

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

the CHILDREN'S PLACE LTD.

vs.

RHODE ISLAND DEPARTMENT
ELEMENTARY/SECONDARY
EDUCATION

D E C I S I O N

July 13, 1989

Travel of the Case

On or about February 16, 1989, Robert J. Powers, Co-Director of the Children's Place, Ltd., requested a formal hearing under Section 7.2 of the Commissioner's Regulations for Administrative Procedures under the Non-Public School Reimbursement Program. This provision provides that formal hearings of disputes regarding reimbursement claims by the Commissioner are disputes arising under a "law relating to schools or education" (i.e., R.I.G.L.16-40.1-1 et seq.) As such, the hearing was conducted pursuant to R.I.G.L.16-39-1, and heard by this Hearing Officer under authority of the Commissioner. A transcript of the hearing was made, and received on March 27, 1989.

Issue

Is the Rhode Island Department of Elementary and Secondary Education prevented from processing the reimbursement claim filed by the appellant because the claim was not filed by the July 15th deadline set forth in the regulations?

Findings of Relevant Facts

● On November 8, 1988, the Children's Place, Ltd., a private pre-school located in Rumford, Rhode Island, filed a claim for reimbursement for costs incurred in providing certain information and reports required by the Department of Education. The amount of the claim is \$1000.61.

● On November 17, 1988, the Director of the Children's Place was notified that an audit of the prior year's reimbursement claim (for costs

incurred in school year 1986-87) should have been \$775.00, instead of \$971.00, resulting in an over-payment in the amount of \$196.00. The letter sent also requested immediate remittance of the over-payment.

● On February 10, 1989, Mrs. Celeste P. Bilotti sent Mr. Powers, President of the Children's Place, formal notice that the claim for reimbursement (for costs incurred in the 1987-88 school year) would not be processed because it had not been filed in a timely manner under the regulations governing the non-public school reimbursement program.

● Mr. Powers delayed filing the 1988 reimbursement claim because he intended to deduct from the amount of this claim the amount determined by audit to have been over-paid the prior year. Although he knew as early as the spring of 1988 that an audit had determined there was an over-payment, he did not know the precise amount until the notification sent to him by Mrs. Bilotti on November 17, 1988.

● Although he had not received notice of the exact amount of the prior year's over-payment on November 8, 1988, Mr. Powers decided to go ahead and file his claim for school year 1987-88 at that time anyway.

● The Department of Elementary and Secondary Education received a schedule of audit adjustments from the state Auditor General on or about June 27, 1988. That document indicated the over-payment to the Children's Place, Ltd. in the amount of \$196.00. The normal practice is to make adjustments resulting from an audit to the amount of the next year's reimbursement.

● The date of July 15th is chosen as the deadline for filing of reim-

bursement claims because it permits the Department staff to have an accurate picture of the annual cost of the reimbursement program for the necessary budget requests. In addition, the July 15th deadline enables the Department to submit a request for a supplemental appropriation, if funds previously appropriated for the program are not sufficient to meet the total of claims for that fiscal year. Request for a supplemental appropriation must be made no later than October of any given year. The annual budget for this program is approximately \$300,000.00.

• The practice of the Department is to process claims that are received within two to three weeks after the July 15th deadline.

DECISION

The issue to be decided by this appeal is whether the 1988 application for reimbursement filed by the Children's Place, Ltd. is void by reason of not having been filed by the July 15th deadline established in the regulations.¹ The Department staff have interpreted the regulation as mandatory.² Certainly this interpretation, stems from the mandatory language of the regulation itself:

4.2 Applications shall be sent to RIDE no later than July 15 of each year for all required reports completed for the immediately preceding school year. . .

1] Regs 4.2, "Commissioner's Regulations for Administrative Procedures" under the Non-Public School Reimbursement Program.

2] See Appellant's Ex. IV, letter from Celeste P. Bilotti, "as you can see, I am not able by law or regulation to process your 1987-88 request for reimbursement because it was submitted November 8, 1988".

