0041-06

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

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Residency of Student D. Doe

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DECISION

Held: In this request for a residency determination, we find that the student is living in East Providence for a substantial reason other than to attend the schools of East Providence, and that he is therefore a resident of East Providence for school purposes.

DATE: October 5, 2006

Travel of the Case

This is a residency case. 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.

Positions of the Parties

Johnston

The Johnston school district, which has a truancy petition pending in the Family Court relating to this student, does not appear to strenuously object to a finding that this student is now a resident of East Providence for school purposes.

East Providence

The East Providence school district submits that the parent of this student is living in Johnston and that this student should therefore be going to school in Johnston.

The Parent

The parent contends that her son is now living in East Providence with his grandmother. The parent contends that the student's move to East Providence was made for a substantial reason other than to gain admission to the public schools of East Providence. She therefore contends that her son is now a resident of East Providence for school purposes. (R.I.G.L.16-64-1, et seq.)

Findings of Fact

1. The petitioning parent, who is now separated from her husband, has three children. She lives in Johnston with two of these children. Her third child, a fourteen-year-old boy, now lives with her mother (his grandmother) in East Providence.
2. The petitioning parent is presently obtaining a divorce from her husband. This divorce has been both acrimonious and traumatic. The petitioning parent has received death threats directed against her and her children in connection with this divorce.
3. The petitioner's fourteen-year-old son has been diagnosed as having several mental health disorders. His conduct has been such as to bring him within the jurisdiction of the family court. He is also a child in need of special education.[1] He can be a difficult youth to deal with and he is presently involved in a truancy petition brought by Johnston school authorities. The father of this fourteen-year-old boy has indicated that he wishes to have nothing to do with his son.
4. The petitioning parent has found that she cannot manage the behavior of her fourteen-year-old son. His bad behavior is not a good example for her two other children. This

[1] *Derek S. v. East Providence School Committee,* Commissioner of Education, July 7, 2003.

behavior also makes it very difficult for the petitioning parent to maintain a stable, orderly environment for her two smaller children or to give them the attention they need.

5. The petitioning parent is experiencing feelings of being overwhelmed by her present difficulties.
6. The grandmother in this case has great concern that her fourteen-year-old grandson, whom she describes as her first-born grandson, could, as a result of his poor conduct, someday find himself in difficulties that might even put his personal safety at grave risk.
7. The grandmother, who has now retired from her job as a respiratory therapist, has raised two sons who have turned out well. Her demeanor evidences intelligence and calm. She is convinced that she can make a difference in her grandson's life. She indicates that her retirement gives her the time needed to work with her grandson to help him express his feelings in constructive ways such as by journaling them. The testimony indicated that the grandson shows a respect for his grandmother that helps him maintain his conduct within the boundaries she sets for him.
8. East Providence has refused, through its attendance officer, to admit this fourteen-year-old student into its school system because it believes that this student is properly the responsibility of Johnston.

Conclusions of Law

The General Laws of Rhode Island provide in pertinent part at R.I.G.L.16-64-1 as follows:

> **R.I.G.L.16-64-1 Residency of children for school purposes.** – Except as provided by law or by agreement, a child shall be enrolled in the school system of the city or town where he or she resides. A child shall be deemed to be a resident of the city or town where his or her parents reside. If the child's parents reside in different cities or towns the child shall be deemed to be a resident of the city or town in which the parent having actual custody of the child resides. *In cases where a child has no living parents, has been abandoned by his or her parents, or when parents are unable to care for their child on account of parental illness or family break-up, the child shall be deemed to be a resident of the city or town where the child lives with his or her legal guardian, natural guardian, or other person acting in loco parentis to the child. ...In all other cases a child's residence shall be determined in accordance with the applicable rules of the common law....* (Emphasis added)

Our reading of this statute leads us to conclude that the sections of this statute relating to "family break-up" and to the "applicable rules of the common law" provide the rules of decision needed to resolve this case. We will first discuss the applicability of the common law of school residency to the present matter. The common law of school residency is well stated in *Joel R. v. Board of Education:*

> The child's residence in a district other than that in which his parents reside is sufficient to entitle him to attend school tuition-free in the district in which he resides

so long as such residence was not established solely to enjoy the benefits of free schooling.[2]

Put another way, a student who is not living with his parents must meet two requisites before he or she can go to a school in a town where his or her parents are not residing. These requisites are that:

- The student is in fact living in the different town.
- That the student is living in that town for a substantial reason other than to go to school there.[3]

In the present case we conclude that the troubled fourteen-year-old student in this case is living with his grandmother in East Providence because (1) his mother cannot provide him with adequate supervision, care, and attention and (2) his presence in his mother's household imposes an undue burden on the welfare of his two siblings. We further find that there is no indication in this case that the student's move to East Providence was a subterfuge developed to evade the force of Rhode Island's School Residency Law. (R.I.G.L.16-64-1, *et seq.*) We therefore conclude that this fourteen-year-old student is living in East Providence for a substantial reason other than to go to school in East Providence and that he therefore has the right to attend the public schools of East Providence.

We also conclude that the provision contained in R.I.G.L.16-64-1 relating to "*family break-up*" is applicable to this case. It is clear that the family of the fourteen-year-old student in this case has "*broken-up*". It is also clear that he is living with his grandmother who is functioning as this student's natural guardian because of the present inability of his mother to fill this role. Once again we must conclude that this student is a resident of East Providence for school purposes.

Conclusion

The fourteen-year-old student in this case is a resident of East Providence for school purposes.

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Forrest L. Avila, Hearing Officer

APPROVED:

_____ _____ October 5, 2006
Peter McWalters, Commissioner Date

[2] 686 N.E.2d 650 (1997)
[3] *Laura Doe vs. Narragansett School Committee,* April 17, 1984; See: *In The Matter of Priscilla H.,* Commissioner of Education September 7, 1983.