

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

THE PARENTS OF JOHN B.F. DOE	:	
	:	
VS.	:	INTERIM ORDER
	:	
BRISTOL/WARREN REGIONAL SCHOOL COMMITTEE	:	
	:	

Held: "Stay-put" order is issued for student with learning disability who had been suspended and removed from regular high school program while special education appeal is pending.

Date: November 23, 1994

Introduction

This is an interim order request filed by Petitioners on behalf of their son, a special education student who has been suspended from school for the remainder of the school year.¹ For the reasons set forth below, we grant Petitioners' request for a "stay-put" order.

Background

Student Doe began the 1994-1995 school year in the 9th grade at Mt. Hope High School. He was diagnosed with a learning disability in kindergarten² and he has had a series of individualized education plans (IEPs) since that time. His IEP for the 1993-1994 school year provided for placement in regular classes at Kickemuit Middle School with resource support in reading and mathematics. [Hearing Officer's Exhibit 2]. In June 1994 an "IEP Addendum" was entered into which reduced the amount of resource support provided to student Doe. The IEP Addendum states that the resource support shall be provided at "KMS/MHHS" with a beginning date of June 1994 and an ending date of October 1994. [Hearing Officer's Exhibit 2].

On September 9, 1994, student Doe assaulted another student at Mt. Hope High School. He received a two-day suspension.

On September 27, 1994, student Doe allegedly assaulted the same student again. He was suspended from school the following day "pending a hearing." [School Committee Exhibit 1].

On September 30, 1994, an IEP review meeting was conducted. The

1 This request was assigned to the undersigned hearing officer and a hearing was held on November 18, 1994. It should be noted that, while the brother of counsel for Petitioners is employed at the Department of Education as legal counsel, he had no involvement in the hearing or decision in this matter.

2 Student Doe's disability was described as "a short-term auditory sequencing memory problem." [Transcript, p. 34].

resulting IEP developed by the school district and Petitioners on that date sets forth student Doe's special education services as a "Resource Monitor" in the "regular classroom" for .15 of an hour per day, 1 day a week, for 36 weeks from October 1994 to October 1995. [School Committee Exhibit 3]. As for student Doe's regular education placement, the IEP contains the notation "see student schedule." Student Doe's schedule consists of academic subjects, taught by various teachers, over the course of 7 periods at Mt. Hope High School.³ The IEP further states that student Doe's "progress in his mainstreamed classes will be monitored by the resource teacher in mathematics and content reading areas," and that he "is still enrolled in a full time school program."

On October 3, 1994, an IEP team determined that student Doe's behavior in this matter is not related to his learning disability. The IEP team further recommended that if student Doe "were to be suspended for an extended time, he receive home tutoring." [School Committee Exhibit 1]. In addition, the assistant principal recommended on that date that student Doe be suspended for more than 10 days, that he undergo counseling, and that he receive home tutoring. The assistant principal also recommended that the superintendent conduct a hearing with regard to the alleged assault.

On October 5, 1994, the principal of Mt. Hope High School recommended that student Doe be suspended at least through the end of the first quarter, and that he receive counseling and home tutoring in the interim. Following a hearing conducted on October 14, 1994, Superin-

3 The record indicates that this IEP providing for special education monitoring was pending and had not yet been signed as of the date of the alleged second assault.

tendent Dr. Guy N. DiBiasio suspended student Doe for 10 days commencing October 17, 1994. Dr. DiBiasio also scheduled a hearing before the Bristol/Warren Regional School Committee to consider his recommendations "for further disciplinary action which may include an additional period of suspension from school." [School Committee Exhibit 1].

On October 25, 1994, student Doe began receiving tutoring in a building which formerly housed a school.⁴ He is provided 5 hours of tutoring a week in his regular education courses along with his special education service of resource monitor for .15 hour a week.

