

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
COMMISSIONER OF EDUCATION

STUDENT E. DOE,	:	
by his mother,	:	
<i>Petitioner</i>	:	
	:	
vs.	:	RIDE No. 20-016 A
	:	
CENTRAL FALLS SCHOOL	:	
DISTRICT,	:	
<i>Respondent</i>	:	

DECISION AND ORDER

Held: Parent’s challenge of school district’s determination of non-residency was affirmed as district failed to effectively rebut parent’s sworn testimony and documents evidencing that parent’s primary residence was located in the district, although she spent 2-3 nights per week at her boyfriend’s residence outside the district, mostly on weekends without the children, but occasionally with her children on school nights.

Date: February 12, 2020

Petitioner, Student E. Doe, by his mother, Ms. Doe, wrote the Commissioner on January 15, 2020 to appeal the determination of non-residency made by Respondent, Central Falls School District (“CFSD”).

II. FACTS

The following facts were deduced from the testimony and documents presented at an evidentiary hearing before the undersigned Hearing Officer on February 6, 2020. Ms. Doe, who appeared *pro se*, testified on her own behalf, and although her native language was Spanish and her English was less than proficient, she said she did not require a translator, appeared to understand the questions asked and despite her strong accent, could be understood. In addition, her boyfriend, who was fluent in English, was present at the hearing, agreed that Ms. Doe could proceed without a translator, and when necessary, provided language assistance.

CFSD and the Cumberland School Department (“CSC”), which had received notice of the proceeding, were both represented by counsel, and CFSD presented the testimony of its Attendance Officer.

1. E. Doe is a fourth grader enrolled at the Raíces Dual Language Academy (the “Academy”).
2. Ms. Doe was informed by CFSD that she would have to dis-enroll her son from the Academy at the conclusion of the first semester because, according to CFSD, “the student does not physically reside in the district.” *See* CFSD Exhibit 8.
3. On January 28, 2020, Ms. Doe wrote the Commissioner stating simply: “I disagree with the determination made of my son’s residency. I live at 6 Parker St. in Central Falls. I wish to appeal this decision.” *See* Petitioner’s Exhibit 1.
4. Ms. Doe testified that she resides with her mother and other relatives in Central

Falls, and has lived there for the past two to three years. However, she also testified that on occasion, she would spend nights with her boyfriend in his Cumberland apartment.

5. Ms. Doe, who is not currently employed, also testified that she “sometimes” would bring E. Doe and his five-year-old brother with her when she spent the night in Cumberland with her boyfriend, and occasionally would do so on a school night.

6. She estimated that she spent 2-3 nights per week, mostly weekends, in Cumberland, and testified that on the nights she was in Cumberland without her children, the children remained in Central Falls with Ms. Doe’s mother or her grandfather, who both also resided at the home in Central Falls.

7. Ms. Doe presented two documents to support her claim that she resided in Central Falls: (a) her Rhode Island driver’s license reinstatement, which was dated February 5, 2020 and which listed a Central Falls address; and (b) a credit card bill for \$726 dated January 18, 2020, which also listed Central Falls as her address, (and which contained the notation “CHANGE SERVICE REQUESTED”).

8. When asked why she had not produced any documentary evidence prior to the hearing, Ms. Doe explained that all the bills and other documents referencing the Central Falls residence were in the name of her mother.

9. According to the testimony of the CFSD Attendance Officer and her written report, *see* DCYF Exhibit 7, E. Doe had missed school for five (5) days in September, and thus the CFSD Director of Equity, Empowerment and Excellence (the “CFSD Director”) made a home visit to the Central Falls residence. According to the written report of the CFSD Director, *see* CFSD Exhibit 6, although Ms. Doe and the children were not at home, Ms. Doe’s grandfather told the Director that “the student actually live [*sic*] in Cumberland with the mother (his granddaughter) and her boyfriend.” *See id.*

10. When confronted with the alleged statement of her grandfather at the hearing, Ms. Doe suggested that her grandfather meant simply that she “stayed” with her boyfriend in Cumberland, not that she and the children lived there as their primary residence.

11. Following the home visit, a meeting was conducted on September 11, 2019 with Ms. Doe, her boyfriend, the CFSD Attendance Officer and the CFSD Director. According to the written report of the Attendance Officer, *see* CFSD Exhibit 6, Ms. Doe was asked to provide documentary proof of her residency in Central Falls at the meeting. Yet, as has been noted, Ms. Doe did not do so at any time prior to the February 6 hearing.

12. The CFSD Attendance Officer visited the Central Falls residence on October 2, 2019. In her written report of the visit, which was echoed by her testimony, she reported that:

I went to visit 6 Parker St 2 Fl. Central Falls, there was no one at the time, I wait it [*sic*] in my car, when the great-grandparents arrived with the children, I introduce myself and said that I wanted to talk to them, I explained to him that part of my job was to make sure where they live, then he told me to go inside the apartment. He said look they live here in this room, it is very small room with a twin bed and some toys were there, I told him it is impossible for them to live here, there is nothing of the mother, then he told me: ‘You know what youth is like...we thought we were already retired to rest, but no... we have to attend the children while they are here, I give him a ride to school back and forth every day’

See CFSD Exhibit 7.

