

IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION

(Cite as 2 D.P.I. App. Dec. 257)

In re Jo Ellen Meerdink	:	
	:	
Ruth Ann Cerny, Appellant	:	DECISION
v.	:	
Burlington Community School District, Appellee	:	[Admin. Doc. 579]

The above entitled matter was heard on January 16, 1981, before a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Mr. Gayle Obrecht, director, administration and finance division; and Dr. Lenola Allen, supervisor, preparatory and supplemental services unit. The Appellant, Ruth Ann Cerny, was represented at the hearing by Jo Ellen Meerdink's mother and stepfather, Sandra and Roger Cooley; and the Burlington Community School District (hereinafter District) was represented by Superintendent Gordon Kniskern. The hearing was held pursuant to Chapter 290, The Code 1979, and Chapter 670--51, Iowa Administrative Code.

The Appellant is appealing a decision of the District regarding tuition.

I.
Findings of Fact

The Hearing Panel finds that it and the State Board of Public Instruction have jurisdiction over the parties and subject matter.

Jo Ellen Meerdink established her residence in the District in May, 1978, when her mother and step-father first established their residence in the District. In August, 1980, Jo Ellen changed her residence to that of the Appellant when a guardianship over Jo Ellen was established in the Appellant. On September 8, 1980, Jo Ellen's mother and step-father moved from the District and established residence in Des Moines, Iowa. Jo Ellen remained in the District and continued residing with the Appellant.

In the early months of the 1980-81 school year the District investigated circumstances surrounding about ten different situations in which students not residing in the District with their parents were attending school in the District without payment of tuition. The District Board was concerned with the fact that revenues generated from local property tax might, in fact, be used for providing education to nonresident students. After an initial investigation by District officials and consultation with legal counsel, the District Board invited students whose residency was in question to meetings with the Board. Jo Ellen and the Appellant met with the District Board on November 3, 1980, to discuss her living

arrangement and its impact on the issue of residency. School officials discussed the matter with Jo Ellen and her guardian and requested responses to a prepared set of questions.

Jo Ellen and her guardian's responses to the Board's questions were the primary basis for its later decision regarding the issue of residence. Apparently Jo Ellen and her guardian responded to key inquiries generally as follows:

- Upon graduation Jo Ellen plans to move to Des Moines and live with her mother and step-father.
- Jo Ellen likes the District's schools better than the district where her mother and step-father live.
- Extracurricular activities were a strong reason for continuing to attend the District high school.
- A guardianship was established to allow Jo Ellen to take part in school activities.
- The tuition charge by the District was a factor in the decision to establish a guardianship.
- Jo Ellen would probably not attend the District's high school if she was required to pay tuition.

On November 6, after discussing the matter, the District Board voted to deny Jo Ellen the waiver of tuition costs in the District because "the Board finds said student is not an actual resident of this district." The school administration was directed to make arrangements for payment of tuition costs beginning the second semester of the 1980-81 school year.

A letter to Ms. Cerny from the Board Secretary dated January 12, 1981, requested payment of tuition for the second semester in the amount of \$935.00. As an alternative, because Jo Ellen will become 18 years of age on March 6, 1981, and will then be considered a resident, the tuition charge will be reduced to \$301.11. The latter charge is conditional upon Jo Ellen's filing of a letter of intent to be a resident.

Mr. Cooley testified that the primary reason his step-daughter remained in the District rather than move to Des Moines with him and Jo Ellen's mother was economic. He stated that Jo Ellen was employed in the District in a job which netted her about \$54 a week. She also had paid in advance for school items such as a class ring, yearbook and senior pictures and would, by moving to a new school, lose the benefit of the money invested in those items. Subsequent to the District Board decision, it was learned that Jo Ellen has an opportunity to receive a scholarship at the University of Dubuque as a result of her athletic ability.

Jo Ellen participates in many school activities. She was a co-captain of the volleyball team, is co-editor of the yearbook, is active in varsity club, is a student trainer to the boys' basketball team and maintains nearly a 4.0 grade average. On cross-examination, Mr. Cooley maintained that the co-curricular school activities played a part in Jo Ellen's decision to maintain her residence in the District, but he denied that it was the primary purpose. He reiterated that the primary purpose was economic.

II.
Conclusions of Law

There is little disagreement between the parties as to the law applicable to the matter at issue here. Section 282.1 requires that "[n]onresident children shall be charged the maximum tuition rate . . .," and Section 282.6 provides, in part, that "[e]very school shall be free of tuition to all actual residents between the ages of five and twenty-one years. . . ." The issue focuses around the definition of "actual residents." Only if students are actual residents for school purposes, may they attend the public school without the necessity of paying tuition.

