

STATE OF RHODE ISLAND
COMMISSIONER OF EDUCATION

BRISTOL WARREN REGIONAL	:	
SCHOOL DISTRICT,	:	
<i>Petitioner</i>	:	
	:	
v.	:	RIDE No. 22-050-A
	:	
Ms. Doe, as parent and next friend of	:	
STUDENTS B. DOE and D. DOE,	:	
<i>Respondents</i>	:	

DECISION AND ORDER

Held: School District’s petition to disenroll two high school students due to non-residency is granted as statutory exception under R.I. Gen. Laws § 16-64-4 to the general rule under § 16-64-1 that “a child shall be enrolled in the school system of the city or town where he or she resides” and “[a] child shall be deemed to be a resident of the city or town where his or her parents reside,” *id.*, did not apply since: (1) the guardianship relied upon by the students’ parents was limited to the probate of a will and was not the “guardianship of the person of a child pursuant to chapter 15.1 of title 33” that is recited under § 16-64-4; and (2) even if that were not the case, the fact that the parent preferred that all her children have their own bedroom is not the kind of “substantial reason” for the appointment of such a guardian that is contemplated under § 16-64-4.

Date: January 4, 2023

On September 1, 2022, counsel for Petitioner, BRISTOL WARREN REGIONAL SCHOOL DISTRICT (“BWRSD”), requested a hearing to determine the residency for school purposes of Respondents, STUDENTS B. DOE and D. DOE (collectively, the “Students”), who were enrolled and attending tenth and eleventh grades, respectively, at Mt. Hope High School in Bristol. Ms. Doe, the Students’ mother, alleged that although she had moved to Johnston with her husband and two younger children, the Students continued to reside in Bristol with her mother (and the Students’ grandmother) (the “Grandmother”), who had been appointed as the Students’ guardian, and thus the Students were legally entitled to continue attending Mt. Hope High School.

I. Jurisdiction and Burden of Proof

The Commissioner has jurisdiction under R.I. Gen. Laws § 16-64-6 and as in most cases, the petitioner – here, the BWRSD – has the burden of proof.¹

II. Undisputed Facts and Law

On December 20, 2022 an evidentiary hearing was conducted by the undersigned Hearing Officer and was attended by the BWRSD Superintendent and the District’s counsel; Ms. Doe and the Students, who appeared *pro se*; and counsel for the Johnston School District. Three exhibits were admitted into evidence: Exhibit 1, the September 1, 2022 letter to the Commissioner from the BWRSD requesting the residency hearing; and Exhibits 2 and 3, Certificates of Appointment from the Bristol Probate Court appointing Grandmother as the

¹ See, e.g., *Parents of CD v. McWalters*, 2005 WL 1984450 (Superior Court, August 15, 2005) (Dimitri, J.), slip. op. at *5-*6. R.I. Gen. Laws § 16-64-3, which shifts the burden of proof to the parent or guardian, is not applicable since this case does not involve a change in residence “due to illness of a parent, the break-up of the child's family, abandonment of the child by his or her parents, death of the child's parents, or emancipation of the child.” *Id.*

guardian of Students B. Doe and D. Doe pursuant to R.I. Gen. Laws § 33-8-1. The following facts were undisputed:

1. In October of 2021 Ms. Doe married Mr. Doe, who is not the biological father of the Students, and at that time resided in Bristol in a rented dwelling.

2. In December of 2021, Ms. Doe and her family moved in with the Grandmother, who resides in Bristol.

3. In March of 2022, Ms. Doe, her husband, and two younger children moved to a four-bedroom apartment located in Johnston, and Ms. Doe enrolled the two younger children in schools in Johnston.

4. Ms. Doe testified that the Students remained in residence with the Grandmother in Bristol because the Johnston residence was not large enough to enable all the children to have their own bedroom.

5. On September 22, 2022, Certificates of Appointment were issued by the Bristol Probate Court appointing Grandmother as the guardian of the Students pursuant to R.I. Gen. Laws § 33-8-1. *See Exhibits 2 and 3.*

6. R.I. Gen. Laws § 16-64-1 provides, in pertinent part, that:

Except as provided by law or by agreement, a child shall be enrolled in the school system of the city or town where he or she resides. *A child shall be deemed to be a resident of the city or town where his or her parents reside.* If 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. In cases where a child has no living parents, has been abandoned by his or her parents, or when parents are unable to care for their child on account of parental illness or family break-up, the child shall be deemed to be a resident of the city or town where the child lives with his or her legal guardian, natural guardian, or other person acting in loco parentis to the child.

