

**0019-99**

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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**IN THE MATTER OF THE RESIDENCY OF BIANCA B.**  
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DECISION

Held: Student is a resident of Warwick, not  
Jamestown, for school enrollment  
purposes.

DATE: August 19, 1999

## **Introduction**

This matter concerns a request by the Jamestown School Department for a  
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residency determination with regard to Bianca B.

For the reasons set forth below, we find that Bianca is a resident of Warwick for school enrollment purposes.

## **Background**

Bianca's parents live in Warwick. They have 6 children. Bianca, 17, is the oldest. The ages of the other children range from 8 to 15. The 9-year-old is severely disabled, has had several operations, and requires constant care.

Bianca's aunt lives in Jamestown with her husband and daughter. In 1993 Bianca resided with her aunt and uncle and attended the 5th grade in Jamestown. Bianca again went to live with her aunt and uncle in Jamestown in March 1997. Bianca was described as being angry and withdrawn at the time. She would not accept controls on her behavior, and her grades were dropping. Bianca received counseling at school, but her anger persisted. Due to the other demands in the home, Bianca's parents were unable to provide the care and attention she was seeking. The family therefore decided to have Bianca move to Jamestown with her aunt and uncle.

As a Jamestown resident, Bianca enrolled in North Kingstown High School. She was an 11th grade student at the time of the hearing. Bianca's siblings live with their parents and attend Warwick public schools.

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1 The undersigned hearing officer was designated by the Commissioner of Education to hear and decide the request of March 17, 1999. A hearing was held on May 26, 1999. Bianca's family and the Jamestown and Warwick school departments were represented at the hearing.

In January 1998, Bianca obtained a driver's license. The address on her license is that of her aunt and uncle in Jamestown. Bianca's father leased a car for her to drive and she took a part-time job at Women and Infants' Hospital in Providence. Bianca works 3 to 6 days a week. The evidence shows that Bianca drives to school, commutes to Providence after school (often stopping at her parents' home in Warwick on the way), and spends time at her parents' home on weekends. The evidence further shows that Bianca stays at her parents' home on other nights, and she spends a lot of time there during school vacations and the summer.

In February 1999, the Jamestown School Department began to have doubts about Bianca's actual place of residence. The School Department contacted Bianca's aunt, who stated that she was Bianca's guardian and that she would provide documentation to that effect. On March 1, 1999, Bianca's aunt provided the School Department with a copy of a "Consent Order" and a cover letter stating that "enclosed you will find copies of the guardian papers supporting my statement to you that I am indeed the primary caretaker of my niece, Bianca . . ." [Jamestown Exhibits 4(a) and (b)]. The "Consent Order," dated February 23, 1999, purports to award temporary custody and temporary physical placement of Bianca to her aunt in Jamestown. It is notarized and "presented by" the family's attorney, but it does not bear a Family Court caption or docket number nor is it signed by a judge.

On March 9, 1999, the School Department informed Bianca's aunt that the documentation was unacceptable. With the help of the North Kingstown attendance

officer, the School Department conducted an investigation of Bianca's residence. The attendance officer's investigation revealed the following: On the afternoon of March 9th, Bianca drove a white Nissan from the parking lot of North Kingstown High School to her parents' home in Warwick.<sup>2</sup> On the mornings of March 10th and 11th, Bianca drove from her parents' home to the High School. On the morning of March 19th, the white Nissan did not leave the parents' home.<sup>3</sup> On the afternoon of March 25th, Bianca drove from the High School to her parents' home. On the morning of March 26th, Bianca drove from her parents' home to the High School. On another unspecified morning, the white Nissan was not seen at the aunt's home, but later that morning Bianca was observed driving the car into the High School parking lot.

Dr. Frances Gallo, the superintendent of schools in Jamestown, testified that she documented 5 occasions – March 26, April 6, April 12, April 15, and May 3 – when she observed the aunt's home from approximately 6:00 to 6:45 in the morning. Dr. Gallo did not see the white Nissan nor did she observe any activity at the house on those dates. Bianca attended school on all 5 of the above dates.

Bianca's mother and aunt testified that Bianca resides in Jamestown. Her aunt testified that Bianca sleeps at her home in Jamestown after working at the hospital. In early March 1999 Bianca's parents were in Florida for a week while her grandmother visited to take care of the children. Bianca stayed at the home in Warwick to spend time

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- 2 On all the occasions Bianca was observed driving to or from school, she was operating a white Nissan, the car leased by her father.
  - 3 Bianca's attendance record shows an unexcused absence from school on March 19th.

with her grandmother. Also, there was a birthday party for Bianca's mother at the home  
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in Warwick on March 25th, and Bianca spent the night on that occasion.

### **Positions of the Parties**

The Jamestown School Committee contends that the reasons for Bianca's supposed residence with her aunt in Jamestown are not among those recognized in Rhode Island General Law 16-64-1. It further argues that the consent decree dated February 9, 1999 is disingenuous, and that the evidence produced by the School Department's investigation shows that Bianca is residing with her parents in Warwick, not with her aunt in Jamestown.

