

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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 JOHN X. DOE, a minor, by :
 his mother and next friend :
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 vs. :
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 MARY CONNOLLY, Director :
 of Special Education; and :
 the Newport School Committee :
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 vs. :
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 RHODE ISLAND DEPARTMENT :
 FOR CHILDREN AND THEIR :
 FAMILIES (DCF) :
 :
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D E C I S I O N

May 22, 1991

This case requires us to determine the educational responsibilities of Newport, Cranston and the Department for Children and Their Families (DCF). We are particularly concerned with the question of which of the above governmental entities is responsible for educating John X. Doe at the Northeast Family Institute (NFI) which is located in Cranston. NFI is a closed facility admission to which is controlled by the Family Court.

At the outset we must find that the City of Cranston is not responsible for educating John X. Doe at NFI. NFI is a closed facility. Under the law the town in which a "closed" facility is located is not responsible for educating students living in such a facility. (§16-24-13). The applicable statute reads as follows:

§16-24-13. Classes for retarded and handicapped children in state residential facilities and institutions. - Classes for retarded children and children with other handicaps as described in the regulations of the state board of regents for elementary and secondary education shall be provided for those children in all the state institutions or state schools for the mentally retarded, and also in state operated and state supported facilities where retarded or handicapped children reside subject to all regulations of the state board of regents for elementary and secondary education.

In In Re Children Res. at St. Aloysius Home, 556 A.2d 552 (R.I. 1989) our Supreme Court stated that:

. . . the provisions of §16-24-13 become applicable and relieve the school committee from the mandate of §16-24-1. . .

. . . only in situations in which a child because of his or her care and treatment requirements, cannot leave a facility to attend the public school special education program on even a part-time basis. . . .

In other circumstances (i.e. a facility which children may leave to attend public schools) the following provision is applicable.

§16-24-1. Duty of school committee to provide special education. - In any city or town where there is a child within the age range as designated by the regulations of the state board of regents for elementary and secondary education, who is either mentally retarded or physically or emotionally handicapped to such an extent that normal educational growth and development is prevented, the school committee of the city or town shall provide the type of special education that will best satisfy the needs of the handicapped child, as recommended and approved by the state board of regents for elementary and secondary education in accordance with its regulations.

At §16-64-1, the law further provides in pertinent part that:

. . . Children placed in group homes, in foster care, in child caring facilities, or by a Rhode Island state agency, or a Rhode Island licensed child-placing agency shall be deemed to be residents of the town where the group home, child caring facility, or foster home is located, and this town shall be reimbursed or the child's education be paid for in accordance with §16-7-20. . .

However, since NFI is a closed facility §16-24-1 and §16-64-1 are not applicable and instead §16-24-13 is the controlling authority in this case.¹

St. Aloysius Home, supra. Cranston, therefore, has no involment in this matter.

1] If §16-24-1 and §16-64-1 were applicable (i.e. if N F I were an "open facility" group home) then the school district reimbursement provisions of §16-7-20 would become applicable. See: Jane L. Doe vs. Lincoln, et al. (Copy attached).

It, therefore, seems clear to us that unless some very unique circumstances apply, DCF is responsible for educating John X. Doe² at NFI. We will, therefore, next turn to examination of Newport's responsibility to see if any such circumstances exist in this case.

2] We should also point out that the records of the Department of Education seem to show that DCF has applied under 34 CFR 302 for Federal Chapter I grant money which flows to the benefit of students at NFI. DCF could only take this action if it claimed to be the state agency having direct responsibility for educating students at NFI. See: 34 CFR 302, Chapter I State-operated or supported programs for handicapped children. See also: Comment to 34 CFR 300. 341 which states:

Comment. This section applies to all public agencies including other State agencies (e.g., departments of mental health and welfare), which provide special education to a handicapped child either directly, by contract or through other arrangements. Thus, if a State welfare agency contracts with a private school or facility to provide special education to a handicapped child, that agency would be responsible for insuring that an individualized education program is developed for the child. (Emphasis added).

We do not rely on these facts in reaching our decision since they do not form part of the record which is before us at this time.

DCF contends that Newport should be responsible for the entire cost of John X. Doe's placement at NFI. We think, however, that these arguments are based upon a number of misconceptions.

The placement in this case was not made by Newport through the IEP process (300.340) in an effort to provide a residential education placement for this student. Instead this placement was made by the Family Court for correctional reasons. This does not mean that this student loses his right to a free appropriate public education but it does affect which governmental entity is responsible for paying for it.

