

0008-06

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

IN THE MATTER OF THE RESIDENCY OF STUDENT N. DOE

Decision

Held: Student is a resident of Tiverton,
not Portsmouth.

Date: April 11, 2006

Introduction

This is a request by the Portsmouth School Department for a determination of the residency of student Doe.¹

Background

Student Doe is an 8th-grade student at the Portsmouth Middle School. He has been a student at the school since the 5th grade. He was enrolled in the Middle School while living with a parent in a one-bedroom apartment in Portsmouth.

In April 2004 student Doe and his custodial parent moved to a larger apartment in Tiverton. His parent, who has health problems, applied for a Section 8 housing voucher with the intent of returning to Portsmouth. In August 2005 the parent received a Section 8 voucher valid for housing in Portsmouth.²

In a letter dated September 2, 2005, the School Department notified Doe's parent of the need to enroll Doe in the school district in which he resides.³ Following a discussion of the matter, the superintendent stated in a September 6th letter to Doe that

In light of the fact that you are currently searching for housing, your son, [Doe], may remain enrolled at the Portsmouth Middle School for the time being. However, as you and I discussed, if you are unable to produce evidence of having a Portsmouth address by October 14, 2005, you will need to appeal to the School Committee if you want [Doe] to remain in the Portsmouth schools. [Portsmouth Exhibit 4].

Doe's parent continued to search unsuccessfully for affordable Section 8 housing in Portsmouth. The parent was able to extend his voucher to December 15, 2005, but by that date, with still no success securing a Portsmouth residence, the parent applied the Section 8 voucher to the current housing arrangement in Tiverton.

On January 10, 2006, Doe's parent asked the School Committee to waive the tuition requirement for nonresident children and permit Doe to remain in attendance at

¹ The request is dated January 19, 2006. The Commissioner of Education designated the undersigned hearing officer to hear and decide the request. A hearing was held on February 14, 2006. The Tiverton School Department was provided notice of this hearing, but chose not to participate.

² Doe's other biological parent does not reside in Portsmouth.

³ The letter also contained the district's residence policy, which allows parents of nonresident children to ask for permission to attend Portsmouth public schools at a tuition rate established by the School Committee.

the Middle School. Doe's request was denied, and the School Department filed the request that is the subject of this proceeding.

Positions of the Parties

The School Committee points to the undisputed fact that Doe has not resided in Portsmouth since April 2004. The Committee emphasizes the restraint it has exercised in this case, and it argues that the time has come when the accommodation for Doe's situation must end. The Committee asserts that there is no statutory support for Doe's continued enrollment in Portsmouth, and that there cannot be a financial exception to the well-established principles of enrollment-by-residency.

Doe's parent contends that the April 2004 move to Tiverton and the inability to subsequently return to Portsmouth were driven by circumstances beyond the family's control, i.e., the unavailability of affordable housing in Portsmouth. To disenroll Doe from Portsmouth only 4 months shy of his graduation from the Middle School would be unfair and contrary to Doe's best interests. The School Department's request in this case comes too late in the school year, and Doe is as equally invested in the Middle School as a senior is in high school. Doe therefore should be given similar protection and be allowed to finish the school year at Portsmouth Middle School.

Discussion

While we are sympathetic to the plight of Doe's parent in attempting to obtain Portsmouth housing that would fit within the budgetary parameters of the Section 8 voucher, there is no legal basis to allow Doe to remain at Portsmouth Middle School. It is undisputed that Doe has been living with his parent in Tiverton since April 2004. They are not homeless. They clearly are residents of Tiverton. Doe has remained at Portsmouth Middle School by reason of the School Department's flexibility. We recognize the distress that Doe faces in changing schools at this time, but his current predicament is the result of the parties' agreement earlier in the school year. That agreement ended when Doe's parent applied the Section 8 allowance to the apartment in Tiverton. The School Committee has discretion in this area. We review the legality, not

the wisdom, of the School Committee's action. The evidence in this matter does not show that the Committee exercised its discretion in an unlawful manner when it denied Doe continued enrollment at Portsmouth Middle School without the payment of tuition.

Conclusion

The evidence shows that Doe currently is residing in Tiverton, and that he was residing there prior to the completion of the first semester of the 2005-06 school year. Accordingly, we order Doe's parent to promptly enroll Doe in the Tiverton school system.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date: April 11, 2006