

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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JOHN E. DOE

vs.

WARWICK  
SCHOOL COMMITTEE  
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D E C I S I O N

March 30, 1990

By letter of February 12, 1990 to Dr. Elliott N. LeFaiver, Superintendent of Schools, the Commissioner of Education scheduled an administrative hearing for the Warwick School Department to "show cause" as to why it should not be found to be in violation of the Regulations of the Board of Regents for Elementary and Secondary Education Governing the Special Education of Handicapped Children as a result of not complying with the decision of the Impartial Hearing Officer as affirmed by a Review Hearing Officer relative to the placement of John E. Doe. Commissioner Earhart assigned the case to the undersigned Hearing Officer. A "show cause" hearing was held on February 16, 1990. All interested parties were invited and notified of the time and place of the hearing. All parties were represented by counsel. Testimony was taken, a transcript of which was made and evidence presented. Upon the testimony taken and the evidence presented, we find the following:

1. A Special Education Hearing Officer, Roderick A.J. Cavanagh, on November 22, 1989, ruled that the parents of John E. Doe and the Warwick School Department meet within ten (10) days of the decision to design a new IEP for the child based upon the fact that Student Doe is severely behaviorly disordered and suffers from attention deficit disorder on a level that is severe. He also ruled that the child be placed in a residential placement and prescribed a number of conditions to be met with regard to servicing the child.

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1] See Joint Ex. 1.

2] See Joint Ex. 2.

2. On January 8, 1990, upon an appeal by the Warwick School Department, Review Officer John P. Garan, upheld the decision of the Hearing Officer (Cavanagh) and dismissed the appeal of the School Department "en toto".<sup>3</sup>

Student Doe's mother testified that no one from the Warwick School Department has contacted her regarding her son's placement since Mr. Cavanagh issued his decision on November 22, 1989. She testified that she has placed her son at Straight of New England in Stoughton, Massachusetts, where he is presently. She further testified that upon receiving Hearing Officer Cavanagh's decision, she investigated different schools for residential placement for her son, that they had gone on two interviews and were prepared to go on a third. She also testified that Growth in Madison, Connecticut was willing to take her son.

Counsel for the School Committee introduced a petition which he had filed in Superior Court on February 15, 1990<sup>4</sup> which would:

1. Stay the decision of the Hearing Officer and the Review Officer.
2. Order the Commissioner through the Review Officer to receive additional evidence, oral argument and permit the Hearing Officer to be examined.
3. Reverse the decision of the Hearing Officer and the Review Officer.
4. Grant other and further relief as is deemed meet and just in cause.

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3] See Joint Ex. 1.

4] See Respondent's Ex. 1.

Counsel for the respondent argues that the Hearing Officer was biased and that the Review Officer did not afford him opportunity to make oral argument or to examine the Hearing Officer. He also argues that his appeal is timely and cites §42-35-15.

Counsel for the Department of Education argues that RIDE must comply with the steps as set forth in the Regulations and that the Department cannot deviate from the process. She also argues that counsel for the School Committee is wrong when he argues that RIDE has some sort of inherent power or authority "to step in and set the procedure out of step and intervene and reorder a hearing". She argues that any remedy which may exist with regard to the charges made by respondent must be in the form of a civil action under 12.0 of the Regulations Governing the Special Education of Handicapped Children and in that regard, respondent has not taken such action in a timely manner. In support of her position, she cites Lora Doe v. Providence, R.I. 680 F.Supp. 66, 1988, wherein the Court ruled that the appellant had not exhausted all of its administrative remedies before filing with the Court and thusly, dismissed the complaint. She argues that even had the appeal to Superior Court been filed in a timely manner, it would not have stayed the decision of Hearing Officer Cavanagh as affirmed by Review Officer Garan which had become final and binding. Counsel for RIDE also argues that the issue of bias with regard to Mr. Cavanagh was adequately addressed by Mr. Garan and dismissed. And, finally she argues that counsel for the respondent is in error when he argues that §42-35-15 governs with regard to the time limits for appeal. She states that §16-39-1.1, §16-39-

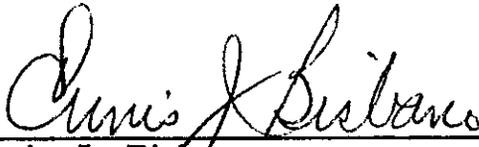
1.2 and §16-39-4 govern in the case of special education matters.

Counsel for appellant states that he is in agreement with RIDE counsel.

We find that we must agree with counsel for RIDE and John E. Doe when they state that the Warwick School Department has not complied with the Order and Decision of Hearing Officer Cavanagh and affirmed by Review Officer Garan which directed them to meet with the parents within ten (10) days of the decision in order to develop a new IEP for their son which would include a residential placement under a carefully prescribed set of conditions for a severely behaviorly disordered child with an attention deficit disorder. The evidence is clear that the charge of bias of the Hearing Officer as raised by the School Department was adequately addressed and dismissed by the Review Officer in his decision of January 8, 1990. And, finally, we find that the time limits for appeal of the Review Officer's decision have expired and that no stay of the decision was obtained which makes the decision of Mr. Cavanagh final and binding.

Accordingly, we direct the Warwick School Department to immediately implement the decision of Hearing Officer, Roderick A.J. Cavanagh dated November 22, 1989.

March 30, 1990

  
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Ennis J. Bisbano  
Hearing Officer

Approved:

  
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J. Troy Earhart  
Commissioner of Education