Bianca's parents contend that there is no evidence showing that Bianca's move to Jamestown was motivated in any way by a desire to attend North Kingstown High School. Instead, Bianca moved to Jamestown to receive one-on-one attention from an aunt with whom she had previously formed a bond. The parents assert that the School Department's investigation was superficial. They admit that Bianca occasionally stays overnight at her parents, such as the night of her mother's birthday party (March 25th), and on weekends (April 12th and May 3rd). Bianca was present at her parents' house on March 9th, 10th and 11th because of a special occasion, i.e., a visit by her grandmother.

The Warwick School Committee primarily contends that Jamestown should be estopped from initiating this proceeding by virtue of the fact that it accepted the reason

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4 In addition, a properly-executed consent order awarding temporary custody and physical placement of Bianca with her aunt was offered into evidence. The order was entered in Family Court on May 17, 1999.

for Bianca’s residence with her aunt back in March 1997.

## **Discussion**

School enrollment is based on a student’s residency. On that subject, Rhode Island General Law 16-64-1 states that “A child shall be deemed to be a resident of the town where his or her parents reside.” In Laura Doe vs. Narragansett School Committee, April 17, 1984, we interpreted this provision as creating “a rebuttable presumption that a child’s residence is the residence of his parents.” Ibid., p. 2. Laura Doe’s parents lived in Providence. Laura claimed to be living with her aunt in Narragansett, and she was seeking to be enrolled in the Narragansett public schools. We framed the question in that case as being “whether the petitioner student has put sufficient evidence on the record to rebut the presumption that her residency for school purposes is now Providence, given that her parents are living in that city.” Ibid., p. 3.

We find the question to be the same here. We further find, as we did in Laura Doe, that because none of the cases “preclusively determined” by the statute applies here, this matter must be examined in light of the common law of school residency. The result

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- 5 Reading the statute as a whole, we are convinced that the presumption applies to all questions concerning residency, whether they involve a student who has attended school in the district for some time or a student who is seeking initial enrollment.
  - 6 Those being the death of the child’s parents, abandonment of the child by the parents, and inability to care for the child because of parental illness or family break-up. *See Laura Doe*, p. 3.
  - 7 Under R.I.G.L. 16-64-3, the appointment of a guardian for a child does not change the child’s residence “unless the child takes up residence with the guardian and unless the guardian has been appointed for a substantial reason other than to change the child’s residence for the purpose of enrolling the child in another school system.”

of our examination in this case is that, while we find that a substantial reason other than school attendance motivated Bianca's move to her aunt's home in Jamestown in March 1997, the evidence does not establish that she is a resident of Jamestown, i.e., physically present there, at this time.

Given the circumstances that existed in the parents' home in March 1997, we find a legitimate basis for Bianca moving to her aunt's home in Jamestown. The parents' child-rearing responsibilities were exceptional, and we can understand their limited capacity to address the behavioral issues of their oldest child, who was then 15 years old. Bianca had lived with her aunt in Jamestown before, and the two had developed a close relationship over the years.

As for Bianca's residence during the winter and spring of 1999, we begin our analysis with the statutory presumption that Bianca is a resident of Warwick. We next consider the results of the School Department's investigation, and the family's response to that inquiry.

We find that Bianca's leaving for school on the mornings of March 10th and 11th from her parents' home in Warwick is explained by her grandmother's visit. We further find that her departure for school from Warwick on March 26th is explained by her mother's birthday party the previous evening. We acknowledge that April 12th and May 3rd were Mondays, but we note that, unlike the events addressed above, weekends are not  
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unique events. There is no accounting for the Nissan's presence at the parent's home on March 19th, a day Bianca was absent from school. Nor is there any explanation for the

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8 Especially when Bianca visits her parents' home frequently during the week after school on her way to work.

absence of the Nissan in Jamestown on the mornings of April 6th and 15th, or the unspecified morning that Bianca was later observed driving into the High School parking lot.

We find it particularly noteworthy that the School Department sought to determine Bianca's whereabouts on 9 schoolday mornings, and not once did it observe Bianca at the address from which she had enrolled.<sup>9</sup> We further note that the School Department's investigation took place after it had contacted the family regarding Bianca's actual place of residence. While Bianca's absence from her aunt's home or presence at her parents' home on some mornings has been explained, other mornings remain unexplained.<sup>10</sup> The family's inability to account for Bianca's whereabouts becomes critical in light of the statutory presumption that a child resides with the parents.

Given the presumption and the unexplained sightings in Warwick and absences from Jamestown, we are constrained to find that Bianca is a resident of Warwick, not Jamestown. We do not reach this conclusion lightly. Under R.I.G.L. 16-64-8, when a student who is about to enter her senior year of high school changes her residence, the student may complete the senior year in her original town of residence. Our findings in this case demonstrate that Bianca changed her residence prior to the completion of her junior year. For that reason, she is not eligible to exercise the option provided in

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9 We find that the School Department acted in a timely manner upon discovering a question concerning Bianca's residency.

10 We find it beyond belief that Bianca was "visiting" her parents overnight every time the School Department checked on her whereabouts. On the other hand, if this actually were the case, it would tend to support, not rebut, the statutory presumption.

R.I.G.L. 16-64-8. We find the consequences of our holding to be unfortunate, but we find this holding to be dictated by the law and the evidence in this case.

**Conclusion**

For school enrollment purposes, Bianca B. is a resident of Warwick, not Jamestown.

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Paul E. Pontarelli  
Hearing Officer

Approved:

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Peter McWalters  
Commissioner of Education

Date: August 19, 1999