

**STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS**

COMMISSIONER OF EDUCATION

.....

Student C.A. Doe

v.

Johnston School Department

.....

DECISION

Held: This is a residency appeal. The mother of Student Doe contends that her son spends enough time living with his father to qualify as a resident of Johnston for school purposes. The Johnston school district contends that the student is not a resident of Johnston because, in the districts view, he does not spend enough of the school days in the week to qualify as a resident of Johnston for school purposes. This case is dismissed without prejudice

Date: February 09, 2010

TRAVEL OF THE CASE AND JURISDICTION

This is a residency appeal. While the Commissioner has jurisdiction under R.I.G.L. 16-39-1, R.I.G.L. 16-39-2, and R.I.G.L. 16-64-6 to decide school residency issues the Commissioner, as will be discussed below, has no jurisdiction to review orders of the Rhode Island Family Court.

POSITIONS OF THE PARTIES

THE PARENT

The mother of the student contends that her son spends enough time living with his father to qualify as a resident of Johnston for school purposes. R.I.G.L. 16-64-1.

THE JOHNSTON SCHOOL DISTRICT

The Johnston school district contends that the student is not a resident of Johnston because, in the districts view, he does not spend enough of the school days in the week to qualify as a resident of Johnston for school purposes. *Residency of Student D.R. Doe, Commissioner of Education, June 26, 2000.*

FINDINGS OF FACT

1. The parents of the student have been divorced since the year 2000. The student's mother lives in Providence. The student's father lives in Johnston.
2. The student currently attends the public schools of Johnston.
3. Until May 28th of 2009 the student had lived exclusively with his father in Johnston. Since this date the student has lived for the most part with his mother in Providence.¹
4. The student does, however spend some time in Johnston. He testified that "I go there [to his father's residence in Johnston] Friday through Sunday, I come home Monday with my mother, Sunday night I go home with my mother, Monday I sleep over my father's again, Tuesday I go to school, come home, sleep over my father's, Wednesday my mother picks me up from school."²
5. The Honorable Family Court has entered a custody decree which includes an order that this student shall remain in his current (i.e. Johnston) school placement.³

CONCLUSIONS OF LAW

1. Subject matter jurisdiction is an indispensable ingredient of any judicial proceeding, and absence thereof can be raised by any party or by the court *sua sponte* at any time. *Warwick*

¹ Transcript, Page 15.

² Transcript, Page 14.

³ Transcript, Page 8. See: Exhibit A (CA No. PO3-1036) & Transcript, Page 32.

School Committee v. Warwick Teachers' Union, Local 915, 613 A.2d 1273 (R.I. 1992);
Naughton v. Goodman, 363 A.2d 1345, 117 R.I. 113 (1976)

2. Whenever it appears that a court has no jurisdiction of the cause, court should, on its own motion, stop proceeding. *David v. David*, 132 A. 879, 47 R.I. 304 (1926)
3. A tribunal always has initial jurisdiction to determine whether or not it has jurisdiction in a matter. *Maryland Cas. Co. v. Sasso*, 204 A.2d 821, 98 R.I. 483 (1964)
4. Under R.I.G.L.16-39-1, R.I.G.L.16-39-2, and R.I.G.L.16-64-6 the Commissioner of Education has no subject matter jurisdiction to review orders of the Family Court or to determine the scope of the jurisdiction of the Family Court. This prerogative is reserved to the Family Court itself and to the Rhode Island Supreme Court.

DISCUSSION

If the school district feels that the Family Court itself lacked jurisdiction to enter the order now at issue it would appear that it would be for the school district to seek intervention in the Family Court action and move the Court to vacate its order because of a lack of jurisdiction.

Since a Family Court Order has directed that this student remain in the Johnston school system, comity requires us to refrain from adjudicating in this matter while this Family Court order is in effect. This matter is therefore dismissed without prejudice. We note that we have refrained from making detailed findings of fact in this case since such detailed findings are not relevant to our disposition of this matter.

CONCLUSION

The above entitled matter is dismissed without prejudice for the reasons stated above.

Forrest L. Avila, Hearing Officer

APPROVED:

Deborah A. Gist, Commissioner

February 09, 2010

Date