

Introduction

This matter concerns a request by counsel for student Doe¹ for an interim protective order pursuant to R.I.G.L. 16-39-3.2. The appeal challenges student Doe's placement at the North American Family Institute (NAFI) and it seeks an order directing the Department of Children, Youth and Families (DCYF) and the Office of the Child Advocate to place student Doe in a regular education program in the appropriate school district.

For the reasons set forth below, we dismiss the appeal as being moot.

Background

Student Doe is 13 years old. He is in the care and custody of DCYF. DCYF is also student Doe's legal guardian. Student Doe has an educational advocate as well.

From August 1991 to December 1993, student Doe was in a residential placement at the St. Aloysius Home. On December 10, 1993, DCYF moved student Doe to the NAFI Alternatives Program. NAFI is a special-education facility. Student Doe was placed there temporarily for an assessment of his educational needs and a determination of appropriate educational programming.

Following the NAFI placement, student Doe obtained counsel. This appeal was filed, alleging that the NAFI placement improperly

¹ This matter was assigned to the undersigned hearing officer and heard on December 21, 1993, January 21, 1994, February 4, 1994, and March 18, 1994. The record closed on March 28, 1994.

interrupted student Doe's regular education. At the February 4, 1994 hearing, student Doe's counsel agreed to a psychologist's review of a number of reports, evaluations, and records regarding student Doe. The reports included a February 3, 1993 individualized education plan (IEP) developed by NAFI placing student Doe in the Alternatives Program.² It was further agreed that if the psychologist concluded from his review that student Doe currently requires special education services, counsel would confer with student Doe and not go forward with this appeal.

The psychologist reviewed the records and concluded that student Doe needs special education services.

Based on the psychologist's conclusion, counsel for student Doe sought to withdraw the appeal. However, the parties were unable to agree on an informal disposition of the appeal as provided in the Administrative Procedures Act.³ DCYF, the Office of the Child Advocate,⁴ and the Scituate School Department have requested a decision in this matter.

Positions of the Parties

Counsel for student Doe has no objection to the student's current placement at NAFI. He withdraws his request for interim

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- 2 Student Doe's educational advocate participated in the development of the IEP and accepted the placement.
 - 3 R.I.G.L. 42-35-9 states that "Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default."
 - 4 Scituate agreed that it is the local education agency responsible for student Doe's education.

relief in this forum.

DCYF, the Office of the Child Advocate, and the Scituate School Department contend that outstanding questions still remain in this matter, i.e., whether student Doe has standing to bring this appeal, whether a justiciable issue exists, and whether student Doe's initial placement in NAFI was appropriate.

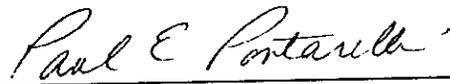
Discussion

R.I.G.L. 16-39-1 states that "Parties having any matter of dispute between them arising under any law relating to schools or education may appeal" to the Commissioner of Education. R.I.G.L. 16-39-3.2 authorizes the Commissioner to issue interim protective orders "pending a hearing as may be needed to insure that a child receives education in accordance with the regulations of the board of regents . . ."

In light of the circumstances which have occurred during the pendency of this matter, we find that the dispute originally presented by this appeal no longer exists. Counsel for student Doe now concedes that, contrary to the allegations of the appeal, special education services are necessary, and the placement at NAFI is appropriate. As a result, no live issue exists with regard to the procedure and substance of the December 1993 change in student Doe's educational placement. Given that this action was brought "to insure that [student Doe] receives education in accordance with the regulations of the board of regents," we hold that it has been rendered moot.

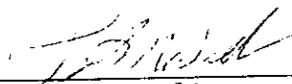
Conclusion

The appeal is dismissed as being moot.



Paul E. Pontarelli
Hearing Officer

Approved:



Peter McWalters
Commissioner of Education

Date: April 11, 1994