

**New Hampshire Board of Education
Student/Northwood School Board**

SB-FY-11-08-002

Hearing Officer Report and Recommendation

I. Overview

This case is a residency dispute. The parents are married and own two houses, one in Deerfield and one in Northwood. The student and parents live together. They spend part of the year in the Deerfield home and part of the year in the Northwood home. The parents contend that they and the student are residents of the Northwood School District. The Northwood School Board determined that the parents and student were not residents when the parents requested that the student be permitted to attend 9th grade at Coe-Brown Northwood Academy as a Northwood resident. Prior to 9th grade, the student attended school in Deerfield.

The parents appeal the Northwood School Board's decision to the state board. I conducted a hearing on September 1, 2010 and gave the parties time to provide post hearing submissions.

Based on the evidence presented to me, I recommend that the board find that the parents are residents of Northwood.

II. Proposed Findings of Fact

The facts in this matter do not appear to be in dispute. Both parties submitted documentary evidence at the hearing before me. I submit the following as proposed findings of fact:

1. On October 21, 2009, the parents submitted a Coe Brown Northwood Academy Assignment Form to the Northwood School district for their son to attend Coe Brown during the 2010-2011 school year.
2. At the time, the student was attending Deerfield Community School as a Deerfield resident.
3. The student attended Deerfield schools from grades 5-8. The student is now in 9th grade and is attending Coe Brown Northwood Academy.
4. On January 6, 2010, the Northwood Superintendent informed the parents that the Northwood School Board had denied the parents' request to attend Coe Brown as residents of Northwood and told them that they could resubmit their request if they changed their primary residence to Northwood.
5. The parents resubmitted their request over the summer. The school board reviewed information submitted by the parents regarding their residency in Northwood and again denied the request to attend Coe Brown as a Northwood resident finding that the Northwood home was seasonal.

6. The parents maintain a home in Deerfield and a home in Northwood. They maintain that the Northwood home is their primary residency. The student lives with both parents.
7. The parents and student spend time in both the Deerfield and Northwood homes. Generally, they appear to spend the winter months in Deerfield and the other months in Northwood.
8. For the 2010-2011 school year, the parents plan to live in the Northwood home when school starts and then go to the Deerfield home starting Thanksgiving weekend and return to Northwood on Easter weekend in April and stay there until the next Thanksgiving.
9. The parents contend that they go to the Deerfield home during Thanksgiving through Easter because they live on a long dirt road and do not want to maintain and plow it during the winter months.
10. The Northwood home is not considered seasonal by the town for tax purposes. Tax records demonstrate that it is taxed and assessed as a year round house.
11. The school district contends that while the house may be a year round house, the parents use it as a seasonal home.
12. The parent's submitted documentary evidence regarding their residency in Northwood including:
 - car registrations
 - driver's license
 - cable bills
 - bank statements
 - IRS 1040 tax forms for 2009
 - PSNH electrical records showing electricity usage that is consistent with the pattern noted above of living in the Northwood home for part of the year and Deerfield for part of the year. The records show little or no electricity in Northwood during December - April for 2008, 2009 and part of 2010.
 - Credit card statements
 - Homeowners and auto insurance documents
13. All of these documents note their 31 Laskey Drive address which is the Northwood home.
14. The parents are not registered to vote.
15. There is also a statement from the Northwood school district truant officer who went out to visit both the Northwood and Deerfield homes unannounced on August 19, 2010. The report states that the parents were living in the Northwood location and that the Deerfield location was not being lived in at that time.

16. At the hearing before the hearing officer and in a document submitted post-hearing, the parents state that the Northwood home is their primary residence and that it is their intent to stay in that residence until death. They stated that they do their shopping in Northwood and consider Northwood to be their home.

III. Proposed Rulings of Law

1. RSA 193:12 governs student residency issues in New Hampshire.
2. Under RSA 193:12, a student is a resident of the school district where their parents reside.
3. RSA 193:12 states:

For the purposes of this title, "legal resident" of a school district means a natural person who is domiciled in the school district and who, if temporarily absent, demonstrates an intent to maintain a principal dwelling place in the school district indefinitely and to return there, coupled with an act or acts consistent with that intent. A married person may have a domicile independent of the domicile of his or her spouse. If a person removes to another town with the intention of remaining there indefinitely, that person shall be considered to have lost residence in the town in which the person originally resided even though the person intends to return at some future time. A person may have only one legal residence at a given time.

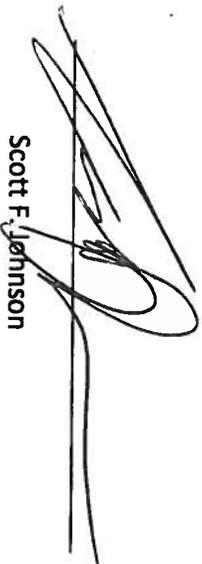
4. Residency or domicile generally requires a showing of physical presence plus the intent to remain permanently, or for an indefinite period of time. *Martinez v. Bynum*, 461 U.S. 321 (1983); *Lisbon Sch. Dist. No.1 v. Landaff Town Sch. Dist.*, 75 NH 324, 325 (1909).
5. However, a party does not have to always be physically present in their principal dwelling for it to be their legal residence/principal dwelling. A party may physically leave their legal residence and reside elsewhere for a period of time as long as they intend to return to the legal residence and intend for the residence to remain their principal dwelling. *Martinez*, 461 U.S. at 332; *Lisbon Sch. Dist.*, 75 NH at 325. See also RSA 193:12, ("legal resident" of a school district means a natural person who is domiciled in the school district and who if temporarily absent, demonstrates an intent to maintain a principal dwelling place in the school district indefinitely and to return there, coupled with an act or acts consistent with that intent.")
6. The parents have demonstrated that they and the student are domiciled in the school district and that they intend the Northwood residence to be their legal residence and principal dwelling.
7. Though the parents will be temporarily absent for part of the school year when they live in Deerfield, they have demonstrated their intent to maintain their principal dwelling place in the Northwood school district indefinitely and to return there and remain indefinitely.

IV. Recommendation

I recommend that the board find that the parents and student are residents of the Northwood school district and that the student can attend Coe Brown Northwood Academy as a Northwood resident. When the parents and student leave to reside in Deerfield, they remain residents and the student can still attend Coe Brown Northwood Academy. To the extent the school district provides any transportation to Coe Brown for students in the district, it would not be obligated to do so for the student when the student was located in Deerfield. See RSA 193:12 (VII).

9/19/18

Date



Scott F. Jenkinson