

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

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**In The Matter of Student V.B. Doe**

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**DECISION**

Held: This student's parent has demonstrated by a preponderance of the evidence that Student V.B. Doe resides with her in Scituate during most nights of the school year. Therefore this student is a resident of Scituate for school purposes.

DATE: August 20, 2008

## **Jurisdiction and Travel of the Case**

This is a school 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**

### **The Mother of the Student**

The mother indicates that she is living in the home of her own mother and father (the child's grandparents) in Scituate. The mother also contends that her high school age child lives with her in this home in Scituate. The mother concedes that she has a former boyfriend who lives in Johnston and that she sometimes stays at his house in Johnston. However, she argues that she and her daughter reside during most school nights in Scituate.

### **The Scituate School District**

The Scituate school district contends that the student who is the subject of this case is living in Johnston.

## **Findings of Fact**

1. The mother has two children. Her first child attends Scituate High School. Her second child was, at the time of the hearing, 16 months old. It is undisputed that this 16 month old child lives with the mother's former boyfriend in Johnston. This former boyfriend is the father of this 16 month old child.
2. The grandmother and grandfather of the student live in Scituate. The student's grandfather suffers from Alzheimer's disease. The mother suggests that her 16 month old child lives with her former boyfriend in Johnston because she thinks it would be unsafe for this young child to live in the same home with her grandfather who has manifested unexpected behavior as a result of his illness. (Transcript, page 55) The mother testified that her purpose in staying at her former boyfriend's house a few times a week was for child care purposes and to visit her 16 month old child. On these visits her high school age daughter accompanied her.
3. Both the student in this case, and the student's grandmother, testified that the student spends most school nights in Scituate. Their testimony coincides with the testimony of the student's mother.
4. The Scituate attendance officer was called upon to investigate whether or not the student was living in Scituate. The attendance officer, who is also a police officer, observed activities at a house in Johnston on three different days. On the first day he observed no activity at the house. On the second day he observed the student's

grandmother arrive at the house in Johnston and pickup the student there and, it seems clear, transport the student to Scituate High School. On a third occasion, over a week later, the attendance officer observed a similar scenario developing. His presence, however, was noted, and a minor confrontation took place. This confrontation was adjourned to the Scituate school department, where further discussion took place. Much of this discussion revolved around a psychological disability which the parent alleged had been aggravated by the prior confrontation and by the way the school district handled the entire situation. The student has a 504 plan to assist her with the psychological difficulties she is dealing with. These psychological concerns are not immediately relevant to the residency issue before us.

5. Based upon the testimony in this case we find, by a small margin, that the parent has demonstrated by a preponderance of the evidence that she and her daughter reside in Scituate during most nights of the school year. While we credit the officer's testimony in this case, his two observations of the residence in Johnston which he conducted are not in irreconcilable contradiction with the sworn testimony of the parent, the student, and the grandparent in this case.

### **Conclusions of Law**

The parent has the burden of proof in cases of this nature. (R.I.G.L. 16-64-3) In most cases, when a student is living in two residences, the Commissioner will look to residence where the student spends the majority of school nights to establish the student's residency for school purposes. *Morgan v. Smithfield School Committee, Commissioner of Education*, December 23, 1993.

### **Discussion**

As noted above, it is our conclusion that the parent has demonstrated by a preponderance of the evidence that she and her daughter reside in Scituate during most nights of the school year.

### **Conclusion**

This student is a resident of Scituate for school purposes.

APPROVED:

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Forrest L. Avila, Hearing Officer

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Peter McWalters, Commissioner

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August 20, 2008  
Date