

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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DIANE W mother of :
J :
 :
vs. :
 :
CHARIHO REGIONAL SCHOOL :
DISTRICT :
----- :

INTERIM ORDER
October 6, 1988

Interim Placement

I. This student is presently placed at the Groden Center. All parties agree that he needs a different sort of placement. The problem is that despite diligent search no private residential placement has been located which is willing to accept this student. The School District has indicated its readiness to provide "additional support services" to this student while a placement is located.

Under these circumstances, we think our only course of action is to appoint a Special Visitor to monitor Chariho in the provision of additional support services to this student. We should know in several weeks whether a private residential placement for this student can be found. If no such placement can be found, we will have to proceed as we did in John S. Doe vs. Chariho and direct that the local School District

" design, provide, and fund an individual residential placement for this student,

that is to say, it will have to hire a special teacher, locate housing and provide the requisite supervision."

II. The Motion For The State To Make A Direct Placement

Petitioner has moved that the state educational agency should take over direct responsibility for the placement of this student. Petitioner's argument is based upon Sec. 1414(d) of the EHA which reads as follows:

Special education and related services provided directly by State educational agencies; regional or State centers

(d) Whenever a State educational agency determines that a local educational agency ---

(1) is unable or unwilling to establish and maintain programs of free appropriate public education which meet the requirements established in subsection (a) of this section;

(2) is unable or unwilling to be consolidated with other local educational agencies in order to establish and maintain such programs; or

(3) has one or more handicapped children who can best be served by a regional or State center designed to meet the needs of such children;

the State educational agency shall use the payments which would have been available to such local educational agency to provide special educational and related services directly to handicapped children residing in the area served by such local educational agency. The State educational agency may provide such education and services in such manner, and at such locations (including regional or State centers), as it considers appropriate, except that the manner in which such education and services are provided shall be consistent with the requirements of this subchapter. (Emphasis added).

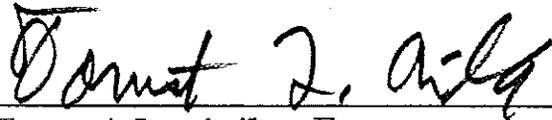
We read this statute to be something in the nature of an "education bankruptcy" provision which is applicable to situations where a local educational agency is "unable or unwilling to establish and maintain programs of free appropriate public education." . . . for . . . "handicapped children residing

in the area served by such local educational agency." That is to say it is a provision for dealing with the systematic failure to provide special education rather than an allegation that a district is having some difficulty in placing one student.

In the present case we are unable to find that Chariho is "unable or unwilling to establish and maintain programs of free appropriate public education." Indeed, we are aware of at least one recent case where, at our direction, the Chariho School District provided a complete residential program for one student. John S. Doe, supra. Under these circumstances, we find no warrant for displacing Chariho in its efforts to provide this student with a free appropriate public education.

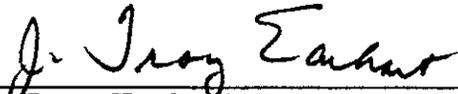
Conclusion

Mr. Robert M. Pryhoda is appointed Special Visitor. He is to monitor the provision of additional services to this student. If a private placement does not presently appear to be available, he is to report on the steps needed to design an individual residential placement for this student.



Forrest L. Avila, Esq.
Hearing Officer

Approved:



J. Troy Earhart
Commissioner of Education

October 6, 1988