

# MAINE STATE LEGISLATURE

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STATE OF MAINE

20 M.R.S.A. § 859

Inter-Departmental Memorandum Date August 9, 1977

To Edward C. Hinckley, Educational Planner, Division of Special Education, Dept. Educational & Cultural Services
From Waldemar G. Buschmann, Assistant Attorney General, Dept. Attorney General
Subject Residency of Non-State Wards Placed in Foster Homes

QUESTION:

If a child is voluntarily placed in a foster home located in a school administrative district other than the one his parents reside in, which school administrative unit will be responsible for his education?

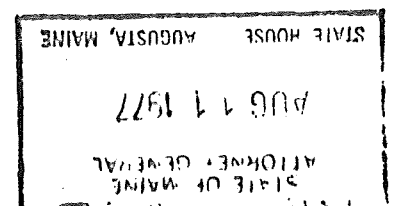
ANSWER:

The child is entitled to attend the school system in the administrative unit where his foster parents reside regardless of whether he is a state ward or whether he is voluntarily placed in the foster home by his parents who may reside in a different administrative unit.

REASONS:

The relevant language under Title 20 relating to residency requirements is the same today as it was in 1924 when the court rendered its decision in the case of Shaw v. Small, 124 Me. 36 (1924). The law in 1924 stated that "Every child between said ages [5 and 21 years] shall have the right to attend the public schools in the town in which his parents or guardian has a legal residence." (R.S., chap. 16, § 30). Present law states that "every person between the ages of 5 and 20 shall have the right to attend as a full-time student, or with the consent of the school committee or board of directors, as a part-time student, the public schools in the administrative unit in which his parent or guardian has residence, . . ." (20 MRSA § 859). In deciding the Shaw case the court devoted its attention to interpreting the word "guardian." Although the court was ruling on the residency of a state ward placed in a foster home, it also indicated that any child's residence for school purposes shall be in the administrative unit where the person having custody of him resides. This would be true whether the child were a state ward or a non-state ward. Shaw, Ibid. Page 40.

The court emphasized the fact that the "Legislature doubtless intends that each child in the state shall have the legal right to attend some free public school" and "intended that free public school privileges should be somewhere open to all children living in any town in the state." Shaw, Ibid. Pages 38, 39. The court also took the position "that statutes relating to public schools should receive a liberal construction in aid of



their dominant purpose which is universal elementary education." Shaw, Ibid. Page 40.

The court held that the foster parent had the control of the child and would be the guardian of the state ward for educational purposes even though she had not been appointed as a probate guardian of the state ward. The court pointed out that the foster parent, as the person having control of the foster child, would, under state law, be "subject to a fine or imprisonment if she does not cause him to attend school. R.S., chap. 16, § 66." Shaw, Ibid. Page 40. Present law would also subject a foster parent or other person having control of a child of school age to being "punished by a fine of not more than \$25.00 or by imprisonment for not more than thirty days for each offense." 20 MRSA § 911.

Therefore, a child has the right to a free education in the administrative unit where the person who has custody of him resides regardless of whether that person is his parent, legal guardian, or a third party, whom the parent or legal guardian has assigned custody of the child to.

WGB:va