

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

IN RE: RESIDENCY OF JOHN C.O. DOE

DECISION

Held: The Warwick School Department failed to prove that Student Doe did not establish residency in Warwick with his father in September of 1996. Therefore, no factual basis was shown for its claim of tuition reimbursement against Student Doe's parents.

DATE: November 26, 1997

Travel of the Case

On February 3, 1997 the Warwick School Department, through its counsel, requested a hearing to determine the residency of this student under R.I.G.L. 16-64-1. An agreed-upon hearing date was scheduled, and rescheduled at the request of the parties for April 2, 1997. In attendance were attorneys for the Warwick School Department, the Cranston School Department and Student Doe's mother, together with their respective clients. Although he was notified of both hearing dates, Student Doe's father did not attend, nor was he represented by counsel. A second hearing was held on April 30, 1997. The record in this matter closed upon receipt of the final memorandum of the Warwick School Department on July 3, 1997.

Issues:

- (1) Where did Student Doe reside for school purposes during the period September 12, 1996 through March 13, 1997?
- (2) If Student Doe did not reside in Warwick for school purposes during any part or all of this period, are either one or both of his parents liable for tuition reimbursement to the Warwick School Department?

Findings of Relevant Facts

- Student Doe, whose parents are divorced, lived with his father in Warwick from April of 1994 until April or May of 1996. (Student Doe Ex. A. Tr. pp. 7-10, 26).
- In May of 1996, Student Doe began residing with his mother in Cranston, and was enrolled in the Hugh B. Bain Middle School. Tr. p. 10.
- In September of 1996 Student Doe's mother enrolled him at Cranston East High School, which he attended for approximately two weeks. Tr. pp. 15-16.
- At some point in mid-September, Student Doe took up residence with his father in Warwick, and resumed visiting his mother on weekends. Tr. pp. 15-16, 18-20, 21-22, 145-146.

- Student Doe’s father enrolled him at Tollgate High School in mid to late September, 1996. Tr. pp. 14, 16. Warwick Ex. 2.
- From October 25 through October 29, 1996 Student Doe was missing and neither his mother nor his father was aware of his whereabouts. Tr. pp. 28-29.
- On November 4, 1996 Student Doe was admitted to Butler Hospital for a ten-day period. He had attempted suicide and suffered from severe depression. Tr. pp. 20-21, 27.
- Upon his release from Butler Hospital on November 14, 1997, Student Doe returned to his mother’s home in Cranston. For health reasons he returned to his mother’s home and she took a leave of absence from her job in order to care for her son. Tr. pp. 21, 27, and 37.
- At this time, it was Student Doe’s mother’s expectation that upon his recovery, he would return to live at his father’s home in Warwick. His possessions remained at his father’s house, he remained enrolled at Tollgate, and his mother drove him to school from her home in Cranston each day. Tr. pp. 21, 27, 31, 38.
- In mid-February of 1997 Student Doe’s father filed a “wayward” petition in the Family Court against Student Doe and it was at this point that his mother had no expectation that Student Doe would return to live with his father. Tr. pp. 31-32.
- On March 13, 1997 Student Doe was placed on “home confinement” as a result of three pending criminal charges. He was ordered to remain confined to his mother’s house by order of the Family Court, which action effectively modified the 1987 divorce decree’s provision that his physical placement would be with his father in Warwick. Tr. pp. 43-46; Student Doe Ex. A.
- The Warwick School Department provided home tutoring to Student Doe subsequent to his home confinement at his mother’s house in Cranston; as of the date of the initial hearing in this matter (April 2, 1997) the Cranston School Department stipulated that it was responsible for Student Doe’s education as of the March 13, 1997 home confinement order. Tr. pp. 50-51.

Position of the Parties

Warwick School Committee

The School Department alleges that Student Doe was not a resident of the City of Warwick in the fall of 1997, or at any time thereafter. It takes the position that his

enrollment in Warwick in September of 1997 was fraudulent from the outset, and that in the absence of legitimate residency in Warwick for school purposes:

(Mr. and Mrs. Doe) have an obligation to make Warwick whole for the investment it made in (Student Doe's)(sic) education, and Warwick certainly should not be put in a position that it is "on the hook" for compensatory special education services for (Student Doe). Memorandum of the Warwick School Department at page 10.

