

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....
Residency of Student A.H. Doe :
.....

DECISION

Held: The student in this case contends that she is a resident of Cranston for school purposes, because she is living there with her sister for a substantial reason other than to attend the public schools of Cranston. For the reasons detailed within this decision, we find that this student is a resident of Cranston for school purposes.

DATE: July 13, 2006

Travel of the Case and Jurisdiction

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. This is a direct school residency appeal under R.I.G.L.16-64-6.

Positions of the Parties

The School District

The Cranston school district contends that this student is not a resident of Cranston for school purposes.

The position of the Student

The student in this case contends that she is a resident of Cranston for school purposes, because she is living there with her sister for a substantial reason other than to attend the public schools of Cranston

Issue Presented

Is this student a resident of Cranston for school purposes?

Findings of Fact

1. The minor student in this case is living with her sister in the city of Cranston.
2. The student's parents live in Mexico.
3. The student entered America because she and her parents wanted her to live in the United States. Her parents still live in Mexico.
4. The student did not move from Mexico to Cranston because she had, as a primary intent, a desire to attend the public schools of Cranston.
5. The student's primary reason for living in Cranston is because it is in Cranston that she has a responsible adult, her sister, with whom she can live.
6. This student's adult sister has only a limited competence in English and she had to testify through an interpreter.

Conclusions of Law

1. Rhode Island's school residency law is essentially a restatement of the common law of school residency.¹ The common law of school residency has been discussed and constitutional endorsed by the United States Supreme Court.²

¹ *In the Matter of Pricilla H., Commissioner of Education*, September 7, 1983; *Laura Doe v. Narragansett School Committee*, April 17, 1984.

² *Martinez v. Bynum*, 461 U.S. 321 (1983)

2. Under the common law of school residency, 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.
 - That the student is living in that town for a substantial reason other than to go to school there.³
3. In overturning the effort of Texas to exclude undocumented immigrant children from the public schools of Texas, the Supreme Court stated in *Plyler v. Doe*, 457 US 202 (1982):

It is difficult to understand precisely what the State hopes to achieve by promoting the creation and perpetuation of a subclass of illiterates within our boundaries, surely adding to the problems and costs of unemployment, welfare, and crime. It is thus clear that whatever savings might be achieved by denying these children an education, they are wholly insubstantial in light of the costs involved to these children, the State, and the Nation... If the state is to deny a discrete group of innocent children the free public education that it offers to other children residing within its borders, that denial must be justified by a showing that it furthers some substantial state interest. No such showing was made here.
4. In *Martinez v. Bynum*, 461 US 321 (1983) the United States Supreme Court held that *Plyler v. Doe*, *supra*, did not prohibit a state from applying normal school residency rules such as those rules to be found in Rhode Island's school residency law.⁴ (R.I.G.L.16-64-1, et seq.)
5. Under *Plyler v. Doe*, 457 US 202 (1982) students whose immigration status is undocumented have the constitutional right to attend public school. Since this is the case, undocumented immigrant students should not be questioned about their, or their parents', immigration status since this status is not material to their right to enroll in public education programs. Furthermore such questions could discourage these students from attending school and undermine the effectiveness of Rhode Island's compulsory attendance law. (R.I.G.L.16-19-1, et seq.)

Discussion

Rhode Island is a very small state divided into 39 cities and towns with a correlative multiplicity of school districts. It is hard to cross a street without treading into the "sovereign" boundaries of another governmental entity. Rhode Island's school residency law is drafted to deal with this situation, and thus to prevent students from being excluded from school. We are therefore confident that the General Assembly intended for Rhode Island's school residency law (R.I.G.L.16-64-1) to completely pre-empt all local

³ *Laura Doe vs. Narragansett School Committee*, April 17, 1984

⁴ *In the Matter of Pricilla H.*, Commissioner of Education, September 7, 1983; *Laura Doe v. Narragansett School Committee*, April 17, 1984.

regulations that purport to deal with school residency matters.⁵ Any other conclusion would be an invitation to chaos.

