

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

Residency of Student S.D.

DECISION

Held: On May 8, 2000 the Commissioner of Education found — on the basis of evidence submitted at a contested hearing — that this student, SD, was a resident of North Providence for school purposes. We find that our decision of May 20th, 2000 still controls this matter for the reasons set out at page 4 of that decision. Given the fact that this student has reached the age of majority, and given the fact that he is not living in Rhode Island with his mother, we have to find, as we did on May 20th, 2000 that this student’s last Rhode Island residence for school purposes was, and still is, North Providence. North Providence therefore remains responsible for paying a per pupil special education cost for this student’s placement at the Chrystal Springs School.

DATE: May 16, 2007

Travel of the Case

This matter is before the Commissioner under R.I.G.L.16-39-1, R.I.G.L.16-39-2, and R.I.G.L.16-64-6. The City of North Providence alleges that it is no longer responsible for paying a per pupil special education cost to the Chrystal Springs School in Massachusetts for a placement arranged by the Department of Children and their Families (DCYF) for a student the Commissioner found to be a resident of North Providence in a decision dated May 8, 2000. North Providence now alleges that the student should be found to be a resident of Lincoln or Westerly for school purposes.

Positions of the Parties

Respondent School Districts

The school districts in this case are Lincoln, North Providence, and Westerly. Each one of these districts argues that it is not responsible for the education of the SD.

Position of the Department of Children and their Families (DCYF)

DCYF argues that at least one of these districts must be responsible for the education of SD.

Findings of Fact

1. On May 8, 2000 the Commissioner of Education found — on the basis of evidence submitted at a contested hearing — that this student, SD, was a resident of North Providence for school purposes. This finding was based on evidence indicating that SD was living with his grandfather in North Providence for a substantial reason other than to attend the schools of North Providence. The substantial reason for SD to be living with his grandparents was the fact that SD's mother was unable to care for him. We find, of course, that this ruling has *res judicata* effect concerning all legal and factual matters encompassed in the decision. We therefore incorporate our decision of May 8, 2000 into the present decision and attach it to this decision.
2. The record before us indicates that SD, whose date of birth is September 20, 1984, was born with many medical difficulties. These difficulties have left him with very significant cognitive impairments.
3. SD has not lived with his mother since he was six years old. At age six he went to live with his grandparents. His grandparents cared for SD until his grandmother became ill in June of 1997. At this point DCYF placed this student in the Crystal Springs School in Assonet Massachusetts, where he has resided ever since.
4. At various times SD's mother has lived in Georgia and in Massachusetts. She presently has a part-time home in Westerly. She still resides for part of the year in Georgia with her husband and her family. Because of business reasons, the family seems to reside in different places at different times, including overseas.

5. Because SD's residence for school purposes in 1997 was North Providence the Commissioner of Education had decided that North Providence was required to pay a per pupil special education cost to the Crystal Springs placement, which had been arranged by DCYF. After this decision, North Providence started to pay a per pupil special education cost to Chrystal Springs in accordance with the Commissioner's decision.
6. In anticipation of this student's 18th birthday, SD's mother went to probate court in Westerly to get a limited guardianship over her son. The purpose of this guardianship was to allow her to make decisions for her son, SD, whose cognitive limitations make it impossible for him to make his own decisions.
7. This guardianship appears to have generated the present dispute. When Crystal Springs forwarded certain paperwork to North Providence, this paperwork contained a notation that this student's "parent/guardian" was his mother, and that she was now living in Westerly. The same paperwork also recorded the student's grandfather as now living in Lincoln, Rhode Island. Upon the receipt of this paper work North Providence made a unilateral decision to stop paying a per pupil special education cost to the Chrystal Springs School, on the theory that this student was no longer a resident of North Providence for school purposes.
8. SD, who is now over 18 years old, has not lived with his mother since he was six years old. It is important to note, however, that there has never been a time when her parental rights have been terminated. Furthermore, SD, since his placement at Chrystal Springs, has not lived with his grandfather.

