

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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IN THE MATTER OF JOHN B.P. DOE  
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DECISION

Held: Child's educational records, which father is entitled to review in their entirety, consist of (1) hospital records in school district's possession; (2) records maintained in hospital's educational unit; and (3) hospital records used in development or review of child's educational program.

February 21, 1996

## Introduction

This matter concerns the Barrington School Committee's alleged violation of several federal and state laws and regulations regarding a parent's access to the educational records of his child. Specifically, the appeal alleges violations of the federal Family Educational Rights and Privacy Act (FERPA), federal Department of Education regulations implementing FERPA, the Rhode Island Educational Records Bill of Rights Act, the Regulations of the Board of Regents for Elementary and Secondary Education Governing the Special Education of Students with Disabilities, and the the Basic Education Program.<sup>1</sup>

## Background

Student Doe is enrolled in the Barrington school system. He receives special education services. Following two brief residential placements at the Emma Pendleton Bradley Hospital in East Providence, student Doe was placed in the Bradley Hospital day school program in May 1991.

Student Doe's parents subsequently separated, and a divorce action commenced. Sometime thereafter, Appellant requested the School Department to provide access to all of his son's educational records, including those of Bradley Hospital and East Bay Mental

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<sup>1</sup> The initial hearing in this matter was conducted on November 15, 1991. An Order issued on December 19, 1991 finding that the appeal presents issues within the jurisdiction of the Commissioner of Education, and that, given her objection to the release of any educational records to Appellant, Appellant's spouse is a necessary party to this proceeding. Additional hearings were conducted on September 3, 1992 and July 27, 1994. Several telephone conferences were also conducted during this time. The parties filed memoranda, reply memoranda, and supplemental memoranda over the course of the following year.

Health Center, another agency providing services to student Doe. Student Doe's mother objected to the release of any records, which precipitated the filing of this appeal.

#### Contentions of the Parties

Appellant asserts that this matter presents issues within the Commissioner's jurisdiction. Appellant contends that as the father of student Doe, he has the right of access to all of the child's educational records, including those medical and/or psychological evaluations which have been disclosed to educational personnel. Appellant also seeks attorney's fees and costs.

The School Committee argues that the enforcement of FERPA is not within the Commissioner's jurisdiction. On the merits, it contends that Appellant has no right to those records which contain medical information regarding his estranged spouse.

Bradley Hospital maintains that it is faced with conflicting statutory requirements given its dual role in the treatment and education of student Doe. Bradley contends that Appellant has a right of access to "student records," not to records containing information about his spouse. Bradley argues that the Confidentiality of Health Care Information Act is applicable to the latter, and Appellant's spouse has not consented to their release.

Bradley Hospital provided the hearing officer with a complete copy of student Doe's records. Those records include a form signed by Appellant's spouse authorizing the release of a broad range of confidential information concerning student Doe to the Barrington

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2 Appellant is no longer seeking access to the records of East Bay Mental Health Center in this proceeding.

School Department. The information to be provided includes "educational reports and academic progress notes," as well as "psychiatric assessment," "pediatric assessment," "social history," "psychological assessment," "progress notes," "medical or nursing records," "comprehensive evaluation report and treatment plans," and "treatment team reviews."

Appellant's spouse was provided with notice of this proceeding. She did not participate in the hearings but through counsel communicated her continued objection to the release of any records to Appellant.

#### Discussion

The Rhode Island Educational Records Bill of Rights Act (R.I.G.L. 16-71-1 et seq.) provides parents of students with the right to "inspect and review records" and to make copies of the records. Under the Act, the term "records" is to be defined in accordance with the definition of "education records" contained in FERPA. (20 U.S.C. Sec. 1232g). FERPA defines "education records," subject to certain exceptions, as "those records, files, documents, and other materials which -- (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution."<sup>3</sup>

Under the Board of Regents Regulations Governing the Special Education of Students with Disabilities, each "participating

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<sup>3</sup> The only exception to this definition which is pertinent herein concerns "records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute."

agency" shall

permit parents to inspect and review any education records relating to their student which are collected, maintained, or used by the agency under this part [Continuum of Special Education Programs] of these regulations. (Section Two, I, 4.1).