Despite the language of the regulations in question, we construe the provision for filing of applications by July 15th of each year to be directory rather than mandatory in nature.

The statutory scheme evidences clear legislative intent to reimburse non-public schools for costs incurred by required record-keeping:

16-40.1-1 ... (3) substantial numbers of pupils in the state comply with the compulsory education law by attending nonpublic schools. It is a matter of state duty and concern that these nonpublic schools be reimbursed for the actual costs which they incur in providing services to the state which they are required by law to render in connection with the state's responsibility for reporting, testing, and evaluating. (Emphasis added).

The statute goes on to require the Commissioner of Education to make an annual apportionment to each qualifying school.³ The non-public school must submit an application to entitle it to receive its annual apportionment, which the statute identifies as an amount equal to the actual cost incurred during the preceding school year in preparing and submitting the required reports. There is no question that the Children's Place, Ltd. furnished the required reports and data during school year 1987-88. It is not disputed by the Department that in so doing, the School has incurred significant expense.

We find that construing the language regarding the filing date for such application as directory rather than mandatory is necessary to effectuate the clear intent and objects of the statute. See the discussion

3] It is also not disputed that the Children's Place, Ltd. is a "qualifying school", eligible for reimbursement under Title 16, Chapter 40.1.

of the doctrine of liberal construction to effectuate statutory intent, particularly when dealing with a procedural rule, contained in Sutherland, Statutory Construction, 4th ed. §67.01- 67.02 as well as §25.02- 25.04.

The Department's own practice bears out our construction that the July 15th deadline is directory, not mandatory. Mrs. Bilotti testified that reimbursement claims filed after July 15th are processed. If the July 15th date were mandatory, any claim not received by that date would be void.

In holding that claims filed by non-public schools after the date of July 15th are not void, we do not rule that all such claims must be processed and paid. The deadline cannot be ignored "at will". A substantial burden is placed on a late claimant to establish that there is good reason for non-compliance with time directives of the regulation and as well that there is no prejudice resulting from the failure to observe the regulation.

The staff of the Department have identified several important interests served by having applications for reimbursement filed by July 15th of each year. Among them are an orderly processing of claims, or to "regulate the flow of action"⁴ as well as to enable the Department to include the necessary funds in its budget to meet the anticipated and actual costs of this program.

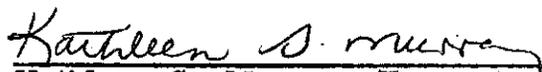
The testimony submitted in this case evidences that the claimant was under a misimpression as to the effect the audit (and resulting finding

4] See the distinction made between this type of time requirement and that at issue in Tiverton v. Fraternal Order of Police, 118 R.I. 160, 372 A.2d 1273 (1977).

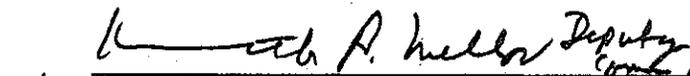
of over-payment) of his prior year's claim had on his responsibility to submit his 1988 claim on time. Without ruling on the reasonableness of this misimpression, or the reasonableness of the appellant's actions in light of it, we find that the claimant made a good-faith mistake in this regard. He did not wilfully ignore the July 15th deadline.

We also find that given the overall annual budget for this program and the small size of this claim (\$1000.61) there is no adverse impact on the budgetary process, or the Department's ability to pay other claims, in this case. This case should not set a precedent for such occasions on which, for example, a claimant wilfully ignores the filing date, or the late filing of the claim has an actual detrimental impact on the administration of this program.

For the foregoing reasons, the appeal is sustained. The Department should process the 1988 reimbursement claim. If it has not already done so, the Children's Place, Ltd. should remit immediately the over-payment it received in 1987.


Kathleen S. Murray, Esq.
Hearing Officer

Approved:


J. Troy Earhart
Commissioner of Education

July 13, 1989