

**STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS**

**COMMISSIONER OF
EDUCATION**

WEST WARWICK SCHOOL DEPARTMENT

VS.

RESIDENCY OF STUDENT V. DOE

RULING ON MOTION FOR SUMMARY JUDGMENT

The West Warwick School Department (“WWSD”) has moved for the entry of summary judgment and a determination that Student V. Doe is a resident of the City of Cranston for purposes of school attendance. Upon WWSD’s request for a residency determination pursuant to R.I.G.L. 16-64-1 *et. seq.*, a telephonic prehearing conference was convened on the 15th day of September, 2015, which resulted in the following facts being agreed to by the WWSD and the parents of Student V. Doe. The parents of Student V. Doe have not objected or otherwise replied to WWSD’s motion for summary judgment. The relevant facts now deemed undisputed are as follow:

1. Student V. Doe lives primarily in the City of Cranston with her father who shares joint custody with her mother who resides in the Town of West Warwick;
2. While acknowledging that Student V. Doe lives with him, the Student’s father seeks his daughter’s continued enrollment and attendance at the schools of the WWSD;
3. Student V. Doe’s mother supports her daughter’s enrollment and attendance in the schools of the Cranston School Department;
4. The Cranston School Department does not object to the enrollment of Student V. Doe in its school system.

STANDARD OF REVIEW

On a motion for summary judgment, the administrative hearing officer reviews the evidence according to the same rules governing the issue of summary judgment in the Rhode Island courts, namely, by drawing from the evidence all reasonable inferences in the light most favorable to the non-moving party, in this instance, the parents of Student V. Doe. See Chavers v. Fleet Bank (R.I.), N.A., 844 A.2d 666 (R.I. 2004). If it is apparent that no material issues of fact exist, then the moving party is entitled to judgment as a matter of law. *Id.* A party in opposition to a motion for summary judgment “carries the burden of proving by competent evidence the existence of a disputed material issue of fact . . .” *Id.*, at 669.

DECISION

R.I.G.L. 16-64-1 provides that: “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”(Emphasis added).

“Actual custody” has been previously construed by the Commissioner of Education to mean physical as opposed to legal custody. See Richard F. vs. Providence School Board, Commissioner’s Decision (February 8, 1991). In the instant matter, there exists no material issue of fact as to the residency of Student V. Doe; she currently lives with her father in the City of Cranston. Accordingly, Student V. Doe resides in the City of Cranston for school attendance purposes.

CONCLUSION

There being no genuine issues of material fact to be decided regarding the residency of Student V. Doe for school attendance purposes, the WWSD’s motion for summary judgment is hereby granted. We are constrained under RIGL 16-64-1 to order that, absent an exercise of discretion by the WWSD to permit the student’s continued attendance in its school system, Student V. Doe is required to enroll in the Cranston school system.

However, given the WWSD's petition for a determination of residency having been filed after the start of the current semester and because no evidence has been offered relating to the timing of Student V. Doe's relocation to the City of Cranston, this change in enrollment need not be done immediately. Accordingly, and in light of the provisions of RIGL 16-64-8, Student V. Doe shall be enrolled in Cranston at the conclusion of the current semester unless her parent(s) elect an immediate enrollment in Cranston.

WHEREFORE, based on the foregoing undisputed facts and consistent with the governing state law and precedent, Student V. Doe shall be dis-enrolled from the WWSD and enrolled in the Cranston School District at the conclusion of the current semester.

For The Commissioner,

George M. Muksian Hearing Officer

Ken Wagner, Commissioner

DATE: October 22, 2015