"Participating agency" is defined as "any agency or institution which collects, maintains, or uses personally identifiable information, or from which information is obtained."

Topic 28 of the Basic Education Program requires each school district to have an established policy and set of procedures which assure the privacy of student records under FERPA, and provide for the inspection and review of records by parents.

We find at the outset that, in light of the state statutory and regulatory provisions set forth above, this matter presents a dispute within the Commissioner's jurisdiction. Because the record in this proceeding does not contain any court order or legally binding document specifically revoking Appellant's right of access to his child's educational records, we must exercise our authority to resolve this dispute by determining which records of student Doe's meet the definition of "educational records."<sup>4</sup>

Any Bradley Hospital record in the possession of the Barrington School Department which contains information directly related to student Doe constitutes an educational record which Appellant is entitled to review. We include in this classification any record documenting a medical, psychological, psychiatric or other type of evaluation of student Doe. Under the applicable statutes, medical

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<sup>4</sup> We do not, however, have authority to entertain Appellant's request for attorney's fees and costs.

records become educational records upon their delivery to the School Department.

As a private facility which has been approved by the Board of Regents to provide special education and related services, Bradley Hospital is subject to the obligation of a "participating agency" to permit parents to inspect and review the educational records of their children.<sup>5</sup> Student Doe's educational records at Bradley Hospital consist of (1) records directly related to him which are maintained at the Hospital's educational unit<sup>6</sup> and (2) medical, psychological, psychiatric and other evaluative records which have been used in the development or review of an educational placement, program or service for him.<sup>7</sup>

Finally, we find that Appellant is entitled to review the documents identified as student Doe's educational records in their

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- 5 Section Three, II, 4.1 of the Board of Regents Regulations Governing the Special Education of Students with Disabilities states that "All special education programs in any non-public and State-operated day or residential schools shall meet the same criteria as those established for public school programs including the employment of appropriately certified personnel."
- 6 Subject to the "sole-possession-of-the-maker" exception previously set forth in footnote 3.
- 7 The record shows that in February 1992 the School Department conducted a meeting to develop an individualized education plan (IEP) for student Doe. Both of student Doe's parents attended the meeting. Other participants at the meeting included two medical doctors, an individual/family therapist, a family therapist, a milieu therapist, and a registered nurse. The proposed IEP that resulted from this meeting was sent to student Doe's parents. It recommends a placement at the day school program at Bradley Hospital. It also addresses student Doe's behavioral problems in the classroom in detail. Under the heading "Specific Special Education Program and Related Services," the IEP lists "psychoeducation," "milieu therapy," "family therapy," "individual therapy," and "medical supervision." The IEP contains specific performance goals for student Doe in all but the last of these program and service areas. (Appellant's Exhibit 19).

entirety. While we recognize the confidentiality rights of Appellant's spouse to her health care information, we note that we are providing access to records of student Doe which document the delivery of services that the School Department considered to be related to his education. The related nature of these services was made clear to Appellant's spouse. She participated in these services and continued to authorize the release of their documentation to the School Department. Given these circumstances, we find no basis to deprive Appellant of his statutory right to review the educational records of his child.

Conclusion

Appellant is entitled to review, in their entirety, all Bradley Hospital records concerning student Doe that have been (1) provided to the Barrington School Department, (2) maintained by the educational unit at Bradley Hospital,<sup>8</sup> and (3) used in the development or review of educational programs and services for student Doe.

We hereby order the Barrington School Committee and Bradley Hospital to make these records available to Appellant.

*Paul E. Pontarelli*

Paul E. Pontarelli  
Hearing Officer

Approved:

*Peter McWalters*

Peter McWalters  
Commissioner of Education

Date: February 21, 1996

<sup>8</sup> Subject to the "sole-possession-of-the-maker" exception set forth in footnote 3 herein.