Conclusions of Law

We find that our decision of May 20th, 2000 still controls this matter for the reasons set out at page 4 of that decision. Given the fact that this student has reached the age of majority, and given the fact that he is not living in Rhode Island with his mother, we have to find, as we did on May 20th, 2000 that this student's last Rhode Island residence for school purposes was, and still is, North Providence. The Commissioner of Education has never construed R.I.G.L.16-64-1 to create an irrebuttable presumption that a parent's residence is automatically a student's residence, even if the student is not living with the parent.¹ North Providence therefore remains responsible for paying a per pupil special education cost for this student's placement at the Chrystal Springs School.

APPROVED:

Forrest L. Avila, Hearing Officer

Peter McWalters, Commissioner

Date May 16, 2007

¹ Laura Doe vs. Narragansett School Committee, Commissioner of Education April 17, 1984. Attachment B.

ATTACHMENT A

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER
OF
EDUCATION

* * * * *

Residency of Stephen D.

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DECISION

Held: This student is the educational responsibility of North Providence.

DATE: May 8, 2000

TRAVEL OF THE CASE

This is a residency case. Jurisdiction is present under R.I.G.L.16-64-1. The Rhode Island Department for Children and Their Families is seeking reimbursement for the educational costs of a student placed at the Crystal Springs School in Assonet, Massachusetts. It is also seeking a designation of a Rhode Island school district to be responsible for providing this student with a free appropriate education (FAPE). R.I.G.L.16-24-1 and 20 USC 1415. The towns involved in this dispute are Providence and North Providence.

POSITIONS OF THE PARTIES

POSITION OF NORTH PROVIDENCE

North Providence concedes that up until the time DCYF placed this student at the Crystal Spring School it had been providing this student with educational services. These services were being provided based upon the child's residence with his grandparents in North Providence. When North Providence discovered that this student was no longer living with his grandparents in North Providence, that his mother was living in Massachusetts, and that his father's street address was really in Providence, it concluded that it had no further responsibility for the education of this student. It argues that if any Rhode Island community should be responsible for educating this student it should be Providence since that is where the student's father is living. R.I.G.L.16-64-1 and R.I.G.L.16-64-1.2 (b)

POSITION OF PROVIDENCE

The position of Providence is that this student has never lived in Providence and that Providence has never been responsible for this child's education. The position of Providence is that at all times the proper school residence of this student has been, and still is, North Providence. This argument is based on the fact that this student was living with his grandparents in North Providence at the time when he came into the custody of DCYF.

FINDINGS OF FACT

Until June or July of 1997 this student was living with his maternal grandparents at a home in North Providence. He had been living there for a number of years because his mother had health problems that prevented her from caring for him. His parents are divorced. Their parental rights have never been terminated.

The North Providence public schools were educating this special education student through the Northern Rhode Island Collaborative. Because this student's grandmother became seriously ill in June or July of 1997, this student came into the custody of the Rhode Island Department for Children and their Families (DCYF). The student's mother voluntarily assented to DCYF taking custody of this student and placing him in the Crystal Springs School in Assonet, Massachusetts. The student's grandmother died not long after this placement was made. Apparently the student's grandfather is still alive and residing in North Providence.

When this student first came to the notice of DCYF his mother was living somewhere in North Providence. By the time DCYF placed this student at the Crystal Springs School, his mother was living in Blackstone, Massachusetts. The student's father was living on Woonasquatucket Avenue on the date of placement. Whether the particular street address of the father's residence on Woonasquatucket Avenue lies in Providence or North Providence is subject to dispute. The residence has a North Providence mailing address but it is taxed in Providence. The weight of the evidence convinces us that the father's residence lies in Providence.

