

0013-03

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

RESIDENCY OF DIANA A.

Decision

Held: Parent did not establish
residency in Johnston to qualify
for school enrollment.

Date: May 30, 2003

Introduction

This matter concerns a request for a residency determination for Diana A.¹

Background

Diana is 15 years old. She lives with her mother. For many years, they lived in Johnston, and Diana attended Johnston public schools. In October 2001, Diana and her mother moved to an apartment in Smithfield.² Diana's mother testified that she had difficulty enrolling Diana in the Smithfield school system after moving there.³ School records show that Diana was enrolled in the Smithfield school system in January 2002. Diana was the subject of a truancy petition filed in March 2002. Diana's mother and Smithfield school officials testified that Family Court proceedings are ongoing at this time.

In September 2002, Diana's mother enrolled her in the Johnston school system. The enrollment address is that of a Johnston house owned by a close friend of Diana's mother. Diana's education records were transferred from Smithfield and Diana has been attending public school in Johnston since September 2002. Diana rides a school bus to and from the friend's Johnston home, and the friend drives Diana to and from the Smithfield apartment. On several occasions when Diana was absent from school, the Johnston attendance officer visited the Johnston enrollment address but found no one present.

Diana's mother testified that she has "basically resided [in Johnston] on and off for five or six years due to medical problems and have had two residences always." [Transcript, p. 10]. Her friend who owns and occupies the Johnston home testified that since Diana and her mother "moved out," i.e., rented the apartment in Smithfield, they have stayed overnight at his home "four or five" times. [Tr., p. 22]. Diana's mother testified that "with the new medication, I don't need to spend as much time at his house." [Tr., p. 31].

¹ The Commissioner of Education designated the undersigned hearing officer to hear and decide this matter. A hearing was held on March 3, 2003. Diana's mother and counsel for the Johnston and Smithfield school departments participated in the hearing.

² The record includes a one-year lease for the Smithfield apartment, beginning December 1, 2001, signed by Diana's mother. The apartment rental currently is on a month-to-month basis.

³ Diana's mother's testimony includes allegations of serious misconduct by the Smithfield attendance officer.

Positions of the Parties

Diana's mother contends that she maintains a residence in Johnston as well as Smithfield. She also asserts that Diana is incapable of attending school in Smithfield because of the conduct of the attendance officer. The Johnston School Committee argues that Diana and her mother have not established a residence in Johnston. The Smithfield School Committee contends that Diana and her mother reside in Johnston and Smithfield.

Discussion

To qualify for enrollment in a city or town's public school system, it first must be shown that the student resides in the particular city or town. Residency is established by one's physical presence. It is the place where one is actually living. In this case, the evidence fails to prove that Diana and her mother reside in Johnston.

Diana lives with her mother who, since October 2001, has leased an apartment in Smithfield. Ordinarily, a person rents an apartment to live in it. While we have no reason to doubt that Diana's mother has medical problems that occasionally cause her to spend time at her friend's home in Johnston, the evidence regarding the frequency and duration of these visits is insufficient to establish a Johnston residence at the present time. In so finding, we note the testimony of Diana's mother and her friend regarding the small number of overnight visits and the reduced need to spend time at the Johnston home.

Conclusion

Diana's current residence for school enrollment purposes is Smithfield. Given the late juncture of the school year and our desire to avoid undue disruption to Diana's education, this decision shall take effect at the conclusion of the 2002-2003 school year.⁴

Paul E. Pontarelli
Hearing Officer

Approved:

⁴ See Residency of Michael G., March 20, 2003. As for any issues related to Smithfield attendance officer, we anticipate that they will be addressed in the Family Court proceeding or by another court with appropriate jurisdiction.

Peter McWalters

Date: May 30, 2003