

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JOHN Z. DÖE

vs.

NEWPORT COUNTY REGIONAL
SPECIAL EDUCATION
PROGRAM

INTERIM ORDER

December 6, 1990

This case was heard on appeal to the Commissioner of Education under §16-39-3.2. John Z. Doe's mother appealed an action of the Newport County Regional Special Education Program.

A hearing was conducted on November 28, 1990, witnesses sworn and testimony taken. The record was closed on December 3 upon receipt of documents from both parties.

Issue of the Case

The student has been placed at a residential school in Texas. Since he is unable to leave the school for a home visit, his mother requested that the school system, providing for his handicapped educational placement, reimburse her for a visit to the school in Texas over the Christmas holiday.

Facts in the Case

1. John Z. Doe was placed at the Devereux Foundation in Victoria, Texas on August 8, 1990.
2. No IEP was forwarded to NCRSEP or the parent until November 28, 1990.
3. The IEP says "Recommend two (2) therapeutic leaves for patient during calendar year."
4. The School requires sufficient behavior change for child to be allowed to leave. The student requires lock-up status according to parent.
5. There is, as of this date, no agreed upon IEP signed by The Devereux Foundation, NCRSEP and the parent.

Conclusion

The lack of an IEP which is well defined and understood by all is a serious problem. The parties, Newport County Regional Special Education Program and Mrs. Doe, are directed to accomplish that task forthwith.

In the absence of an IEP the mother is requesting travel, accommodation and meal reimbursement for a Christmas visit for herself and her 9 year old daughter.

The NCRSEP has read the Rhode Island Regulations of the Board of Regents for Elementary and Secondary Education Governing the Special Education of Children with Disabilities and has interpreted those regulations to say that the school district is not required to provide the mother with her request.

The NCRSEP, however, has offered to reimburse the mother for her airfare (round trip) since this transportation cost would be what the school district would provide if the student could come home.

We find the provision offered by the NCRSEP to be fair and just. The regulations in Rhode Island speak to transportation in terms of a service needed to provide for a child to attend a "special education program" and thereby "benefit" from that education. The regulations are silent on other transportation issues.

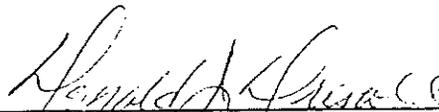
We cite Cohen v. The School Board of Dade County, Florida (1984-1985) EHLR Dec. 556-162. In this case the Court found that round trip(s) as described in the IEP for therapeutic visits home provided by the School Board had met the requirement to provide funding for transportation as a

service related to Paul Cohen's special education. "The 'free, appropriate education' provided under the Act does not require the state to satisfy all the particular needs of each handicapped child."

We, therefore, enter as an Interim Order that the offer made by NCRSEP to the parent is, subject to a full hearing, outside the requirements of law and regulation.

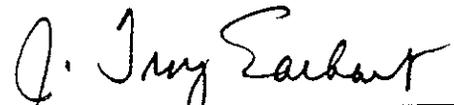
We hasten to note, however, that the School has waived its requirement for this one time and offered an amount of reimbursement that it would spend if circumstances were different and the student could come home. We would urge the parent to accept the offer for this trip, without prejudice to her case. We reiterate our order that the parties work to establish the IEP.

A full hearing on the merits will be held at the request of either party.



Donald J. Driscoll
Hearing Officer

Approved: December 6, 1990



J. Troy Earhart
Commissioner of Education