We summarize the *mise-en-scene* of the *dramatis personae*:

- The Grandmother – beyond the jurisdiction
- The Grandfather – North Providence (apparently)
- The Mother – Blackstone, Massachusetts
- The Father – Providence

CONCLUSIONS OF LAW

At the outset we find that this student's residence for school purposes at the time he went into the custody of DCYF was North Providence. There is no doubt that this student was living with his grandparents because his parents could not care for him. Under Rhode Island school residency law this student was therefore a resident of North Providence for school purposes. *Residency of Emily R.*, Commissioner of Education, April 5, 2000 Rhode Island law states: "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 town where the child lives with his or her legal guardian, natural guardian, or other person acting in loco parentis to the child" R.I.G.L.16-64-1 Under the Regulations to the Individuals with Disabilities Education Act (IDEA)² the term "parent" is defined to include: "A person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare.)" 34 CFR 300.20 (3).

The Rhode Island Department for Children and their Families (DCYF) has placed this special education student in Crystal Springs School in Massachusetts. While this placement may not have been made to provide this student with a free appropriate public education (FAPE), it is obvious that this student is entitled to receive FAPE in accordance with the Individuals with Disabilities Education Act (IDEA).³ It is also obvious that DCYF, and the Rhode Island Department of Education (RIDE), are responsible for ensuring that this student receives FAPE. Massachusetts is not. The Comments to the IDEA regulations state:

Regardless of the reason for the placement, the "placing" State is responsible for ensuring that the child's IEP is developed and implemented. The determination of the specific agency in the placing State would be based on State law, policy, or practice. However, the SEA [State Educational Agency] in the placing State

² 20 USC 1415

³ 20 USC 1415

is ultimately responsible for ensuring that the child has FAPE available.⁴

In the present case DCYF is the placing agency. The General Laws of Rhode Island, at R.I.G.L.42-72-5 (b)(24), state in pertinent part that DCYF is:

To be responsible for the delivery of appropriate mental health services to seriously emotionally disturbed children. Appropriate mental health services may include hospitalization, placement in a residential treatment facility, or treatment in a community based setting.

Each community, as defined in chapter 7 of title 16, shall contribute to the department [DCYF], ...in accordance with rules and regulations to be adopted by the department, at least its average per pupil cost for special education...as its share of the cost of educational services furnished to a seriously emotionally disturbed child...

The definition of “community” contained in “chapter 7 of title 16” is found at R.I.G.L.16-7-16. This definition is, for practical purposes, synonymous with the term “local school system.” At one time “chapter 7 of title 24” also contained several rules relating to the determination of which community was responsible for paying a per pupil special education towards the cost of a child’s education who had been placed by DCYF in an out of state facility. The new version of these rules is now found at R.I.G.L.16-64-1.1 and R.I.G.L.16-64-1.2 which, in pertinent part, state:

16-64-1.1. Payment and reimbursement for educational costs of children placed in foster care, group homes, child caring facilities, community residences, or other residential facility by a Rhode Island state agency. —(b) Children placed by DCYF pursuant to 42-72-5(b)(24) in a residential treatment program, whether or not located in the state of Rhode Island, which includes the delivery of educational services, shall have the cost of their education paid for as provided for in R.I.G.L. 42-72-5 (b) (24).

16-64-1.2. Designation of residency of children in state care for purposes of financial responsibility under R.I.G.L.16-64-1.1—Effect of designation of residency. —(b) The department of elementary and secondary education shall designate the city or town to be responsible for the cost of education for children in state care who have neither a father, mother, nor guardian living in the state or whose residence can be determined in the state or who have been surrendered for adoption or who have been freed for adoption...using the following criteria: (1) last known Rhode Island residence of the child’s father, mother, or guardian prior to moving from the state, dying, surrendering the child for adoption or having

⁴ Appendix A to Part 300 [IDEA Regulations], Question 16

parental rights terminated; (2) when the child's parents are separated or divorced and neither parent resides in the state, the last known residence of the last parent known to have lived in the state. Such designation shall be incorporated on the child's intra-state education identification card.

