

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

IN THE MATTER OF JOHN A.Y. DOE

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DECISION ON
JURISDICTION

Held: Dispute concerning provision of nursing care to special education student in pre-school program is a matter "arising under" laws relating to schools or education pursuant to R.I.G.L. 16-39-1 and therefore within the jurisdiction of the Commissioner.

April 12, 1994

Introduction

Pursuant to R.I.G.L. 16-39-1, the Barrington School Committee requests the Commissioner of Education to resolve a dispute regarding the provision of special education services to a technology-dependent child. (Hearing Officer's Exhibit 1).

At the conclusion of a hearing held on February 16, 1994, the parties jointly requested a ruling on the issue of the Commissioner's jurisdiction in this matter.

For the reasons set forth below, we find that the Commissioner has jurisdiction to decide this matter.

Background

Student Doe is a technology-dependent child as that term is defined in R.I.G.L. 23-13-26. He is in his second year in the Barrington Pre-School Special Needs Program. He receives nursing services pursuant to his individualized education program (IEP).

In the 1992-1993 school year, student Doe's nursing services were provided by a private nurse selected by his mother and paid for by the school district.

In the fall of 1993, the school district hired an additional certified school nurse-teacher to care for student Doe and two other technology-dependent children in the same classroom.

A dispute arose between student Doe's mother and the school district with regard to the certified school nurse-teacher's qualifications and her ability to care for three technology-dependent children in the same classroom.

The school district has maintained the arrangement with the private nurse pending resolution of the dispute.

Positions of the Parties

With respect to the jurisdictional issue, the School Committee relies on the Commissioner's exercise of jurisdiction under R.I.G.L. 16-39-1 in the case of Rhode Island Department of Elementary and Secondary Education vs. Warwick School Committee.¹ The Commissioner in that case ordered the school committee to cease and desist from using health professionals other than certified school nurse-teachers to provide health services to students. The School Committee further contends that the special education due process hearing procedure has not been established as the exclusive forum for the resolution of this type of dispute.

Counsel for student Doe's mother argues that the Commissioner does not have jurisdiction under R.I.G.L. 16-39-1 because this is a matter which must be referred for a special education due process hearing as provided by the Individuals with Disabilities Act (IDEA) and the Board of Regents Regulations Governing the Special Education of Students with Disabilities. Counsel bases this argument on the cases of Chase v. Mousseau, 448 A.2d 1221 (R.I. 1982); Laura and Edward V. v. Providence School Board et al., 559 EHLR 377 (U.S.D.C. 1988); and Christopher W. v. Portsmouth School Committee et al., 441 EHLR 498 (U.S.C.A. 1st Cir. 1989). Counsel requests that this matter be dismissed for lack of jurisdiction.

Discussion

This case presents issues concerning the appropriate professional credential, qualifications, and scope of responsibilities of the individual assigned to provide nursing care to student Doe.

¹ Commissioner's decision, September 27, 1993.

These issues raise questions regarding the application of various education laws and regulations, including R.I.G.L. 16-21-7, which requires school health programs in schools; R.I.G.L. 16-21-8, which requires such programs to be staffed by certified nurse-teacher personnel; the Rules and Regulations for School Health Programs, which contain requirements for school health programs; R.I.G.L. 16-11-1, which requires the certification of public school teachers; the Rhode Island Certification Requirements for the School Nurse-Teacher; R.I.G.L. 23-13-26, which requires certified school nurse-teachers providing direct care for technology-dependent children have advanced skills; and the Board of Regents Regulations Governing the Special Education of Students with Disabilities, which contain requirements for pre-school special education programs.

R.I.G.L. 16-39-1, which has been invoked by the School Committee as the basis for jurisdiction in this matter, states that

Parties having any matter of dispute between them arising under any law relating to schools or education may appeal to the commissioner of elementary and secondary education who, after notice to the parties interested of the time and place of hearing, shall examine and decide the same without cost to the parties involved.

With regard to the jurisdiction of the Commissioner, the Board of Regents has stated that "Appeals to the Commissioner were established on the theory that he or she possessed a level of expertise which should be brought to bear on educational issues."²

We find that this dispute presents educational issues "arising under" laws relating to schools or education, and that

² LaPierre vs. Cranston School Committee, May 11, 1989.

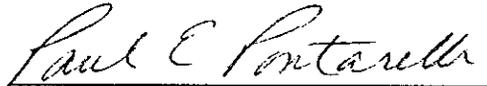
these issues are within the Commissioner's area of expertise.

We do not find that the cases cited by counsel for student Doe's mother establish otherwise. Although these cases illustrate the requirement that a party must exhaust administrative remedies before seeking judicial relief in special education matters, two of the cases refer to appeals to the Commissioner as being among the administrative remedies available to the plaintiffs.³ Given the nature of the issues raised herein, we find that this matter squarely falls within R.I.G.L. 16-39-1.⁴ We therefore shall exercise our jurisdiction over this dispute.

Conclusion

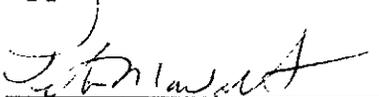
The instant dispute is a matter "arising under" laws relating to schools or education pursuant to R.I.G.L. 16-39-1. The request to dismiss for lack of jurisdiction is denied.

The matter will be scheduled forthwith for continued hearing on the merits.



Paul E. Pontarelli
Hearing Officer

Approved:



Peter McWalters
Commissioner of Education

Date: April 12, 1994

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- 3 Chase v. Mousseau, Ibid. at 1223-1224, and Laura and Edward V. v. Providence School Board, Ibid. at 380.
- 4 Although jurisdiction was not contested in Rhode Island Department of Elementary and Secondary Education v. Warwick School Committee, the Commissioner examined the school health program and certified school nurse-teacher requirements of R.I.G.L. 16-21-7 and 8 and the Rules and Regulations for School Health Programs in that case.