

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

In Re: Residency of D.S. Doe

### **INTERIM ORDER DECISION**

Held: Student Doe's legal guardian did not satisfy his burden of proof to establish that his ward, Student Doe, is a resident of Cumberland for school purposes. Nonetheless, on an interim basis, Student Doe will retain eligibility to attend Cumberland schools pending the Probate Court's review of this matter and pending further hearing before the Commissioner. On an interim basis, Doe will retain her school residency in Cumberland under R.I.G.L. 16-64-2 "until (her) residence has been established in another city or town and that city or town has enrolled (her) within its school system".

Although the Cumberland Probate Court conditioned the Petitioner's guardianship on Student Doe "remaining" a legal resident of Woonsocket and returning to the Woonsocket school system, the Petitioner has not complied with this directive. He has clearly not enrolled Doe in the Woonsocket school system and his testimony was that Doe currently lives with him in Cumberland.

Based on the Probate Court's decree entered on November 12, 2015, Cumberland school officials automatically disenrolled Doe from Cumberland schools on November 13, 2015. She is therefore not attending school at all or receiving the free appropriate public education to which she is entitled as a student with a disability. Pending further Probate Court action, Student Doe will retain school residency in Cumberland. Further hearing on the merits of this dispute will be scheduled immediately after the Probate Court's review of the Respondent's guardianship on January 14, 2016. Further evidence, from all interested parties, including the Woonsocket School Department, will be taken at that time.

Date: November 24, 2015

### **Travel of the Case:**

On November 16, 2015, the Petitioner filed a request for a hearing to determine whether Student Doe, for whom he has been appointed Temporary Guardian, was entitled to remain in attendance at Cumberland High School. Cumberland school officials had disenrolled Student Doe the day following a hearing at the Cumberland Probate Court held on November 12, 2015. At that hearing, it was determined that the Petitioner had qualified for appointment as her Temporary Guardian through January 14, 2016 “on condition that ward remains a legal resident of the City of Woonsocket and returns to the Woonsocket School System”. Petitioner Ex. 1. The letter sent to Commissioner Ken Wagner indicated that Student Doe had not been transferred to the Woonsocket schools system because “there was not enough time to register her or transfer her records on Friday”. At the time that this matter was assigned to the undersigned for hearing, it was clear that no steps whatsoever had been taken to “return” Student Doe to the Woonsocket school system because the Temporary Guardian disagreed with the Probate Court’s requirement that she return to that school system.

The matter was heard on November 20, 2015. Present were the Petitioner and his former wife (who is Student Doe’s cousin). Legal Counsel for the Cumberland School Department and its attendance/truancy officer were also present. Representatives of the Woonsocket School Department declined to attend.

Since this matter was treated as a request for an Interim Order, factual findings are based on the hearing officer’s notes and the exhibits entered into evidence at the time of the hearing. The transcript of the hearing has been ordered and will assist in findings as they may be necessary when this case receives a full hearing on the merits.

### **Petitioner:**

The Petitioner and his former wife, who is Student Doe’s cousin, testified credibly that the Petitioner has stepped in and offered his home in Cumberland so that Student Doe could have a safe and stable home in which to reside. Doe’s family history has been troubled, according to them, and although her mother is still living and resides in Woonsocket, she has not been able to provide a secure and stable home for Doe. Doe is a student with a disability who has behavioral issues and is chronically absent. According to the Petitioner, she was absent during

eighth grade at Woonsocket Middle School last year a total of 111 days. Nonetheless, she was promoted into ninth grade. Both he and his ex-wife testified that living with the Petitioner since early September has enabled Doe to improve her school attendance. An IEP was developed for her by the Cumberland School Department on October 8, 2015. Academics “were not happening” for Doe in Woonsocket primarily because of her troubled home life.

The Petitioner points out that several years ago when he and his wife lived together in Woonsocket, they became the foster parents of Student Doe’s older sister. Doe’s sister (who was in DCYF care) lived with them for a period of time and was able to “straighten herself out”. The Petitioner testified that he has stepped in to become Student Doe’s legal guardian so that he can give her “opportunity in life” just as he and his ex-wife did for her older sister several years ago. He testified that Doe stays with him in Cumberland most of the time and when she does not, she sometimes stays with his ex-wife in Woonsocket.

