

0025-05

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTIONS

COMMISSIONER OF EDUCATION

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IN RE: RESIDENCY OF C. DOE  
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**Decision**

Held: Student is a resident of  
Burrillville for school enrollment  
purposes.

Date: May 31, 2005

## **Introduction**

This matter concerns a request by the Burrillville School Department for a determination of the residency of student Doe.<sup>1</sup>

## **Background**

In September 2004, the attendance officer for the Burrillville School Department received a report that a student enrolled in a Burrillville kindergarten did not actually reside in the town of Burrillville. The following evening, about 6:00 or 7:00 p.m., the attendance officer visited the Burrillville property from which student Doe was enrolled. The home is owned by the parents of Doe's mother. The attendance officer parked his car in the driveway and walked to the doorway on the back porch. At the door, Doe's grandmother informed the attendance officer that Doe and his mother were visiting Doe's father in West Warwick. The grandmother told the attendance officer that Doe spends most of his time at the Burrillville home. According to the attendance officer, he saw some toys, a bicycle and a sandbox on the property, but "not an overabundance" of child-related objects. [Transcript, pp. 13-14]. From the doorway, he could see the kitchen and a portion of the front living area of the home. The attendance officer testified that the Burrillville home "was a very well-kept house, but I saw very few indications of a young child living there." [Tr. pp. 8-9]. The attendance officer did not go inside the Burrillville house.

On the following evening, the attendance officer visited the residence of Doe's father in West Warwick. The attendance officer met the father in the driveway and asked if Doe lived there. According to the attendance officer, the father said, "yes, he lives here." [Tr. p. 9]. The attendance officer testified that he saw a bike, a go-cart and lots of toys on the property. Doe's mother was present and spoke to the attendance officer, telling him that Doe spends most of his time with her in Burrillville. These conversations took place in the driveway and the attendance officer did not go inside the West Warwick house.

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<sup>1</sup> The Commissioner of Education designated the undersigned hearing officer to hear and decide the request. A hearing was held on October 25, 2004.

Doe's father testified that he rents the upstairs of a dwelling owned by his parents. He further testified that Doe and his mother visit him in West Warwick every day after school and on weekends. A Burrillville school bus transports Doe to the Burrillville home after school and Doe and his mother drive to the father's residence in West Warwick to have dinner and spend time together. At about 7:00 or 8:00 p.m., Doe and his mother return to Burrillville, where Doe spends the night with his mother and boards the bus to school in the morning. Doe and his parents spend time together in West Warwick on weekends as well. Doe and his mother share a bedroom in the Burrillville home<sup>2</sup> and Doe has a bedroom in the West Warwick residence. Doe lives with his mother in Burrillville and the two visit Doe's father in West Warwick. Doe's parents have continued their relationship. Finally, Doe's father testified that he told the attendance officer that Doe was "in the house," not that he lived there. [Tr. p. 22].

### **Positions of the Parties**

The Burrillville School Committee contends that Doe is a resident of West Warwick for school enrollment purposes based on his father's statement to the attendance officer, the attendance officer's observations at the two homes, and the conclusions that the attendance officer was able to draw from those observations in light of his 15 years of experience in this area.

Student Doe's family contends that Doe lives with his mother at the Burrillville residence and that the two of them visit the father's West Warwick home to spend time together as a family.

The West Warwick School Committee similarly contends that the evidence in this matter shows this to be a case of a mother and child who live in Burrillville and have a visitation arrangement with the father in West Warwick. It further argues that, at best, the evidence shows that Doe spends significant amounts of time in both communities, and therefore is entitled to attend school in either one.

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<sup>2</sup> The home has 4 bedrooms and serves as the residence for Doe's grandparents, their son, a brother-in-law and Doe and his mother.

## Discussion

School enrollment in Rhode Island is based on a student's residency. It is not uncommon for a dispute to arise regarding a student's place of residence. Rhode Island General Law 16-64-6 authorizes this type of proceeding to resolve the dispute and determine the student's city or town of residence. In making residency determinations, we rely on the evidence presented by the parties with respect to the student's actual physical presence.

The evidence that proves to be determinative in a residency dispute hearing often is derived from the school department's investigation of the matter. Observations of the investigating official are particularly important in this regard. The evidence produced by a school department investigation must establish the out-of-district residence, however, either directly or by reasonable inference.

Recent successful school department requests for residency determinations include Bianca B.<sup>3</sup> and Jane and Julie Doe<sup>4</sup>. In Bianca B., the school department gathered evidence of the student's whereabouts by observing the homes in question on 10 different dates. In Jane and Julie Doe, the school department observed the homes on 8 different dates. Based on those observations, the school departments were able to compile persuasive objective evidence that the students were not actually living in the homes from which they were enrolled in school.

We do not have persuasive objective evidence in this case that Doe does not live in Burrillville. What we have is an observation of each of the homes in question on one occasion and a disputed statement from Doe's father. The observations in this case were not only one-time-only visits, they were limited as well. The attendance officer was not able to go inside the homes. He did not get to see the bedroom arrangements for Doe. Moreover, what he did see was consistent with the explanation offered by Doe's parents with regard to his whereabouts – that on the evenings of school days Doe and his mother visit the father in West Warwick. There is no evidence in the record to contradict the testimony of Doe's parents that, with rare exception, Doe sleeps in the Burrillville home on school nights. Unlike Bianca B. and Jane and Julie Doe, there is no evidence that Doe

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<sup>3</sup> Commissioner's decision of August 19, 1999.

<sup>4</sup> Commissioner's decision of May 30, 2002.

spends the night anywhere else but at the Burrillville home before boarding the bus for school in the morning. In the absence of additional evidence regarding Doe's whereabouts, the disputed statement from his father and the attendance officer's conjecture fail to establish the necessary factual basis to support a finding of a West Warwick residency.

**Conclusion**

Based on the evidence presented at the hearing, student Doe is a resident of Burrillville for school enrollment purposes.

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Paul E. Pontarelli  
Hearing Officer

Approved:

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Peter McWalters  
Commissioner of Education

Date: May 31, 2005