

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

DEPARTMENT OF EDUCATION

PROVIDENCE SCHOOL COMMITTEE V. JANE Z. DOE
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DECISION

Held: Matter is referred to local hearing officer.

Date: December 7, 1994

Introduction

This matter is before the Commissioner on the school district's motion for an interim order. The district seeks a finding that the student concerned is now a resident of Pennsylvania for school purposes.

Background

All parties agree that the student in this case, Student Doe, left Rhode Island with her parents on November 6, 1992 and that she is now a resident of Pennsylvania for school purposes. The problem in this case is that the student has a claim against the school district for compensatory education pending before a local level Rhode Island Hearing Officer. On November 5, 1992 the school district sent correspondence to the student's lawyer. In this correspondence the school district "... recognized its failure to provide summer services during the summer of 1990, 1991 and all but a few days in the summer of 1992 for Student Doe". The student is basing her claim for compensatory services upon this failure to provide her with a summer educational program. The First Circuit Court of Appeals has held that under some circumstances compensatory education may be available under the Individuals with Disabilities Education Act. Murphy v. Timberlane Regional School District, 20 IDELR 1391, 22 F.3d 1186 (1st Cir. 1994).

Discussion

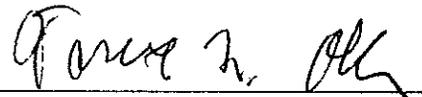
The school district seems to believe that a finding by us that this student is no longer a resident of Rhode Island would prevent her from pressing claim for compensatory education for the education she alleges she lost during the time she was living in Rhode Island. Counsel for the respondent student argues however that the student's claim for compensatory education, both on the merits of the claim, and upon the issue of the effect which this student's change in residency has upon this claim, is before a local level hearing officer and that it is this officer who

should initially decide the issues. On this point we concur with the respondent student.

We think that the issue of compensatory education is an incident of her right to a free appropriate public education (FAPE) and that as such it is properly before the local level hearing officer. See CFR 300, 506 and CFR 300, 504. Murphy v. Timberline, supra. The same is true with regard to the change of residency issue since the issue implicates the right to "provision" of FAPE. CFR 300, 506.

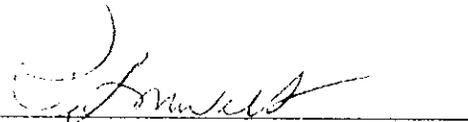
Conclusion

The district's request for an interim order is denied as moot since all parties agree that this student is now a resident of Pennsylvania for school purposes. This matter is remitted to the local level hearing officer for the determination of all other issues.



Forrest L. Avila, Hearing Officer

Approved:



Peter McWalters, Commissioner

December 7, 1994

Date