

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

IN THE MATTER OF THE RESIDENCY OF S. DOE

Decision

Held: Student is not a resident of
Cranston for school enrollment
purposes.

Date: August 3, 2006

Introduction

This case concerns a request for a residency determination submitted by the aunt of student Doe.¹

Background

Student Doe is 16 years old. He was born in Houston, Texas. When he was 4 years of age, Doe's family moved to Venezuela. Doe has attended school in Venezuela since that time. He is seeking to enroll as a senior in Cranston East High School for the 2006-07 school year.

Doe's family plans to bring Doe to Cranston this month to reside with his father's sister. Doe's aunt initially testified that

my brother wants [Doe] to go to college and . . . come to the United States, do the last year of high school and then go to college [in Houston]. He wants to do the last year here so he can get used to living in the United States again and . . . just try to make him strong because he always lived with his parents. They're going to give him some independence here. [Transcript, p. 6].

When asked on cross-examination for the reason for Doe coming to Cranston, his aunt testified that he needed to finish one last year of high school to be admitted to the college in Houston and that he was seeking "to get some practice in English. All his life he speaks English, but he still needs practice." [Tr. p. 10].

Doe's aunt also testified that Doe's parents plan

to stay with him for like a month to have everything all set with the school . . . Then he's staying with me. They're going to come probably every three months, my sister-in-law or my brother to follow up everything with him and the school and stuff. [Tr. p. 7].

Positions of the Parties

Doe's aunt asserts that Doe is a United States citizen who is entitled to live and go to school in the United States.

¹ The Commissioner of Education designated the undersigned hearing officer to hear and decide the request. A hearing was held on July 13, 2006.

The Cranston School Committee contends that under Martinez v. Bynum,² Rhode Island's school residency rules apply to Doe and that under those rules Doe does not qualify for enrollment in the Cranston schools because he will be living with his aunt in Cranston solely for the purpose of going to school there.

Discussion

Rhode Island General Law 16-64-1 states that "A child shall be deemed to be a resident of the city or town where his or her parents reside." It is well established in decisions of the Commissioner that the statutory language creates a rebuttable presumption concerning residency. In practical terms, this means that the presumption can be rebutted where a child is not living with a parent.³ Thus, school residency may be established by proof that a child is living apart from his or her parents for a substantial reason other than school attendance. In this case, Doe's aunt has failed to establish a reason for Doe's planned move that is separate and distinct from school attendance.

The evidence shows that the timing and purpose of Doe's planned move are specifically designed to permit Doe to take advantage of the benefits of attending an American high school before he begins college in Houston.⁴ Because his aunt resides in Cranston, Cranston East is the American high school that has been selected to serve Doe's education plan. The completion of high school, the gaining of independence, and the improvement of language skills are all tied to Doe's schooling. Doe is not coming to Cranston to live with his aunt because of family-related problems. He is coming to Cranston for one year to use one of its high schools as a preparatory program prior to enrolling in an American college. Based on these findings, the objective of the family's

² 461 U.S. 321 (1983).

³ If Doe were to live with a parent in Cranston, this case would be covered by Plyler v. Doe, 457 U.S. 202 (1982), in which the United States Supreme Court held that it is unconstitutional for a state to deny to undocumented school-age children the free public school education that it provides to children who are citizens of the United States or legally admitted aliens.

⁴ Unlike the case of Residency of Student A.H. Doe, July 13, 2006, in which we stated that it was "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." [Decision, p. 3].

plan and Doe's move away from his parents do not meet the test of a residence established for a substantial purpose other than school attendance.⁵

Conclusion

Student Doe is a resident of Venezuela, not Cranston, for school enrollment purposes.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date: August 3, 2006

⁵ As argued by the School Committee, the circumstances of Doe's case are similar to that of Martinez v. Bynum. In that case, an 8-year-old boy who was born in Texas but residing with his parents in Mexico returned to Texas to live with his sister to attend school. Texas law denied tuition-free admission to public school if the child is living apart from a parent or guardian for the primary purpose of attending school. The United States Supreme Court found the residence requirement to be bona fide and upheld the school district's denial of enrollment. While Doe is not entitled to tuition-free attendance in the Cranston public schools, his family has the option of pursuing a tuition-based enrollment.