

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

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In Re: Residency of J.R. :
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DECISION
AND
INTERIM ORDER

Held: This child is resident of Foster, Rhode Island and entitled to enrollment in the Ponagansett Middle School.

Date: August 23, 2000

Travel of the Case

On June 13, 2000 the Woonsocket School Department requested that the Commissioner's office determine the school residency of a child who had been attending the Woonsocket Middle School for the entire second semester of the 1999-2000 school year, despite the fact that he had not resided in Woonsocket since late December, 1999. Woonsocket's petition to Commissioner McWalters also requested that a determination of fiscal responsibility be made, so that Woonsocket could be reimbursed for the cost of this child's special education during the time when he continued to be enrolled but was not a Woonsocket resident. At the same time, the department of education received a request for a determination of school residency from a couple who lived on the Rhode Island/Connecticut border and who took the position that the foster child living with them was a resident of Foster and eligible to attend Ponagansett Middle School. Upon closer review, it was determined that both requests for a determination of school residency related to the same child.

Upon assignment of both matters to the undersigned hearing officer on June 26, 2000, it was suggested to the parties that the proceedings be consolidated, and with the agreement of the parties the two petitions have been consolidated for purposes of hearing and decision. Hearing took place on July 21, 2000. Extensive testimony was taken and exhibits entered on the record at that time. The parties argued their respective legal positions at the conclusion of the case. The record in these cases closed upon receipt of the transcript on August 11, 2000. Given the need for a speedy determination of educational responsibilities and entitlements at issue here, this decision has been expedited.

Issues

- Where does J.R. reside for school purposes?
- Is the City of Woonsocket entitled to reimbursement for the special education program it provided to J.R. during the second semester of the 1999-2000 school year, during which time J.R. was not a resident of the city of Woonsocket?

Findings of Relevant Facts:

- J.R. is a twelve year old child who has been in the custody of the Rhode Island Department of Children, Youth and Families since December of 1997. Tr.pp. 43-44; Woonsocket Ex. A.;
- At the time he was placed in DCYF custody, J.R. resided in Providence with his biological mother and siblings at Ford Street, Providence, R.I. Tr. pp.48-49; DCYF Ex. 1;
- J.R. and his siblings were removed from their home by DCYF in April of 1998 because of the incarceration of both parents at the Adult Correctional Institutions. Tr.p. 44;
- Because of the ongoing inability of both parents to care for J.R., DCYF is in the process of terminating his parents' parental rights. Tr. pp.42-43;70-72; His father's parental rights have already been terminated. Tr. p.58;
- Both of J.R.'s parents have consistently resided in Providence. Tr. p.58; DCYF Ex. 1;
- After living in several different residential placements, including an extended stay at Camp E-Hun-Tee in Exeter, Rhode Island, J.R. was placed in a group home in Woonsocket, Rhode Island in early December, 1999. Tr. p.60. He was enrolled at Woonsocket Middle School. Petitioners Ex. 2;
- On December 24, 1999 a suitable foster home was found and J.R. was placed with the Petitioners in this case. Tr.p.19;
- After their attempts to enroll J.R. in Ponagansett Middle School were unsuccessful, the Petitioners received verbal indication from the superintendent of the Foster-Glocester Regional School District that J.R. was ineligible to enroll in the system because he was not a resident of Foster. Tr.p.20;
- J.R. thereupon returned to Woonsocket Middle School with the agreement of school officials there; his foster parents transported him to and from school and he completed the second semester of the 1999-2000 school year in Woonsocket. Petitioners Ex.2; Tr.p.203;
- The Petitioners were licensed as foster parents by DCYF from April 30, 1999 to April 29,2000 at which time their license as foster parents lapsed. The Petitioners had asked that their license be renewed, but because of the question raised as to whether they were Rhode Island residents and the resulting controversy as to their foster child's residence for school purposes, DCYF decided not to renew to Petitioners' license. Tr. pp. 102-104;

