

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JOHN A. B. DOE)

vs.)

CRANSTON SCHOOL COMMITTEE,)
NARRAGANSETT SCHOOL COMMITTEE,)
PROVIDENCE SCHOOL COMMITTEE)
-and-)

DEPARTMENT FOR CHILDREN,)
YOUTH and FAMILIES)

DECISION

March 12, 1992

I. The Department of Corrections is responsible for John A.B.Doe's Special Education

Student John A. B. Doe, who is under the age of 21, is incarcerated at the Adult Correctional Institution. There is no doubt that state and federal special education law guarantees special education at "state correctional facilities" to students under the age of 21. (Fed. Reg. 302) Moreover, state law explicitly provides, in pertinent part, that:

16-24-2. Regulations of state board. - It shall be the duty of the state board of regents for elementary and secondary education to set up regulations for the purpose of carrying out the intent of this chapter; and the regulations shall also be applicable in the administration of all educational programs operated and/or supported by the department of mental health, retardation, and hospitals; human services; and corrections; department for children and their families and the board of regents shall report to the attorney general for the purpose of enforcing any non-compliance with its regulations for special education. (Emphasis added).

State law further provides that:

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. (Emphasis added).

The Adult Correctional Facility is obviously both a "state operated and state supported facility" and while it may seem strange to describe some of its inmates as "children" those inmates who are educationally handicapped and who are under the age of 21 fall under that category. The Federal regulations state that:

300.122 Timelines and ages for free appropriate public education.

(a) General. Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken in order to insure that a free appropriate public education is available for all handicapped children aged three through eighteen within the State not later than September 1, 1978, and for all handicapped children aged three through twenty-one within the State not later than September 1, 1980.
(Emphasis added).

We also must take notice of the fact that the Adult Correctional Institution receives federal funds which also obligates it to provide John A. B. Doe with educational services in accordance with state and federal law and regulations.
(See: Attachment).

In sum, we see this case as being completely analogous to the decision of the Rhode Island Supreme Court entitled "In re Children Residing at St. Aloysius Home" 556 A.2d 552. In the St. Aloysius case the Supreme Court ruled that when a student is confined in a "closed facility" the state agency operating or supporting the facility is responsible for providing the student with special education. It is thus clear that in this case the Department of Corrections is responsible for providing John A.B. Doe with special education while he "resides" at the Adult Correctional Institution.

II. Student Doe is still entitled to receive Special Education

The record in this case establishes that John A. B. Doe received a high school diploma from the Ocean Tides on June 15, 1990. Ocean Tides is an institution funded by the Department for Children, Youth and Families. The record also establishes that John A. B. Doe, who has been classified as a special education student, was graduated without receiving the required special education notices which must proceed a change in placement. It is well established that graduation is a change in placement and so we are constrained to follow precedent and find that John is still entitled to receive special education. See:

(e.g.) Cronan v. Bd. of Education of East Ramapo Cent. School District.,
689 F.Supp. 197 (S.D.N.Y.1988).

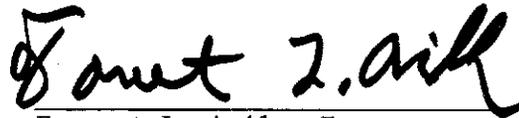
III. The responsibility of the local school districts and the
Department for Children, Youth and Their Families

At this preliminary stage it appears to us that the Narragansett and Cranston School Committees have been named as respondents simply because Ocean Tides is located in Narragansett and the Adult Correctional Institution is located in Cranston. Providence is a respondent since John has at various times lived at Whitmans's house which is located in Providence. The record also establishes that John's grandmother, who has had legal custody over him lives in Woonsocket. DCYF indicated on the record that John Doe is no longer under its supervision.

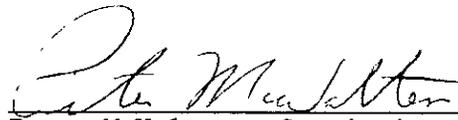
At this time it is a moot point as to which of these entities may be responsible for educating John Doe when he is released from the ACI. We will determine this issue when we have this matter on the merits.

CONCLUSION

The Department of Corrections and the Woonsocket School District are to be named as respondents in this matter. A special visitor will be appointed to facilitate the provision of special education to John Doe at the Adult Correctional Institution.