The School Committee held a hearing on October 27, 1994. In a subsequent written decision, the School Committee suspended student Doe for the balance of the academic year based on his two September 1994 assaults and his disciplinary history. [School Committee Exhibit 2]. The School Committee found that the assaults were not a manifestation of student Doe's learning disability, and that student Doe's presence in school is disruptive and threatens the physical safety of other students. The School Committee also ordered that student Doe "receive such services and tutoring as the multi-disciplinary team may request." [School Committee Exhibit 2].

By letter dated October 27, 1994, Petitioners appealed the findings of the IEP team that student Doe's behavior is not related to his learning disability.

Positions of the Parties

Petitioners challenge the IEP team's nonrelatedness finding as

4 This tutoring apparently was the first educational services received by student Doe since September 27, 1994.

being based on incomplete information regarding student Doe's academic and disciplinary history. They claim that the current tutoring arrangement represents a change in their son's educational placement, and they invoke the stay-put provision in order to have him returned to his educational program at Mt. Hope High School pending the adjudication of their appeal from the nonrelatedness finding. Petitioners also request that their son receive compensatory education for the time he did not receive any educational services, and that a new IEP be developed.

Citing Concerned Parents v. New York City Board of Education, 629 F.2d 751 (2nd Cir. 1980), the School Committee contends that only the special education component of the student's program must be maintained under the stay-put provision. It further argues that, under the Commissioner's decision in Peter C. on Behalf of Lisa v. Bristol/Warren Regional School District,⁵ the special education component can be mobile in that a change in its location does not amount to a change in the student's educational placement. The School Committee asserts that the placement in this matter is the resource monitor provided for in the September 30, 1994 IEP, which is being maintained under the present tutoring arrangement. According to the School Committee, student Doe "can receive regular instruction from any teacher or group of teachers or a tutor, and he can receive it at any location."⁶ [Transcript, p. 45]. The School Committee also emphasizes its duty

5 April 26, 1994.

6 The School Committee cites to the "homebound instructional programs" section of the Board of Regents Regulations Governing Special Education of Students with Disabilities which provides for 5 hours per week of instruction as a minimum for a homebound student.

to ensure a safe school environment, and states that student Doe "represents a serious threat to the health, safety, and welfare of the student body." [Transcript, p. 22].

Discussion

It is well established that a suspension of educational services to a student with a disability for more than 10 days constitutes a change in the student's educational placement. Honig v. Doe, 484 U.S. 686 (1988). The Board of Regents Regulations Governing the Special Education of Students with Disabilities also state that

Any student with a disability who is excluded from school, whether or not the reason for exclusion is related to the student's disability, must continue to be provided with a free appropriate public education (FAPE). Section One, Part IV, 4.2.3.

The facts in this matter show that student Doe's exclusion from school had already exceeded 10 days by the time the superintendent imposed a 10-day suspension effective October 17th. Furthermore, student Doe was not being provided with educational services during this time. No evidence was presented that Petitioners, who appealed this action to the School Committee, consented to their son's exclusion from school. We therefore find that the school district acted improperly by unilaterally changing student Doe's placement and failing to continue to provide him with educational services.

Section 1415(e)(3) of the Individuals With Disabilities Education Act, commonly referred to as the "stay-put" provision, states in pertinent part that

During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child . . . until all such proceedings have been completed.

The record shows that the School Committee has suspended student Doe from Mt. Hope High School for the remainder of the 1994-1995 school year. The School Committee has further ordered that student Doe "receive such services and tutoring as the multidisciplinary team may request . . ." Petitioners, however, have filed a special education due process complaint with respect to the IEP team's determination that their son's behavior is not related to his learning disability. Petitioners have not agreed to an alternative placement for their son pending the completion of the due process proceeding. According to the IEP signed on September 30, 1994, student Doe's educational placement is a regular education program with a resource monitor in the regular classroom at the Mt. Hope High School. Student Doe's IEP clearly states that he has been mainstreamed into regular classrooms at Mt. Hope High School.