- At the time the Petitioners' license as foster parents from the state of Rhode Island lapsed, DCYF approved the Petitioners' home as a preadoptive placement, for which no license is required. J.R. has continued to reside with them. Tr. pp. 102-105;
- Upon completion of proceedings in family court, J.R. will be eligible for adoption, and it is the Petitioners' intent to adopt J.R. Petitioners' Ex.2;
- The Petitioners reside at Cucumber Hill Road, Foster, Rhode Island; a portion of their property lies in Rhode Island, and a portion lies in Killingly, Connecticut; their house is located on that portion of the property which is located in Killingly, Connecticut; Petitioners' Ex.2; Tr. pp. 120-122;
- The Rhode Island/Connecticut boundary line runs horizontally across their property at a point in their front yard; their house is located behind this line. Petitioners' Ex 1; Tr.p.122;
- The only access to the Petitioners home is from Cucumber Hill Road, which extends along the entire frontage of their property; the parcel is otherwise landlocked. Tr. pp. 150-151; Petitioners Ex. 1;
- The Petitioners' cars, which are garaged on the Connecticut portion of the property, are registered in Connecticut and taxed by that state. Tr. 173-174;
- The Petitioners pay property taxes to both towns - Foster and Killingly. Tr. p. 147-148;
- Both of the Petitioners work in the state of Rhode Island and pay income taxes to the state of Rhode Island. Petitioners'Ex. 2;¹
- One of the Petitioners is a registered voter of the town of Foster at the Cucumber Hill Road address; the other is not registered to vote. Tr. pp. 156, 163;
- Both of the Petitioners have, and are required by the Registry of Motor Vehicles to have, drivers licenses issued by the state of Rhode Island. Tr. pp. 131, 148
- All utilities servicing the Petitioners' property are provided by companies based in Rhode Island; emergency and police services are provided by the town of Foster. Petitioners' Ex. 2; Tr. pp. 128-130, 153;
- J.R. is a child who has received special education services, and received such services in his last educational placement at the Woonsocket Middle School. Tr. p. 191;

¹ The record is unclear as to whether the Petitioners file their Rhode Island income tax return as residents or non-residents; there is a suggestion on the record at pages 129-130 that they file as residents of Rhode Island.

Positions of the Parties

Petitioners:

The Petitioners, who appeared pro se, take the position that they are residents of Foster, Rhode Island. Although they concede that their house is physically located on that part of their property that is beyond the Rhode Island state line into Connecticut, they argue that a significant portion of their property is, in fact, in Foster and the entire orientation of their home and their daily lives makes them Foster, Rhode Island, residents. They argue that many facts should be taken into consideration in determining their residency. They direct our attention to the fact that they pay taxes to the town of Foster, pay all of their income taxes to the state of Rhode Island, and are registered to vote in Foster. They point out that the location of their property is such that access is available only through Cucumber Hill Road in Foster. Consistent with this location and access, all utilities and emergency services originate in Rhode Island and with the town of Foster. Not only do both of the Petitioners work in Rhode Island, but they note that all of their family activities are conducted in Rhode Island, and conversely, no family activities take place in Connecticut. These other factors should be given appropriate weight along with geographical factors, they argue – particularly when the issue is residency for school purposes and the student lives on the border between two states.

Woonsocket School Department

Through counsel, the school department argues that unusual circumstances are present here. Those cases cited for the proposition that the situs of the home, the location of the larger portion of the dwelling unit, or even the location of the bedrooms of the dwelling are determinative of residence are not dispositive, given these unusual circumstances. Counsel notes that the only access to this residence is from Rhode Island and from the town of Foster. Further, the “totality of circumstances” should be taken into account in situations in which property lies in two different towns. In this case the totality of circumstances would make this family residents of the town of Foster.

In point of fact, this child has resided in Foster since December 24, 1999, but received educational services through the Woonsocket School Department until the end

of the last school year. When the fact of J.R.'s placement with a foster family became known to Woonsocket school officials, and his foster parents requested his continuation in Woonsocket Middle School, school officials complied with this request. Counsel stressed that although J.R.'s residence in Woonsocket had clearly ended in December of 1999 (and with it Woonsocket's responsibility to educate this child), administrators of the Woonsocket school system were willing to ensure that J.R., a special education student, continued to receive educational services until his entitlement to attend school elsewhere could be established. The school department filed its petition for a determination of J.R.'s school residency on June 13, 2000 at the conclusion of the school year. Because the department takes the position that this child was, as of December 24, 1999 a resident of the town of Foster, Woonsocket requests reimbursement from the town of Foster for the cost of his education for the second semester. If it is determined that the child is not a resident of Foster for school purposes, then Woonsocket would assert this reimbursement claim against DCYF, or in the alternative, the city of Providence, whichever entity is found to have fiscal responsibility. The claim for reimbursement is based on general equitable principles, i.e. Woonsocket incurred costs which should have been the responsibility of Foster or one of these other entities.

