

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JOHN B.C. DOE

V.

SMITHFIELD SCHOOL COMMITTEE

DECISION

Held: Inter Order is granted to preserve  
the status quo.

Date: September 13, 1994

John Doe is a senior regular education student at a Rhode Island public high school. The School Committee of the school district has reached the conclusion that John may present a danger to other students or to staff if he is allowed to attend a normal school program. Last year this conclusion led the school committee to assign an aid to stay with John during the school day and to make special arrangements for his transportation. John caused no difficulties during the school year. During this summer the School Committee arranged for John to be examined by Bradley Hospital. Bradley Hospital concluded that John suffers from a mental health disorder called "Asperger's Disorder" as it is called in the standard Psychiatric Evaluation Manual. In the hearing before the Commissioner of Education a psychiatrist from Bradley Hospital testified the John was not civilly committable under Rhode Island law as being a danger to himself or to others. Still he felt unable to testify that there was no possibility that John might not act out. He felt that John could safely attend a public school provided that an aid was present as was the case during the last academic year. He felt that a therapeutic component should be added to John's program.

The School Committee wishes to provide John with two hours of tutoring a day at the Administration Building. No interaction with other students would be permitted. The school Committee denies that John is eligible for special education. It also denies that he is protected by 504 of the Rehabilitation Act since that act exempts from its coverage those who have certain sexual disorders or those who might have a proclivity to set fires. The School Committee denies that it is responsible for providing John with a more "restricted placement".

The School Committee first became concerned about John several years ago when he admitted to setting some papers on fire in the Boys Room. He does not appear to have carried out any other aggressive acts at the schools. There is a concern that John might have been involved in some acts of petty theft. There is

also the unproven possibility that John might have been involved with some acts of sexual abuse with younger children at home in his family. Neither during last year nor this year has John committed any act which would justify his suspension from school.

John's parents have filed this request for an interim order. They have also filed requests for hearings under 504 of the Rehabilitation Act and under the Individuals with Disabilities Education Act. The parents contend that under the law their request for a special education hearing under the Individual with Disabilities Act should preserve the status quo pending a decision from the special education hearing officer. The Federal Regulations state:

**§ 300.513 Child's status during proceedings.**

(a) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.

(Authority: 20 U.S.C. 1415(e)(3))

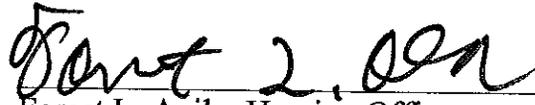
Comment. Section 300.513 does not permit a child's placement to be changed during a complaint proceeding, unless the parents and agency agree otherwise. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others.

In examine this matter we are aware that during the last school year John has committed no act endangering himself or others. John's present regular education placement with an aid seems to provide a reasonable level of protection

to other students and staff. We are also aware that no party to this present hearing alleges that John's problems raise to the level which would justify a civil commitment. G.L. 40.1-5-8.

Conclusion

We find that under 20 U.S.C. 1415(e)(3) John Does status quo placement is a regular education program with an aid to accompany him at school. This is the placement that John Doe is to return to pending the decision of the appeals which are now pending. We do not preclude the school district from adding an additional aid if it so wishes. In particular we do not preclude the school district from applying for an injunction from the Federal District Court if it can prove that John is a danger to himself or to others. Whether or not John is ultimately determined to be a special education student it is only a Federal Court which has the power to overturn the status quo placement required by 20 U.S.C. 1415(e)(3). Howig v. Doe 108 S.Ct. 592.

  
Forest L. Avila, Hearing Officer

Approved:

  
Peter McWalters, Commissioner

September 13, 1994  
Date