

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

In Re: Residency of M.R. Doe
and M.R. Doe v. Central Falls

INTERIM ORDER
DECISION

Held: Students living with their grandmother in Central Falls during the school week are doing so for a substantial reason other than for the purpose of attending school in Central Falls. They currently reside with their grandmother, and not with their mother in Cumberland, because a team of professionals at Hasbro Children's Hospital worked together with the extended family to develop a safety/supervision plan during Doe's recent hospitalization. This plan calls for the brothers to reside with their grandmother during the week to eliminate the need for one brother to stay home to care for his twin, who has autism, while their mother is at work. Doe's child care responsibilities and isolation were stressors contributing to his deteriorating mental health. School residency rules do not require that this living situation be permanent. Under the extraordinary circumstances in this case, this living situation is not simply a "child care" arrangement, which does not entitle children to attend school in a town or city in which they reside apart from their parent.

Date: February 19, 2016

Travel of the Case:

Does' parent requested a residency hearing after she sought unsuccessfully to enroll both of her children (twin boys) in the Central Falls school system. Her letter of appeal to the Commissioner of Education was received at RIDE on February 2, 2016 and a hearing officer assigned on February 9, 2016. An expedited hearing was held on February 16, 2016 at which time the Petitioner appeared, pro se, and Central Falls and Cumberland School Departments were represented by counsel. At the conclusion of the hearing, the record was left open to give Ms. Doe opportunity to submit documentation of Student Doe's recent hospitalization. Mother had testified that one of the boys had experienced a medical crisis for which he had been hospitalized, but she brought no records verifying these facts. This documentation was received on February 16, 2016 and circulated to the parties on February 17, 2016. The record closed upon receipt of the transcript on February 18, 2016.

Issues:

- Do these students have residency for school purposes in the town of Central Falls or Cumberland?
- Is the Student who previously attended an out-of-district placement at the Cornerstone School in Cranston, Rhode Island entitled to continue in this placement?

Findings of Relevant Facts:¹

- Ms. Doe has resided with her children² in Cumberland, Rhode Island since August of 2015. She previously resided in Central Falls for several years, but secured more affordable housing in Cumberland in August of 2015.

¹ Because of the need for an expedient determination of school residency for these two disabled students, citations to the transcript have been omitted.

² In addition to her two school-age children, Ms. Doe has an eight (8) month old daughter.

- Both of her school-age children, twin boys aged 13, were enrolled in the Cumberland School Department at the time of the family’s move there. One of the children attended sixth grade at Cumberland Middle School and the other child, who has autism and other significant disabilities, continued in attendance at the Cornerstone School in Cranston, where he has been placed since age three (3).
- Student Doe’s attendance at the Cornerstone School was pursuant to an Individualized Education Program (IEP) initially developed for him several years ago. A more recent IEP developed after the family’s move to Cumberland calls for his attendance at Cumberland Middle School. The new IEP was to take effect on January 26, 2016.
- Ms. Doe is not in agreement with the placement called for in the new IEP, and “tried to fight it”. There is no evidence that she has formally challenged his change of placement.
- Ms. Doe³ works as a certified nursing assistant on a shift that starts at 3:00 p.m. and ends at 11:30 p.m. each night at a state-operated hospital in Cranston, Rhode Island. She works every night of the school week, except for every other Monday and Wednesday. Because of mother’s work schedule, Student Doe was required to care for his disabled twin brother after both boys would return home from their respective schools.
- According to Ms. Doe’s testimony, at approximately 5:00 p.m. each evening Ms. Doe’s brother would pick up both boys and drop them off at their grandmother’s house, where they would stay the night.⁴
- On January 17, 2016 Student Doe was admitted to Hasbro Children’s Hospital for self-injurious behavior and suicidal ideation⁵. He received in-patient treatment and therapy for a period of eight (8) days.
- One of the strategies Student Doe identified as helpful in managing his anxiety and depression was “not being alone”. Among other issues, family therapy focused on

³ We infer that Ms. Doe is a single parent. There is no evidence that she is assisted/supported in her parenting responsibilities by the father of her children; she evidently does have strong support from her own extended family.

⁴ We infer that Ms. Doe would transport both children back to Cumberland in the mornings to get ready for school.