**Cumberland School Department:**

Although the School Department empathizes with this family and understands that they are trying to help this child, the district takes the position that Doe is not a school resident of Cumberland. The district argues that there is evidence that she does not in fact reside with her legal guardian, the Petitioner, at his Cumberland home. Statements were made to the school attendance officer by two relatives of this child that Doe did not live at the Cumberland home of the Petitioner. Doe has been observed being picked up in the morning at her mother’s address in Woonsocket and being dropped off there at the end of the school day. Her mother picked her up at school on two occasions when she went home sick.

Even if the evidence did show that Doe had taken up residence with her legal guardian, the district argues that the reason for any change in residency is so that she can attend school in Cumberland, rather than Woonsocket. Statements have been made by the Petitioner that the Woonsocket school system failed her and that she needs to be enthusiastic about going to school, which she is in Cumberland. Under Rhode Island education law, the appointment of a legal guardian does not operate to change school residence unless the child takes up residence with the guardian and unless the guardian has been appointed for a substantial reason other than to change the child’s residence for the purpose of enrolling the child in another school system. R.I.G.L. 16-64-4. On this record, there is insufficient evidence both of Doe’s actual

residence in Cumberland and of the facts that the Petitioner maintains provide the reasons for her living with him-apart from school attendance purposes.

**Discussion:**

On the record at the November 20, 2015 hearing, the Petitioner clearly registered his disagreement with the Probate Court decree and its mandate that Student Doe (remain) a legal resident of the City of Woonsocket and (return) to the Woonsocket school system. The hearing officer made clear that the hearing of his Petition before the Commissioner of Education did not constitute an appeal of any decree, ruling or order of the Probate Court. The Petitioner was advised to seek legal counsel to learn of the proper forum in which to register any objection he has to complying with action that is required by the Cumberland Probate Court.

Since this petition indicated that Student Doe had not yet been enrolled in Woonsocket and that she was not attending school at all, the hearing was scheduled to protect Student Doe's right to a free appropriate public education somewhere, pending resolution of issues in the Probate Court matter. School residency determinations made by the Commissioner do not require or authorize the Commissioner to resolve the issue of where and with whom a student should live. This case is no exception.

On the basis of the record, we cannot find as a fact that Student Doe is a school resident of Cumberland. Although there was some evidence that she does reside at the Petitioner's home in Cumberland, this evidence was contradicted by testimony placed in the record by the Cumberland School Department. There was credible testimony of a family history of trauma and drug addiction and that Student Doe requires the safety and security of a home other than that of her mother at the present time. This testimony, although credible, was not verified by the testimony of disinterested parties or grounded in documentation of professionals who work with children in such situations. The Petitioner has the burden of proof on these issues and it simply was not a burden he successfully met at the November 20, 2015 hearing. However, while the record does not enable us to make a finding of fact that Student Doe lives in Cumberland, it does not establish that she lives in Woonsocket.

Under Rhode Island law, Student Doe must attend school somewhere pending review by the Cumberland Probate Court of the Petitioner's appointment as Temporary Guardian. This is scheduled to occur on January 14, 2016. Since Doe was most recently enrolled in Cumberland

and attended school there with an IEP that was developed for her on October 8, 2015, she is “eligible” to retain her school residency in Cumberland until her residence is established “in another city or town and that city or town has enrolled the child within its school system.” R.I.G.L. 16-64-2 The Commissioner will not “order otherwise” at this time<sup>1</sup> because to do so would not necessarily ensure that Doe receives an education or the free appropriate public education to which she is entitled as a student with a disability. A determination of where Student Doe currently lives cannot be made based on the evidence received at the November 20, 2015 hearing.

This matter will be scheduled for further hearing during the week of January 18, 2016, unless issues of residence and school attendance are resolved by the Probate Court on January 14, 2016. It would be helpful if the judge of the Probate Court would clarify at that time exactly where and with whom Student Doe should be living, if it is not with her legal guardian in Cumberland. If Woonsocket continues to be identified as the “legal residency” of Student Doe, we will require the Woonsocket School Department to be in attendance at any continued hearing.

Meanwhile, Student Doe shall remain “eligible” to attend Cumberland High School. Her school attendance should be closely monitored by appropriate school staff to ensure compliance with the compulsory attendance law.

For the Commissioner,

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Kathleen S. Murray, Haring Officer

DATE: November 24, 2015

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Ken Wagner, Commissioner

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<sup>1</sup> Typically, the Commissioner “orders otherwise” following a hearing in which a child’s school residency is found to be in a town or city other than where he or she is currently enrolled. Otherwise, school residency determinations could be thwarted by a party’s failure to proceed to enroll the child in the appropriate school system.