With regard to Student Doe's father (who did not appear at the hearing), the school department asserts it is entitled to a default judgement for tuition for the period of Student Doe's fraudulent enrollment, i.e. September of 1996 through March 13, 1997. Mrs. Doe is also financially responsible to the School Department. While she may not have been the parent who actually enrolled Student Doe in the Warwick School System, Mrs. Doe acquiesced in this arrangement. The alleged motivation for their son's enrollment at Tollgate High School was to meet his parents' conveniences. Neither parent, the district argues, had any real intention for him to resume residence with his father.

As proof of this child's nonresidence and lack of entitlement to an education in the Warwick school system, counsel for the district points to alleged inconsistencies in the mother's testimony. He also relies on statements made by Student Doe and his father that he did not reside with his father in Warwick in the fall of 1996. These statements were made to various officials of the Warwick School Department who testified at the hearing.

Student Doe's Mother

At the outset, counsel for Mrs. Doe argues that the Commissioner has no jurisdiction over tuition reimbursement claims under R.I.G.L. 16-64-1 et seq. or any other

provision of education law. Such claims must be presented to a court of competent jurisdiction, not in an administrative hearing the purpose of which is to determine the residency of individual students.

Even if proper jurisdiction for such a claim were with the Commissioner of Education, Warwick did not notify the Commissioner or Mr. or Mrs. Doe of its intention to seek tuition reimbursement. The notice to the parties in interest described the issue only as a residency determination. Without proper notice, that issue cannot be raised, especially for purposes of a default judgment against Student Doe's father.

On the merits, Mrs. Doe's attorney argues that the burden to establish Student Doe was not a Warwick resident rests with the Warwick School Department. She notes the testimony given by Student Doe's mother that he did take up residence in Warwick with his father in mid to late September, 1996. The only evidence to the contrary consists of two hearsay statements, one of which was excluded from the record following objection by Mrs. Doe's attorney and a ruling on the objection by the hearing officer. Therefore, Counsel argues that there is insufficient proof that he was not entitled to be educated in the City of Warwick.

After Student Doe's release from Butler Hospital on November 14, 1996, he returned to his mother's home in Cranston to recuperate. The intention of his parents was that as soon as his mental and emotional state improved, he would return to his father's home in Warwick. To preserve the continuity of his school setting, his mother continued to bring him to Tollgate High School while she worked with special education staff to determine an appropriate school program for him. It was not until February of 1997 that the prospect of his returning to live with his father was eliminated. The Warwick School

Department did not seek to have his school residency determined until February 3, 1997. Under such circumstances, she argues that Student Doe maintained residency in Warwick for school purposes until Cranston accepted educational responsibility and enrolled him in his new district.

In conclusion, counsel for Mrs. Doe argues that the “residency” hearing –now transformed into a tuition reimbursement claim – is without merit and is retaliatory in nature. The purpose of pressing a tuition claim against Mrs. Doe is alleged to be an attempt to stifle the request for compensatory education she has made in another forum.

Decision

There has been no definitive ruling on the issue of the Commissioner’s authority to decide claims for tuition reimbursement against parents whose children attend schools of a district without any legal entitlement. Prior cases have only affirmed those situations wherein claims for tuition reimbursement were not justified.¹ Implicit in these cases is the principle that in appropriate circumstances and when authorized under the residency statute, parents will be held responsible financially for their child’s attendance in a district from which they were ineligible to receive educational benefits. We will assume that the Commissioner does have authority to hear such cases as an adjunct to residency determinations under R.I.G.L. 16-64-6.

