

STATE OF RHODE ISLAND and PROVIDENCE PLANTATIONS

DEPARTMENT OF EDUCATION

SPECIAL EDUCATION DUE PROCESS HEARING

(Case # 11-11)

STUDENT: JOHN DOE

SCHOOL DISTRICT: NORTH PROVIDENCE

HEARING OFFICER:

ARTHUR G. CAPALDI, ESQ. 1035 MAIN  
STREET COVENTRY, R.I. 02816  
Tel: 821-3537

SCHOOL DISTRICT ATTORNEY:

ANDREW HENNEOUS, ESQ .. 362  
BROADWAY PROVIDENCE, R.I. 02903  
Tel: 453-2300

PARENT'S ATTORNEY:

JASON KNIGHT, ESQ .. ONE TURKS  
HEAD PLACE SUITE 1440  
PROVIDENCE, R.I. 02903 Tel: 865-6075

THE WOLF SCHOOL ATTORNEY:

JON M. ANDERSON, ESQ .. 28  
FINANCIAL PLAZA PROVIDENCE,  
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BROADWAY PROVIDENCE, R.I.  
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SCHOOL DISTRICT ATTORNEY:

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PARENTS ATTORNEY:

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274-9200

THE WOLF SCHOOL ATTORNEY:

ARTHUR G. CAPALDI,  
ESQ., 1035 MAIN  
STREET COVENTRY,  
R..1.. 02816  
Tel: 821-3537

**LEXICON**

For the purposes of the decision in the within hearing and to ensure confidentiality of the student, the following Lexicon shall be used in this decision:

**STUDENT:**

**MOTHER:**

**SCHOOL DISTRICT: NORTH PROVIDENCE SCHOOL DEPARTMENT**

**HEARING OFFICER: ARTHUR G" CAPALDI, ESQ. 1035 MAIN  
STREET COVENTRY, R.I. 02816**

**DISTRICT'S ATTORNEY: ANDREW HENNEOUS, ESQ. 362  
BROADWAY PROVIDENCE, R.I.  
02909**

**PARENT'S ATTORNEY: JASON KNIGHT, ESQ.  
ONE TURKS HEAD PLACE SUITE  
1440  
PROVIDENCE, R.I" 02903**

## POSITION OF PARTIES

**PARENT:** The Hearing Officer has jurisdiction under the IDEA and State Regulations through the due process provisions of the State regulations over the private school, the Wolf School, to order it to continue the education of the Student and to keep the Wolf School as the Student's placement even when the School no longer has a contract with the School District and no longer wants to educate the Student

**SCHOOL DISTRICT and WOLF SCHOOL:** The Hearing Officer does not have jurisdiction over a private school under the due process provisions of IDEA or State and can not order the Wolf School to continue the education of the Student and placement at the Woolf School.

## ISSUES and SUMMARY of DECISION

**ISSUE:** Does the Hearing Officer have jurisdiction over the Wolf School under the due process procedures to order continued placement at the Wolf School.

**DECISION:** The Hearing Officer does not have jurisdiction over the Wolf School to order continued placement at the School

## TRAVEL OF THE CASE

Pursuant to Section IX, 7.1 I of the Regulations of the Board of Regents Governing Children with Disabilities, on September 6, 2011, this Hearing Officer received notice of



appointment to conduct an impartial due process hearing. On September 13, 2011, a notice was sent to all parties setting forth hearing dates and a date for a prehearing conference. The prehearing conference was held on October 5, 2011 without a stenographer present. After a discussion by all parties, the Hearing Officer rendered an Order directing the School District to convene an IEP Meeting on October 20, 2011. The meeting was to include the Wolf School. The Order further explained that the Hearing Officer was not rendering an opinion as to the appropriateness of any prior IEP. The Order was issued on October 5, 2011. The Order is attached hereto as exhibit A. The decision due date was November 17, 2011. On November 1, 2011, the parties including the Wolf School agreed to extend the decision due date to December 17, 2011. The stipulation is attached hereto as exhibit B. Also, on November 1, 2011 the School District, the Parents and The Wolf School entered into a joint stipulation of facts which is attached hereto as exhibit C. At a telephone conference call on October 21, 2011, with all parties, the Hearing Officer was advised that the Student was being placed at the Providence Center with agreement by the Parent and School District. This was confirmed by a letter from the attorney for the School District dated October 21, 2011, a copy of which is attached hereto as exhibit D.

The parties further agreed to submit a narrow issue to the Hearing Officer for determination

That issue is whether the Wolf School is subject to the jurisdiction of the Hearing Officer in the due process hearing requested by the Parents



**DECISION:**

The remedy proposed by the Parent in the request for a due process hearing was that the Student remain at the Wolf School for the 2011-2012 school year and that the Wolf School continue to administer F APE in accordance with the Student's IEP and the Act

In order for the Hearing Officer to render such an order, the Hearing Officer has to have authority to do so

All the authority exercised by hearing officers has to be found in the Regulations Governing the Education of Children With Disabilities or in the Individuals with Disabilities Education Act as found in Title 16, Chapter 24 of the General Laws of Rhode Island and in the Federal IDEA, 2004 (20 U.S.C Chapter 33, 1400 et seq)

The State regulations first address the purpose of the regulations and in section 3002 it explains to whom the regulations are applicable In regard to private schools and facilities (Section 3002 (c)), it clearly states that "each public agency" in the State is responsible for ensuring that the rights and protections under part B of the IDEA and the regulations are given to govern children with disabilities It is the public agency, in this matter, the Town of North Providence, that has the responsibility for delivering F APE to the Student at Wolf School by contracting with the Wolf School for necessary services. The District is also responsible for ensuring that due process is available for the Parent and Student. Section 300508 clearly places the responsibility for the due process procedure on the public agency (School District) and not on any other entity. The Student who is placed in or referred to a private school or facility is



provided special education and related services in conformity with an IEP that meets the requirements of Section 300320 through Section 300325 of the regulations (Section 300146 of the Regs . .) The resolution process required under the regulations rests with the School District and no other entity. (Section 300.510 Regs .)

In reviewing section 300903 (Non Public and State Operated Schools) which is relied upon by the Parent for their position that the Hearing Officer has jurisdiction over the Wolf School, I do not find anything in that section that would allow a non public school to be subject to the due process procedures under the regulations independent of the School District

That section sets standards for non public schools to make sure they are capable of servicing special needs students. In fact, that section specifically provides that progress in a private day or residential school shall be monitored by the special education director from the school district (300903 (d))

If the regulations were going to provide that the due process provisions, independent of the School District, apply to private schools, one would find it at least in this section and further, it would have to be clear and unambiguous ..

It is important to note that as of the date of filing for due process, September 1,2011, the contract between the Wolf School and the North Providence School District had expired It expired on June 8, 2011 (Placement Agreement, paragraph 1 ) All that was left for the School District to do was to find and recommend another placement

The Wolf School was never subject to the due process provisions independent of the School District While under contract, the Wolf School would be part of the due process procedures only as it applies to the School District.



3.

In reviewing the cases provided by the Parent, I did not find them to be persuasive in interpreting the Regulations of the State of Rhode Island in regard to the jurisdiction of this Hearing Officer over the Wolf School.

I find that his Hearing Officer does not have jurisdiction over the Wolf School

Date: December 15, 2011

John D. Galdi  
Esq.