

0007-98

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

IN RE: RESIDENCY OF JOHN C.O. DOE

DECISION ON
WARWICK SCHOOL COMMITTEE'S
MOTION TO RECONSIDER

Held: Motion to Reconsider is denied.

DATE: March 3, 1998

Decision on Motion to Reconsider

The Warwick School Committee filed a Motion to Reconsider with the Commissioner on December 23, 1997. Objection to the motion was filed on January 13, 1998, and thereafter on January 15, 1998. The School Committee filed a reply memorandum.

In seeking reconsideration and/or clarification of the November 26, 1997 decision of the Commissioner, the School Committee requests that the decision expressly state that Student Doe was not a resident of Warwick as of November 14, 1997. The memorandum alleges that evidence regarding the intent of Student Doe or his mother to have her son ultimately return to Warwick to live with his father does not make him a resident of Warwick for school purposes. Furthermore, the Committee argues that since the child took up residence with his mother in Cranston on November 14, 1997, Cranston, and not Warwick, should be responsible for any compensatory education claim he may have, or be asserting.

The School Committee has lost sight of the fact that this proceeding was initiated by its own attorney so that a determination of residency for school purposes could be made retrospectively. The student was accepted as a Cranston student and was to be enrolled in that system as of the time of the first hearing. The committee pressed for a residency determination so that it could assert a tuition claim against either one or both of Student Doe's parents. Student Doe's entitlement to compensatory education services was not litigated in the course of these administrative proceedings under R.I.G.L. 16-64-6.

With reference to the tuition claim, the committee took the position that Student Doe's parents misrepresented where he was actually living and enrolled him in the Warwick School System in September of 1996. The committee alleged that at no point in the fall semester of 1996 did this student actually reside with his father in Warwick.

In the documentation accompanying the Motion to Reconsider, the School Committee states:

In her decision, the hearing officer emphasized her finding that [Mrs. Doe] intended [her son] to return to his father in Warwick. Motion 12/23/97 p. 1

The argument is made that a factual finding with regard to intent erroneously formed the basis of the conclusion that Student Doe was a resident of Warwick for school purposes throughout the relevant period.

A close reading of the decision would indicate that there are no findings of fact with regard to the “intent” of either Student Doe or his mother.¹ Also clear is that the issue of intent formed no basis for the legal conclusions reached by the hearing officer. Review of the “decision” portion of the document would indicate a clearly-worded conclusion that Student Doe was entitled to continue to receive education from Warwick even after he took up actual residence with his mother in Cranston on November 14, 1997. This entitlement was despite the fact that as of November 14, 1997 he did not physically reside in Warwick. Our legal conclusion was pursuant to R.I.G.L. 16-64-2 and based on the factual finding that Student Doe had established actual residence in the city of Warwick during September of 1996. Under the provisions of Section 16-64-2 he was therefore entitled to continue to be educated in Warwick even after moving to Cranston until his enrollment in the “new” district (Cranston) or a residency ruling was issued by this office.

We would note that the reference to “intention” of Student Doe’s parents is made in the summary of the Position of the Parties. Student Doe’s mother had argued that intent to return to Warwick should have the legal effect of preserving his residency there for school

¹ One of our findings of fact does describe Mrs. Doe’s “expectation” that upon his recovery he would live with his father in Warwick. See decision p. 3.

purposes. The School Committee's motion somehow mistakenly presumes that this argument was adopted by the hearing officer and formed the basis for the ruling in this case. It clearly did not.

For the foregoing reasons, the Motion for Reconsideration is denied and the decision dated November 26, 1997 denying the School Committee's claim for tuition is reaffirmed.

Kathleen S. Murray, Hearing Officer

Approved:

Peter McWalters, Commissioner

Date: March 3, 1998