Providence School Department

Although it is clearly established that J.R.'s biological parents are residents of the city of Providence, this fact has no relevance to these proceedings, the school department maintains. It has been established that during the entire period for which educational responsibility is to be determined, J.R. has been in a foster placement. Therefore, under R.I.G.L. 16-64-1.1, J.R. was and remains entitled to the same free appropriate public education provided to all other residents of the city or town where he is placed and that city or town is entitled to reimbursement only under R.I.G.L. 16-7-20 (a) (the state aid formula)². There is, under these circumstances, no contribution required from the city or town in which the child's parent(s) live, as would be the case if a child were placed by DCYF in a group home or other type of residential facility. Given these facts, and the

²The amount determined under the formula in fiscal year 1997-1998 serves as the present "base" for state aid received by districts under R.I.G.L. 16-7.1-15.

nature of the petitions under review in this hearing, counsel for the Providence school department takes the position that Providence has no educational or financial responsibility for J.R. in this proceeding.

Department of Children, Youth and Families:

Counsel for DCYF agrees that R.I.G.L. 16-64-1.1 is controlling. Applying this statute to the facts of this case, i.e. the central fact that J.R. was placed in a foster home, counsel argues that the responsibility for his education lies with the community in which the foster home is located. DCYF's counsel acknowledges that body of law which calls for a determination of residence based strictly on the location of the physical structure of the dwelling - and concedes that the evidence here is that the house is located entirely within the Connecticut portion of the property. However, counsel argues that with reference to residence for school attendance purposes, the analysis of residence must go beyond the physical location of the structure to take into account the "equities" of the situation. DCYF points out that this family has significant contacts with the town of Foster and the state of Rhode Island. He notes also that the only access to the Petitioners' property is from Cucumber Hill Road, with the entire frontage of the property lying on this road and in Foster, Rhode Island. Given these circumstances, he argues that J.R. is a resident of the town of Foster, and therefore, entitled to attend school there or in the schools of the regional school district of which it forms a part. Foster (and not DCYF) should also reimburse Woonsocket for the educational services provided to J.R. from December of 1999 through June 2000, he argues.

Foster-Glocester Regional School District

Counsel for the regional school district focuses on the central fact that the Petitioners' house is located entirely in Killingly, Connecticut, and thus he argues that under the legal tests for residence established in a long line of cases cited to the hearing officer, the Petitioners are residents of Killingly Connecticut. Despite their Connecticut residency, the Petitioners have not acted appropriately to have J.R. admitted to school in the district in which they reside, and in which he has resided since December of 1999. Counsel notes that even when their Rhode Island foster license was not renewed, in part

because of questions concerning their residency status, the Petitioners neglected to make efforts to become licensed foster parents in the state of Connecticut.

As for DCYF, it is argued that this agency illegally issued a foster parents license to the Petitioners given that they are not residents of Rhode Island. Furthermore, when this fact became clear, instead of removing J.R. from the Petitioners' home, DCYF facilitated J.R.'s ongoing presence there by approving the home as a "preadoptive placement". This was also improper agency action, it is argued, because DCYF has no authority to approve preadoptive placements outside the state of Rhode Island, except under the terms of the Interstate Compact for the Placement of Children (ICPC). The ICPC was not utilized in the approval of the Petitioners' home as a preadoptive placement. This was done directly by DCYF, after a home study completed by a DCYF social worker. The approval of J.R.'s preadoptive placement at a site outside Rhode Island was, therefore, without authority.

