



Pennsylvania Association for Retarded Citizens

1500 NORTH SECOND STREET • HARRISBURG, PA. 17102 • TEL: (717) 234-2621

L STEUART BROWN

President

April 21, 1975

PETER P. POLLONI

Executive Director

F. John Hagele, Esq.
Pepper, Hamilton & Scheetz
2001 Fidelity Building
123 South Broad Street
Philadelphia, Pennsylvania 19109

Dear Jack:

This letter expresses my opinion that the Pennsylvania Department of Education has failed to implement Paragraph 51 of the Consent Agreement with respect to institutionalized mentally retarded students, and has failed to follow the procedures of Chapter 13 of the School Code which calls for the education of all handicapped children.

When the Consent Agreement was signed, it was agreed that all students would be accorded equal treatment under law, and that neither the fact of retardation nor the artifact of residence would obstruct equal treatment under the School Code. The Code very clearly states that the primary responsibility for providing education rests with the local School District, with the provision that certain services can be provided by contractual arrangements with the Intermediate Unit. For the most part, this procedure has been followed for all mentally retarded students, except those in state schools and hospitals. For state school students the Department of Education circumvented the School Code with interdepartmental agreement. I am now questioning the legality of certain provisions of this action. The interdepartmental agreement, reached with the Department of Public Welfare, placed the responsibility for educating the state school and hospital students on the I.U. Because the I.U. operates with serious constraints, the effect of this agreement has been discriminatory. Unlike a local School District, the Intermediate Unit does not have the power to tax nor does it have the authority to construct classroom facilities. Consequently, now three years after the Consent Agreement was signed, the majority of state school students are not receiving an appropriate program of education and training. It is acknowledged by all that the lack of classroom space is the most serious problem. I.U. personnel have not been able to solve the space problem. Their failure is not due to a lack of commitment, but to a lack of authority. The Intermediate Unit is trying to meet a School District responsibility without the capabilities and authority accorded a local School District. Consequently, the institutionalized mentally retarded are not accorded equal treatment under the School Code.

Lacking authority to implement their mandate, the Intermediate Units in some instances have had to propose that the Department of Public Welfare allow for the construction of classrooms on the grounds of the State Schools and Hospitals for the purpose of lease to the Intermediate Unit. In two instances, Hamburg and White Haven, the

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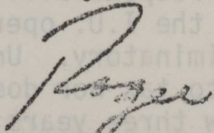
Secretary of Education, John Pittenger, has concurred. This concurrence was given in spite of the Department's affirmation that this solution is the least desirable option for the education of state school students. Furthermore, this concurrence raises the further question of possible non-compliance with Department's assurances to the Federal Government under Part "B" of the Education of the Handicapped Act. These assurances quote the School Code citing the responsibility of the local School District to educate all handicapped students and furthermore, states that this education shall occur in the least restrictive setting.

We are opposed to the classrooms being constructed on the grounds of the state schools and hospitals. Such plans are the results of a faulty planning process, it is not the least restrictive setting, and we are appalled at the failure to date to provide these students with an appropriate program of education and training.

We request that the Department of Education communicate with the School Districts, where state schools and hospitals are located, and facilitate these Districts to meet their legal responsibility and to speedily implement the provisions of the School Code. If the School Districts fail to comply, then in accordance with paragraph 51 of the Consent Agreement, we request "... the Secretary of Education, pursuant to section 13.72 (5) of the Public School Code of 1949, 24 PURD. STAT. 13.72 (5), shall directly provide, maintain, administer, supervise, and operate programs for the evaluation of these children".

Jack, I am requesting a legal review of the opinions expressed in this letter, and legal advice as to what steps to follow to remedy the non-compliance that currently exists and the worsening non-compliance that will result when state school and hospital students are actually assigned to the classrooms currently proposed.

Sincerely,


Roger E. Buchanan, Chairman
Right to Education Committee

REB:ras

cc: Frank S. Beal
John C. Pittenger
Milton J. Shapp
Edwin Martin
Robert Raines
Robert Nagel
Judge Barbierri
✓ Superintendents of St.Sch.&Hosp.
✓ Directors of I.U.s
✓ President of St.Sch. & Hosp. Parent Assoc.
State Task Force on Right to Education
Chairmen of Local Task Forces on Right to Education
P.A.R.C. Committees, Regional V.P.s, and staff