

The Commissioner of Education by letter dated December 15, 1989¹ to Dr. Josephine Kelleher, Superintendent of Schools, cited the North Kingstown School Department in violation of special education regulations of the Board of Regents for not complying with that portion of the decision in which a Special Education Hearing Officer required North Kingstown to pay Bradley Hospital the total cost of all services rendered to Matthew P. between April of 1987 and January of 1989. The Commissioner in the December 15 letter informed the North Kingstown School Department that he was directing the General Treasurer to hold the sum of \$102,181.70 due to North Kingstown under the state aid formula and to pay the sum to Bradley Hospital for services provided to Matthew from April 4, 1988 through September 20, 1988. The Commissioner stated that he is taking this action pursuant to R.I.G.L. §16-5-30. The Commissioner scheduled a "show cause" hearing on the matter before the undersigned Hearing Officer. As a result of the Commissioner's letter of December 15, 1989, a "show cause" hearing was held on December 27, 1989. All interested parties were invited and notified of the time and place of the hearing. All parties at the hearing were represented by counsel. Testimony was taken, a transcript of which was made and evidence was presented. Upon the testimony taken and the evidence presented, we find the following:

1. A Special Education Hearing Officer, H. Jefferson Melish, on December 30, 1988 ruled that the North Kingstown School Department "is directed to place and fully fund M. at the New England Center for Autism. . .".²

1] Appellant's Ex. B.

2] Appellant's Ex. C.

2. The same Hearing Officer ruled on March 31, 1989 that the North Kingstown School Department "is also ordered to fund M's placement at Bradley from April 4, 1988 to January 22, 1989. . . The District is financially responsible . . .; it is further ordered to pay for the cost of providing special education and related services to this student at the Bradley Hospital from April 4, 1987 through January 22, 1989".³
3. On June 19, 1989, upon an appeal by the North Kingstown School Committee, Review Officer James McGarry upheld the order of the Hearing Officer that the North Kingstown School Committee fund Matthew's placement at Bradley Hospital from April 4, 1988 to January 22, 1989.⁴

Through the testimony of the North Kingstown Director of Special Education, counsel for the School Committee illicited information that as a result of meetings held between representatives of the North Kingstown School Department and Children's Mental Health Services, an agreement was reached that the Medical Assistance would assume responsibility for part of Matthew's hospital stay (See Appellant's Ex.N) but that Children's Mental Health Services reneged on its agreement. (See Appellant's Ex.M) and that is why they have not made payment. In a letter dated October 25, 1989 to Mr. Donald V. Sullivan, Chief Medical Care Specialist at the Department of Human Services, School Committee counsel informs Mr. Sullivan that "unless the department pays the sum agreed to. . ., legal action will be commenced against the department and the School Committee will be seeking not only the payment of the contribution, but also attorney's fees and other relief".⁵

Counsel for the School Committee argues that the North Kingstown School Committee will indemnify Mrs. P from any portion of

3] Appellant's Ex. E.

4] Appellant's Ex. H.

5] Appellant's Ex. N.

the bill she has received from Bradley Hospital (See Appellants Ex.O). North Kingstown is waiting for Bradley Hospital to bring suit against Mrs. P so that they can join in the suit and bring a third party action against the Department for Children and Their Families (DCF).

Counsel for the Department of Education argues that the order of two separate Hearing Officers directed the School Committee to make direct payment to Bradley Hospital for the services already provided to Matthew during the period between April 4, 1988 and January 22, 1989, not for indemnification against claims made against Mrs. P. Counsel argues further that if counsel for the School Committee is successful in shifting part of the educational expense to a state agency, that is wonderful for his client, but, it does not affect the statutory responsibility of the School District to the child and it does not relieve the North Kingstown School Department of complying with the Order and Decision of the Hearing Officer James McGarry which was not the subject of any further appeal or removal. Finally, counsel for RIDE argues that there is definitely a situation of non-compliance with existing regulations and that the North Kingstown School Department has not followed through in terms of compliance with the Order entered by the Special Education Review Officer.

Counsel for Mrs. P agrees with the position taken by counsel for RIDE. She argues that if there was an agreement between the North Kingstown School Department and Children's Mental Health Services, it was never reduced to writing and apparently it fell through. She argues that if such an agreement was made, Mrs. P was not a

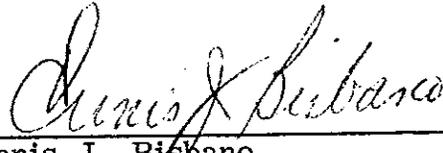
party to nor included in that agreement and it would not have changed the fact that there are two final decisions by Hearing Officers ordering the School Department to make full payment for Matthew's services directly to Bradley Hospital. While we have empathy for the position that the North Kingstown School Department finds itself in with regard to the payment of huge sums of money for services provided to one child, and which probably were not budgeted for, we find that we must agree with counsel for RIDE and Mrs. P when they state that the School Department has not complied with the Order and Decision of the Hearing Officer which directed them to fully fund all services provided by Bradley Hospital to Matthew and to make full payment directly to Bradley Hospital. Furthermore, the time limits for appeal of the Hearing Officer's decision have expired and no stay of his decision was either sought or obtained.

As a final matter, we have carefully reviewed School Committee's counsel's claim that only if the "status quo" is maintained and Bradley Hospital sues to collect the unpaid portion of its bill can it retain "standing" to sue "DCF".⁶ Counsel has claimed that by agreement, a portion of its obligations under the decision of Hearing Officer McGarry were supposed to be undertaken by the Department of Human Services, which agency later reneged on this agreement. Counsel did not provide any case citations for a technical "standing" problem created by payment of the bill, but rather disadvantages in the nature of a) having to come up

6] The actual state agency involved is the Department of Human Services, Division of Medical Services. (Appellant's Ex. M).

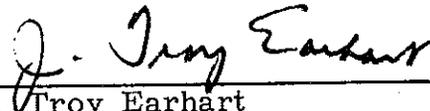
with such a large sum, or have this amount deducted from its state aid and b) the burden of bringing any lawsuit to enforce its "agreement" with the Department of Human Services after the School Department has, in a sense, confirmed that these expenses are educational in nature by actual payment. These disadvantages are not adequate justification for deferring indefinitely the payment of what has already been determined to be an educational expense, especially when the School District had opportunity to further appeal this determination and did not do so. If North Kingstown's claim against the Department of Human Services is enforceable and meritorious it must rise (or fall) on its own.

Accordingly, the General Treasurer shall be directed to hold the sum of \$102,181.70 due to North Kingstown under the State Aid Formula pursuant to R.I.G.L. §16-5-30 and pay the sum to Bradley Hospital.



Ennis J. Bisbano
Hearing Officer

Approved:



J. Troy Earhart
Commissioner of Education

February 27, 1990