student Doe was entitled to finish only that semester under R.I.G.L. 16-64-8. This statute provides for the ongoing attendance of seniors in their original town of residence only if they move during the senior year or when they are "about to enter" the senior year.

The School Committee does not deny that the statements attributed to Principal Elmasian and Mr. Cronan, Director of Guidance were in fact made to Student Doe's father⁴. It does deny a practice of extending a courtesy to juniors who moved out of the district to permit their attendance for the senior year. The School Committee also argues that no binding agreement resulted from these conversations. It notes that the principal (and we would assume the Director of Guidance as well) has no actual authority to enter into an agreement permitting the attendance of non-resident students. Under school committee policy⁵, such agreements require their specific authorization. Secondly, even if the school principal were found to have such authority, the principal was under a misimpression as to when in point of time Student Doe moved out the district. The

⁴ The school committee does point out that the Director of Attendance, Mr. Rodericks, was not even present at the June or August meetings. See pages 25-26 of its brief.

⁵ School Committee policy provides for the acceptance of tuition students only upon specific authorization of the school committee. Policy 600 S.C. Ex. A.

Committee argues that without information on the precise date of the move, there was no “meeting of the minds” which would form the basis of a binding agreement.

With respect to the claim that the assurances made by the school administrators support the claim of equitable estoppel, the School Committee asserts that the principal had no authority to give such assurances. The doctrine of estoppel is, therefore, inapplicable. Even if the doctrine were applicable, the school committee asserts that detrimental reliance has not been proven. At the time of the Superintendent’s September 20, 1996 decision, Student Doe still had the option of enrolling in North Kingstown High School without undue hardship or detriment. The School Committee notes that the Commissioner must weigh the interests of the public in considering whether to invoke this doctrine against a governmental entity. Counsel argues that the school committee’s substantial interest in this matter clearly outweighs any financial burden placed on Student Doe and his family.

As to recovery of attorneys fees under R.I.G.L. 42-92-1 et seq., the School Committee argues that residency proceedings before the Commissioner are not “adjudicatory proceedings” as this term is used in the statute. Even if 42-92-3 were applicable, the position taken by the Committee is that the actions of the school committee were substantially justified, thus insulating it from any liability for Student Doe’s litigation costs.

Decision

We must observe at the outset that Superintendent Daniel’s decision that Student Doe was ineligible to attend East Providence High School sparked a controversy not just between the parties to this dispute. Her decision apparently caused an equal degree of

controversy within the school department. Internal support for the Superintendent's decision dissipated quickly after September 20, 1996. Even those whose previous professional recommendation had been consistent with the Superintendent's decision testified before us that her decision was "wrong". Fortunately our role under the statute requires us to resolve only one of these disputes - the difference of opinion between Student Doe's family and the East Providence School Committee as to whether the committee should be reimbursed for the cost of his senior year.

An important step in understanding our resolution of this issue is to review the Superintendent's decision to place it in a factual context. It is this decision which is argued to be without substantial basis. It also is argued that the Superintendent overruled experienced administrators who sought to act consistently with past practice and to maintain educational continuity for this senior student.

Our review of the record in this case, to focus on "what the superintendent knew and when did she know it" convinces us that on September 20, 1996 Superintendent Daniel acted consistently with both state law and school committee policy. Her findings that Student Doe was ineligible to continue in attendance and that he had been given misinformation, were both correct. She was unaware at that time of the precise nature of the representations made to Student Doe's father in both June and August of 1996.

On September 19, 1996 Principal Elmasian and the Director of Attendance, Robert Rodericks, gave a written report to the Superintendent on Student Doe's residency status. Student Doe Ex. 3. Mr. Rodericks testified that he had interviewed not only Student Doe's father, but also Mr. Elmasian and Edward Cronan, Director of Guidance at the high school. The written report notes that the prior ruling (by Mr. Elmasian) that Student Doe

could remain in attendance was based upon the information known to the high school administration at that time. The report went on to state:

It is further noted that pertinent facts and dates in this matter were not known to the high school administration prior to September 17, 1996. Doe Exhibit 3.

Student Doe's attendance had been authorized without regard to the actual date on which he moved from East Providence. The principal testified that on both dates he met with Student Doe's father he did not inquire as to the date of the family's move. The memo explains the prior decision on the absence of knowledge of this date. Since the date of the move was determined to be in January, Mr. Elmasian retracted his prior approval. The memorandum clearly shows that Superintendent Daniel did not "overrule" the high school administration in making her September 20th decision that Student Doe was not entitled to remain enrolled. In fact, as Exhibit 3 indicates, this was the specific recommendation made by both the Director of Attendance and the Principal of the high school at that time⁶. Superintendent Daniel accepted the facts and recommendation of her staff after their investigation, and acted on those facts to enforce the school committee's written policy on Residency of Students. (Policy 600a S.C. Ex. A).