A reading of R.I.G.L. 16-64-1.2 shows that it has no real relevance to the present case. This statute only becomes operative when the child has "neither a father, mother, nor guardian living in the state or whose residence can be determined in the state or who have been freed for adoption..." In fact the student has a father living in the state (Providence) and a natural guardian (his grandfather) living in North Providence. Moreover parental rights have never been terminated and the student has not been freed for adoption. Thus R.I.G.L. 16-64-1.2 is not applicable to the present case.

In fact the last known guardians of this child were not his parents but rather his grandparents. Before the illness of the student's grandmother, the student was living with his grandparents in North Providence. The student's grandparents were functioning "in loco parentis" to this student – in fact they were his natural guardians. Under these circumstances we are convinced that North Providence remains responsible for this student's education. We make this determination based upon R.I.G.L. 16-64-2 which in pertinent part states:

16-64-2. Retention of residence. – A child shall be eligible to receive education from the town in which the child's residence has been established in another town and that town has enrolled the child within its school system, unless the commissioner...pursuant to R.I.G.L. 16-64-6, has ordered otherwise.

While there are a few circumstances where DCYF itself functions as a school system (i.e. the Rhode Island Training School for Youths) this is not one of them. R.I.G.L. 42-72-5 (22) The only school system this student has ever been enrolled in is North Providence. This is the "community" which remains responsible for educating him. R.I.G.L. 16-7-16 (5).

CONCLUSION

This student is the educational responsibility of North Providence.

Forrest L. Avila, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

May 8, 2000
Date

ATTACHMENT B

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

LAURA DOE :
 : :
 : :
 : :
vs. : :
 : :
NARRAGANSETT : :
SCHOOL COMMITTEE : :
 : :

D E C I S I O N

April 17, 1984

FINDINGS OF FACT

The record establishes that Laura Doe, a kindergarten student, is living with her aunt, Jane Smith, in the Town of Narragansett. Jane Smith and her husband provide for Laura's support and Laura is subject to their care, control and discipline. Laura was born on August 3, 1977 and since she was one year old she has spent summers with her mother in Newport with two other siblings. On or about May 23, 1983, Laura went to live with her aunt in Narragansett. Laura's mother and father now live in Providence, but Laura has continued to live with her aunt in Narragansett. The reason given for this arrangement is that Laura was subject to crying spells when she was living apart from her aunt. On such occasions Laura would not eat or sleep. When Laura was living with her mother, Laura failed to gain weight. Laura's mother could not cope with Laura's crying spells. When Laura returned to live with her aunt, Laura's crying stopped and she began to gain weight. It is expected that Laura will remain indefinitely with her aunt.

CONCLUSIONS OF LAW

The School Committee contends that this case is governed by that portion of G.L. 16-94-1 which reads as follows:

A child shall be deemed to be a resident of
The town where his parents reside.

The School Committee argues that, since the record establishes that Laura's

mother and father are living in Providence, Laura must irrebuttably be presumed to be a resident of Providence, even though she is, in fact, living in Narragansett. We reject this argument. The above-quoted language simply establishes a child's right to attend school in a town where he is living with his parents. It does not preclude a child from establishing a school residence apart from that of his parents when the proper legal standards are met. The narrow construction argued for by the School Committee would run counter to the initial command of G.L. 16-64-1 that a child ". . . shall be enrolled in the school system of the town where he resides. . . ." while at the same time it would render nugatory, for the most part, the saving clause of G.L. 16-64-1 which states "In all other cases a child's residency shall be determined in accordance with the applicable rules of the common law." We, therefore, do not read G.L. 16-64-1 as creating an irrebuttable presumption that precludes a student from ever establishing a residency apart from his natural parents. We also note that the creation of such an irrebuttable presumption might run afoul of the Supreme Court's latest pronouncement in this area of the law, Martines v. Bynum. 103 S. Ct. 1838 (1983). See also: In The Matter of Priscilla H., Commissioner of Education, September 7, 1983.

