

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

PROVIDENCE SCHOOL BOARD

VS.

THE PARENTS OF JOHN A.Q. DOE

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DECISION

Held: Student Doe is a resident of Hialeah, Florida for school enrollment purposes; his parents are directed to request Hialeah to provide their son with appropriate educational services and to exercise their rights under federal law if necessary; Providence is ordered to maintain student Doe's current placement for 30 days or until Hialeah commences appropriate educational services, whichever occurs first.

Introduction

This matter concerns a request by the Providence School Board for a determination of the residency of student Doe, who currently is receiving special education services from the Providence school district.¹

Background

Student Doe is 15 years old. He has been a resident of the Tavares Pediatric Center in Providence since 1983.² He has attended Meeting Street School for the past 11 years. The Providence school district has paid for student Doe's tuition at Meeting Street School. Providence also has provided student Doe with nursing and transportation services. Student Doe continues to reside at the Tavares Pediatric Center at this time and Providence continues to fund the above-mentioned educational and related services.

In June 1993 student Doe's parents moved from Providence to Hialeah, Florida. The parents have been residents of Hialeah since June 18, 1993.

Student Doe's mother testified that she and her husband want their son to be with them in Hialeah. They have applied for a residential transfer under a Medicaid interstate compact, contacted the local Medicaid office in Hialeah, and spoken to the special education placement officer at the Hialeah school district.

1 This request was assigned to the undersigned hearing officer. Hearings were conducted on August 11 and August 25, 1993. Notice of this proceeding was provided to the Tavares Pediatric Center, Meeting Street School, and the Hialeah, Florida school district. The record in this matter closed on August 30, 1993.

2 Student Doe's residential placement is funded by Medicaid.

The parents stated that they were hampered in their efforts to relocate their son by an emergency which required them to spend 16 days in the Dominican Republic in August. As of August 25, 1993, they have not been able to obtain a residential placement in Florida for their son.

Student Doe's mother testified that her daughter will be attending school in Florida this year.

Dr. Pia Durkin, special education director of the Providence school district, learned of the parents' move in June 1993. She contacted Dr. Gale Kofsky, special education placement officer of the Hialeah school district, and informed her of the parents' move to Hialeah and the status of student Doe. They discussed an educational placement for student Doe in Hialeah. Dr. Durkin wrote to student Doe's parents requesting that they contact Dr. Kofsky to make plans for an educational program for their son in Hialeah and they sign a release for the transfer of his educational records to Hialeah. On June 30, 1993, Dr. Durkin provided Dr. Kofsky with a copy of her letter to student Doe's parents.

Student Doe's parents signed an authorization for the release of his records. On July 9, 1993, Dr. Durkin sent student Doe's educational records to Dr. Kofsky in Hialeah.

Dr. Durkin spoke to Dr. Kofsky on August 23, 1993. Dr. Kofsky advised Dr. Durkin that she had met with student Doe's mother and that Hialeah could provide for student Doe's educational needs in a public school setting. Dr. Kofsky described the services available at High Middle School in Hialeah which provides instruction to many children with needs similar to

student Doe. Dr. Kofsky further stated that a residential placement was awaiting approval by Medicaid.

Positions of the Parties

The School Board contends that it is no longer responsible for providing educational services to student Doe because his parents are residents of Hialeah, Florida.

The parents of student Doe assert that they have not had sufficient time to make the necessary arrangements to have their son join them in Florida. They argue that, in the meantime, their son retains the right to a public education.

Discussion

R.I.G.L. 16-64-1 provides that

Except as otherwise provided by law or by agreement a child shall be enrolled in the school system of the town wherein he or she resides. A child shall be deemed to be a resident of the town where his or her parents reside.

R.I.G.L. 16-64-1 also addresses other situations not applicable here, and states that "In all other cases a child's residence shall be determined in accordance with the applicable rules of the common law."

In Laura Doe vs. Narragansett School Committee, April 17, 1984, the Commissioner found that the "deeming" provision of R.I.G.L. 16-64-1 quoted above creates a rebuttable presumption that a child's residence is the residence of his or her parents. As discussed previously, it is undisputed that student Doe's parents established residency in Hialeah, Florida on June 18, 1993. The parents of student Doe have not offered any evidence to rebut the presumption that their son's residency for school purposes is Hialeah, Florida.

We therefore find that as of June 18, 1993, the responsibility to provide student Doe with a public education belonged to the Hialeah, Florida school district, not the Providence School Board.

We are aware, however, that student Doe is a child with disabilities who requires special education and related services. As such, he is covered by the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Sec. 1400 et seq., which provides federal funds to assist state and local agencies educate children with disabilities. The Act conditions funding upon a state's compliance with extensive goals and procedures. The goals include the assurance to all children with disabilities of the right to a free appropriate public education.³ The procedures include the opportunity for the parents to present complaints with respect to any matter relating to the educational placement or provision of a free appropriate public education to a child with a disability and to have those complaints resolved at an impartial due process hearing.