Her decision was also consistent with state law. R.I.G.L. 16-64-8 permits a senior to complete the senior year in his or her original town of residence only if the student "is a senior or about to enter his or her senior year" at the time of the move. The Commissioner's office has interpreted the phrase "about to enter the senior year" as including a move prior to the beginning of the senior year and after the conclusion of the

⁶ Both Mr. Rodericks and Mr. Elmasian made different recommendations with regard to Student Doe's ongoing attendance at the high school at the time of the hearing.

student's junior year. See Jane J. Doe v. Warwick School Committee, November 14, 1989. Under state law and school committee policy a second-semester junior who moved in January, 1996 would have no entitlement to attend beyond the end of the junior year. This is true even if the student remained enrolled at the start of the senior year while the issue of residency was litigated.⁷

There is no evidence that Dr. Daniel received information on the existence of a practice permitting non-resident students to attend their senior year. To the contrary, the written report noted that the recommended action was based on their "consistent application of Rhode Island law regarding residency for school purposes". (emphasis added) (Doe Ex. 3). The report did not mention statements concerning a "courtesy" made to Student Doe's father to assure him that his son's attendance for his senior year did not constitute special treatment. It is precisely these additional facts on which Student Doe premises his defense to the school committee's claim for reimbursement. Superintendent Daniel also decided a different issue – eligibility to continue in attendance. The issue presented to us is whether these additional facts prevent the school committee from recovering the costs associated with Student Doe's senior year.

We find on this record that there is insufficient proof of a practice of letting juniors who move from the district return for their senior year. While there is some testimony concerning a practice of extending a courtesy to juniors moving out of the district, it is not persuasive. If there were such a practice, we find it incredible that it would not have been mentioned in the September 19, 1996 memorandum to Superintendent Daniel. The

⁷ R.I.G.L. 16-64-2 "Retention of Residence" merely preserves the status quo. It requires a district wherein residency has been established to retain a child pending the outcome of a residency hearing. We thus reject the broad interpretation of this section argued by Student Doe as authorizing his attendance during the entire 1996-97 school year.

principal of the school omitted mention of such a practice in his description of the general rule he applied in dealing with residency issues of students entering their senior year. If such a practice existed, it is unlikely that the principal would be unable to recollect one occasion on which such a practice were followed. Principal Elmasian testified that he could recall no student who was extended such courtesy from 1979 to the present. He was aware of the special permission sought and obtained directly from the school committee by the granddaughter of a school committee member in 1990. This was, however, not an example of the “courtesy” extended by school administrators because he was not even aware of it at the time.⁸

Whether such practice existed or not, it is undisputed that Student Doe’s father was told such a practice existed and that his son’s attendance in his senior year would, therefore, not constitute special treatment. Mr. Elmasian and Mr. Cronan made such representations on two occasions, and stated in addition that there was no need for Student Doe’s father to get written approval from the school committee. In reliance on these statements, Student Doe’s father took no action to get school committee approval and his son continued in attendance for his senior year. When a public controversy arose in mid-September, the legality of his enrollment was questioned and the issue of whether Student Doe had sought, or received, special treatment was a public issue. Detriment would have resulted to Student Doe had he changed high schools at that point in time. The unfortunate controversy which surrounded his ongoing enrollment at East Providence High School tainted his senior year experience. Moreover, his family’s reputation in the community was jeopardized as a result of the controversy.

⁸ The school committee’s granting of such special permission on one occasion does not operate as a bar to

We find that the doctrine of equitable estoppel, premised on the representations of the principal and guidance director and the resulting detriment to Student Doe and his family, prevents the school committee from recovering any costs it may have incurred as a result of Student Doe's attendance in the 1996-97 school year. We are mindful of the School Committee's argument that high school administrators lack the authority to make assurances which induce the reliance of third parties—non residents who have no entitlement to remain in the districts schools. The authority issue is critical here. Implicit in the statement that no letter to the school committee is necessary is a representation that these individuals had the authority to authorize his attendance, even though they did not. Under such circumstances their actual lack of authority should not preclude the defense of equitable estoppel. To permit the school committee to recover any costs under such circumstances would be unfair, and it is basic fairness which the doctrine of equitable estoppel is designed to achieve.

We are uncertain of the applicability of R.I.G.L. 42-92-1 et seq. to proceedings before the Commissioner of Education. Assuming arguendo that this statute applies, it would provide for an 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 proceedings itself.

As discussed infra, the Superintendent's decision was clearly "justified." It was a correct determination of Student Doe's status as a nonresident student and his ineligibility to remain in attendance at the high school. Facts regarding the precise nature of the representations made to Student Doe's father were not made known until the time of the

enforcement of its residency policy. See Murphy v. Newport School Committee, decision of the

hearing. Factual development continued (and the record supplemented) even after conclusion of the last hearing. Under such circumstances, the school committee was substantially justified in litigating the issue of whether Student Doe's family should pay the per pupil cost for this year. Thus, no costs are awarded pursuant to R.I.G.L. 42-92-3.

Kathleen S. Murray, Hearing Officer

Approved:

Peter McWalters, Commission

Date: July 15, 1997

Commissioner dated December 3, 1985.