

**S. DOE**

**v.**

**TIVERTON SCHOOL DEPARTMENT**

**ORDER**

Held: Sufficient showing was made that student is residing with his grandmother in Tiverton for a substantial reason other than to attend school there so as to warrant an interim order under RIGL 16-64-6 directing his immediate enrollment in Tiverton pending further hearing; it is further ordered that Warwick, where student's mother and sisters are living, is to be joined as a party and the proceeding continued in order to address the fluid situation causing the student to live with his grandmother.

Date: January 23, 2020

## **Introduction**

This matter concerns a request for an interim protective order and an appeal from the Tiverton School Department's refusal to enroll Student Doe.

## **Background**

Student Doe is 8 years old and in the third grade. At the start of the 2019-2020 school year he was enrolled in a Warwick elementary school while living in Warwick with his mother and two sisters at his mother's boyfriend's home. Doe has an individualized education program (IEP).

In early November 2019, Doe's mother "broke up" with her boyfriend. She dis-enrolled Doe and his sisters from Warwick and the family moved to Tiverton to live with her mother. About a week later, Doe's mother reconciled with her boyfriend. She and the three children moved back to her boyfriend's home. The daughters returned to their Warwick schools but Doe did not. At some point later in the month he returned to Tiverton to live with his grandmother. Doe's grandmother testified that she is retired and able to care for Doe and help him with his schoolwork.

Doe's mother and her boyfriend work long hours. Their workday starts early and Doe's mother works on weekends. At the start of the school year, Doe and his younger sister attended a Warwick child care facility before and after school. Doe's other sister is older and does not require child care services.

When Doe's mother returned to Warwick after the reconciliation with her boyfriend, she was able to re-enroll her daughter in the child care facility. Doe could not be re-enrolled because his seat on the facility's transportation van had been assigned to another child. Doe and his younger sister attend different Warwick elementary schools. His sister is transported to and from the child care facility by school bus. Doe needs private transportation to and from the child-care facility because his school bus does not go there.

Doe's mother tried to place Doe in a couple of other child care facilities in Warwick but the programs were full or transportation was not available. In the meantime, Doe's grandmother tried at least three times to enroll Doe in Tiverton public schools. Tiverton refused to enroll Doe, telling his grandmother that she needed to establish legal guardianship of him. Tiverton did not provide Doe's grandmother with a written refusal to enroll nor did it inform her of her right to appeal its refusal.

Doe's grandmother retained counsel, who filed this request and appeal on January 10,

2020. Doe's grandmother and mother and Tiverton participated in the hearing held on January 17, 2020. Doe has now been residing with his grandmother in Tiverton for two months without attending school anywhere. Doe's mother and grandmother both testified that Doe would be living with his family in Warwick if it were not for the transportation problem in obtaining the before-and-after-school child care he needs.

### **Positions of the Parties**

Appellant contends that student Doe's actual residence with his grandmother is uncontroverted and that his residence with her is not for the purpose of attending school in Tiverton. Doe's residence with his grandmother is the result of family circumstances, work schedules, and transportation problems which have overwhelmed his mother. Doe's residence in Tiverton is a living arrangement, not a mere day care situation. He needs to be enrolled in school where he lives as quickly as possible.

Tiverton argues that Doe's residence with his grandmother is a day care arrangement, which was found to be insufficient to establish residency in the *Jessica M. v. Barrington School Committee* decision.<sup>1</sup> Unlike other cases, there are no extreme circumstances concerning Doe's health or family situation. Before-and-after-school child care, including transportation to and from it, is a common challenge for families. Doe's mother is not making an active effort to overcome this challenge. Appellant has not met its burden to prove that Doe is living with his grandmother for a substantial reason other than to attend school in Tiverton.<sup>2</sup>

### **Discussion**

In the case of *Residency of Student C.V.*,<sup>3</sup> the Commissioner stated that

Rhode Island school residency law recognizes the obvious point that there are times when a child, for various good reasons, is not able to live with his or her parents and so must go to live with a relative or some other person who is legally responsible for the child's welfare and who is willing to be the child's caretaker. For the child to go to school in the town where the child's caretaker lives, it must be shown to local school officials that (1) the child is, in fact, living in the town with the caretaker and (2) the child is living in the town for a substantial reason other than to go to the public

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<sup>1</sup> November 1, 1990.