13. Finally, on October 8, 2019, the CFSD Director visited Ms. Doe’s boyfriend’s house in Cumberland and observed that Ms. Doe’s name was on the mailbox. Photos of the mailbox and of Ms. Doe and her younger son outside the Cumberland apartment were introduced into evidence. *See* CFSD Exhibits 1 – 5.

II. POSITIONS OF THE PARTIES

1. Student E. Doe

Ms. Doe is relying upon her sworn testimony that she spends 2-3 nights per week, mostly weekends, in Cumberland, and only occasionally with her children who, when not with her, are

with her mother and/or grandfather in Central Falls, which, she claims, is her primary residence. In addition, she introduced two documents – i.e., her reinstated Rhode Island driver’s license and a credit card bill, *see* § II, *supra*, ¶ 7 at 3 – in support of her claim that her primary residence is in Central Falls.

2. CFSD

CFSD argued that Ms. Doe’s primary residence is her boyfriend’s apartment in Cumberland, relying upon:

- (a) E. Doe’s failure to provide any documentary evidence establishing her Central Falls residency prior to the February 6 hearing, and the fact that the documents she did produce were recently-created and one (the credit card bill) contained a notation suggesting that a change of address request had been made. *See* § II, *supra*, ¶¶ 7, 11 at 3-4;
- (b) the alleged statement by Ms. Doe’s grandfather that “the student actually live [*sic*] in Cumberland with the mother (his granddaughter) and her boyfriend.” *See id.*, ¶ 9 at 3;
- (c) the conclusion of the CFSD Attendance Officer after visiting the Central Falls residence that the room where the children supposedly slept was “very small” and she saw no evidence of Ms. Doe’s presence in the home. *See id.*, ¶ 12 at 4; and
- (d) the photos of Ms. Doe and her younger son outside the Cumberland apartment and of Ms. Doe’s name on her boyfriend’s mailbox in Cumberland. *See id.*, ¶ 13 at 4.

3. CSD

CSD’s attorney observed, but did not actively argue or take a position at the hearing.

III. DECISION

1. Jurisdiction and Burden of Proof

It is clear that the Commissioner has jurisdiction over the school residency issues raised here under R.I. Gen. Laws § 16-64-6. In such cases, the petitioner challenging a school district’s residency determination, in this case Student E. Doe, has the burden of proof. *See*,

e.g., *Parents of CD v. McWalters*, 2005 WL 1984450 (R.I. Superior Court, August 15, 2005)

(Dmitri, J.) at 5-6. As recently noted by the Rhode Island Supreme Court:

‘the term “burden of proof” embraces two different concepts’—the burden of production and the burden of persuasion.’ *Murphy v. O’Neill*, 454 A.2d 248, 250 (R.I. 1983). ‘The “burden of persuasion” refers to the litigants’ burden of establishing the truth of a given proposition in a case by such quantum of evidence as the law may require[,]’ and it ‘never shifts.’ *Id.* (punctuation omitted). The burden of production, also referred to as the ‘burden of going forward with the evidence,’ *DeBlois v. Clark*, 764 A.2d 727, 732 n.3 (R.I. 2001), ‘shifts from party to party as the case progresses.’ *Murphy*, 454 A.2d at 250.

Cranston Police Retirees Action Committee v. City of Cranston, 208 A.3d 557, 573 (R.I. 2019).

2. The Merits

The Rhode Island Supreme Court has stated that residence does not possess a fixed legal definition, but “must be interpreted according to the context and the purpose of the statute in which it is found.” *Flather v. Norberg*, 119 R.I. 276, 281, 377 A.2d 225 (1977). The criteria for establishing the residency of children for school purposes is set forth in R.I. Gen. Laws § 16-64-1, which provides that “a child shall be enrolled in the school system of the town wherein he or she resides,” and “[a] child shall be deemed to be a resident of the town where his or her parents reside.” *Id.*¹

Ms. Doe, who, as noted, has the burden of proof, met her initial burden through her sworn testimony and the introduction of documents evidencing that her primary residence is located in Central Falls. The burden of persuasion then shifted to CFSD, which, as noted, relied upon various evidence, which will be considered separately.