Id. (emphasis added).

7. R.I. Gen. Laws § 16-64-4 provides that:

The appointment of *a guardian of the person of a child pursuant to chapter 15.1 of title 33* shall not operate to change a child's residence unless the child takes up residence with the guardian and unless the guardian has been appointed for a substantial reason other than to change the child's residence for the purpose of enrolling the child in another school system.

Id. (emphasis added).

8. R.I. Gen. Laws § 33-8-1 provides that:

Upon the probate of a will the probate court shall issue letters testamentary thereon to the executor named therein, if he or she is legally competent, and if he or she gives bond as by law required.

Id.

9. And finally, R.I. Gen. Laws § 33-15.1-4 provides that:

The probate court in each city or town, if occasion shall require, shall have power to appoint or approve guardians of the persons and estates, or of the person or estate of minors who shall reside, or have a legal settlement in the city or town, and of the estate within the city or town.

Id.

III. Positions of the Parties

1. The BWRSD

The BWRSD argues that although R.I. Gen. Laws § 16-64-4 provides that the residency for school purposes of a child who resides with a guardian can under certain circumstances be the residency of the guardian, the exception to the general rule under § 16-64-1 does not apply here because:

- (a) the Grandmother was appointed guardian pursuant to R.I. Gen. Laws § 33-8-1, *et seq.*, which pertains to the appointment of administrators and executors of wills, as opposed to having been appointed a guardian of the persons of the Students under § 33-15.1, *et seq.*, which pertains to the appointment of guardians for minors and is specifically referenced in § 16-64-4; and
- (b) even if the Grandmother had been appointed guardian of the persons of the Students under R.I. Gen. Laws § 33-15.1, the fact that Ms. Doe prefers that all her children have their own bedroom is not the kind of “substantial reason” for

the appointment of such a guardian that is mandated if the exception under § 16-64-4 is to apply.

2. The Students

Ms. Doe argued that the inability of the Students to have their own bedrooms in her Johnston residence was a “substantial reason” – other than their ability to continue attending Mt. Hope High School – to appoint the Grandmother as their guardian. In addition, she maintained that the Students resided with the Grandmother in Bristol. Thus, she maintained, the exception to the general rule under R.I. Gen. Laws § 16-64-4 is applicable and the Students are legally entitled to attend Mt. Hope High School.

IV. Decision

The plain language of R.I. Gen. Laws § 16-64-1 (quoted above) makes clear that “a child shall be enrolled in the school system of the city or town where he or she resides,” and “[a] child shall be deemed to be a resident of the city or town where his or her parents reside.” *Id.* Under this general rule, is it clear that the Students reside in Johnston for school purposes since Ms. Doe resides in Johnston.

Resolution of this case, however, hinges upon the plain language of § 16-64-4 (also quoted above), which provides an exception to the general rule articulated under § 16-64-1 if “a guardian *of the person of a child*” has been appointed “pursuant to chapter 15.1 of title 33” for a “substantial reason” unrelated to the child’s residency for school purposes. Yet, it is clear that the exception to the general rule of residency articulated under § 16-64-4 is inapplicable here for two reasons.

First, the guardianship relied upon by Ms. Doe was issued under chapter 8 of title 33, which is limited to the probate of a will (*see* § 33-8-1, quoted above), and is not the

“guardianship of the person of a child pursuant to chapter 15.1 of title 33” that is recited in § 16-64-4 (see § 33-15.1-4, quoted above).

Second, even if the Grandmother had been appointed guardian of the persons of the Students under chapter 15.1 of title 33, the fact that Ms. Doe prefers that all her children have their own bedroom is not the kind of “substantial reason” for the appointment of such a guardian that is contemplated under § 16-64-4. There are many parents who, like Ms. Doe, are unable to provide all their children with their own bedrooms, and presumably most wish they could do so. Yet, it is highly unlikely that the Legislature intended the chaos that would result in the event that all parents in such a common-place situation would thereby be able to be exempt from the basic rules governing residency for school purposes.

V. Order

For all of the above reasons:

1. The Petition of the Bristol Warren Regional School Department is hereby granted; and
2. Students B. Doe and D. Doe are hereby found to be residents of Johnston for school purposes and may be disenrolled from Mt. Hope High School.



ANTHONY F. COTTONE, ESQ.,
Hearing Officer for the Commissioner



ANGÉLICA INFANTE-GREEN,
Commissioner

January 4, 2023