

0005-98

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

IN RE: RESIDENCY OF JOHN C.S. DOE

DECISION

Held: Student Doe is a resident of East Greenwich for school purposes. He continues to reside there during the school week with his stepfather and with his mother in North Kingstown on weekends. Medical documentation establishes his mother's limited capacity to care for him because of her present physical and mental condition.

DATE: February 9, 1998

Travel of the Case

On October 23, 1997 the Superintendent of Schools in East Greenwich requested that a determination of school residency be made for Student Doe. Hearing took place under R.I.G.L. 16-64-6 on November 14, 1997 before the Commissioner's designee. Both parties appeared pro se. Undisputed facts submitted at the hearing established that until the end of August, 1997 Student Doe resided with his mother and stepfather in East Greenwich, Rhode Island. Student Doe's mother moved from East Greenwich on August 27, 1997, the day on which she was served with a restraining order requiring her to leave the family home. Since August 27th was also established as the first day of school of the 1997-1998 school year, it was agreed that Student Doe was therefore entitled to complete the semester in East Greenwich. Under R.I.G.L. 16-64-8 a student who changes his or her residence "during the course of a semester" is entitled to complete the semester in the town of original residence. Thus, even assuming Student Doe's residence (for school purposes) had changed on August 27, 1997, he clearly could finish out the first semester at East Greenwich High School.

In this posture the case was continued for further hearing until January 8, 1998 so that the parties could revisit the residency issue with updated and complete information supporting their respective positions.¹

On January 8, 1998 the hearing was reconvened and both parties submitted additional evidence and argument. Student Doe's mother and stepfather testified concerning Mrs. Doe's ongoing limitations in caring for her child and further testified

¹ The superintendent had submitted only hearsay evidence that Student Doe no longer physically resided with his stepfather in East Greenwich. Student Doe's mother had no medical documentation that Student Doe's mental health required him to continue to reside with his stepfather in East Greenwich during the

that even though they had separated in late August, Student Doe continued to reside during the school week with his stepfather in East Greenwich. The hearing officer described the standard of proof required to establish such incapacity as a substantial reason for this child's residence apart from his mother. Prior decisions of the Commissioner had established the need for medical documentation when the alleged reason is the physical or mental condition of a child or a parent.

At the close of the hearing, it was agreed that Mrs. Doe would be given the opportunity to submit medical documentation regarding her condition within forty-eight (48) hours and the school department would be given the opportunity to challenge or otherwise respond to this additional evidence. The record closed on January 22, 1998 when the medical documentation (submitted to the school department but not to the hearing officer) was sent from the Superintendent to the Commissioner office.² Because of the need to determine Student Doe's status and entitlement to continue at East Greenwich High School, decision in this matter has been expedited.

Issue

Is Student Doe a resident of East Greenwich for school attendance purposes?

Finding of Relevant Facts

- Student Doe is fourteen (14) years old and a freshman at East Greenwich High School. Tr. 11/14/97 p. 15.
- Until August 27, 1997 he resided in East Greenwich with his mother and stepfather; when his mother separated from his stepfather, they both left the family home, but he returned to live with his stepfather in East Greenwich during the school week in late September or early October. Tr. 11/14/97 p. 12.

school week. Both parties were alerted to the need for more definitive proof in an administrative hearing wherein the issue is a child's school residency.

² It was sent from the Commissioner to the office of the hearing officer on January 28, 1998.

- Generally Student Doe lives with his mother in North Kingstown on the weekends. Tr. 1/8/98 pp. 4, 6, 9, 19 and 22.
- Student Doe has always had and continues to have a good relationship with his stepfather, who is semi-retired and has assumed much of the responsibility for overseeing Student Doe's education. Tr. 1/8/98 pp.6-9.
- Since at least March of 1997, Student Doe's mother has suffered from chronic fatigue syndrome, as well as a number of other physical and mental problems, which have substantially reduced her capacity to care for her son. Tr. 1/8/98 pp. 11-14; 18-19 Packet of medical documentation submitted 1/22/98.

Position of the Parties

The School Committee

Through the Superintendent, the school committee argues that although Student Doe physically resides in East Greenwich for the better part of the week,³ his continued residence there is primarily for the purpose of school attendance.

Student Doe

Mrs. Doe submits that her current medical problems make it impossible for her to care for her teenage son on a full-time basis. Not only does she suffer from chronic fatigue syndrome, but an immune disorder as well. Her fragile medical condition was exacerbated by an attack by a neighbor's rottweiler in July of 1996, which resulted in a subsequent medical diagnosis of post-traumatic stress disorder.

Given Student Doe's mother's medical status, his stepfather points out that it is he who has assumed much of the child-caring responsibilities. Student Doe continues to reside with his stepfather during the school week to facilitate this child-caring role. The present separation of the child from his mother during the school week to live with the stepfather has occurred because of the separation of husband and wife and the mother's present medical incapacity to assume total responsibility for her son's care. The present

residency situation results from the mother's illness, and is not, it is argued, for purposes of school attendance in East Greenwich.

Decision

No mention was made by Student Doe's mother of her medical condition as a reason for his present living arrangements at the initial hearing of this matter on November 14, 1997. Thus considerable skepticism prevailed upon hearing of this reason for the first time at the January 8, 1998 hearing. Nonetheless, subsequent to the hearing the record was supplemented with medical documentation of her present limited capacity to function. Her mental and physical incapacity is presently substantial enough that she is incapable of performing many of the parenting tasks occasioned by having a teenager. The family's living situation is complicated by the impending divorce of Student Doe's mother and stepfather, as well as the projected sale of the family home in East Greenwich.

Despite the somewhat complicated evolution of this case and our initial doubt with regard to the actual reason for Student Doe's present residence apart from his mother, his custodial parent, we find that he resides in East Greenwich because of his mother's present medical incapacity. Under R.I.G.L. 16-64-1

...when parents are unable to care for their child on account of parental illness or family break up, 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)

³ The school committee does not dispute the testimony on this point presented by Student Doe's mother and stepfather.

While his mother is not totally incapacitated from performing her parenting responsibilities, we find that she is, at present, substantially impaired in this regard. We make this finding on the basis of the medical documentation submitted by Mrs. Doe.

Should Student Doe's mother's health improve, and/or should the school district become aware of facts indicating⁴ he no longer physically resides with his stepfather in East Greenwich, then we would look into the issue of school residency upon future request of the school committee. Under the facts presented in this record, however, he is at present a resident of East Greenwich for school purposes.

Kathleen S. Murray
Hearing Officer

Approved:

Peter McWalters
Commissioner

DATE: February 9, 1998

⁴ Facts which were not ascertainable at the time of the January 8, 1998 hearing.