First is the fact that Ms. Doe failed to timely provide CFSD with documentary evidence

¹ The Commissioner has defined the term “residency” as “a factual place of abode, where one is physically living.” *See Smith v. McWalters*, 2000 WL 1273912 at *3 (Superior Court, July 27, 2000) (Silverstein, J.). 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).

that she resided in Central Falls that had been requested by CFSD in early September, and only did so at the February 6 hearing, and only then produced two documents that were recently-created and one of which (the credit card bill) contained a notation suggesting that a change of address request had been made. Yet, Ms. Doe’s explanation for the failure to produce documentary evidence earlier, i.e., that all the bills and other documents referring to the residence in Central Falls were in the name of her mother, is credible, and also explains the fact that the documents that were produced at the February 6 hearing had been created only recently.²

Second is the alleged statement by Ms. Doe’s grandfather quoted by the CFSD Director that “the student actually live [*sic*] in Cumberland with the mother (his granddaughter) and her boyfriend.” *See* § II, *supra*, ¶ 8 at 3-4. The statement is, of course, “hearsay,” i.e., “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” *See* R.I. Rule Evidence 801(c). In fact, the statement is “double hearsay,” or “hearsay within hearsay,” since the CFSD Director who included the alleged statement in his report did not testify at the hearing. *See* R.I. Rule of Evidence 805. Moreover, although portions of the written report (CFSD Exhibit 6) would be separately admissible as a report of a public agency under Rule of Evidence 803(8), the hearsay statement itself would not be admissible. *See, e.g., Flynn v. Nickerson Community Center*, 177 A.3d 468, 475, note 7 (R.I. 2018) (“social worker’s report contains a summary of what the juvenile told

² CFSD’s counsel suggested that the notation on the credit card bill – “CHANGE SERVICE REQUESTED” – evidences that Ms. Doe recently requested a change of address (presumably from the address of her boyfriend’s apartment in Cumberland to the Central Falls address). However, the suggestion is based upon an unsubstantiated speculation as to the notation’s meaning. In addition, even if true, such a request should not be surprising considering Ms. Doe’s testimony that she could not locate any documents relative to the Central Falls residence that was not in her mother’s name. Moreover, there are any number of plausible reasons why Ms. Doe may have wanted to receive her mail at her boyfriend’s apartment, and not at a home she shared with her mother and other relatives, and no evidence suggesting which of these plausible reasons actually explains why Ms. Doe had her name on her boyfriend’s mailbox.

the social worker, making the statement double hearsay; and, accordingly, [the public agency report] exception does not apply.”).

All that being said, double hearsay may be admissible under the state’s Administrative Procedures Act, which applies to contested proceedings before the Commissioner, *see* R.I. Gen. Laws § 42-35-2.³ Yet, despite its admissibility in this context, its status as normally inadmissible double hearsay is relevant when weighing its probative value since, as the Court noted in *Rhode Island Consumers’ Council v. Smith*, 111 R.I. 271, 277-78, 302 A.2d 757, 762-63 (1973), “[a]n administrative agency may not base a finding or determination on information that is not legally probative.” *Id.*; *see, e.g., DePasquale v. Harrington*, 599 A.2d 314, 316 (1991) (“The provisions of § 42–35–10 entrust the hearing officer with both the ability to exercise prudence in considering evidence and the reliability that must condition its admissibility.”); *Wood v. Ford*, 525 A.2d 901, 903 (R.I. 1987) (“signed statement . . . concerning an issue which could readily be the subject of testimony, subject to cross-examination, is not the type of hearsay to which reference is made in § 42–35–10”).

In sum, after considering the “inherent reliability” of the alleged statement and factoring in Ms. Doe’s interpretation – i.e., that her grandfather intended merely to state that she and the children “stayed” at her boyfriend’s Cumberland apartment, not that it was their primary residence – the double hearsay does not, standing alone, meet CFSD’s burden of persuasion.

Third, the bald conclusions of the CFSD Attendance Officer that the room where the children supposedly slept in Central Falls was “very small” and there was no evidence of Ms. Doe’s presence in the home, does little to meet CFSD’s burden of persuasion, at least without some further explanation.

³ It would only be admissible, however, if it is “necessary to ascertain facts not reasonably susceptible of proof under [the rules of evidence]” or “[i]s of a type commonly relied upon by reasonably prudent men and women in the conduct of their affairs.” *See* R.I. Gen. Laws § 42-35-10(1).

Fourth, the photos of Ms. Doe and her children outside the Cumberland apartment are entirely consistent with Ms. Doe's testimony that she "sometimes" would bring E. Doe and his five-year-old brother with her when she spent the night in Cumberland, and occasionally would do so on a school night, which is not inconsistent with her claim that her primary residence is in Central Falls.

And finally, fifth, the photo of Ms. Doe's name on her boyfriend's mailbox in Cumberland does not, standing alone and without any explanation, satisfy CFSD's burden of persuasion. Although Ms. Doe was not asked why her name was on the mailbox, there are any number of plausible reasons why she may have wanted to receive her mail at her boyfriend's apartment, and not at a home she shared with her mother and other relatives, as has been noted.

In sum, Ms. Doe's sworn testimony together with the relevant documentary evidence satisfied her burden of proving that her primary residence was located in Central Falls, and was not effectively rebutted by CFSD.

IV. ORDER

For all of the above reasons:

1. The appeal of Student E. Doe from CFSD's determination of non-residency is hereby granted; and
2. E. Doe was entitled to remain enrolled in the Raíces Dual Language Academy, and shall be re-enrolled forthwith.

Anthony F. Cottone, Esq.,
as Hearing Officer for the Commissioner

Angélica Infante-Green,
Commissioner of Education

February 12, 2020