STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

RE: SPECIAL EDUCATION :
REGULATIONS AND PROVIDENCE :
COLLECTIVE BARGAINING AGREEMENT :

DECISION

DATE: February 24, 1993

Held: Collective Bargaining cannot overturn the Special Education Regulations

In an opinion letter the Commissioner of Education adopted the view that collective bargaining agreements could not diminish the full force and effect of the Board of Regents Special Education Regulations (copy attached). At the request of the Providence Teacher Union a hearing was convened on the subject of this opinion letter. After considering the arguments and testimony presented at the hearing we find that we must adhere to our original opinion.

In Rhode Island law "legislative" rules and regulations have the force and effect of statutes. Lerner v. Gill, 463 A.2d 1352. The Rhode Island supreme court has held that statutory powers and obligations cannot be contractually abdicated. Power v. City of Providence, 582 A.2d 895 (R.I. 1990). The Court stated: "Contracts entered into in contravention to a state statute...are illegal, and no contract rights are created thereby." Power, supra.

Conclusion

We affirm our opinion that collective bargaining agreements may not run contrary to the Special Education Regulations of the Board of Regents.

Forrest L. Avila
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

DATE: February 24, 1993

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Peter McWalters
Commissioner

June 8, 1992

Dr. O. William Hilton, Jr., Ed.D.
Interim Acting Assistant Superintendent
Special Education
Providence School Dept
Providence, RI 02903-4045

Dear Dr. Hilton:

In response to your letter dated April 10, 1992, it is the opinion of this Department that present language in two sections of the Providence Teachers Contract[1] is inconsistent with federal and state regulations governing special education and places the Providence School Department in a non-compliant situation.

We are confident that state and federal laws and regulations protecting the rights of handicapped students cannot be invalidated by any collective bargaining agreement. Basic principles of contract law specify that any contractual provisions contrary to law are void and, indeed, that contract should be read as if the applicable law were written into them. (Power v. City of Providence, 582 A. 2d 895, Citizens for Preservation of Waterman Lake v. Davis, 420 A. 2d 53.)

No private contract can nullify a statutory right created for the public good. (Berthiaume v. School Committee of Woonsocket, 397 A. 2d 889.)

While no reinforcement of these points is needed it is not inappropriate to observe that the laws and regulations at issue were passed to enforce state and federal constitutional guarantees. Indeed the Individuals with Disabilities Educational Act was passed under the authority of Congress to enforce the Fourteenth Amendment guarantee of equal protection. (Smith v. Robinson, 468 U.S. 992.) We do not believe that a student's right to equal protection can be denied on the basis of a collective bargaining agreement.

The federal law, Individuals with Disabilities Education Act (IDEA), and Rhode Island Regulations of the Board of Regents Governing the Special Education of Children with Disabilities mandate that students eligible for special education be placed on the basis of the evaluation and individualized educational program (IEP)[2]. This cannot occur if students are placed upon any other basis, such as disability label.

Secondly, Rhode Island Regulations mandate that the maximum allowable size of self-contained, special education classes is limited to: a) eight children or, with a teacher's aide, ten children, for students with moderate and mild disabilities; or b) three children or, with an aide, six children, for students with severe, profound or multihandicapped disabilities[3]. The determining number shall be based upon the actual enrollment of students[4]. This requirement is violated when the distribution of students in a special education class into other special education classrooms, due to teacher absence, creates overages in class size.

The intent of federal and state laws governing special education is to insure both that instruction is specially designed to meet the unique needs of each child with a disability[5], regardless of label, and that children are placed in environments (within class size limits) which enable such individualized educational programs to be appropriately implemented.

Failure to correct the language of these two sections of the Providence Teachers Contract places the Providence School Department in a position of violating the signed agreement entered into record on April 9, 1992 and jeopardizes the approval of the 1992-93 Providence school program.

Sincerely,

Peter McWalters
Commissioner

FA:SLR:dl

cc: Dr. Arthur Zarrella
Richard A. Skolnik, Esquire

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[1] Article 8: 8-20.1 (p. 31)
Article 8: 8-1.1, 8-1.3 (pp. 19-20)

[2] ONE: V: 6.1 (p. 27)

[3] THREE: II: 2.1 (pp. 60-61)

[4] ONE: II: 9.0 (p. 8)

[5] ONE: II: 3.0 (p. 7)