

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JOHN G. DOE
vs.
PROVIDENCE SCHOOL
BOARD and
THE SPURWINK SCHOOL, II

D E C I S I O N

May 17, 1990

This matter was heard on February 14, 1990 upon appeal to the Commissioner of Education by Spurwink School II from a decision of the Providence School Department refusing to contribute its per pupil cost as its share of the cost of the educational services for John G. Doe.

The Commissioner has jurisdiction to hear the appeal by virtue of the provisions of §16-39-2 and §16-64-1 of the General Laws of Rhode Island, as Amended. The matter was heard by the undersigned Hearing Officer under authorization by the Commissioner.

Due notice was given to the interested parties as to the date, time and place of the hearing. The Spurwink School was represented by its Director of Rhode Island Program, and the Providence School Department was represented by counsel. Testimony was taken, a transcript of which was made and evidence was presented.

The issue to be decided in this case is whether the Providence School Department is responsible for paying its per pupil cost as its share of the educational services being provided for Student Doe at the Spurwink School II as defined under Chapter 7, Section 40.1-7-1 through 9 of the General Laws of Rhode Island for the period commencing January 9, 1990. If not, who, if anyone, is responsible for said payment?

The testimony and evidence in this case established the following facts:

1. Student John G. Doe was a full-time regular education student at the Broad Street School in Providence during the 1988-89 school year.
2. In August of 1989, the Department for Children and Their Families (DCF) withdrew Student Doe from the Broad Street School and placed

him at the St. Aloysius Home in Smithfield, Rhode Island.

3. At the time that DCF removed Student Doe from the Broad Street School in Providence, there was no active referral on him for special education involvement.
4. When Student Doe was three (3) years of age, he was evaluated by a MDT in Providence relative to some concerns for his emotional and learning status. The MDT at that time determined that no handicapping condition existed.
5. On January 9, 1990, DCF placed Student Doe in the Spurwink School's residential elementary special education program for children with behavioral and/or learning disorders.
6. DCF has temporary custody of Student Doe.
7. The student's mother, with whom he lived prior to being taken into custody by DCF, lives at River Avenue in Providence.
8. There is not now, nor has there ever been an IEP in place for John.
9. Student Doe is presently undergoing a series of evaluations at the Spurwink School.
10. Student Doe is a MHSCY student and as a result his residential services costs other than educational costs are being paid by DCF through the MHSCY Program.

The facts in this care are in little dispute. The whole case seems to revolve around definitions, procedures and responsibilities as specified in Chapter 7, Section 40.1-7-4 and 40.1-7-7 of the General Laws of Rhode Island.

Counsel for respondent argues that §40.1-7-4 and the DCF, State

of Rhode Island Rules and Regulations, Mental Health Services for Children and Youth dated May 14, 1982 define an "emotionally disturbed child" as "any person under the age of twenty-one (21) years, and who has been diagnosed and judged by the examining physician to be in need of psychiatric care and treatment". The unrefuted testimony reveals that Student John Doe has not been diagnosed and judged by a physician but only by a clinical social worker. Therefore, counsel for respondent argues that as a result, this child does not "fit into the law" and that there is nothing in the record that indicates that this child is handicapped and as a result, DCF should be ordered to pay for his educational services at Spurwink in the interim since presently he is not handicapped and has not been "diagnosed and judged by an examining physician" as stated in the statutes. Respondent requests that it be allowed to implement the plan as outlined by Mrs. Gannon, Providence's Supervisor of Tuition and Support Services¹ and that in the event that the child is determined to be handicapped, then the Providence School Department will, of course, pick up the funding for education in accordance with §40.1-7-2.

From the testimony adduced at the hearing and a review of various citations brought forward by the parties, namely Chapter 7, Section 40.1-7-1 through 9, Rules and Regulations-Mental Health Services for Children and Youth-Department for Children & Their Families dated May 14, 1982 and Policies of the Board of Regents, Section 18, dated 11-8-83 and Section 19 dated 4-11-84, we find that as of this date, Student Doe is not a handicapped or special education student as defined in the aforementioned statute and

1] Respondent's Ex. 1, Clinical Team Summary

regulations.

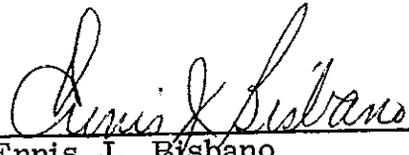
However, we reject counsel for respondent's argument that the child has not been diagnosed and judged by a physician as required by §40.1-7-4 and as a result Providence is not required to pay the shared costs for John's educational services. Chapter 40.1-7-2 and §42.70-18 of the R.I.G.L. has established within DCF a program known as "services for emotionally disturbed children". The responsibilities of this program have been delegated to an entity within the Division of Community Services known as MHSCY. Under the Rules and Regulations of DCF pursuant to Chapter 40.1-7, §42-35 and §42.70-18 of the R.I.G.L, Rule 2.1.2.3 requires the Department to "take the initiative in all matters involving the interests of such children where adequate legal provision has not already been made;" and §2.1.3.1. requires the Department to "plan a diversified and comprehensive network of programs and services to meet the needs of emotionally disturbed children including, but not limited to, preventive, casefinding, ² diagnostic, treatment, rehabilitative or aftercare services". Rule 2.2.1.2

Diagnostic and Referral reads as follows:

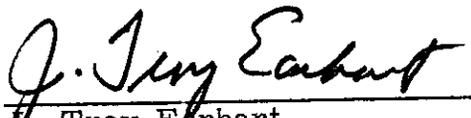
This section is responsible for receiving and reviewing applications to the agency; for determining the eligibility of applicants; for making appropriate referrals following applications and determination of eligibility; for evaluating placement programs and facilities before and during the placement of an eligible child; for assisting referring agencies in monitoring the progress of all placed eligible children; and for aiding referring agencies in returning children to the community after placement. MHSCY may delegate all or part of these responsibilities to community mental health centers.

2] Emphasis added.

It is our decision that the Providence School Department is responsible for paying its per pupil cost as its share of the educational services being provided for Student Doe at the Spurwink School II and as defined under Chapter 7, Section 40.1-7-1 through 9 of the General Laws of Rhode Island, as Amended, for the period commencing January 9, 1990.


Ennis J. Bisbano
Hearing Officer

Approved:


J. Troy Earhart
Commissioner of Education

May 17, 1990