

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

IN RE RESIDENCY OF DOUGLAS C :

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DECISION

Held: Evidence establishes that the student is a resident of Johnston for a substantial reason other than school attendance.

DATE: April 30, 1999

Introduction

This matter concerns a request under R.I.G.L. 16-64-6 for a determination of the
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residency of Douglas C for school enrollment purposes.

For the reasons set forth below, we find that Douglas C is a resident of the town of Johnston.

Background

Douglas C began the 1998-99 school year as a 9th grade regular-education student at Coventry High School. At the time he was living with his parents and two sisters in Coventry. Both sisters attend Coventry High School. Douglas presently is 15 years old; his sisters are 16 and 17 years old.

Douglas' father is a foreman with an electric company. His mother is a dental assistant and student. Douglas' father, who had been unemployed for more than a year, currently is working a job that requires substantial overtime. He testified that, given his work opportunities and responsibilities as a foreman, he is not in a position where he can limit his work hours. He has typically worked until 7:00 p.m. during the week on his current job. When Douglas' mother is taking courses, she likewise is away from the
2
home until approximately 7:00 p.m. during the week. Both of Douglas' sisters have part-time jobs after school.

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- 1 A hearing was conducted in this matter on April 8, 1999. The Coventry School Committee, as a party in interest, participated in the hearing.
 - 2 Douglas' mother finished her part-time studies in February, and she is planning to become a full-time student in September.

In these circumstances, the family has experienced difficulties supervising Douglas after school. His parents have not been home much of the time, and when they are, Douglas refuses to obey them. Douglas' sisters have been unable or unwilling to control Douglas' activities. Douglas socializes with his friends in the neighborhood after school and neglects his schoolwork. Douglas is receiving failing grades and he has not been allowed to participate in the high school wrestling program.³ According to his grandmother, by the time Douglas' parents came home at night, "they were pretty tired and they weren't doing much of an effort and he wasn't doing [his schoolwork]." [Transcript, p. 39]. Douglas' father testified that he and his wife have disciplined Douglas for failing to do his homework. Such measures have included taking away television and video games, and grounding him. An effort by Douglas' parents to obtain his homework assignments from school was abandoned. The family has not sought any professional or school-related help to deal with Douglas' behavior.

For a while, Douglas' grandfather drove from his home in Johnston to Coventry during the week to watch over Douglas. Douglas has a good relationship with his grandfather; he listens to him and obeys him. The commuting eventually became too tiring for the grandfather, who has had two hip replacements and open-heart surgery.

In mid-March 1999, Douglas moved to his grandparents' home in Johnston. He has his own bedroom, and his clothes and personal possessions are there. Douglas

³ Douglas has been involved in wrestling since he was 9 years old.

helps his grandfather with housework, yardwork and lifting. His parents visit him on Sundays in Johnston. Douglas' grandparents attempted to enroll him in Johnston High School, but their request was denied.

Positions of the Parties

Douglas' family contends that Douglas is entitled to be enrolled in the Johnston school system because he is actually residing in Johnston for a substantial reason other than to attend school there. It asserts that legitimate supervisory issues exist with regard to Douglas, with real adverse consequences. It argues that the family has attempted numerous approaches to this problem, all to no avail. The extended family decided to move Douglas to his grandparents' home in Johnston because of Douglas' relationship with his grandfather and Douglas' ability to assist him around the house. Given the circumstances, the family has determined that Douglas can best be raised by his grandparents in Johnston. Douglas is residing in Johnston only because his grandparents reside there.

The School Committee contends that Douglas is living with his grandparents as a matter of convenience, i.e., to spare his grandfather from driving back and forth to Coventry. It claims that Douglas' parents have shirked their responsibilities, that Douglas is not a caregiver to his grandfather, that Douglas is looking to wrestle at Johnston High School, and that a special-education referral may solve his academic problems in Coventry.

4 Douglas' grandmother works full-time.

Discussion

Under R.I.G.L. 16-64-1, there is a rebuttable presumption that a child is a resident of the town where his or her parents reside. In cases where the parents have died, have abandoned the child, or are unable to care for the child because of parental illness or family breakup,⁵ the child is presumed to a resident of the town where he or she lives with a legal guardian, natural guardian, or other person acting in loco parentis. The statute further provides that, in all other cases, the child's residence shall be determined in accordance with the rules of common law. Under common law, a child may establish residence for enrollment purposes separate from the residence of the parents. To do so, the residence of the child apart from the parents must be shown to be for a substantial reason other than to attend the district's schools.

It is clear from the record in this matter that Douglas is physically present with his grandparents in Johnston. Because Douglas' situation does not fall within one of the three statutory conditions stated above, we must apply the common law and determine whether it has been established that Douglas' residence in Johnston is for a substantial reason other than to attend Johnston High School.

Based on the testimony and demeanor of the witnesses, we are convinced that a supervision problem exists with regard to Douglas. We are further convinced that Douglas' immediate family is unable to resolve this problem. We share, to some degree,

5 In Laura Doe vs. Narragansett School Committee, April 17, 1984, we interpreted "family breakup" as the relationship between parents, not the relationship between parent and child.

the feeling of the School committee that certain actions and decisions of Douglas' parents have created or exacerbated this problem. We therefore understand the Committee's unwillingness to be part of this attempt to solve the problem. But our duty in determining whether it has been proven that Douglas is living in Johnston for some reason other than school attendance is to examine what actually happened to bring about Douglas' residence in Johnston, not what should have happened had we been making the decisions regarding his upbringing and his education. So while we reluctantly find that there is a problem with Douglas' supervision that the immediate family is unable to resolve, that is our finding nonetheless. We also find that Douglas' residence in Johnston with his grandparents is a genuine attempt to address this problem, a problem which threatens not just Douglas' academic standing, but his health and safety as well. We therefore conclude that the evidence establishes that Douglas' residence in Johnston⁶ is for a substantial reason other than to attend school there.

Conclusion

Douglas C is a resident of the town of Johnston for school enrollment purposes.

6 In Jane A.K. Doe vs. North Kingstown School Committee, March 6, 1996, we found that the student took up residence with relatives in another town because of school-related safety issues. Because the reason for the move was school attendance, we did not find a valid residence for enrollment purposes in the new town, and we ordered the original school district to take appropriate measures to ensure that the student received an education in a safe environment. The case of In Re: Residency of Jane A.X. Doe, April 25, 1997, presented issues that included school safety. Again, we ordered the original district to implement the same type of measures as in Jane A.K. Doe. We note that Douglas' problem is exclusively home-based. Furthermore, we cannot order his parents to change their lifestyle and improve their parenting skills. As for his interest in wrestling, Douglas' need to become academically eligible to be a member of the wrestling team will be the same in Johnston as it was in Coventry.

The Johnston School Committee is ordered to enroll him forthwith.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date: April 30, 1999