The recognized authoritative Iowa Supreme Court ruling in this area is Mt. Hope School District v. Hendrickson, 197 Ia. 191, 1979, N.W. 47 (1924). The Mt. Hope decision clearly points out that an attempt to establish residence for the purpose of attending public school on a tuition-free basis may negate any claim that mere presence in a school district establishes residency for school purposes. The court in Mt. Hope stated this point at page 194 as follows:

If a minor leaves the home of his father, to reside in another place for the sole purpose of securing free public school education, without bringing with him an actual residence, and with the intent to return to his former residence, he does not become an actual resident, within the purview of our school law.

This view has been discussed in several Attorney General Opinions. See 1934 O.A.G. 255 and 1958 O.A.G. 198.

The primary issue to be resolved here is one of fact; whether the continued residence of Jo Ellen in the District after her mother and step-father moved was for the primary purpose of attending school tuition-free, as the District Board determined, or as Mr. Cooley argued, was primarily for economic purposes. The District Board, after investigation and a meeting with Jo Ellen and the Appellant, determined that Jo Ellen was "not an actual resident" and directed that the Appellant be charged tuition. Mr. Cooley has argued orally and in his written brief that the burden is on the District Board to prove to the State Board that its decision was a correct one. His understanding of the burden of proof is different than ours. Generally, in appeals of this nature, the person bringing the appeal has the burden of showing that the decision being appealed was in error, not the reverse. In many instances such as this, a local school board has investigated the facts and laws applicable to a particular circumstance and has rendered a decision in good faith upon the law and facts as it understands them to be. We do not feel that it would be equitable to them to require the same Board, after the filing of an appeal, to be compelled to carry the burden of showing that its decision was not in error. It is a general legal percept that the burden of proof is best left to the party bringing the appeal. See In re Douglas B., 1 D.P.I. App. Dec. 274.-

In the vast majority of the appeals heard before the State Board, the issue of burden of proof is not an important one. In most appeal hearings the facts or the law clearly weighs more heavily in favor of one of the parties and the issue of burden is not raised. Here, however, both the facts and application of the facts to the law raise such a close issue that the responsibility of carrying the burden of proof is dispositive of the appeal. We feel here that the Appellant has the burden of proof in this appeal to show that the District Board acted im-

properly and, we find that the Appellant has not successfully carried that burden. In the absence of a satisfactory showing that the District Board acted improperly, its decision should be upheld.

In this appeal we appear to have a circumstance in which a 17-year-old high school student who has been active in school activities and has achieved good academic success is understandably reluctant to move with her parents to a new community and an unfamiliar school setting in her senior year. Mixed with this reluctance to leave the District's school is what must be considered real economic issues of employment and previously made, unrecoverable expenditures related to school activities. Judging from the entire context of the circumstances here, and recognizing the closeness of the question, we have not been persuaded that the District Board was in error in its determination that Jo Ellen was not an actual resident of the District for school purposes because she attempted to establish residency for the primary purpose of attending school tuition free. While the record is somewhat lacking regarding the motivation for the establishment of the guardianship, the record, as it exists, strongly suggests that the primary motivation for the establishment of the guardianship was for the purpose of securing an education in the District, both in academic and extracurricular areas, without the payment of tuition. As such, under the authority of the Mt. Hope decision, Jo Ellen should not be considered by the District a resident for school purposes.

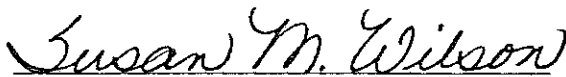
The existence of a guardianship in the Appellant, who is a resident of the District, is relevant to a determination of residency, but is not the conclusive deciding factor. To allow guardianships such a role would effectively emasculate the entire legal structure of school district boundaries and provisions for funding public elementary and secondary education within the state. Whenever a dispute arises as to the residence of a student and a guardianship is involved, the board of the district in which residence is claimed must take account of the guardian in its deliberations, but its decision should not be controlled by its existence. See D.P.I. Dec. Rul. 1, D.P.I. Dec. Rul. 8, 1 D.P.I. App. Dec. 117 and 1 D.P.I. App. Dec. 284.

III.
Decision

The decision of the Burlington Community School District Board of Directors in this matter is hereby affirmed.

March 26, 1981

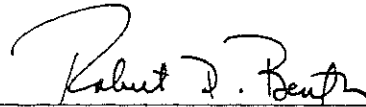
DATE



SUSAN M. WILSON, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

March 6, 1981

DATE



ROBERT D. BENTON, Ed.D.
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
AND
PRESIDING OFFICER