

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

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**Parents of Student D.**

v.

**Johnston School Committee**

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**DECISION**

Held: The Petitioners have established no legal basis to support their claim of entitlement for their daughter to receive tutoring from the Johnston School Department during a period of time in which she cannot attend St. Rocco's School because of illness.

DATE: January 27, 2006

## **Travel of the Case**

This request for hearing was apparently first made on January 6, 2006 and then resubmitted on January 10, 2006. It was referred for hearing and the undersigned was designated to hear this matter on January 10, 2006. Written acknowledgement of the appeal and the agreed-upon date for hearing were sent on January 12, 2006. The matter was heard on January 20, 2006 at which time testimony and documentary evidence were received. Decision in this matter has been expedited, even though it was not formally framed as an interim order request.

## **Issue**

Is Student D. entitled to receive tutoring from the Johnston School Department during the period in which she is unable to attend school<sup>1</sup> because of illness?

## **Relevant Facts:**

- Student D resides with her parents in the Town of Johnston and is in the eighth grade at St. Rocco School which is also located in Johnston. Tr. pp.3-4.
- On December 19, 2005 Student D. became ill and was hospitalized with, among other problems, osteomyelitis. Following her release from the hospital on January 1, 2006, she continued to receive intravenous therapy and cannot attend school for an “undetermined amount of time”. Letter of Appeal dated January 6, 2005 (sic); Tr.pp.4-5, 9-10.
- Student D.’s parents contacted officials of the Johnston School Department with respect to the provision of a tutor who could work with their daughter until such time as she is able to attend school. At first they understood that such services were available only if they enrolled their daughter in the public school system, but after consultation with staff at St. Rocco School, understood that this step was not necessary. As a result, they did not file registration forms that they had received and filled out to register their daughter in Johnston and disenroll her from St. Rocco School. Tr. pp. 12, 16-18, 31.
- In discussions with Johnston school officials, Student D.’s parents have been redirected to St. Rocco School as the source of a tutor for their daughter. Tr. p.17.
- Student D.’s parents have made a similar request for a tutor from St. Rocco School, although not in writing. School officials have responded, although not in writing to the petitioners<sup>2</sup>, that it takes the position that this is the obligation of the public school district. Tr. p.48-49.

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<sup>1</sup> She presently attends St. Rocco School in Johnston. She has contemplated enrollment in the Johnston School Department if it would be the only way in which she would be entitled to receive tutoring until she is well enough to attend school again.

<sup>2</sup> Appended to the Petitioners’ letter requesting a hearing was correspondence to the Commissioner from the Principal of St. Rocco School dated January 6, 2005 (sic) expressing the “understanding” that Student D. was

## **Positions of the Parties**

### **Parents of Student D.**

Student D's parents assert that because they are residents (and taxpayers) of the town of Johnston and their daughter has not been able to attend school because of a serious illness from which she is still recuperating, the Johnston School Department should provide tutoring so that she will be able to finish the school year successfully. Their preference is for her to remain enrolled at St. Rocco School, because she has been a student there for a number of years and is intent on graduating with her peers; however, if they are forced to withdraw her and enroll her in Johnston public schools in order to qualify her for tutoring while she is recovering from her illness at home, they will do so. Their understanding is that this step should not be necessary, as their daughter should, during this period of temporary medical incapacity, be entitled to such services whether or not she is enrolled in the public school system. They also would prefer that she be tutored in the coursework in which she has been involved at St. Rocco School, rather than any different curriculum in the public schools which would be the point of reference of her tutor if she were enrolled in the public schools.

Although they cite to no specific law which addresses the situation, the parents point to common sense as the basis for the obligation of school officials to address the educational needs of their daughter during a long-term absence from school. Especially in this situation, in which the length of her period of recovery is as of yet undetermined, an extended absence could seriously impact on her ability to finish the eighth grade at St. Rocco School, or anywhere. This could jeopardize her ability to move on to the high school of her choice next year.

### **Johnston School Department**

At the outset, the Commissioner's jurisdiction over the issues in this case are brought into question, counsel argues, since there is no decision of the Johnston School Committee which has been made, and from which the petitioners have appealed. The request for tutoring that has been made has not been submitted to the School Committee, nor even to the Superintendent of Johnston public schools. Thus, this dispute has not reached the level necessary for it to be submitted as an appeal to the Commissioner.

