

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

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**In Re: Residency of Andrew V.**

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**DECISION**

Held: This student is a resident of East Greenwich for school enrollment purposes. R.I. law does not recognize a hardship exception, or school assignment based on the best interests of a child. The claim of the district for tuition for the cost of educating Andrew V. does not arise directly under a law relating to schools or education, and is therefore more properly placed before a court of competent jurisdiction.

DATE: July 24, 2001

## **Travel of the Case**

On March 29, 2001 an attorney representing Andrew V.'s mother presented a request for a determination of school residency to the Superintendent of the North Kingstown school department. Subsequently, on April 26, 2001 a copy of this request was sent to Commissioner Peter McWalters with the request that a residency hearing be conducted. On May 4, 2001 the undersigned was designated to hear and decide this matter. A hearing was scheduled by agreement of the parties and the hearing was held on June 7, 2001. The record in this case closed on June 27, 2001 upon receipt of the transcript by the hearing officer. Decision in this matter has been expedited so that the parties will be aware of the decision in time for suitable arrangements to be made for this student's school attendance in his upcoming senior year of high school, and so that any transition to a new school can be made with as little disruption as possible.

## **ISSUES**

Where does Andrew V. reside for school purposes, and if he is not a resident of the town of North Kingstown, and has not resided there over the course of the 2000-2001 school year, is his parent liable for tuition in the nature of the per pupil cost to the North Kingstown School Department?

## **Findings of Relevant Facts:**

- From May, 1995 to May 2000 Andrew V. resided in the town of North Kingstown with his family and attended North Kingstown public schools. Tr. p.23.
- When his family moved to East Greenwich in May of 2000, Andrew continued in attendance at North Kingstown High School; he completed his junior year there in June 2001. Tr. p. 23-24.
- When the School Department received a copy of a form Andrew had filed at the R.I Department of Labor and Training in March of this school year, and the form indicated that Andrew resided in East Greenwich, school officials questioned his residency and eligibility to attend North Kingstown High School. Tr. pp. 11-12.
- At that time Andrew's mother submitted a letter to school officials that indicated Andrew "will be living" with his grandmother in the town of North Kingstown. N.K. Ex.3; Tr. p.12.
- After further investigation, North Kingstown school officials determined that Andrew was not living in North Kingstown with his grandmother, and that he continued to live in East Greenwich. Tr. p.13.
- Thereafter, Superintendent James Halley notified Andrew's mother that he would no longer be allowed to attend North Kingstown High School. At the same time, the Superintendent gave Andrew's mother the option of continuing him at the high school contingent on the payment of tuition. N.K. Ex. 4.

- To date, Andrew's mother has declined to exercise the option to continue his attendance at North Kingstown High School for his senior year on a tuition basis. Tr. p.14.
- When Andrew's family moved from North Kingstown to East Greenwich in May of 2000, the family's circumstances were quite difficult and included the breakup of his parent's marriage. He has been detrimentally affected by the many transitions of the last year, and his mother felt that maintaining him at North Kingstown High School where he has several close friends was in his best interests. Tr. pp. 24-38.
- The school district's offer to permit Andrew to continue in attendance at North Kingstown High School upon the payment of tuition has not been accepted because the mother's present financial circumstances do not permit this. Tr. p.40.

### **Positions of the Parties:**

#### Andrew V.

Andrew's mother detailed the reasons why completing his senior year at North Kingstown High School is so important to him. His continued attendance at the high school would provide the only real stability in his life right now. In her testimony, his mother described the detrimental impact on Andrew of the breakup of her marriage to Andrew's father, sale of the family home in North Kingstown, her own recent unemployment and the fact that she has received no child support from Andrew's father. If she were financially able to pay the tuition requested of her to ensure his continued attendance during his upcoming senior year, she would. She is convinced that finishing at North Kingstown High School is in her child's best interests. Her counsel argues that this is a case of substantial hardship and a good reason for an exception to the rule that requires that public school attendance be determined by residency. He also argues against any assessment of tuition for Andrew's attendance during the 2000-2001 school year, given the family's financial circumstances.

#### North Kingstown School Department

Counsel for the North Kingstown School Department submits that Andrew clearly is a non-resident and has not been legally entitled to an education in North Kingstown since the beginning of the 2000-2001 school year, given that he moved to East Greenwich in May of 2000. While the school department is sympathetic to the family's circumstances, it must stand behind the principle that town schools are for residents of the town, except upon an agreement that the non-resident will pay tuition in the nature of a reasonable per pupil cost as fixed by the school finance office. It has offered this option to Andrew's mother, and will explore any possible flexibility that may exist in the timing of tuition payments in order to accommodate their financial situation. Through counsel, it is also argued that Andrew's mother is legally responsible for reimbursement of the cost of educating Andrew during the past school year.

**DECISION**

Although it is clear that Andrew V.'s best interests would be served by his continued attendance at North Kingstown High School, school residency in Rhode Island is not aligned to the best interests of the student, but rather to the district in which he or she resides. The record in this matter clearly demonstrates that in May of 2000 Andrew and his family moved from North Kingstown and took up residency in East Greenwich. Under our school residency law, his entitlement to continue in attendance at North Kingstown High School extended to the end of school year 1999-2000. While we are appreciative of the family's present circumstances and the fact that Andrew would be well served by finishing his high school career in North Kingstown, any arguments as to flexibility in the terms under which this student would be allowed to continue in attendance, despite his present ineligibility, are more properly presented to the members of the School Committee. We have also implicitly suggested to mother that the importance of school attendance may warrant her relocation back to North Kingstown, if at all possible.

The claim for tuition which may be owed for the school year 2000-2001 is more properly presented to a court of competent jurisdiction. It is true that the Commissioner has occasionally ruled on claims for reimbursement for non-resident students, e.g. *In Re: Residency of John C.F.Doe*, decision of the Commissioner dated July 15, 1997. In that case, adjudication of the residency issue originally brought to the Commissioner in September of the 1996 school year extended over the course of the entire year, and "evolved" into a tuition issue only because counsel for the East Providence School Committee determined at some point in the litigation that the district would no longer seek to disenroll the student and disrupt his senior year, but rather would change its requested remedy to tuition reimbursement. The nature of a claim for reimbursement is such that it arises under a tort or contract theory, and is not based on a law relating to schools or education and within the expertise of the Commissioner of Education. We would thus direct the North Kingstown school department to the courts for any reimbursement it sees fit to seek from Andrew's mother for the 2000-2001 school year.

Unless Andrew becomes a resident of North Kingstown or other arrangements are made for his continued attendance at North Kingstown High School, he should be disenrolled and directed to school officials at East Greenwich High School so that he may complete the requirements for his high school diploma there.

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Kathleen S. Murray  
Hearing Officer

APPROVED:

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Peter McWalters, Commissioner

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July 24, 2001  
DATE