

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

In the Matter of the Residency of Student K. Doe

Decision

Held: Where parents living in different communities are both exercising actual custody over their 3-year-old child, the parents may request special-education services from either community.

Date: September 21, 2011

Introduction

This matter concerns a parent's request for a residency determination.¹

Background

Doe is three years old. His parents were recently divorced. Doe's father lives in a home he owns in Barrington. Doe's mother left the Barrington home in November 2010 and now lives in Providence. She testified that she plans to live in Providence for at least a year.

Doe's mother has custody of him on Monday, Tuesday, Wednesday and every-other weekend. Doe's father has custody on Thursday, Friday and every-other weekend. Doe attends day care in Barrington on Monday, Thursday and Friday. Doe's father picks Doe up from day care on Monday afternoons and takes him to the Barrington home. Doe's mother picks Doe up from his father's house on Monday evening and brings him to Providence. Doe's mother brings Doe to day care on Thursday morning, and Doe's father picks him up in the afternoon. If Doe's father has Doe for the weekend, he brings Doe to day care on Monday morning. If Doe's mother has Doe for the weekend, she picks him up in Barrington on Saturday. Both parents have picked Doe up from daycare when illness forced him to leave early.

In 2010, Doe received speech services from Meeting Street School. The services were provided at the home in Barrington. Doe's parents believe he has developmental delays and is in need of special-education early intervention services.

Doe's parents' divorce decree provides for joint custody and "shared placement" of Doe.

Positions of the Parties

Doe's father contends that Doe has sufficient connections to Barrington so as to require that school system to evaluate him for special-education services. Doe's father believes it is in Doe's best interests to receive services from Barrington.

¹ The Commissioner of Education designated the undersigned hearing officer to hear and decide the request. A hearing was held on August 31, 2011.

The Barrington School Department asserts that actual custody of a child, not his best interests, is the legal determinant of where the child may enroll for educational services. In this case, Doe spends more time with his mother in Providence and she has plans to establish a new domestic household in Providence. According to recent residency decisions of the Commissioner, Doe's residence for school enrollment purposes is Providence.

Discussion

In the case of Residency of Student D.R. Doe,² the student spent most school nights with his mother in Pawtucket and some days of the week with his father in Cumberland. The mother left for work early in the morning, so on school days the father picked up his son in Pawtucket and drove him to school in Cumberland. Cumberland argued that the student lived in Pawtucket and should go to school there. The Commissioner stated

in our prior rulings we have looked to the “number of school nights” that a student spends in a community to define, at least to some extent, which community is responsible for educating a student who is, in actuality, living in two different communities. We note that there is nothing in the residency statute that mandates the use of the “school nights” rule. We have adopted this rule, more an as “rule of thumb” than a rule of evidence. While we are still convinced that the “school nights” rule gave the correct result in all the cases it has been used in, we do not think that it is a rule of universal application.

For example, in the present case the truth of the matter is that both parents are exercising actual custody over this student. Although the parents of this child are living in different towns they are still sharing responsibility for his care, shelter, and education. We believe that the public schools should be as supportive as possible for parents who are striving to fulfill their responsibilities under such difficult circumstances. We therefore think that in cases where both parents, while maintaining residences in different communities, are sharing actual custody of the child, the better rule is to allow the parents the choice of which of the two communities they wish to enroll their child in. Since both parents, in such cases

² Commissioner's decision of June 26, 2000.

are, in fact, exercising actual custody over their child, no departure from the language of the statute has occurred.³

Barrington offers two subsequent cases to support its position in this case. The first, In Re: Residency of C. Doe,⁴ involved a Burrillville kindergarten student who, with rare exception, stayed with his mother in Burrillville on school nights. The student and his mother visited his father in West Warwick every day after school and on weekends. Based on the time spent with his mother in Burrillville, the Commissioner found the student's enrollment in Burrillville to be proper. The second case, In the Matter of Student V.B. Doe,⁵ involved a Scituate high-school student who spent most nights with her mother in Scituate. The student and her mother stayed at the mother's former boyfriend's house in Johnston a few times a week so the mother could visit and care for the 16-month old child she had with the former boyfriend. Upholding the enrollment in Scituate, the Commissioner stated

[t]he parent has the burden of proof in cases of this nature (R.I.G.L. 16-64-3). In most cases, when a student is living in two residences, the Commissioner will look to residence where the student [spends] the majority of school nights to establish the student's residency for school purposes. *Morgan v. Smithfield School Committee, Commissioner of Education*, December 23, 1993 . . . it is our conclusion that the parent has demonstrated by a preponderance of the evidence that she and her daughter reside in Scituate during most nights of the school year.⁶

In both C. Doe and V.B. Doe, the evidence showed that the students spent most school nights with their mothers. That is the case here as well. Doe spends three or four school nights per week with his mother in Providence. But there are important differences in these cases. Doe's father has a much larger role in the "care, shelter, and education" of his child than did the fathers in C. Doe and V.B. Doe. Unlike those cases, Doe stays with his father unaccompanied by his mother, and he does so three nights a week. Furthermore, on Monday afternoons, Doe's father picks him up from daycare and

³ Ibid., p. 2. Rhode Island General Law 16-64-1 states, in part, that "[i]f 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."

⁴ Commissioner's decision of May 31, 2005

⁵ Commissioner's decision of August 20, 2008.

⁶ Ibid., p. 2.

takes care of him until his mother travels to the Barrington home in the evening. Doe's father also has picked up Doe at daycare when he was ill.

The evidence of "actual custody" by Doe's father is much stronger than that of the fathers in C. Doe and V.B. Doe. Most importantly, Doe's mother does not stay with Doe when he spends time at his father's home. The application of the "school nights" rule in C. Doe and V.B. Doe correctly captured the nature of the custodial arrangements in those cases. We find that it does not do so here. The rule we followed in D.R. Doe is more apt in this case. Doe's father is truly exercising actual custody of his son when he is in his care Monday afternoon and evening, Thursday, Friday and every other weekend.⁷ Doe's mother is not present during these times. Doe's father therefore is solely responsible for Doe's care and safety. Based on the near-even split of custodial days during the week, and the type of custody exercised by each parent, we find the "choice" rule of D.R. Doe to be applicable. Doe must be enrolled in the Barrington school system if that is his parents' choice.

Conclusion

Because both of Doe's parents are sharing actual custody of him, a request for special-education services may be made of either Barrington or Providence. If Doe's parents choose to enroll him in the Barrington school system, Barrington must accept the enrollment.

Paul E. Pontarelli
Hearing Officer

Approved:

Deborah A. Gist
Commissioner of Education

Date: September 21, 2011

⁷ In addition, on the weekends when Doe's mother has custody, Doe's father takes care of Doe on Saturday until Doe's mother picks him up.