

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

IN RE: RESIDENCY OF W. DOE

Decision

Held: Student does not reside in family's East Greenwich house and therefore is not entitled to attend East Greenwich public schools.

Date: August 27, 2012

Introduction

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

Background

Student Doe's parents purchased a home in North Kingstown in 2001. They purchased another home in East Greenwich in 2007.² They enrolled Doe in the East Greenwich school system for the 2007-08 school year. Doe has attended East Greenwich public schools since that time.

In May 2012, the East Greenwich School Department received a report that student Doe and his family were living in the North Kingstown home. The School Department assigned its attendance officer to investigate the report.

The attendance officer began his investigation on May 11, 2012. During the next 4 weeks, he conducted 9 documented observations of the two houses. The observations were made from the street and took place on school days. During this period and afterward, the attendance officer drove by the houses on additional occasions, including weekends. He testified that, as of the date of the hearing, he drove by the North Kingstown house 15 times and the East Greenwich house 25 times. He never observed any activity or cars at the East Greenwich house. The property was "meticulous," however. [Transcript, p. 37]. There was a "For Sale" sign on the property and there was a listing for it on an online real estate site.

The attendance officer observed Doe being dropped off at school in the morning by his mother. On a couple of occasions, the attendance officer followed Doe's mother's car back to the house in North Kingstown. He saw cars in the driveway of the North Kingstown house. He never saw a "For Sale" sign at the North Kingstown property, and a property records search showed the house "Not For Sale." [School Department Exhibit 3].

The phone number provided to the East Greenwich School Department by Doe's parents is listed to the North Kingstown address. The parents are registered to vote in North Kingstown and they file their federal income tax returns from the North Kingstown

¹ A hearing in this matter was conducted on August 2, 2012. The parties subsequently submitted written argument.

² They also own a house in New Hampshire.

address. Doe's father's driver's license bears the North Kingstown address. The family's motor vehicles are registered in East Greenwich.

Doe's father testified that he resides at all three homes he owns. The family attends church, socializes, purchases gas, and patronizes restaurants in East Greenwich. The family considers itself to be part of the East Greenwich community.

When asked when his family last stayed at the East Greenwich house, Doe's father answered "Sometime early in the year." [Tr., pp. 50-51]. He could not be more specific. When asked when he last slept in the East Greenwich house, Doe's father answered "I do not recall; earlier in the year." [Tr., p. 54]. When asked when his son last slept at the East Greenwich house and was driven to school from that house, Doe's father answered, "I leave for work very early, my wife drives him to school. I occasionally drive him, but, I mean, I can count on one hand how many times a year, 'cause I usually leave for work very early." [Tr., p. 57-58]. Doe's father further testified that the North Kingstown house is "for sale by owner," in that "there's a house for sale across the street and we just, we're piggy-backing off that for now, because, unfortunately, I'm overpriced in the neighborhood, so [we're] trying to avoid a commission if possible . . ." [Tr., p.74].

Positions of the Parties

The School Department contends that, applying the definition of "residence" as set forth in the Commissioner's decision in *In Re: Residency of John Doe (CS) and Jane Doe (LS)*,³ the results of the attendance officer's surveillance and the lack of specificity in Doe's father's testimony establish that student Doe resides in North Kingstown.

Petitioner contends that the School Department's investigation did not establish lack of residency in East Greenwich, and that Doe's family's home ownership and constellation of interests in the East Greenwich community are sufficient to establish residency for school enrollment purposes.

³ February 2, 2000.

Discussion

We find the definition of “residence” set forth in the *John Doe (CS) and Jane Doe (LS)* case to be the proper standard here. In doing so, we note the decision of the Superior Court in the appeal of our decision.⁴ The Court stated that

[t]he Commissioner defined the term “reside” as “a factual place of abode, where one is physically living.” This definition is consistent with the definition of the term residency,” which is defined as the “fact or condition of living in a given place,” and the definition of the term “residence,” which is defined as “bodily presence as an inhabitant in a given place.” See Black’s Law Dictionary, 1310-1311 (7th Ed. 1999). The Commissioner’s stated definition of the term “reside” as used within the context and purpose of the statute is proper, within the Commissioner’s statutory authority, and not an error of law.⁵

That case also involved parents who owned houses in two Rhode Island communities, Providence and East Providence. We concluded that the family resided in Providence because “[t]hey conduct the activities of their household from their Providence home, and sleep there most, if not all, of the time.”⁶

The focus in this matter therefore is on the household, not community, activities of Doe’s family. The evidence in this case does not show that Doe’s family conducts their household activities or sleeps in its East Greenwich house. The family therefore does not reside in East Greenwich and Doe has no entitlement to educational services from the East Greenwich public schools. Absent a change in the family’s living arrangement, Doe must be withdrawn from the East Greenwich school system and, for public school purposes, enrolled in North Kingstown.⁷

⁴ *Charles M. Smith III and Maria Casimoro v. Peter McWalters*, C.A. No. 00-0928.

⁵ *Ibid.*, p. 6.

⁶ February 2, 2000 Decision., p. 4.

⁷ We have employed a constellation-of-interests analysis in residence cases, but only in “rare [state] boundary line cases” where one dwelling was involved. *In Re: Residency of T. Doe*, January 28, 2005. Also see, *In Re: Residency of J.R.*, August 23, 2000 and *Residency of Student C.D.*, December 9, 2003.

Conclusion

For public school enrollment purposes, Doe is a resident of North Kingstown, not East Greenwich.

Paul E. Pontarelli
Hearing Officer

Approved:

Deborah A. Gist
Commissioner of Education

Date: August 27, 2012