

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

IN THE MATTER OF THE RESIDENCY OF C. DOE

Decision

Held: Student living with his aunt and uncle in South Kingstown is a resident of that town for school enrollment purposes.

Date: September 28, 2006

Introduction

This is a request for a residency determination filed by student Doe's aunt.¹

Background

Student Doe is 17 years old. During the 2005-06 school year, he attended the 10th grade at Feinstein High School in Providence while living with his mother in that city.² Doe's three younger teenage sisters also live with their mother in Providence.

Student Doe moved to his aunt and uncle's home in South Kingstown at the end of the 2005-06 school year. Doe's aunt and uncle have a 3-year-old daughter. The uncle's 17-year-old nephew also lives with them and attends South Kingstown High School.³ The aunt and uncle are guardians for the nephew's 15-year-old sister who lives with them by way of a Department of Children, Youth and Families (DCYF) placement. The 15-year-old attends a nonpublic school in Westerly. Another DCYF placement at the aunt and uncle's home, an 18-year-old, is presently living in a group home.

The director of guidance at South Kingstown High School testified at the hearing that she received a phone call from Doe's mother during the last week of August 2006. Upon being told that Doe had moved in with his aunt and uncle in South Kingstown, the guidance director asked for the reasons for the move. The mother responded that South Kingstown had better schools and that because two of Doe's friends had been murdered, she wanted to get him out of the city so that he could stay out of trouble.

On September 6, 2006, Doe's mother appeared at South Kingstown High School to enroll her son. She met with the school principal and the guidance director. They testified that Doe's mother stated that South Kingstown High School was a better school for her son, that the aunt and uncle's home was a better place for him given the presence of a male adult, and that she was a single parent who worked at night. Following the meeting, the principal drafted a letter to Doe's mother explaining that the reason she initially expressed to the guidance director, i.e., her desire to send her son to a "better

¹ The Commissioner of Education designated the undersigned hearing officer to hear and decide the request. A hearing was held on September 19, 2006.

² The present residence of Doe's father is unknown.

³ The aunt and uncle are in the process of adopting the 17-year-old.

school,” while understandable from a safe learning environment standpoint, was not an acceptable basis upon which to enroll Doe at South Kingstown High School.

Doe’s aunt testified that Doe came to her home at the end of the school year for many reasons, not just those related to school. She testified that Doe’s mother is a single parent who works nights, that two of Doe’s friends were shot and killed, that his friends are involved in criminal activity, and that Doe needs a male role model. Doe’s aunt and uncle have a 5-bedroom house.

Doe’s mother testified that Doe is a talented basketball player and that some of his peers are jealous of his athletic ability. She stated that Doe’s behavior was not a problem at home or at school, but that she feels the need to remove Doe from the social environment in the city and that she likes the slower pace of South Kingstown. She noted the death of two of Doe’s friends and she testified that Doe has been in arguments with persons who dislike him. She stated that she noticed a change in Doe’s behavior last spring and when she inquired, Doe told her that he had been shot at from a passing car while walking to school. Doe’s mother also stated that it was her intention that Doe return to her home at the end of the summer, but she changed her mind after finding that she did not worry about Doe while he was living in South Kingstown. Doe’s mother is a singer who works several nights a week.

School records for the 2005-06 school year show that Doe was absent 33 days and tardy 87 days. He has not earned all his attempted credits for grades 9 and 10. He does not have a disciplinary record.

A Providence Police Department incident report documents a case that was opened on October 19, 2005 concerning an alleged discharge of a firearm from a motor vehicle at student Doe. According to the report’s narrative, Doe stated that while he was walking to school at 8:30 a.m. on that date, , “he heard a car slow up behind him and as he turned to look at the vehicle, two gun shots were heard coming from the vehicle. At this time, [Doe] fled the scene and sought shelter. The vehicle fled off in an unknown direction.” Doe described the vehicle as an older white Oldsmobile. The report further states that Doe “is unaware of any person(s) that would be out to harm him but indicated that he has a beef with a subject named [deleted].” The status of the case is described as “Unfounded” and the disposition is listed as “Closed.”

Positions of the Parties

Petitioner contends that there were many reasons for Doe's move to her home in South Kingstown, and that the quality of South Kingstown High School was not the primary reason. She added that she has registered two children at the High School in the past without any problem.