⁵ Student Doe has a history of depression, ADHD and anxiety.

addressing safety/supervision concerns for Doe and his brother while mother is working. See: After Visit Summary from Hasbro Children’s Hospital dated January 25, 2016.

- At a “safety planning family meeting” with hospital staff, a detailed schedule of supervision was developed with his extended family. The plan calls for Student Doe and his brother to live with their grandmother in Central Falls during the week while they attend school.⁶ The plan focuses on eliminating Student Doe’s isolation in the evening/nights while his mother works and relieving him of the responsibility of caring for his significantly disabled twin brother⁷ during these same periods of time. In addition to changes in his living situation, Doe’s mental health needs are being addressed by medication and follow up treatment on an outpatient basis. See: After Visit Summary from Hasbro Children’s Hospital dated January 25, 2016.
- Ms. Doe had given her mother a “General Power of Attorney” and a “Medical Power of Attorney” on November 16, 2015 because, according to her testimony, she sensed something “wasn’t right with (Student Doe)” and was preparing for the situation in which she might have to place the children with her.
- Neither of these students is currently attending school. A determination was made in late January by the Superintendent that their current living situation does not establish school residency in Central Falls⁸. Ms. Doe testified that if she continues their school attendance in Cumberland, she has no way to get them from Cumberland to her mother’s home in Central Falls where they must live during the school week.

Positions of the Parties

Ms. Doe:

⁶ Ms. Doe testified the children also live with their grandmother every other weekend, when she is scheduled to work.

⁷As noted above, Student Doe has been diagnosed with depression, ADHD and anxiety. We infer that one or more of these conditions constitutes a substantial impairment. The record indicates that he previously had an IEP and currently has a Section 504 Plan.

⁸ Ms. Doe testified that she did not receive the form (developed by RIDE) notifying her of the district’s basis for its determination that her children were not school residents of Central Falls.

Ms. Doe describes the boys' current living arrangements as "temporary". She hopes to move back to Central Falls and is trying to alter her work schedule so that it coordinates better with the school day. Both changes will take time. In the meantime, in light of her son's mental health crisis and the need for him to be with someone at all times, she needs to "place" the twins with her mom until she can figure out next steps. If Cumberland had complied with her request to provide bus transportation after school to drop her children off at her mother's house in Central Falls, she could have maintained them in the Cumberland school system. This would have been her preference. However, the district was only willing to take them to the border of Cumberland and Central Falls, not door-to-door.

Ms. Doe submits that she has voluntarily "placed" her children with her mom because of this emergency matter involving her son's mental health. She sees no alternative but for them to live with her mother and attend Central Falls schools. If she can't register them in Central Falls and they need to go back to Cumberland in order to attend school, she is fearful as to what will happen. She sees her son's safety at stake and speculates that this unresolved situation may force her to quit or lose her job. She is concerned that the children are currently not in school and asks for help in resolving these issues.

Central Falls School Department

As much as members of the Central Falls School Department are concerned for this family, the situation presented in this case does not establish facts that entitle Ms. Doe's children to attend school in Central Falls. Counsel notes that their living situation has been described as "temporary". Residency for school purposes can be established only by a move coupled with the intent to live there permanently. The Does' living arrangements could change tomorrow. Ms. Doe is actively working on finding a different home and changing her hours of work. The fact is that these boys still have a home in Cumberland.

Even if living with their grandmother in Central Falls were a permanent situation, the district submits that the children are living in Central Falls during the school week to facilitate

childcare arrangements. In the case of *Jessica M. v. Barrington School Committee*⁹ the Commissioner ruled on a strikingly similar situation. The children in *Jessica M.* stayed in Barrington with their grandparents during the school week and returned to live with their mother on the weekends when she did not work. The finding of the Commissioner was that this “childcare” arrangement was insufficient to establish school residency in Barrington. This precedent is controlling and should result in the conclusion that Ms. Doe’s children are school residents of Cumberland.

Cumberland School Department:

Counsel for the Department takes the position that his district will abide by the Commissioner’s ruling with respect to school residency. If the children are determined to be school residents of Cumberland, district staff will take an active role to get them back into school as soon as possible. The district is not in a position to facilitate a plan for their supervision and care afterschool by providing a bus to grandmother’s home in Central Falls.

