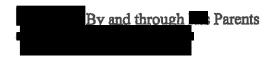
STATE OF RHODE ISLAND and PROVIDENCE PLANTATIONS

DEPARTMENT OF EDUCATION



Lincoln School Department

Vs.

Case No. LL -15-26

DECISION:

This Hearing Officer was appointed on or about December 17, 2015 in accordance with the Rhode Island Board of Education Regulation Governing the Education of Students with Disabilities, section 300.511 to conduct an Impartial Due Process Hearing.

The Parents filed an amended request for Hearing in the nature of an Impartial Due Process Hearing pursuant to R.I.G.L. 16-24-1 (b) - (d) on January 7, 2016.

On December 23, 2015, the Hearing Officer provided notice of appointment to the School District and the Parents through their attorneys providing suggested dates of hearing. The decision due date was January 26, 2016 which was extended to February 26, 2016 by the parties. On or about January 11, 2016 the Hearing Officer received the School Districts answer to the complaint along with a motion to dismiss the complaint.

On January 12, 2016, a prehearing conference was held and all parties were present.

ISSUE:

To date, no evidence was taken by the Hearing Officer. A jurisdictional question was raised by both parties. It was agreed that the Hearing Officer would decide whether or not the Hearing Officer has jurisdiction to hear this case.

The Parents made an allegation in their complaint that the School District will terminate special education services if they do not agree to the most recently proposed IEP. The Parents primarily make reference to a violation of R.I.G.L. 16-24-1 (b) and not specifically to the Regulations Governing the Education of Children with Disabilities (The Regulations). The same can be said of the proposed resolutions as found in the complaint. Further, neither the complaint nor the proposed resolutions make reference to FAPE.

A Hearing Officer's obligation under the Regulations is to determine, based on substantive evidence, that the child received FAPE (Section 300.513).

The Regulations require that the Hearing Officer must possess knowledge and the ability to understand the provisions of the Regulations, Federal and State, pertaining to the IDEA and must be able to interpret the legal interpretations of the Regulations by Federal and State Courts. (300.511 (B)(ii)). The present matter is presenting the Hearing Office with an issue relating to a State Law, R.I.G.L. 16-24-1 (b) – (d).

That statute seems to exclude any other federal, state law or regulation when considering it.

Section (b) begins: "Notwithstanding any other federal or state law or regulation" It appears to be a parallel law to the Regulations.

The Hearing Officers jurisdiction is limited to the four corners of the Regulations and the court determinations and rulings related to thereto.

The observance of all laws relating to schools and education is within the jurisdiction of the commissioner of elementary and secondary education (R.I.G.L. 16-1-5 (9).

Accordingly, I direct that this case be transferred to the commissioner of Education for further review.

Dated this // that of Februar, 2016.

ARTHUR G. CAPALDI

Hearing Officer 1035 Main Street Coventry, R.I. 02816

Tel: 821-3537

acapaldi111@verizon.net