

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

AND

PROVIDENCE PLANTATIONS

JOHN A.U. DOE

V.

COVENTRY SCHOOL COMMITTEE

DECISION

Held: Interim Order is denied without
prejudice.

DATE: March 4, 1994

The Rhode Island Department of Education has authority to change the educational placement of a special education student at the request of a parent even over the objection of the local school district which is providing the services. Burlington School Committee v. Department of Education of Massachusetts, 105 S. Ct. 1996 at 2004. G.L. 16-39-3.2. See also: The Many Faces of the EHA's "Stay Put" provision, 62 Education Law Rep. 833 at 838 (Nov. 22, 1990). We have indicated however that as a general rule we think the better procedure is to allow completion of at least the local level special education hearing before we act in a matter. In this way we have the benefit of a complete record and the hearing officer's decision before we decide whether or not a student is receiving education in accordance with applicable state and federal law and regulations G.L. 16-39-3.2. We do not believe that we should "short circuit", even in a small measure, the due process procedures established by congress unless there is a clear need to do so to protect the rights of a student.

This matter is now pending before a local level special education hearing officer who has already taken voluminous testimony. A truancy petition concerning this particular student is before the Family Court. A denial of a request for approval of a home instruction plan for this student has been appealed to the Commissioner of Education. A petition for injunctive relief on behalf of this student has been filed with the Federal District Court for Rhode Island. The present request for interim relief seeks an order directing the Coventry school system to place this student in a day program at the Briggs School pending completion of all relevant hearings. The student contends that the placement at the Briggs School may only be open for a short time before it is taken by another student.

On the merits of this case Coventry is contending that it can provide this student with a free appropriate public education within the Coventry school

system. It also contends that Briggs School, in fact, is not qualified, or licensed to meet this particular student special education needs. The student's contends to the contrary. It should be noted that the student is now receiving home instruction in a program which has not been approved by Coventry school system.

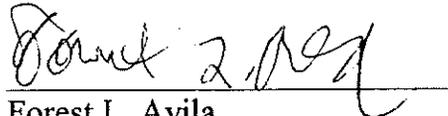
The testimony before the Commissioner consists of voluminous transcripts from the hearing before the local level hearing officer, documents from Bradley Hospital, McLean Hospital, the Briggs School, and the Coventry school system. Direct testimony was also taken concerning a number of issues.

We have reviewed all the material submitted with a great deal of care. The psychiatric testimony presented is in conflict on whether or not Coventry education program meets the needs of this student. While this student has made some progress in his program in Coventry this progress has been very limited in spite of various modifications which Coventry has made to this student's Individualized Education Program. Coventry points out, however, that this student is chronically absent from school (over 130 days during one year). It is obviously difficult to make progress under such circumstances.

The record before us now does not preponderate so strongly in favor of the petitioner that we would feel justified in entering an interim order at this time. If however the local level hearing officer rules in favor of the petitioner we would be prepared to decide whether we should order an immediate implementation of that decision.

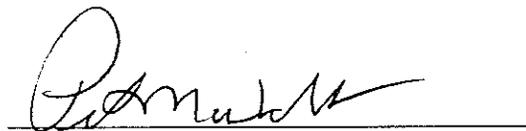
Conclusion

The request for an interim order is denied without prejudice. We will reconsider this matter when the local level hearing officer issues her decision.



Forest L. Avila
Hearing Officer

Approved:



Peter McWalters, Commissioner

March 4, 1994
Date