It is the position of the school department that if Student D. enrolled as a student in Johnston and she submitted documentation of her illness and projected absence for a period of thirty (30) consecutive days, the department would use its best efforts to procure a tutor for her. She still would have no legal entitlement to home tutoring. In support, counsel for the school department cites the July 16, 2001 Advisory issued by Commissioner Peter McWalters on this subject, noting that the Commissioner has circulated a "suggested policy" covering home tutors for students who are temporarily incapacitated by injury, non-chronic illness or

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entitled to receive at-home tutoring from her local public school district. The letter also indicates that while St Rocco School is willing to provide "much support and care for (Student D)" it does not have the personnel who would be able to go to her home during the day to tutor her.

surgery. A legal obligation to children who technically did not meet the definition of a student with a disability, but who were subjected to long-term absence from school because of illness, surgery or the like, was omitted from the revised Board of Regents Regulations Governing the Education of Children With Disabilities (December 14, 2000). Based on the July 16, 2001 advisory, Johnston stands ready to make its best efforts to locate a tutor for Student D., should she enroll in the Johnston school system. In any event, she is not yet enrolled, nor has she made such request as a Johnston public school student. If she does so at some point, counsel notes that, based on the record and testimony of the district's assistant superintendent, the tutoring would be gauged to the curriculum of the public school, and not the coursework this student has undertaken at St. Rocco School. It also would, for obvious church/state separation reasons, not include tutoring in the subject of religion.

Counsel stresses that at this point the district has no reason to believe that Student D. is a student with a disability, but has considered her request under the terms used by her parents, i.e. a temporary medical incapacity. If, however, it is actually the case that this child's medical condition may qualify her as a student with a disability under the provisions of federal and state law, Johnston will process a referral to determine her eligibility for special education services, even if she remains enrolled at St. Rocco School. The school department suggests, however, that if she qualifies as a disabled student under Section 504 of the Rehabilitation Act and R.I.G.L. 42-87-1 et seq., St. Rocco School has a parallel obligation to accommodate Student D.'s needs for tutoring. Given the varying timeframes and procedures involved in making a determination of disability, counsel for the district suggests that Student D.'s private school should review any obligations it may have to provide tutoring services to Student D.

### **DECISION**

Student D's parents come to the Commissioner's office not so much for an adjudication but for assistance in their endeavor to obtain a tutor for their child as soon as possible. Student D has not been in attendance in school since December 19, 2005, and her parents are understandably frustrated at the inconsistent information they have received regarding any entitlement for home tutoring their daughter may have until she is well enough to attend school. Unfortunately, her legal right to tutoring services from the Johnston school department is not evident on the record in this case. This case was presented as one in which the nature of Student D.'s illness is non-chronic and temporary. In such posture, she is not covered by any law which entitles her to tutoring or other services, but rather by a policy "encouraged" in the July 16, 2001 communication from the Commissioner of Education to all superintendents of public schools. The policy is to provide home tutoring for students when their long-term absence from school, because of injury, non-chronic illness or surgery, will have serious impact on their educational progress. As counsel for the Johnston School Department points out, the Commissioner's encouragement of such a local policy extends to Student D. only if she is enrolled in the Johnston public schools and does not provide her with tutoring advancing her in the curriculum being used by St. Rocco School. Thus, if she were to leave St. Rocco School, and enroll in middle school in Johnston, she would have tutoring, but there would be some degree of disruption to her educational program and progress. We

hesitate to leave Student D. with this her only alternative so late in her educational career at St. Rocco School.

We are constrained to point out that the same logic and policy considerations that motivated the Commissioner to issue the July 16, 2001 advisory to administrators in the public schools may be considered by administrators of St. Rocco School in determining whether it is within their responsibility to provide Student D. with home tutoring. While she may not have submitted documentation to her school which qualifies her as a student with a disability under federal and state law (and thereby legally obligating her private school to make accommodations or “minor adjustments”<sup>3</sup> in its program) she is a “temporarily incapacitated student” for whom tutoring services, for a reasonable period, may not impose an undue burden. Her educational needs, consistent with the program and curriculum at St. Rocco School, could be addressed as soon as possible. Given that the decision of St. Rocco School was, in part, premised on the faulty assumption that the Johnston School Department was responsible for such tutoring, we request<sup>4</sup> that St. Rocco School reconsider its decision as soon as possible. A copy of this decision will be mailed to the Principal of St. Rocco School, consistent with this request.

For the above-described reasons, we decline to order the Johnston School Department to provide home tutoring. Should Student D. decide to enroll in the public school system, and request that tutoring be provided to her in her status as a temporarily incapacitated student of the district, we direct that school officials process such request as soon as possible.<sup>5</sup>

For the Commissioner,

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Kathleen S. Murray, Hearing Officer

APPROVED:

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Peter McWalters, Commissioner

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January 27, 2006  
Date

<sup>3</sup> See 34 CFR Section 104.39 of the 504 Regulations applicable to private elementary and secondary programs which are incorporated into R.I.G.L. 42-87-1.

<sup>4</sup> But do not direct, since St. Rocco School was not a party to this hearing.

<sup>5</sup> As indicated previously, if Student D.’s parents suspect that she suffers from a disability due to a chronic condition or based on some other factors, they should make a referral to the Director of Special Education for the Johnston School Department for expeditious processing consistent with IDEA.