

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

 BRYAN D., a minor by :
 TOM D., his father and :
 next friend :
 :
 vs. :
 :
 PORTSMOUTH SCHOOL :
 COMMITTEE :

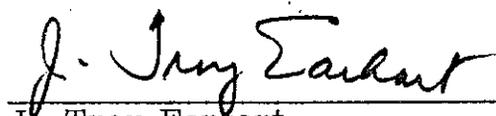
INTERIM ORDER

We rule as follows:

1. We direct the School District to conduct an evaluation of this student.
2. The multi-disciplinary team is to decide two (2) issues:

Is this student handicapped and if he is did the conduct at issue result from a handicapping condition?
3. No suspension hearing on the conduct at issue is to take place until (1) the ordered evaluation is complete and (2) we vacate this interim order.
4. When the evaluation is completed we will determine whether this interim order shall be vacated or to what extent it shall remain in effect during any appellate procedures which might be implemented.


 Forrest L. Avila, Esq.
 Hearing Officer

Approved: 
 J. Troy Earhart
 Commissioner of Education

April 15, 1988

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

BRYAN D., a minor by TOM D., :
his father and next friend :

vs. :

PORTSMOUTH SCHOOL :
COMMITTEE :

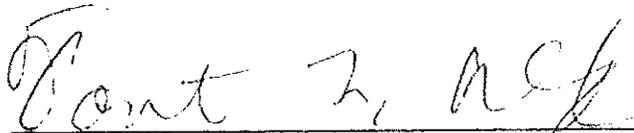
O R D E R

May 31, 1988

While this student had not been classified as a special education student and was not, therefore, protected by the "stay put" provision of The Education For All Handicapped Childrens Act, we thought it necessary and appropriate to stay suspension proceedings against him pending a Special educational evaluation. Such a comprehensive evaluation has now been completed. The evaluation, which included psychiatric, psychological, neurological, pediatric and educational components, has reached the conclusion that this student is not in need of special education. We, therefore, must vacate the Interim Order entered in this case. This decision vacating the Interim Order is to take effect on June 6, 1988 in order to enable petitioner to seek review of this decision.

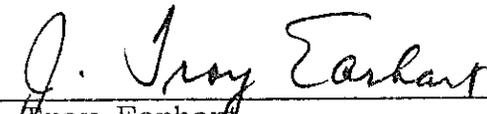
Conclusion

The Interim Order entered in this case is vacated, effective June 6, 1988.



Forrest L. Avila, Esq., Hearing Officer

Approved:



J. Troy Earhart
Commissioner of Education

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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BRIAN D. , a minor by :
THOMAS D. , his father :
and next friend :
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vs. :
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PORTSMOUTH SCHOOL :
COMMITTEE :
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June 13, 1988

DECISION ON MOTION TO RE-HEAR

We must deny the motion to re-hear. We think that the authorities which we have found are to the effect that the "stay-put" provision of the EAHCA does not attach until the student is classified as, or clearly should have been classified as, a special education student. EAHCA case No. SE-29-8, P. 507:272. EAHCA OCR 1986 Wright City (Mo) R-11. If this were not so, schools would be greatly hampered in the use of suspensions as a disciplinary tool since the mere filing of request for special education could delay the imposition of the sanction for three or four years while the matter was being litigated.

In the case at hand, there was evidence of a prior request for special education which had been denied and there was an allegation

(albeit of little merit as we see it) that the parents, who are well-educated individuals, had not been informed of their rights. We therefore thought it best to require a full evaluation of the student so that we would have some information upon which to base a judgment as to whether this student should have been classified as a special education student and whether he might, therefore, be entitled on a "nunc pro tunc" basis to coverage by the special education regulations of the Rhode Island Board of Regents. The full evaluation which we ordered has determined that this student is not in need of special education. The parents may challenge this decision through the normal due process procedures which are available to them. While this process is going on, we see no reason why this student should not be treated in the same way as any other student enrolled in a regular education program.

We note that the recent case of Honig v. Doe, 56 U.S.L.W. 4091 is not relevant to this matter for the following reasons:

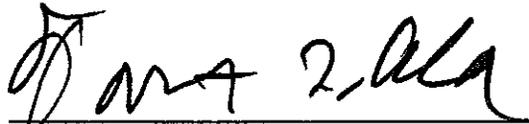
1. Honig v. Doe was a case where the students were already classified as special education students and where all parties agreed that the misconduct at issue resulted from the students' handicapping conditions. In the present case, the student concerned has not been classified as a special education student.
2. In Honig v. Doe the Appellate Court decision, affirmed by the Supreme Court, held that even a special education student whose misconduct did not result from his handicapping

condition could be suspended in accordance with the school district's normal rules for school suspensions. Doe by Gonzales v. Maher, 793 F.2d 1470. Since Honig seems to allow some scope for the application of normal disciplinary rules to some classes of special education students, it is hard to read the case as constituting a ban on the suspension of a student who is classified as being a regular education student.

In sum, since this student is a regular education student we must rule that he is subject to the same discipline rules as any other student.

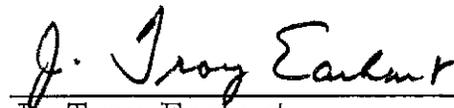
Conclusion

The motion to re-hear is denied.



Forrest L. Avila, Esq.
Hearing Officer

Approved:



J. Troy Earhart
Commissioner of Education

June 13, 1988