

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

Residency of Student S.C.

DECISION

Held: In this request for residency determination, Student S.C. was about to enter her senior year when her parents moved to Glocester. Under R.I. Residency Law 16-64-8, if a student is a senior or about to enter her senior year, the student shall be allowed to complete her senior year in her original town of residence, even if the student has moved to a different town. We therefore find that this student is entitled to complete her senior year in Smithfield, and it is therefore unnecessary to decide residency.

DATE: February 18, 2005

Travel of the Case and Jurisdiction

The parents of this student have requested a hearing to determine residency for school purposes. Jurisdiction is present under R.I.G.L. 16-39-1, R.I.G.L. 16-39-2, and R.I.G.L. 16-64-6.

Issue Presented

Is the student who is the subject of this appeal a resident of Smithfield or of Glocester for school purposes?

Positions of the Parties

The Smithfield School Committee

The Smithfield School Committee contends that since the parents of this student have moved to Glocester, the student is now a resident of Glocester for school purposes. R.I.G.L. 16-64-1.

The Parents of the Student

The parents of this student submit that after the close of the school year in June of 2004 they moved to Glocester. They contend that since their daughter was about to enter her senior year in the Smithfield school system she is entitled to the protection of R.I.G.L. 16-64-8 which allows seniors--and those about to become seniors--to complete their education in their original town of residence, even if they have become residents of different town. They also contend that in fact their daughter has continued to reside in Smithfield on most school days in order to help care for her ill grandfather.

Findings of Fact

1. Sometime during the middle of June of 2004 the parents of this student moved from Smithfield to Glocester. The Smithfield school year ended on June 16th in 2004.¹
2. The student who is the subject of this appeal spends her weekends in Glocester. On most school days she stays in Smithfield to live with her grandfather who is undergoing medical treatment. She helps with housework and runs errands for her grandfather. She also works 20 hours a week in a Smithfield nursing home. She has been a good student in the public schools of Smithfield.²
3. The parents of this student have filed a petition with the Smithfield probate court to make the student's grandfather her legal guardian.³

¹ Testimony of student's mother.

² Testimony of student.

³ Testimony of mother.

Conclusion of Law

At the outset we find that under law the pendency of a guardianship petition or, indeed, the granting of guardianship, has no effect on the residency of a student for school purposes. [R.I.G.L.16-64- 4] In fact, it is evident from the Rhode Island School Residency Law that one of its major purposes was to prevent the use of guardianships to change a student's residence for school purposes. To this end, under the Residency Law, a student who is not living with his parents must show two things before he or she can go to a school in a town where his or her parents are not residing. These are that:

- The student is in fact living in a different town, and:
- That the student is living in that town for a substantial reason other than to go to school there.⁴

Therefore if a child is not living with his or her parents there is no need to get a guardian appointed to get the child enrolled in school.⁵ In fact, guardianship has no real effect on school residency:

16-64-4. Effect of guardianship. – The appointment of a guardian of the person of a child pursuant to chapter 15.1 of title 33 shall not operate to change a child's residence unless the child takes up residence with the guardian and unless the guardian has been appointed for a substantial reason other than to change the child's residence for the purpose of enrolling the child in another school system.

We therefore find that the pending guardianship hearing is of no moment in this matter.

More germane to the residency issue at hand is the fact that this student was about to enter her senior year when her parents moved to Gloucester. Under the Residency Law a student who is a senior, or who is about to enter the senior year, is allowed to complete the senior year in the school distinct he she was enrolled even if the student has moved to a different town:

16-64-8. Completion of semester of school year. – When a student changes his or her residence during the course of a semester the student shall be allowed to complete the semester in his or her original town of residence. If the student is a senior or about to enter his or her senior year the student shall be allowed to complete his or her senior year in his or her original town of residence. No school district shall be required to provide transportation to a student exercising the option permitted by this section. No school district shall require a student to exercise the option allowed in

⁴ *Laura Doe vs. Narragansett School Committee*, April 17, 1984

⁵ In fact it has been suggested that a "policy of excluding minor children from school unless the child has a parent or legal guardian living in the district violates the equal protection and due process clauses. *Horton v. Marshall Public Schools*, 769 F.2d 1323 (1985)

this section. No school district shall be required to pay tuition for a student who exercises the option allowed in this section....

Given this statute it is evident that the student in this case has the right to complete her senior year in Smithfield, even if she was living in Gloucester.

We therefore find it unnecessary to decide whether or not this student is still a resident of Smithfield as a result of the days of the week she spends in her grandfather's residence during the school week. While we tend to accept the facts and the arguments made by the student on this point we conclude that R.I.G.L. 16-64-8 provides a correct and sufficient grounds for the disposition of this case.

Conclusion

In accordance with R.I.G.L. 16-64-4 we find that this student is entitled to complete her senior year in Smithfield.

APPROVED:

Forrest L. Avila, Hearing Officer

Peter McWalters, Commissioner

February 18, 2005
Date