In the Concerned Parents case cited by the School Committee, the Second Circuit stated that a change in educational placement occurs only when there is a change in the "general educational program in which a child . . . is enrolled, rather than mere variations in the program itself." 629 F.2d at 754. In order for a change to qualify as a change in educational placement, there must be a fundamental alteration in, or elimination of, a basic element of the student's education program.

In the Peter C. on Behalf of Lisa case, a high school student was receiving a related service pursuant to her IEP, i.e., physical therapy, at her home. The parent challenged the school district's proposal to provide the therapy program at the high school after school. Citing Concerned Parents, the Commissioner found that the

changes in the time and place of the IEP service did not constitute a change in the substance of the student's therapy program.

Student Doe's September 30, 1994 IEP provides for an educational program at Mt. Hope High School with special education resource monitoring. The location of that program is in the regular classrooms at Mt. Hope High School. The IEP states that student Doe is in mainstreamed classes and in a full-time school program.

Following his suspension and removal from Mt. Hope High School, student Doe is being offered 5 hours of tutoring a week, plus resource monitoring, at a building which formerly housed a school.

Contrary to the arguments of the School Committee, we find that there has been a change in student Doe's educational placement. A comparison of student Doe's "general educational program" at Mt. Hope High School and the tutoring arrangement currently being offered clearly demonstrates to us that the substance of student Doe's educational program has been significantly altered in such a way as to adversely affect his learning experience and his ability to benefit from the free appropriate public education to which he is entitled. Unlike the cases cited by the School Committee, this is not a mere change in the location of the educational services provided to student Doe, but a significant modification of the educational programs and services set forth in student Doe's September 30, 1994 IEP. In light of the fact that Petitioners have not agreed to this change in student Doe's educational placement, we shall enter an order directing that student Doe remain in his educational placement at Mt. Hope High School.

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7 Given that this is an interim order request for stay-put relief, (continued on next page)

We are not unmindful of the safety concerns raised by the School Committee in this matter. However, there is adequate recourse, under federal and state law, for the School Committee to address these concerns. In Honig v. Doe, the Supreme Court stated that a student who poses an immediate threat to the safety of others may be temporarily suspended for up to 10 school days, which "gives school officials an opportunity to invoke the aid of the courts under Sec. 1415(e)(2), which empowers courts to grant any appropriate relief." Id. at 699. We also refer the school district to Section One, Part IV, 4.3 of the Board of Regents Regulations, which state that

If a student is substantially likely to cause injury to himself or herself or to others in his or her current placement, the superintendent may suspend the student for ten (10) or fewer days in order to seek a court order or to obtain written parental approval to remove the student from school until an appropriate placement is identified.

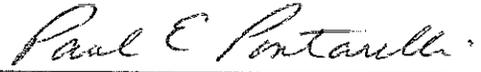
Conclusion

The School Committee unilaterally changed student Doe's educational placement by excluding him from school for more than 10 days without providing him with appropriate educational services and by assigning him to a tutoring arrangement which significantly altered the substance of his general educational program as set forth in his IEP. Given that Petitioners have appealed the IEP team's findings that their son's behavior is not related to his learning disability, we grant Petitioner's request for a stay-put order.

We therefore order that student Doe remain in his educational

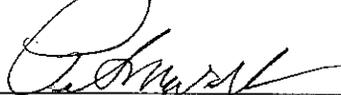
7 (continued from previous page) we do not find Petitioners' request for compensatory education to be properly before us at this time. As for Petitioners' request for a new IEP for student Doe, they may initiate the IEP review process by notifying the school district of their wish to do so.

placement at Mt. Hope High School pending the completion of the proceedings regarding Petitioners' appeal of the IEP team's findings.



Paul E. Pontarelli
Hearing Officer

Approved:



Peter McWalters
Commissioner of Education

Date: November 23, 1994