Forrest L. Avila, Exq.
Hearing Officer



Peter McWalters, Commissioner
Elementary & Secondary Education

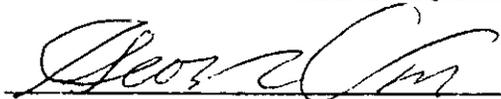
STATEMENT OF ASSURANCES FOR THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA-Part B) AND CHAPTER 1 STATE OPERATED AND SUPPORTED PROGRAMS (AS AMENDED BY CHAPTER 1 OF THE EDUCATION CONSOLIDATION AND IMPROVEMENT ACT [ECIA] OF 1981)

THE APPLICANT AGENCY HEREBY ASSURES THE RHODE ISLAND COMMISSIONER OF ELEMENTARY AND SECONDARY EDUCATION THAT:

1. The control of funds provided under the IDEA-Part B and Chapter 1 State Operated Programs for Children with Disabilities and property acquired with those funds is administered by the Applicant Agency. [20 USC 1414(a)(2)(A)]
2. The funds provided under the IDEA-Part B and Chapter 1 State Operated Programs for Children with Disabilities can be used only for excess costs of special education and related services for children with disabilities. (300.229)
3. The funds shall be used to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of children with disabilities, and in no case supplant State and local funds. (300.230)
4. The funds provided under the IDEA-B and Chapter 1 State Operated Programs for Children with Disabilities may not be used to provide services to children with disabilities unless the Applicant Agency uses State and local funds to provide services to those children which, taken as a whole, are at least comparable to services provided to other children with disabilities in the Applicant Agency. The Applicant Agency shall maintain records which show that the Applicant Agency meets the requirements of this section. (300.231)
5. All policies and programs which the Applicant Agency establishes and administers are consistent with the IDEA-B, Section 1412(1-7) and Section 1413(a). [20 USC 1414(a)(b)]
6. The Applicant Agency has procedural safeguards which meet the requirements of IDEA-B regulations, Section 300.500-300.514 of Subpart E and Section One, IX of the Regulations of Rhode Island Board of Regents Governing the Special Education of Children with Disabilities. (300.237)
7. All information as may be necessary to enable the Rhode Island Department of Elementary and Secondary Education to perform its duties under the IDEA-B and Chapter 1 State Operated Programs for Children with Disabilities, including information relating to the educational achievement of children with disabilities shall be provided. [20 USC 1414 (a)(3)(A)]
8. The Applicant Agency shall keep such records, and afford to those records, as the Rhode Island Department of Elementary and Secondary Education as the State Educational Agency may find necessary to insure the correctness and verification of the information that the Applicant Agency provides. [20 USC 1414(a)(3)(B)]
9. The program assisted under IDEA-B and Chapter 1 State Operated Programs for Children with Disabilities will be operated in compliance with Title 45 of the Code of Federal Regulations, Part 84 (Non-Discrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance).
10. The Applicant Agency has established policies that are in accordance with the standards in Subpart P of the Education Department General Administrative Regulations (EDGAR) and CFR Part 74.

I HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS APPLICATION IS TO THE BEST OF MY KNOWLEDGE CORRECT, AND THAT THE APPLICANT AGENCY NAMED BELOW HAS AUTHORIZED ME AS ITS REPRESENTATIVE TO FILE THIS APPLICATION.

R.I. Department of Corrections
APPLICANT AGENCY


SIGNATURE OF THE STATE AGENCY DIRECTOR
OR SUPERINTENDENT OF SCHOOLS

8/9/91
DATE OF SIGNATURE

PROJECT NARRATIVE

Use of IDEA-Part B Funds: Describe how funds will be used to address the statewide priority. Attach additional sheets if necessary.

Although the need for Special Education Services in the correctional setting has long been obvious to correctional educators and administrators, it has only recently been integrated into the curriculum at the ACI with assistance from the State Department of Education, Special Education Unit. The number of incarcerated young adults between the ages of sixteen and twenty-one years has increased sharply over the past ten years. Eighty percent (80%) are functionally illiterate. Our obligation to serve this special needs group is clear.

It is the policy of the Adult Correctional Institutions to ensure that inmates in its custody have the opportunity and are encouraged to avail themselves of educational services as an integral part of the rehabilitative process. In implementing this policy, an Educational Tracking Procedure has been developed to provide comprehensive awareness of programming. Active recruitment and retention measures are utilized by all Correctional personnel. The sixteen through twenty-one year old group has been singled out for particular focus as a target group for educational services.

The Educational Tracking Procedure dictates identification of all potential students as soon as they enter the system. This is accomplished through administration of several batteries of Educational tests such as the Wide Range Achievement Tests for spelling, math, vocabulary; the Botel for reading; Culture Fair for Intelligence Quotient by Intake Counselors. Counselors then forward names of all inmates suspected of having a need for educational services to the Education Unit. At this point, the Educational Tracking System as outlined in the Education Policy is implemented as follows:

EDUCATIONAL TRACKING SYSTEM

GOAL: To ensure that all inmates in need of educational services are made aware of the availability of such services and are encouraged to participate in school programs for the duration of their incarceration.

This procedure will be implemented as follows:

Objective #1. To identify potential students during the intake orientation process and enroll them in school.

1. The teacher assigned to the Intake Unit will list all inmates without a high school diploma or GED based on their performance on educational assessments administered during the intake orientation period.