

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER
OF
EDUCATION

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In Re: Residency of John Doe (CS) :
 and Jane Doe (LS) :
:
.....

DECISION

Held: The Petitioners' children do not reside in the city of East Providence, Rhode Island, and therefore are not entitled to attend East Providence public schools.

DATE: February 2, 2000

Travel of the Case

As provided in R.I.G.L. 16-64-6 the Petitioners appealed directly to Commissioner Peter McWalters from the determination of the Director of Attendance for the East Providence School Department that their residency for school purposes is in the city of Providence. Again, consistent with the provisions of our school residency laws, both of the petitioners' children were permitted to continue in attendance in East Providence schools until the dispute could be resolved at the Commissioner's level.

Hearings were scheduled by agreement of the parties on November 3 and November 17, 1999. Post hearing memoranda were submitted by the parties, and the record in the case closed on January 4, 2000 when the hearing officer received the transcript of the hearing. Decision in this matter has been expedited, so that any change in the enrollment of these students might occur at a time which would minimize disruption of their school work.

Issue:

Are CS and LS residents of East Providence for school enrollment purposes?

Positions of the Parties:

The Petitioners

Counsel for the Petitioners submits that they own two residences, one in Providence and one in East Providence. The Petitioners and their two children are presently a family in "transition" from their Providence home which is quite large and expensive to maintain to their home in East Providence, which is a smaller and less expensive home they acquired in October of 1997. While they have maintained dual residences over the past two years, they have been attempting to sell their Providence home. The family's relocation to East Providence will also enhance the career opportunities for Mrs. C., who has been employed in the East Providence school system for over twenty years.

Although the couple and their children have not lived full-time at their East Providence house since its purchase in 1997, they have lived there and continued to do so

even after another couple moved into the house several months after it was purchased. The Petitioners argue that during the tenancy of this other couple, their guests, the Petitioners stayed there also, although less frequently. These guests moved out at the end of August, 1999, when the house they were building was completed.

Supporting Mrs. C's testimony concerning her family's taking up a second residence in East Providence in October of 1997, her counsel points to documentary evidence establishing the family's residence in East Providence -- the real estate deed showing the 1997 purchase, utility bills, registration for one of the family automobiles at the East Providence address, and voter registration documents.¹ He argues that this un rebutted evidence clearly establishes that the family resides at the East Providence home, albeit while still maintaining their Providence home where they also live with extended family part of the time.

As to the evidence submitted by the school department -- observations of the East Providence attendance officer over an extended period and his testimony that the family did not reside in East Providence, counsel for the petitioners attributes this testimony to the fact that the attendance officer was unfamiliar with the concept of "dual residency"; i.e., that the family could be living in both places, and that evidence of residence in Providence does not preclude residence in East Providence. Given that the Petitioners are taxpayers and voters in East Providence, as well as the fact that they spend part of their time at the East Providence residence, residency for school purposes has been established there, he submits.

The School Committee

The School Committee's argument is a factual one. In order to be eligible to attend a district's schools, a child must reside in the city or town in question. A child is "deemed" to be a resident of the city or town where his or her parents reside under our school residency law. In this case, counsel argues that neither the children, nor the parents, reside in the city of East Providence. The documentation submitted by the Petitioners that they are the owners of a house in East Providence does not establish that they "reside" there, as

¹ Voter registration documents were changed to verify East Providence residency in early October, 1999.

required by R.I.G.L. 16-64-1. Counsel argues that ownership is not synonymous with residence. The factual issue is where the Petitioners actually reside, and the evidence is persuasive that they live in Providence, and have continuously resided in Providence during the entire time that their children have been enrolled in East Providence schools. Equally strong, the school department argues, is the evidence that the Petitioners do not reside in East Providence.

The School Committee takes the position that if it has the burden of proof in this case, the burden has been met. It has clearly established by the testimony of the school attendance officer and by the testimony of two neighbors to the East Providence house that the Petitioners do not, nor have they ever, lived at the house they own in East Providence. Counsel points to the numerous inconsistencies in Mrs. C's own testimony as further evidence that the actual facts are not consistent with her testimony. Since the Petitioners do not live in East Providence, their children are not entitled to attend the district's schools.

Findings of Relevant Facts

- The petitioners reside in the city of Providence, Rhode Island. The Petitioners have not resided in East Providence since their purchase of a house there in October of 1997. S.C. Ex.A.; Tr. Vol I. pp. 66-71;73-80.
- During the period from approximately January, 1998 to October, 1999 the East Providence house owned by the Petitioners was rented to a couple who had been referred to the Petitioners. Tr.Vol.I. pp. 66-71; 73-80; 53-54, 57, 59.

DECISION

As our findings of fact indicate, persuasive evidence in this case demonstrates that the Petitioners and their two children reside in the City of Providence. While there was some testimony that over the course of the last two years the Petitioners also resided in East Providence, this testimony was not credible. The petitioner's testimony that for over a year her family shared the East Providence home with "guests", whom they did not know and who paid them rent is simply not plausible. The petitioner contradicted herself several times during her testimony on such issues as the frequency of the family's stays at the East Providence home, whether their Providence house was for sale, and even who owned the

Providence home. More credible was the testimony of neighbors who stated that they had never seen the Petitioners occupy their alleged residence in East Providence. Of great weight was the Attendance Director's record of the family's exclusive use² of their Providence home right up until the day before the hearing in this matter.

The petitioners' argument that they should be entitled to establish dual residences is simply not relevant to the facts of this case. Based on the credible evidence submitted at this hearing, the only residence of the Petitioners is Providence, Rhode Island. To avoid any impression that the Petitioners are somehow being required to establish that their domicile is in East Providence, we will clearly define residence as:

a factual place of abode, where one is physically living.

This definition is consistent with the common law of school residency, as set forth in The Law of Public Education, 3rd edition by E. Edmund Reutter, Jr. at page 672 and has been adopted in numerous decisions of the Commissioner. While it is clear that the Petitioners have owned a home in East Providence since October of 1997, it is equally clear that they have not, and do not presently, reside there. From the credible evidence in this record, we conclude that their place of abode is Providence. They conduct the activities of their household from their Providence home, and sleep there most, if not all, of the time. For these reasons the residency of the children for school purposes is Providence.

The children should be disenrolled from the East Providence school system and enrolled in the public schools of Providence, where they reside.

Kathleen S. Murray, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

DATE

² Minimal attempts were made to create the impression of residency in East Providence. The Petitioners arrived to give out candy from the East Providence house on the evening of Halloween, but the entire family left the house by eight o'clock to return to Providence for the night.