Decision

Under Rhode Island school law, “a child shall be deemed to be a resident of the city or town where his or her parents reside”. In situations not specifically covered by the language of R.I.G.L. 16-64-1, the statute provides that school residency will be determined in accordance with the applicable rules of common law. Under the common law, a child living apart from his or her parents can establish residency for school purposes only by (1) actually residing in the town and (2) demonstrating that the move to the town was not made for the purpose of going to school there. In the *Matter of Priscilla H.*, decision of the Commissioner dated September 7, 1983.

⁹ Decision of the Commissioner dated November 1, 1990.

Ms. Doe has established by a preponderance of the evidence that her children's move from Cumberland to Central Falls on or about January 26, 2016 to live with their grandmother was not for school attendance purposes.

After living in Central Falls for several years, in August of 2015 Ms. Doe moved to Cumberland to a more affordable apartment than her prior home in Central Falls. She enrolled her twin boys in the Cumberland School Department at that time. Although a complex and difficult family routine was developed and in place from September to January 17, 2016 (when Student Doe was hospitalized), it persisted for several months without change. The schedule developed so that Ms. Doe could keep her job, provide as best she could for the care and oversight of her children did not result in a change in their "residence" even though they were spending most of their out of school time in Central Falls at their grandmother's house. The boys were driven by their uncle from Cumberland to Central Falls at approximately 5:00 p.m. each evening to spend the night at their grandmother's, yet there was no request to re-enroll them in Central Falls schools to facilitate this schedule during this period of time.

It was not until the isolation and responsibility of caring for his disabled brother, among other identified "stressors", brought Student Doe to Hasbro Children's Hospital on January 17, 2016 that a plan to change their living arrangements was made. The necessity for the boys to actually live with their grandmother, for Student Doe's treatment and for the safety of both children, became evident. Their "placement" with their grandmother was part of a medical treatment plan developed by Hasbro professionals along with members of Doe's extended family. The purpose for their living arrangements was not so that they could attend school in Central Falls rather than Cumberland, but so that they could live closer to and be cared for by their grandmother and other family members on a more structured and supervised basis- at least while until the medical crisis with Student Doe had passed. We find that the medical necessity was the driving force behind the change in the children's living situation, not school attendance. This is distinguishable from the case cited by counsel for the district (Jessica M. v. Barrington) in which it was determined that the children were living with their grandparents for the purpose of attending school in Barrington.

We acknowledge that there is some evidence that Ms. Doe contemplated “placing” her children with her mother in Central Falls prior to the medical crisis with Student Doe in January of this year.¹⁰ She gave her mother a power of attorney on November 16, 2015 so that she could make medical decisions and exercise other rights on her behalf. Ms. Doe testified that she sensed things were not right with Student Doe at that time and was preparing herself for what might become necessary in the future. This was also the same period of time in which a new IEP was developed that called for her son’s transfer from the Cornerstone School to Cumberland Middle School. Ms. Doe is not in agreement with this change. Taking the evidence as a whole, we do not conclude that her disagreement with the changes called for in the new IEP was the motivation for the children to live with their grandmother in Central Falls during the school week.

Based on this record Student M.R. Doe and his brother Student M.R. Doe are found to be school residents of Central Falls at this time and Central Falls must enroll them immediately. Although their current living situation may be “temporary,” precedent establishes that domicile, or an individual’s true, fixed, and permanent home, is rejected as the governing standard for determining where a child has a right to go to school. See in the Matter of Priscilla H., decision of the Commissioner September 7, 1983 at pages 14-18. Thus, even though their living situation may be indefinite, these students are school residents of Central Falls.

Ms. Doe’s request that her son receive transportation to Cornerstone is denied because Cornerstone is not his current placement, according to the evidence in this case. We assume that Central Falls will either implement his current IEP or develop a new one for him pursuant to R.I.G.L. 16-24-1(e). With respect to his brother’s Section 504 Plan, it should be reviewed and reevaluated in light of his current medical needs and history.

The order to enroll the Doe children is entered as an Interim Protective Order pursuant to R.I.G.L. 16-39-3.2, given that mother has testified that alternate arrangements for their

¹⁰We do not mean to imply that had she done so, such circumstances would not establish school residency in Central Falls. That question is not reached here.

school enrollment in Cumberland would place their safety in jeopardy unless she gives up her job and stays home to take care of them.

For the Commissioner,

Kathleen S. Murray
Hearing Officer

Ken Wagner, Ph.D.
Commissioner

DATE: February 19, 2016