A situation similar to this case occurred in Lyons v. Town of Yarmouth, 18 IDELR 671 (U.S. District Court, Maine, 1992). The parents of the disabled student in Lyons resided in Nashua, New Hampshire. The Nashua school district developed an IEP placing the student in a private residential school in New York for the 1991-1992 school year. In October 1991 the student's parents moved to Yarmouth, Maine. Following their move, the

3 The free appropriate public education required by the Act is tailored to the unique needs of disabled student by means of and "individualized educational program" (IEP).

parents asked the Yarmouth school district to continue funding their child's placement at the New York school in accordance with his IEP. The Yarmouth school district prepared its own IEP for the student and concluded that it could provide an appropriate educational placement in the Yarmouth school system. The parents did not agree. They commenced a due process hearing with the Maine department of education and, pursuant to the "stay-put" provision of IDEA, sought an injunction compelling Yarmouth to maintain the child's current New York placement pending the final determination of his appropriate educational placement.

The court held that the parents were entitled to an injunction and order pursuant to IDEA requiring Yarmouth to continue the student's placement at the New York school and to provide funding for that placement until the educational placement was finally determined.

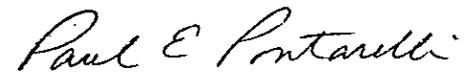
The opinion in Lyons v. Town of Yarmouth is attached to this decision (see Appendix I). That case demonstrates that IDEA provides student Doe's parents with the means to ensure that the responsible local educational agency provides him with a free appropriate public education. We have determined on the basis of the record herein that as of June 18, 1993, the local educational agency responsible for providing student Doe with a public education is Hialeah, Florida. We therefore direct the parents of student Doe to request the Hialeah school district to provide their son with a free appropriate public education. If the Hialeah school district refuses to provide appropriate educational services for student Doe, we expect the parents to

exercise their right to commence a due process hearing and seek other judicial relief under IDEA.

In the meantime, we find it necessary in light of the requirements of IDEA to order the Providence School Board to continue to maintain and fund student Doe's placement at the Meeting Street School for 30 days from the date of this decision or until the Hialeah school district begins to provide student Doe with appropriate educational services, whichever occurs first.

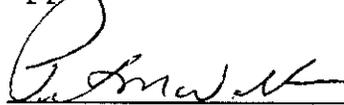
Conclusion

As of June 18, 1993, student Doe became a resident of Hialeah, Florida for school enrollment purposes. We direct student Doe's parents to immediately request the Hialeah school district to provide their son with the free appropriate public education to which he is entitled as a child with disabilities. We further direct the parents to exercise their due process and legal rights under IDEA if the Hialeah school district fails to provide their son with appropriate educational services. The Providence school district is ordered to maintain and continue to fund student Doe's current placement for 30 days or until the Hialeah school district begins to provide student Doe with appropriate educational services, whichever occurs first.



Paul E. Pontarelli
Hearing Officer

Approved:



Peter McWalters
Commissioner of Education

Date: September 22, 1993

John "Kip" LYONS, by his next friend and parent, John Lyons, and by his next friend, parent, and guardian, Joan Lyons; John LYONS and Joan LYONS,

Plaintiffs

v.

TOWN OF YARMOUTH,

Defendant

No. 91-0407-P-H

U.S. District Court, Maine

February 21, 1992

The parents of a 19-year-old student with a mental disability sought injunctive relief to compel their new school district of residence to fund their son's residential placement pending the completion of a due process hearing. The parents had originally resided in State A, and their school district of residence in State A had agreed to place the student at a residential facility in State B. When the parents moved to State C in the middle of the school year, their new school district of residence proposed a public school program for the student. The parents challenged the placement recommendation and requested a due process hearing. In the interim, however, the new school district of residence refused to fund the student's continued residential placement, citing the "initial application" exception to the stay-put provision of Section 1415(e)(3).

HELD: for the parents.

The court found that the parents were simply requesting maintenance of the status quo pending the outcome of the administrative proceedings, pursuant to the stay-put provision. Specifically, there was no basis for the school district's argument that the student's case involved an initial application for admission to public school. In the court's opinion, the student was not applying to public school for the first time, but rather was requesting that the new school district of residence accept and fund his current educational placement in accordance with the IEP developed by his former school district. Accordingly, the parents were entitled to a preliminary injunction and an order to compel the new school district of residence to continue funding the student's residential placement on an interim basis.

HORNBY, District Judge

Order Granting Automatic Preliminary Injunction

The parties in this action are presently embroiled in a dispute over the proper educational placement of the plaintiff John "Kip" Lyons, a nineteen year old mentally disabled student. The plaintiffs have brought this action pursuant to 20

U.S.C. § 1415(e)(3), seeking an automatic preliminary injunction and an order compelling the defendant Town of Yarmouth to maintain Kip Lyons' current placement in a private institution pending the final determination of his appropriate educational placement. The plaintiffs have now moved for an automatic preliminary injunction on a stipulated record. I conclude that the plaintiffs are entitled to the requested relief and therefore GRANT their motion for an automatic preliminary injunction.

