

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

C.J.S. DOE

vs.

WESTERLY SCHOOL
COMMITTEE

INTERIM ORDER

June 7, 1988

The appellant School Department has placed the following issue on appeal for a decision of a local Hearing Officer:

According to paragraph six of said Decision, the Respondent School Department was ordered to initiate a meeting to develop an IEP whereby the Petitioner would be placed in residential placement. The Petitioner is presently not enrolled in the Westerly School System and, in fact, is placed at Ocean Tides, Narragansett, Rhode Island, pursuant to a Washington County Family Court Order. Consequently, at this time, the Respondent School Department is unable to comply with said Order, and is seeking review and direction by the Commissioner of Education in accordance with the Board of Regents Rules and Regulations for Education of Handicapped Children, as amended.

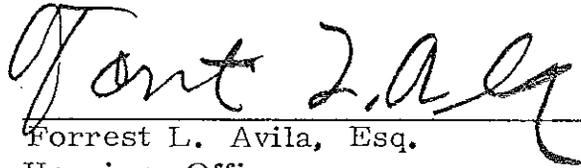
We think a "Catch 22" situation has been created in this case. This student is being denied an LEA IEP because he is in a DCF placement. At the same time the reason why he may be in a DCF placement is because the LEA refuses to even develop an IEP.

We must cut the Gordian Knot by directing the LEA to develop an IEP on an Interim basis. If this is done it may be possible for this

student to be released from his DCF placement to take advantage of the IEP.

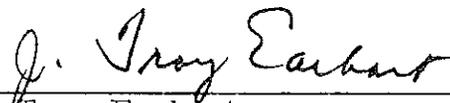
Conclusion

The School District is directed to immediately develop and to tender to this student an IEP. This is without prejudice to the School District's right to argue the merits of its position on appeal or for the student to argue that the School District's appeal is not timely.



Forrest L. Avila, Esq.
Hearing Officer

Approved:



J. Troy Earhart
Commissioner of Education

June 7, 1988