South Kingstown School Department contends that Petitioner failed to rebut the presumption that, for school enrollment purposes, children are deemed to reside in the city or town where their parents reside. In making this argument, the School Department claims that the reasons for Doe's move have changed over time. Initially, his mother said she wanted her son in a better school. A week later, at the September 6th meeting, the factors of single parent, working nights and male role model were added. At the hearing, the concern for Doe became his overall safety. The School Department contends that the initial reason is the most reliable, and it is insufficient under the law to establish a residency for school enrollment. Furthermore, the safety issues are all related to the school Doe has been attending in Providence. In the School Department's view, student Doe's move was prompted by a desire to leave Feinstein High School, which is not a permissible basis to establish school residency and, in the context of this case, raises serious public policy implications.

The Providence School Department asserts that there are 7 other high schools Doe could attend in Providence, and that he need not move to South Kingstown to leave Feinstein. Students with safety concerns are able to enroll in different city schools in order to avoid violence-related issues.

Discussion

The South Kingstown School Department correctly points out that, subject to certain exceptions that do not apply to this case,⁴ there is a presumption under Rhode Island General Law 16-64-1 that, for school enrollment purposes, a child is a resident of the city or town where his or her parents reside. This is a rebuttable presumption,

⁴ The exceptions apply to a child who has no living parents, has been abandoned by his or her parents, is unable to be cared for by his or her parents on account of parental illness or family break-up, or is an emancipated minor.

however. As the School Department also correctly observes, residency for the enrollment of a child not living with his or her parents must be based on a substantial reason other than to attend the schools of a particular city or town.

Doe's aunt and mother have attempted to rebut the residence presumption in this case. It is Petitioner's burden to prove that the presumption does not apply here.

With regard to the explanations for Doe's move to South Kingstown, we find some merit in the School Department's position in that the proffered reasons did not remain uniform during the three-week period in which this matter has unfolded. We do not find that the reasons offered for Doe's move have shifted or changed, however. Instead, we find that depending upon whether it was Doe's aunt or mother doing the explaining, the reasons for Doe's move were fleshed out over time.

In so finding we go back to Doe's mother's initial communication with the guidance director. According to the director, Doe's mother offered her opinion that South Kingstown had better schools than Providence and she also mentioned the murder of two of Doe's friends and her desire to get him out of the city so that he could stay out of trouble. Doe's physical safety therefore was a stated concern at the outset. At the September 6th meeting, Doe's mother explained that the aunt and uncle's home was a "better place" for Doe, noting the presence of a male authority figure. At the hearing, Doe's social environment and peer problems were discussed. We therefore find a consistent thread in the explanations for Doe's move that relates to Doe's social surroundings and a perception of impending trouble.

We find more to this case, however. Doe's mother is a single parent who works several nights a week. In addition to Doe, she has three teenage daughters at home. Based on Doe's 33 absences and 87 tardies last year, there clearly is a problem in the home with regard to getting Doe to school on time. It is obvious that this problem is related to the mother's single parent status, her work schedule, and the needs of Doe's siblings. While these factors were not prominent parts of the parties' discussions, they cannot be overlooked in our review of the entire record in this case.

Another factor that cannot be overlooked is the home to which Doe has relocated. It is the home of not just an aunt and uncle, but a home that has taken in other children, including other members of the extended family. The aunt and uncle have room in their

home for Doe and they clearly have a strong caretaking mission in their lives. It is equally clear to us that Doe needs their help at this time.

Based on the conversations that school officials had with Doe's family members, we understand the position the district has taken in this matter. We are obligated under the statute to look at all the relevant evidence in making a residency determination. In light of the evidence presented at the hearing in this matter, we are persuaded that Petitioner has rebutted the statutory presumption and proven that Doe resides in South Kingstown.⁵

Conclusion

The record in this case establishes a South Kingstown residency for student Doe that is permissible for school enrollment purposes. We therefore order that Doe be enrolled immediately and placed in the appropriate grade based on his academic record.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date: September 28, 2006

⁵ We again remind Doe's family, as the hearing officer did at the hearing, that Doe's change of residence and academic standing may affect his eligibility to play sports at South Kingstown High School this year.