In Rhode Island, as we have seen, the statutes provide a narrow exception to the duty of school committees to educate handicapped children living in their districts. This narrow exception applies only in circumstances where a state agency operates or supports a "closed" facility. §16-24-13, St. Aloysius, supra. The General Assembly has recently specifically provided in the pertinent part of §16-7-20 that:

Children, except those children receiving care and treatment in accordance with chapter 7 of title 40,1 who are placed, assigned or otherwise accommodated for residence by the department for children and their families in a state-operated or supported community residence licensed by a Rhode Island state agency shall have the cost of their education paid by the department for children and their families.

The Department of Education construes the above-quoted language to be quite narrow in scope. The Department has held that it extends no further than closed facilities where children

. . .are placed, assigned or otherwise accommodated for residence by the department for children and their families in a state-operated or supported community

residence licensed by a Rhode Island state agency and said residence operates an educational program approved by the department of education. (§16-7-16). (Emphasis added.)

The General Assembly has gone on to provide at §16-7-20 that:

. . . the department for children and their families shall be reimbursed one hundred percent (100%) of all approved education expenditures including special education expenditures in the prior fiscal year. The commissioner of elementary and secondary education shall promulgate such rules and regulations to carry out the intent of this section.

In sum the statutes compel us to rule that D C F is responsible for educating John X. Doe at N F I. To hold otherwise would be to ignore the plain meaning of the applicable statutes and this we are not justified in doing. Gilbane Co. v. Poulas, 576 A.2d 1195 (R.I. 1990).

In arguing that Newport should be responsible in this case counsel for D C F has perceptively pointed out the following regulation of the Board of Regents:

2.0 Residential School Programs. A school district shall provide for the free education of a preschool-aged or school-aged child with a disability whose needs, as judged by the evaluation process, can best be met through enrollment of the child as a boarding or day student in a special education residential school approved by the Rhode Island Commissioner of Elementary and Secondary Education. The availability of financial assistance for such placements from sources outside the school district in no way relieves a school committee of its responsibilities under Title 16, Chapter 24, Section 1 of the General Laws of Rhode Island, 1956, as amended and subsequently:

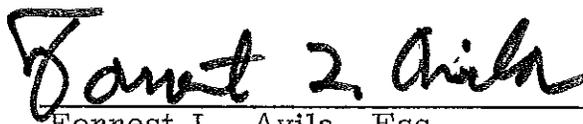
2.1 If resources are not available under the above or similar programs, the school committee must still provide a free appropriate

education (FAPE) for all children with disabilities in the community. [This includes children whose individualized education program (IEPs) state that they must be placed in residential placements. Such placements must be at no cost to parent(s) for the educational program and related services, non-medical care and room and board].

We read this provision as only extending to placements made for educational reasons through the I E P process. The intent of this regulation was to prevent school districts from using the existence of "Governor's Beneficiary Programs" (G.L. §16-25-1, originally Gen. Laws, 1923, Ch. 112). (See also: Legislative history of "Services for Emotionally Disturbed Children," G.L. §40.1-7-1, et seq.) as an excuse for a failure to provide residential educational services to children on the waiting list for placement through one of the Beneficiary Programs. Any reading of these regulations which would extend them to cover John X. Doe's placement at N F I is not supported by the history or the intent of the regulations. It is also not supported by the literal language of the regulations which applies only to placements made through the "evaluation (i. e. IEP) process" which is not the type of placement made at N F I in this case. It should also be noted that the construction of the regulation proposed by DCF is contrary to statute (§16-24-13) so is inadmissible in any event.

Conclusion:

- (1) John X. Doe is entitled to a free appropriate public education at Northeast Family Institute (NFI) at no cost to his parent.
- (2) DCF is responsible for educating John X. Doe at N F I and is responsible for the cost of such education including the cost of the supplemental services required by John X. Doe. Costs for John's education after July 1, 1990 are to be reimbursed to DCF through the state aid program at the rate of one hundred (100%) percent. (§16-7-20).
- (3) DCF is required to reimburse Newport for any costs incurred by Newport for funding the placement of John X. Doe at NFI.
- (4) Newport is required to cooperate with DCF and NFI to facilitate the return of John X. Doe to his home community. In Re John T. Doe, Commissioner of Education, February 27, 1989.



Forrest L. Avila, Esq.
Legal Counsel to Commissioner

Approved:



J. Troy Earhart
Commissioner of Education

May 22, 1991