

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

.....  
**Rhode Island Department of  
Elementary and Secondary Education**

v.

**Growing Children of Rhode Island**  
.....

**DECISION**

Held: At a show cause hearing convened by the Department, there was no demonstration of a reason why the annual approval for the operation of a nursery school and Kindergarten by Growing Children of Rhode Island should be granted. The Department's decision to deny approvals for both programs is upheld.

DATE: October 5, 2006

## **Travel of the Case**

On September 5, 2006 Deputy Commissioner Todd D. Flaherty requested the scheduling of a show cause hearing as to why the Department of Education should not deny nursery school and kindergarten approvals for the 2006-2007 school year for Growing Children of Rhode Island, a facility located in Wakefield, Rhode Island. The undersigned was designated to hear and decide this matter on September 7, 2006. The matter was scheduled for hearing. Notice of the scheduled September 28, 2006 hearing date was sent to the District Manager of Growing Children of Rhode Island, Ms. Denise Dionizio at 12 Johnson Avenue, Meriden, Connecticut on September 18, 2006. Additional notice of the hearing date, both by telephone and in writing, were provided by counsel for the Department. RIDE Ex.10; Hearing Officer Notes.

At the time of the hearing the Department of Education proceeded to place documentation on the record through counsel. No one appeared on behalf of Growing Children of Rhode Island. The record consists of the documentation submitted on behalf of the Department and the notes of the hearing officer taken at the September 28, 2006 proceeding.

## **ISSUE**

Should Growing Children of Rhode Island be granted approval for operation of a nursery school and kindergarten program in the State of Rhode Island for the 2006-2007 school year?

## **Findings of Relevant Facts**

- Growing Children of Rhode Island<sup>1</sup> has applied for program approvals to operate a nursery school and kindergarten program at its Wakefield, Rhode Island facility; those program approvals are currently pending.
- Growing Children of Rhode has a policy requiring all potential candidates (for employment) to submit a negative TB test and proof of MMR immunization before employment may be obtained. RIDE Ex. 5a and 6.<sup>2</sup>
- The Department has found this policy to be contrary to the regulations governing approval of nursery school and kindergarten programs (the Board of Regents

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<sup>1</sup> Which has been described on the record as a corporation operating in the State of Rhode Island

<sup>2</sup> Evidently information concerning this policy was furnished to the Department in the course of its investigation of a complaint received from a prospective employee who requested, and had been denied reimbursement for the costs of such medical testing.

“Standards for Approval for Educational Programs for Very Young Children” (March 1994). RIDE Ex. 6<sup>3</sup>.

- The Department of Education has notified the District Manager of Growing Children of Rhode Island, Ms. Denise Dionizio, of its conclusion with respect to the policy on medical testing of job applicants, and has requested that its policy be conformed to be consistent with both RIDE and DCYF regulations. The Department has also requested that Growing Children of Rhode Island resolve the complaint with respect to reimbursement of a job applicant who was not selected for a position and who filed a complaint with the Department. RIDE Ex.6.
- At the time of the hearing, Growing Children of Rhode Island had not formally responded to this request and had not conformed its policy, despite notice that the failure to do so would have implications for renewal of its program approvals for the current school year. The “show cause” request of Deputy Commissioner Flaherty and letter from Department legal counsel specifically indicated that denial of nursery school and kindergarten approvals for the 2006-2007 school year were contemplated. RIDE Ex. 6 and 7.

### **DECISION**

Growing Children of Rhode Island has not demonstrated any reason why the Department of Education should be precluded from denying program approvals for the 2006-2007 school year. In the absence of a factual dispute and/or presentation of a regulatory interpretation that is at variance with that presented by the Department at the hearing<sup>4</sup>, RIDE’s request to proceed with denial of approvals for both the nursery school and kindergarten programs operated by Growing Children of Rhode Island is hereby granted. Notice of program denials should be sent forthwith.

For the Commissioner,

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Kathleen S. Murray, Hearing Officer

APPROVED:

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Peter McWalters, Commissioner

\_\_\_\_\_  
October 5, 2006  
Date

<sup>3</sup> The Department’s analysis is that this same policy also violates DCYF “Child Day Care Center Regulations for Licensure” which replicate the relevant language as to testing of individuals who have been *selected* for employment at nursery schools and day care centers. See also RIDE Ex. 6.

<sup>4</sup>Full and fair opportunity to make such presentation was the purpose of the “show cause” hearing of September 28, 2006.