Kip Lyons has received special education for several years as a handicapped child under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* In accordance with his Individualized Education Program ("IEP"), Kip Lyons has, since 1986, attended the Maplebrook School in Amenia, New York, a private residential school for students with learning disabilities. Kip Lyons' most recent IEP for the school year 1991-1992 was prepared by the Nashua, New Hampshire School District while his parents resided in Nashua. Under that IEP, the Nashua School District provided funding for the Maplebrook program.

This dispute arose after John and Joan Lyons moved from Nashua, New Hampshire to Yarmouth, Maine in October, 1991. Following their move, the Lyons requested the Yarmouth School Department to continue Kip Lyons' placement at Maplebrook and provide funding for that placement in accordance with his 1991-1992 IEP. Instead, the Yarmouth School Department prepared its own proposed IEP for Kip Lyons and concluded that it could provide an appropriate educational placement in the Yarmouth public school system. The Lyons appealed the Yarmouth School Department's decision to the Maine Department of Education. That appeal remains pending.

The Lyons brought this action in response to the Town of Yarmouth's refusal to provide funding for Kip Lyons' continued placement at Maplebrook during the pendency of the administrative proceedings. The plaintiffs seek to maintain the status quo pending the final determination of Kip Lyons' educational placement. I conclude that the statute upon which the Lyons rely provides unequivocally for this relief. It states:

During the pendency of any proceedings conducted pursuant to this section . . . , the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings have been completed.

20 U.S.C. § 1415(e)(3).

The statute thus directs that, except where a child is applying for initial application to a public school, the child is to remain in his "current educational placement." Contrary to the Town of Yarmouth's assertions, I do not find that this case involves an application for "initial admission to a public school." Kip Lyons is not applying to a public school for the first time,¹ but rather is requesting the Town of Yarmouth to accept and fund his current educational placement which is now being provided at Maplebrook under the Nashua developed IEP.²

I further find that in refusing to fund and continue Kip Lyons' placement at Maplebrook, the Town of Yarmouth is attempting to upset the status quo. Under these circumstances, I

conclude that the Lyons are entitled to an automatic preliminary injunction and an order, pursuant to 20 U.S.C. § 1415(e)(3), compelling the Town of Yarmouth to continue Kip Lyons' placement at Maplebrook and to provide funding for that placement until the final determination of his proper educational placement.³

Accordingly, the Lyons' motion for an automatic preliminary injunction is GRANTED, and the Town of Yarmouth is ORDERED to provide funding for Kip Lyons' continued placement at Maplebrook in accordance with this decision.

SO ORDERED.

¹ This reading of the statute is consistent with the underlying purpose of the "initial application" clause, which is to ensure that children applying to a public school for the first time are not left out of school pending the completion of the application review process. *See, e.g.,* 1978-87 EHA Rulings and Policy Letters, reprinted in 211 Educ. H.L. Rep. 404 (1986) (attached to Plaintiffs' Reply Memorandum of Law). This purpose is not furthered where, as here, the child is presently attending school.

Moreover, the U.S. Department of Education's Office of Special Education has taken the position that where a family moves from one school district to another within the same state, the child's arrival at the new school district "does not constitute an initial admission to a public school and that the 'initial admission' portion of the statute is not applicable. . . ." *Id.* The same policy letter goes on to state that the phrase, "then current educational placement" encompasses three components: (1) the type of placement (*e.g.*, a residential program or a regular class or self-contained class program); (2) the IEP developed educational program, including annual goals; and (3) the specific school or facility the child attends. *Id.* The policy letter supports the conclusion that any administrative review proceedings now pending involve the appropriateness of Kip Lyons' current educational placement rather than an initial application to a public school.

² This conclusion disposes of the Town of Yarmouth's other arguments in opposition to the Lyons' motion. The Town's argument that the Lyons have failed to exhaust all available administrative remedies rests solely upon its contention that the so-called "stay put" clause of § 1415(e)(3) does not apply. As I have just found, however, the stay put clause is applicable to the facts of this case. In addition, the Town argues that it cannot fund the Maplebrook program because Maplebrook has not been approved by the Maine State Commissioner of Education. I find that this argument, however, has no application in the determination of whether the Lyons are entitled to an automatic preliminary injunction under § 1415(e)(3).

³ This holding is consistent with the decision in *Doe v. Brookline School Committee*, 722 F.2d 910 (1st Cir. 1983). The *Doe* Court held that the party desiring to depart from the status quo, here the Town of Yarmouth, must move for a preliminary injunction. *Id.* at 917. The Town of Yarmouth has failed to file such a motion and, therefore, cannot unilaterally avoid the funding arrangements developed under the Nashua 1991-1992 IEP. In its Opposing Memorandum of Law, the Town "acknowledges that if Maplebrook School is Kip's 'then current educational placement,' then § 1415(e)(3) appears to require that he remain there during the pendency of proceedings and that the Town [fund the placement]." Defendant's Opposing Memorandum of Law at 3.