The school district argues that this appeal to admit J.R. to the Foster-Glocester system by the Petitioners runs contrary to their legal obligation to aggressively seek his enrollment in the Killingly, Connecticut, school system. Counsel argues that laziness is the reason the Petitioners have not taken appropriate action here. It is also argued that DCYF's approval of the Petitioners' home as a foster home and as a preadoptive placement was the result of the failure of DCYF officials to do their jobs properly. The district asserts that there is complicity with respect to finding an "easy way out" and an attempt to shift responsibility for J.R.'s education to the Foster-Glocester school district, when the rule of law would clearly make this child the educational responsibility of Killingly, Connecticut.

DECISION

At issue here is the school residency of J.R., a child placed in foster care with the Petitioners in December of 1999 and who, since the end of April of this year, has been living with them in an approved preadoptive placement. Our law clearly and directly addresses the issue of school residency of children placed in foster care. Both R.I.G.L. 16-64-1 and 16-64-1.1 create an entitlement for a foster child to attend school in the town where the foster home is located and to receive the same free appropriate public

education provided to all other residents. Although these same statutes do not contain language specifically addressing the school residency of a child in a preadoptive placement, a child is generally “deemed to be a resident of the town where the child lives with his or her legal guardian, natural guardian, or other person acting in loco parentis to the child”.³ See Section 16-64-1. Thus, J.R. is entitled to attend school in the town in which he resides with the Petitioners in this case. The more difficult question is which town this is – Foster, Rhode Island, or Killingly, Connecticut.

The case law submitted by counsel for the Foster-Glocester school district does establish a rule adopted by several courts in determining legal residence. In the *Teel v. Hamilton – Wenham Regional School District* case⁴ the issue of residence for school purposes was decided with reference to the geographical location of the substantial portion of the house and the location of “that part of the house most closely connected with the primary purposes of a dwelling” *Teel* at page 910. In the *Teel* case, despite evidence of other facts which would have connected the family with the adjoining community, the location of the “substantial portion” of the home was controlling on the issue of residence. The rule set forth in the *Teel* case is in fact the same rule adopted in Rhode Island by the Commissioner in the 1984 case of *Viti v. Cranston School Committee*,⁵ a decision which cites the *Teel* case. Again, evidence of other facts connecting the family to the adjoining city, in this case Cranston, Rhode Island, was rejected in favor of the single test of location of the “greater portion” of the house. The children were determined to be residents of Providence for school purposes, and evidence concerning family contacts with Cranston was rejected.

Since the adoption of what was then the common law rule in the *Viti* case, significant case law has developed which moves away from a rigid approach to determining residence based only on the physical location of the house in rare boundary line cases. More recent cases adopt a more flexible approach to school residency determinations when the property in question lies in two different towns. This approach takes into account not just geographical factors and location of the dwelling, but other

³ J.R. is in the custody of DCYF and living with the Petitioners because his biological parents are unable to care for him because of reasons set forth in the statute.

⁴ Mass.App., 433 N.E.2d 907 (1982)

⁵ decision of the Commissioner dated November 20, 1984.

facts as well – mailing address, place of employment, voter registration, origin of utility and emergency services, and where the family conducts its activities. Professor James A. Rapp discusses this evolution of case law in his treatise on Education Law:

Courts increasingly do not apply a bright line test based solely on the physical location of a residence or portions of a residence. Instead, the determination of residency where a dwelling overlaps district boundaries is “based on the whole constellation of interests including both geography and the community orientation of the student and his family. See Rapp, Education Law Sec. 5.03 (4)(g)

The obvious benefit of a fact-based approach which takes into account the “constellation of interests” of the family and the student in determining school residence in rare boundary line cases is more flexibility. Such an approach also recognizes that educational interests are personal, and rules governing school attendance for those few families whose properties lie in two localities should take into account a broad range of personal factors.

Adoption of this approach in Rhode Island is consistent with the General Assembly’s post-Viti amendment to R.I.G.L. 16-64-1 to permit the parent or guardian of a child to choose which school district a child will attend when the child resides in a dwelling which lies in more than one municipality. This 1987 amendment abolished the rigid approach to school residency determinations used in the *Viti* case. In boundary line cases in which the residence lies not only in different municipalities, but also in different states, consideration of facts in addition to geography is particularly appropriate because it recognizes the affinity of a family to one state or the other, but not both.

