

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JANE R. DOE, Parent and
next friend of

JOHN R. DOE

vs.

COVENTRY SCHOOL
COMMITTEE

INTERIM PROTECTIVE ORDER

September 12, 1990

John R. Doe is a 5-1/2 year old boy who has severe and multiple disabilities. Various evaluations describe John as severely mentally retarded, pervasively developmentally delayed, behaviorally disordered, autistic, non-verbal and hearing impaired.

Since May 2, 1990 John has been a student at the Developmental Disability Day School at Bradley Hospital in East Providence. John attended this program on a daily basis throughout the summer of 1990. The Coventry School Department has been funding John's placement at the Bradley Day School since June of 1990.

Until recently John has been represented in Special Education matters by an Educational Advocate appointed by the Rhode Island Department of Education. This appointment resulted from a referral sent by the Department for Children and Their Families (DCF). The referral represented that as a result of a Family Court Order the right to control John's education has been vested in DCF and that John, therefore, was in need of an Educational Advocate.

The petitioner in this case, who is John's natural mother, alleges that whatever Order the Family Court had entered in this matter did not, in fact, have the effect of ousting her from the right to control her child's education. The petitioner also argues that in any event a Family Court Order issued on August 30, 1990 specifically gave her the right to control her child's education.

The question of who at what particular time had the right to control John's education is important because the educational advocate on June 25, 1990 consented to a placement for John which consisted of a "primary self-contained classroom at Washington Oak School and related supportive services as detailed in the I.E.P. A transitional period of attendance at Bradley Day School will be provided with (John) beginning to attend Washington Oak in September, 1990." (Ex. 10) The I.E.P. itself (Ex.15) states in Section 7(D) and (E):

D. During the transition period-1st quarter of the 90-91 school year-consultation services will be sought from Bradley Hospital in the areas of behavioral programming and speech and language therapy 2 x per month for 3 months.

E. This I.E.P. covers the period of June 1990-June 1991. His current placement under section 1-9-B.1 (page 40) of the R.I. Regulations for the Education of Handicapped Children is Washington Oak School. For the purpose of transition he may attend Bradley Day School until September 1990.

The natural parent disagrees with this I.E.P. which would place her son at Washington Oak School. She wants her son to remain at Bradley Hospital. On August 24, 1990 she requested a due process hearing and claimed that the School District "must maintain (John's) current placement

at Bradley Hospital" under the "status quo" provisions of the law (Regs. 500.513). The School District contends that this request for a hearing is invalid since the student was then represented by an Educational Advocate. The School District concedes that after August 30, 1990 (the date of the Family Court Order) John's mother had the right to control her son's education.¹ But the School District further argues that under the I.E.P. the placement at Washington Oak School is the "current placement" even though John has not yet attended Washington Oak School.

In our view of the matter the key provision is Regs. 300.500 which reads as follows:

§300.500 Definitions of "consent", "evaluations", and "personally identifiable".

As used in this part: "Consent" means that:

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and

(c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

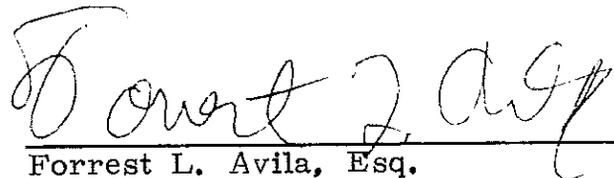
(Emphasis added).

We think that as of August 30, 1990 (the date of the Family Court Order) the natural parent had the right to claim a hearing and invoke the status quo provision since she had the right to revoke consent to the IEP. Furthermore, we regard the physical placement at Bradley Hospital as the "status quo". We recognize the argument of the School Committee that the "placement" is the sequence of placement called for in the IEP or,
1] On August 31, 1990 the natural parent renewed her request for a hearing.

in the alternative, that the placement at Washington Oak is "metaphysically" in existence now since it is labeled the "current placement" in the IEP. We think, however, that we must reject this argument. If the School Committee were right then consent could only be withdrawn at the expiration of an IEP rather than "at any time." Any such construction would, therefore, defeat the evident purpose of the regulation.

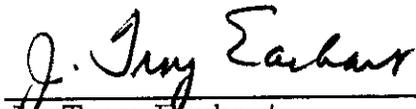
ORDER

This student is to remain at Bradley Hospital pending completion of the due process hearing which has been requested along with any administrative review which may be claimed. We leave to a Court of competent jurisdiction to determine if the placement at Bradley Hospital shall be maintained if judicial review of any administrative review is claimed,



Forrest L. Avila, Esq.
Hearing Officer

Approved: September 12, 1990



J. Troy Earhart
Commissioner of Education