This is the first case to be presented to the Commissioner in which the district’s claim of reimbursement is based on the theory of “fraudulent enrollment”. It is probably

¹ LaFontaine v. North Kingstown School Committee, decision of the Commissioner dated November 30, 1988; Garrett and Laura Sullivan v. Newport School Committee, February 10, 1986 decision of the Commissioner; In Re Residency of John C.F. Doe, July 15, 1997 decision of the Commissioner.

a correct statement of the law that when a parent misrepresents his or her child's residence in a district at the time of enrollment and thereby obtains significant educational benefits for the nonresident child, the parent becomes liable for the costs incurred by the school district. Such situation would fall outside the rather liberal provisions of our residency law which protect even a nonresident student's ongoing entitlement to education services when the non residency results from the student's (or parent's) move out of the district. Education must be provided until one of two events occurs: (1) a residency ruling is obtained from the Commissioner or (2) the child is enrolled by the new district of residence. R.I.G.L. 16-64-2 provides:

A child shall be eligible to receive education from the town in which the child's residence has been established until his or her residence has been established in another town and that town has enrolled the child within its school system, unless the Commissioner ... has ordered otherwise.

A child who has legitimately established school residence within a town and subsequently moves outside the district retains eligibility to receive education until the new town has enrolled that child within its school system or a ruling from the Commissioner has been obtained.² On the other hand, a child who has not established school residence within a town, i.e. whose parent misrepresents the child's or the parent's residence at the time of enrollment, receives no protection from Section 16-64-2.

Without such initial legitimacy the nonresident child's attendance presents the potential for a claim of reimbursement by the district which provided an education to the

²This provision puts the burden on school districts to request residency hearings to terminate their educational responsibility to students who move out of the district (after the child has exhausted any rights acquired under R.I.G.L. 16-64-8 to finish the semester or school year).

nonresident child. We will assume, arguendo that such a claim arises under R.I.G.L. 16-64-1 et seq.³ rather than arising as a civil action based on fraud or misrepresentation.

A prerequisite to such a claim must be proof, by a preponderance of evidence, that the child in question did not establish legal residence in the town, in this case, the city of Warwick. Based on the record at the hearing before us, in which the only issue was the residency of Student Doe, we have made a finding of fact that his residence was established in the city of Warwick in mid to late September of 1996. However fleeting or unstable his residence with his father was at that time, his mother testified that he moved out of her Cranston home and to his father's home in Warwick in September. Her testimony on this point was consistent over two days of hearings. Although there is evidence in the record to contradict the mother's testimony on this point, it is not as reliable or probative as the mother's direct, credible testimony on the issue of her son's residence.

The school committee argues that statements made to the Special Education Director and Student Doe's teacher (statements to the effect that he had not resided with his father during the fall of 1996) should establish proof of his nonresidence. It argues the credibility of the two school officials reporting the statements. Their credibility is not at issue⁴, but rather the credibility of those making the statements – Student Doe and his father. Such statements are not as reliable as in-person testimony on this issue.

The school committee declined the invitation to continue the hearing to bring in

³ The Commissioner's jurisdiction extends only to controversies arising under any law relating to schools or education under R.I.G.L. 16-39-1 and 2.

⁴ Dr. Amalfitano and Mrs. Watson were clearly credible witnesses.

Student Doe's father to present his testimony on the issue of his son's residency during the relevant period. (See transcript pages 70, 74-75, 157-158). A decision was made to rest on the record made. Even taking into account both statements (that of Student Doe and his father) regarding the issue of residency⁵, the mother's testimony clearly preponderates.

Thus, under the provisions of R.I.G.L. 16-64-1 et seq. Student Doe became a resident for school purposes in the city of Warwick in September of 1996 when he was in the actual custody of his father. Even though he moved back to Cranston following his release from the hospital, he retained eligibility for education until enrolled by the Cranston School Department (where he is now enrolled) or until an order directing his enrollment in Cranston was issued by the Commissioner.

The appeal is denied.

Kathleen S. Murray, Hearing Officer

Approved:

Peter McWalters, Commissioner

DATE: November 26, 1997

⁵ The hearsay statement to Dr. Amalfitano was ruled inadmissible, but even if it were admissible under an exception to the hearsay rule, it would not change our finding of fact on this issue.