In a factual context strikingly similar to this case, the Appellate Court of Connecticut recently applied the “constellation of interests” approach to determine the residence of a family whose property bordered New Canaan and Norwalk, Connecticut. The court determined school residency after review of geographical factors⁶ and the community orientation of the family. The case is entitled *Baerst v. State Board of Education et al.* 642 A.2d 76 (Conn. App. 1994). The physical location of the house was

⁶ Only five(5)% of the total real estate taxes was paid to New Canaan- for land only. The rest was paid to Norwalk. The record in our case does not indicate precisely the proportion of the Petitioner’s property found in each town.

not found to accurately and fully reflect the interests and orientation of the Baerst family, whose daily lives were focused in the New Canaan community. In finding that the children were residents of New Canaan for school purposes, the Court looked at a broad range of factors in determining residence for purposes of school attendance.

Although the record in the case before us is not fully developed on the “constellation of interests” of the Petitioners’ family, there is extensive evidence on the record that the significant contacts and activities of this family take place in Rhode Island, and not in Connecticut. Our findings of fact will reflect the evidence to which we refer. As found in the *Baerst* case, *supra*, we find that the physical location of the Petitioners’ house does not accurately and fully reflect the interests and orientation of the Petitioners’ family. The Petitioners’ statement at the close of the case that “the whole bias of our property, the whole bias of where we live, it is Foster. It is not Connecticut” is supported by the record in this case. We focus on a fact that clearly demonstrates the Petitioners’ status as Rhode Islanders—the fact that they have accepted into their home and intend to adopt a child whose “roots” are in Rhode Island and who is presently in the custody of the Rhode Island Department of Children, Youth and Families.

We find that the Petitioners’ are residents of Foster, Rhode Island for school attendance purposes, and that J.R. is eligible to attend the Ponagansett Middle School. We order that he be admitted forthwith. It is our conclusion that the decision in this matter should also be entered as an interim protective order under R.I.G.L. 16-39-3.2 so that pending any appeal of this decision, J.R. will have an immediate entitlement to attend school and continue to receive the free appropriate public education to which he is entitled as a child with a disability. We would note that even in the event that our decision with respect to his school residency is ultimately overturned, IDEA⁷ places on the Rhode Island Department of Elementary and Secondary Education a direct and individually-based responsibility to ensure that J.R. receives a free appropriate public education. See 34 C.F.R. Part 300, Appendix A (IEP Interpretation) part IV, Other Questions Regarding the Development and Content of IEP’S, Question 16, 64 Fed. Reg. 12,476 (1999) and the discussion in Rapp, Education Law page 10-333, “State

⁷ the Individuals With Disabilities Education Act

Supervision of Local and Other Implementation of IDEA” particularly footnote 49 of this section. Thus, pending any possible appeal of this decision, such interim order is necessary to ensure that J.R. receives an education and that the state education agency’s statutory responsibilities under IDEA are met.

With regard to the Woonsocket School Department’s request for reimbursement, it has been shown that the district permitted J.R. to remain in attendance, despite the fact that it could have sought to immediately terminate its responsibility by filing a request for a residency determination under R.I.G.L. 16-64-6.⁸ Instead the district sought a ruling after the conclusion of the school year. Woonsocket thereby facilitated and ensured that J.R. would receive an uninterrupted free appropriate public education when the provision of such education appeared doubtful, at least on a temporary basis. We find the circumstances of this case to be such that Woonsocket has established its entitlement to reimbursement from the Town of Foster from the point at which J.R. became a Foster resident.

Under the current statutory scheme for reimbursement by “home” districts, “reimbursement” consists of a contribution of at least the amount of the average per pupil cost for general or special education of the city or town making the contribution. See R.I.G.L. 16-64-1.1 (d). Given the fact that reimbursement here is based on general equitable principles, should this amount not adequately address the costs associated with J.R.’s education for the second semester, or greatly exceed these costs, we would direct the parties to confer and attempt to reach agreement on this issue. If agreement is not possible we will reconvene the hearing for the purpose of making this determination

Kathleen S. Murray, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

August 23, 2000

Date

⁸ Until such request was made, and an order entered, R.I.G.L. 16-64-2 apparently permits ongoing attendance in the “old” district until enrollment in the “new” district is effectuated. This statutory provision was not considered by any of the parties, or the hearing officer, at the time of hearing.