<sup>2</sup> Tiverton asserts that it has taken steps to correct the legal guardianship response it made in denying the requests to enroll Doe.

<sup>3</sup> January 28, 2005.

schools of the town. (*Laura Doe vs. Narragansett School Committee*, April 17, 1984; See: *Joel R. v. Board of Education* 686 N.E.2d 650 (1997)).<sup>4</sup>

In addition, we take official notice of the annual “School Residency Determinations” memorandum sent by the Department of Education to school superintendents and principals. The memorandum includes the following:

R.I. Gen. Laws § 16-64-1 provides that a child can establish residency for school purposes even if he lives separate and apart from his parent, and even if he lives with a relative or a person who is not his legal guardian. If a child lives with a person who has not been appointed as his legal guardian but who is acting *in loco parentis*, and the purpose for these living arrangements is for some *substantial reason other than to attend a district’s schools*, the student is entitled to enroll. A district cannot condition school enrollment on the appointment of a legal guardian. The guardianship would not necessarily change a child’s residency unless the guardian had been appointed for a substantial reason other than to change the child’s residency for school purposes.

The memorandum also states that

R.I. Gen. Laws § 16-64-6 provides that disputes concerning the residency of students shall be resolved by the Commissioner. In all such cases, the school district must notify the parent(s) or guardian of a student of: (1) the reason(s) for the district’s refusal to enroll the child, and (2) the parent’s or guardian’s right to appeal the district’s decision to the Commissioner. It is critical for this notice to be given so that gaps in school attendance can be avoided. We have enclosed a form of written notice, along with a *Spanish translation* for your use as needed. We would appreciate your cooperation in making sure that appropriate staff in your district have copies of this form and that they use it whenever a determination of non-residency is made.<sup>5</sup>

There is no dispute that student Doe has been residing at his grandmother’s apartment in Tiverton, including nights and weekends, beginning in November 2019. Unlike the *Jessica M.* case, where the parent living in East Providence failed to explain why her job made it necessary for her two daughters to stay at their grandmother’s home in the adjoining town of Barrington during the week (but not on weekends), we find that Appellant established a *prima facie* case at the hearing showing that Doe is residing with his grandmother in Tiverton for a substantial reason other than to attend school there. Appellant admits, however, that this arrangement is temporary and will end when suitable child care is found for Doe in Warwick. We agree with Tiverton that the effort to find this child care does not appear to be an active one. In our view, the situation

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<sup>4</sup> *Ibid.*, p.2.

<sup>5</sup> The memorandum was most recently issued on August 20, 2019.

preventing Doe from returning to Warwick with his mother and siblings is fluid and could benefit from the assistance of all the parties involved. Therefore, in light of the factual circumstances and legal principles discussed above, we conclude as follows:

- (1) An interim order is hereby issued pursuant to R.I. Gen. Law 16-64-6 directing the Tiverton School Department to enroll Student Doe immediately;<sup>6</sup>
- (2) The Warwick School Department, as a party in interest, is hereby joined as a party to this case; and
- (3) Further proceedings in this matter will be scheduled promptly.

So ordered:

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Paul E. Pontarelli  
Hearing Officer

Approved:

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Angélica Infante-Green  
Commissioner

Date: January 2020

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<sup>6</sup> R.I. Gen. Law 16-64-6, entitled “Disputes over residency – Determination proceedings,” states in part that “[t]he commissioner of elementary and secondary education shall have power to issue any interim orders pending a hearing needed to insure that a child receives education during the pendency of any matter.” Also, as previously noted, student Doe has an IEP. R.I. Gen. Law 16-24-1(e) states that “[i]n those cases that an individual education plan has been adopted for a child and the child moves to another town or city, the plan shall remain in effect until a new plan is adopted for the child in the new town or city.”