If regulations are needed to interpret the state school residency law such regulations must be promulgated at the state level by the Board of Regents, which has the specific duty to, “allocate and coordinate the various educational functions among the educational agencies of the state and local school districts and to promote cooperation among them so that maximum efficiency and economy shall be achieved.”⁶ Rhode Island simply cannot tolerate a situation where territorially minded towns and school districts might promulgate varying, and potentially conflicting residency rules, thus defeating the State’s long-term interest in securing an educated citizenry.⁷ Concerning this point, it is helpful to remember that education is a state, not a local, function⁸.

The student in this case has come from Mexico, and she is now living with her sister in Cranston. While we greatly appreciate the excellence of the public schools of Cranston, we cannot quite accept Cranston’s argument that this student left Mexico so that she could enroll in the public schools of Cranston. We think it far more likely that this student left Mexico because she, and her family in Mexico, wanted her to have the advantages of living in the United States. We therefore conclude that the substantial reason why this student is living in Cranston is because it is in Cranston that she has the support of a responsible adult, her sister, with whom she can live *in the United States*. Since this student is living in Cranston for a substantial reason other than to attend the public schools of Cranston, we must find that she is a resident of Cranston for school purposes.⁹

Cranston suggests that there is a hint of guile in this case because the student’s sister, who herself speaks little English, checked that she was this student’s “custodial parent” on the admission form used by the public schools of Cranston. A glance at the venerable Oxford English Dictionary, however, clears up this point nicely. The dictionary points out that etymologically “parent” is properly “...a father or mother, or by extension an ancestor; *in mode[ern] Romance lang[ua]ges any kinsman*.” We think it more likely than not that the sister in this case (who has only limited proficiency in English) read “parent” to be equivalent to the Spanish word “pariente”—which, as the Oxford English Dictionary reminds us, means, “any kinsman.”¹⁰ In any event, as we have pointed out, this is a case where the student’s residence with her sister is properly the student’s residence for school purposes.

Cranston suggests that it should be allowed to make significant inquiry concerning this student’s immigration status because it has a purely speculative concern that it might

⁵ See: *Providence City Council v. Cianci*, 650 A.2d 499, at 501 (R.I. 1994)

⁶ R.I.G.L.16-60-4 (4)

⁷ On this point it is important to note that the school residency law provides for a direct hearing in residency cases without any need for a prior hearing before local authorities. R.I.G.L.16-64-6.

⁸ Constitution of Rhode Island, Article XII

⁹ *In the Matter of Pricilla H.*, Commissioner of Education, September 7, 1983; *Laura Doe v. Narragansett School Committee*, April 17, 1984.

¹⁰ The Larousse Diccionario Usual defines the Spanish *pariente* as a “Persona unida con otra por lazos de consanguinidad.”

be possible that this student is in this country under an F1 student visa. Under an F1 student visa, a high school student can attend high school for only one year, and the full cost of this education must be paid for in advance.¹¹ Without discussing this hypothesis in detail we note that F1 student visas are no longer issued to students of elementary or of middle school age. A high school age student can only obtain an F1 visa to enter this country by first securing advanced documentation, from the high school in which the student wishes to enroll, that shows that (1) this enrollment has been approved by a school official who has the authority enter into contracts and that (2) the appropriate tuition has been paid in advance. Furthermore, Federal authorities will usually also require such evidence as a cancelled check for the cost of tuition before the student will be granted an F1 visa to enter this country.

We therefore see little merit to Cranston's speculation that this student is in this country under a F1 student visa since no such student visa could have been issued unless Cranston had itself, in effect, granted approval for the issuance of such a student visa.¹² The Supreme Court mandate of *Plyler v. Doe* gives resident undocumented immigrant students the constitutional right to attend public schools. School officials must not trammel this right by asking students or parents questions about a families immigrant status. Such questions can only serve to ensnare school officials in a circle of inquiries that serve no material public school purpose and which, more troublingly, have the effect of inhibiting the exercise of a constitutional right.

Conclusion

This student is a resident of Cranston for school purposes.

APPROVED:

Forrest L. Avila, Hearing Officer

Peter McWalters, Commissioner

July 13, 2006
Date

¹¹ 8 CFR Part 214.2(f)

¹²See USCIS web site: <http://www.uscis.gov/graphics/services/tempbenefits/StudVisas.htm>