In sum, we think that the "deeming" provision of G.L. 16-64-1 creates nothing more or less than a rebuttable presumption that a child's residence is the residence of his parents. It is not unusual for "deem" to have this meaning (e.g. Rayle v. Rayle, 202 S.E. 2d 286), especially in statutes dealing with residency (e.g. Hardy v. Lomenzo, 349 F.Supp. 617).

The question in this case is thus whether the petitioner student has put sufficient evidence on the record to rebut the presumption that her residency for school purposes is now Providence, given that her parents are living in that city. In a previous decision (In The Matter of Priscilla H., Commissioner of Education, September 7, 1983) we have discussed in detail the law of school residency in Rhode Island, and the common law of school residency which covers cases not preclusively determined by the statute. Since we have ruled that the “deeming” provision does not preclusively establish Laura’s residency as being Providence, and since no other portion of the statute appears to be directly relevant,¹ we must examine this case in the light of the common law of school residency. The applicable law is well stated in Schools and the Law, E. Edmund Reutter, Jr., Oceana Publication, 1981, p. 48:

RESIDENCE: Whether a child has the right to attend school in a given school district depends upon where he has his legal residence. It is generally held that a child has the right to attend the schools of the district in which he is actually living. The only major exception is when he is living in that district solely for the purpose of attending the school there. A child who for reasons other than schooling is living in a boarding house generally is entitled to attend free the schools of the district containing the establishment. The same is true for a child living with a relative, even though the relative is not his legal guardian.

¹ We reject the suggestion that the “family break-up” provision of G.L. 16-64-1 is relevant to his case. We think it plain that “family break-up” refers to the relationship existing between parents and not to the relationship existing between parents and children.

Our duty is, therefore, to determine whether Laura is living in Narragansett for a substantial reason other than to go to school there. (Our own Rhode Island statute repeats this common law rule when it states that even the appointment of a guardian does not shift a child's residence ". . . unless the guardian has been appointed for a substantial reason other than to change the child's residence. . . .")

If Laura were an older child we might be more skeptical of the present claim. In the case at hand, however, it seems entirely credible that a very young child, who lives with a relative for a prolonged period of time, could come to see the relative as a parent substitute, and that such a child would suffer extreme and protracted anxiety on any occasion when she was separated from her substitute parent. While we do not suggest (and have no jurisdiction to decide) that Laura's aunt has acceded to all the rights of a parent as occurred in Hoxsie v. Potter 16 R.I. 375 (1888), we think that this case does recognize the common sense fact that young children can become extremely attached to, and dependent on a relative who fills the role of a parent.

Under the unique circumstances of this case we think that the reason why Laura is living with her aunt is because her aunt has become the emotional equivalent of a mother for Laura and that this very young child cannot now be separated from her aunt without extreme suffering. We think Laura is living with her aunt in Narragansett for these reasons and not ". . . for the sole purpose of attending school. . . ." in Narragansett. (Schools and the Law, supra). Under these

circumstances Laura is entitled to attend the public schools of Narragansett. There is nothing in Rhode Island school residency law which would compel, on a de facto basis, the dissolution of the bond which has formed between Laura and her aunt and the restoration of Laura to a difficult situation with her natural mother.²

CONCLUSION

Laura Doe is a resident of Narragansett for school purposes and is entitled to attend the public schools of Narragansett.

² This case is easily distinguishable from Grinnell vs. Newport School Committee. Commissioner of Education, April 12, 1984. In Grinnell, a Middletown mother had placed her child with the child's grandmother in Newport because the mother would be operating a charter fishing boat in the Caribbean. The mother returned from the Caribbean and took up residence again in Middletown. No reason was given to show that the child was now living in Newport for a reason other than to attend school there. It was, therefore, held that the child concerned was not entitled to attend the public schools of Newport.

Forrest L. Avila, Esq.
Hearing Officer

Approved:

J. Troy Earhart
Commissioner of Education

April 17, 1984