

0022-00

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER
OF
EDUCATION

Residency of Student D.R. Doe

DECISION

Held: The question posed in this case is whether student Doe is a resident of Pawtucket or Cumberland for school purposes. Although the parents of this child are living in different towns, both parents are exercising actual custody over this student and are sharing responsibility for his care, shelter, and education. The student is therefore eligible to attend the public schools of Cumberland.

DATE: June 26, 2000

TRAVEL OF THE CASE

This is a school residency case. Jurisdiction is present under R.I.G.L.16-64-6. The question posed in this case is whether student Doe is a resident of Pawtucket or Cumberland for school purposes. R.I.G.L. 16-64-1, et seq.

POSITION OF THE PARENT

The father of this student contends that the student has always gone to school in Cumberland and that is where he should continue to go to school.

POSITION OF CUMBERLAND

Cumberland argues that this student is living in Pawtucket and not in Cumberland.

POSITION OF PAWTUCKET

Pawtucket indicates that it has no objection to this student attending its public schools.

FINDINGS OF FACT

- The father of this student is living in Cumberland.
- The mother of this student is living in Pawtucket.
- This student spends most school nights in Pawtucket where his mother lives.
- During some days of the week this student lives with his father in Cumberland.
- The mother of this student goes to work at an early hour.
- On school days the father leaves his home in Cumberland to pick-up his son in Pawtucket.
- The father testified that there is no one at the Pawtucket residence that could watch this child after the child's mother goes to work
- The father testified that he brings his child from Pawtucket to a public school in Cumberland.
- This student has frequently arrived late for school in Cumberland.
- Cumberland school authorities believe that this student might be more regular and prompt in his attendance if he were going to school in Pawtucket

CONCLUSIONS OF LAW

The part of the School residency law that is applicable to this case is found in R.I.G.L.16-64-1 which in pertinent part states:

If the child’s parents live in different towns the child shall be deemed to be a resident of the town in which the parent having *actual* custody of the child resides. (*Emphasis added*)

In this context the word “actual” means “existing in fact or reality”.¹ The purport of the word “actual” is to stress the physical location of the child in deciding about where the child is living for school purposes. The use of the word “actual” in the statute indicates that in construing this statute we are to look to practical reality and not to constructive legal fictions.

Counsel for the school committee points out that this student stays with his mother, in Pawtucket, on most school nights. Counsel correctly points out that in our prior rulings we have looked to the “number of school nights” that a student spends in a community to define, at least to some extent, which community is responsible for educating a student who is, in actuality, living in two different communities. We note that there is nothing in the residency statute that mandates the use of the “school nights” rule. We have adopted this rule, more an as “rule of thumb” than a rule of evidence. While we are still convinced that the “school nights” rule gave the correct result in all the cases it has been used in, we do not think that it is a rule of universal application.

For example, in the present case the truth of the matter is that both parents are exercising actual custody over this student. Although the parents of this child are living in different towns they are still sharing responsibility for his care, shelter, and education. We believe that the public schools should be as supportive as possible for parents who are striving to fulfill their responsibilities under such difficult circumstances. We therefore think that in cases where both parents, while maintaining residences in different communities, are sharing actual custody of the child, the better rule is to allow the parents the choice of which of the two communities they wish to enroll their child in. Since both parents, in such cases are, in fact, exercising actual custody over their child, no departure from the language of the statute has occurred.

We of course are aware that the residency statute, R.I.G.L.16-64-1, speaks of “the town in which the parent [singular] resides.” Of course this is no obstacle to the construction that we adopt today. The General Assembly has given the following guidance to be used when construing the statutes that it has adopted:

43-3-4. Singular and plural. — Every word importing the singular number only, may be construed to extend to and to include the plural number also; and every word importing the

¹ Merriam Webster’s Collegiate Dictionary, 10th Edition,

plural number only, may be construed to extend to and to embrace the singular number also.

The construction we adopt today simply recognizes the actual fact that both parents may be exercising actual custody over their child despite the fact that they are living in different communities. Exactly which town the child is living in on a given day is apt to have more to do with the exigencies of work schedules and the availability of child care than with any intent to prefer one school system over another

We also think the rule we adopt today will be of great help to school districts. There is no reason why their scarce resources should have to be devoted to investigating the exact domestic arrangements of a separated family.

We point out that school districts are, for the most part, only obligated to provide transportation to students within their own town boundaries. *Chaves v. School Committee*, 100 R.I. 140 (1965) The only major exception to this rule is found in the states cross-district busing law. R.I.G.L. 16-21.1-2 However none of the categories of the cross district busing law are applicable to cases such as the present one. Therefore schools are not obligated to provided transportation between communities when parents live in different communities

CONCLUSION

The student in this case is eligible to attend the public schools of Cumberland.

Forrest L. Avila, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

DATE: June 26, 2000