



## **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 Smithfield School District**

The Smithfield school district contends that the three students in this case are, in fact, residents of Lincoln for school purposes.

### **The Parents**

The parents contend that their three children are residents of Smithfield for school purposes.

### **The Lincoln School District**

For practical purposes, the Lincoln school district has indicated that it will abide with whatever decision the Commissioner makes in this matter.

## **Findings of Fact**

1. On May 30, 2008 the Smithfield school district, after an investigation, directed a letter to the parents informing them that the school district had concluded that the parents' three children were, in fact, living in Lincoln rather than in Smithfield for school purposes. The letter informed the parents that their children would be allowed to finish the school year in Smithfield, but that at the end of the school year these children would be expected to enroll in the public schools of Lincoln.
2. Based upon the testimony in this case we find that the Smithfield school district was correct in determining that on May 30th, 2008 these three children were living at a street address in Lincoln. This conclusion is based upon the testimony of the school district's attendance officer who had investigated this matter in May of 2008.

3. The student's mother owns a house in Smithfield in which the students' grandmother lives. As time passed, the three students and their mother began to spend more time in this house as the grandmother began to experience increasing health difficulties which required the provision of additional family help and support. By sometime in August, this partial residency had "morphed" into fulltime residency.
4. The father of these students continues to live Lincoln.

### **Conclusions of Law**

In pertinent part the applicable school residency statute (R.I.G.L.16-64-1) provides that: "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." There is no requirement in this clause for parents to demonstrate the reason why the child is living with one parent rather than the other. (See: *Morgan v. Smithfield School Committee*, Commissioner of Education, December 1993 and *Lewis v. Smithfield School Committee*, November 1995) Instead, the clause focuses on "actual custody."

Doubtlessly the drafter of the clause intended to avoid, to the extent possible, requiring school districts to become involved in the details of the family life of parents and children as a prerequisite to a determining which town a child was living in for school purposes in cases where parents were living in different towns. For most practical purposes, a reading of R.I.G.L.16-64-1 will show that the reason why a child is living in one place rather than another only becomes decisive when the "common law of school residency" comes into play. And the common law of school residency, with its "intent" requirements, is only apt to come into play when the fact pattern of the particular case does not clearly fit within the specific statutory provisions of R.I.G.L.16-64-1 governing run of the mill cases.

**Discussion**

Since we find that as of August 2008 these students were living in Smithfield with their mother, we are constrained to rule that these students are now residents of Smithfield for school purposes. Nothing we say herein shall be construed to deal with any purely hypothetical claims for past tuition which the town treasurer of Smithfield may have for school costs accruing before these students became residents of Smithfield for school purposes. *East Providence School Committee v. Smith*, 896 A.2d 49, (R.I., 2006) . Such questions are beyond our jurisdiction, so we do not address them here.

**Conclusion**

As of August 2008, the three students in this case are found to be residents of Smithfield 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 27, 2008  
Date