

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JOHN B.H. DOE

V.

WARWICK SCHOOL COMMITTEE

DECISION

Held: A violation of the "stay-put" provision is found because of an assignment to a more restricted class room setting.

Introduction

During the 1993-1994 school year, John Doe was a special education student in the Warwick School System. He was assigned for approximately 3 hours a day to a "double size classroom" which contained approximately 20 students. About 5 to 6 of these students were special education students. He was mainstreamed for the remainder of the school day.

Findings

For the 1993-1994 school year, John's program of instruction consisted of placement in a third grade regular education classroom with non-disabled peers for english, reading, writing, spelling and organization. Staff included a regular education teacher, a special education teacher, a teacher's aide, and volunteer grandparent. John was "mainstreamed" into 4th grade classes in mathematics, music, art, physical education, science, and home room. No aide was present in these regular education classes. Late in the 1993-1994 school year some computer instruction to writing was added to John's program.

For the 1994-1995 school year, John was placed in a program which included placement in a "self-contained" classroom and "part-time" placement in regular education classes. John's regular education classes were to be at the fifth grade level in math, science, library, art, physical education and music. The "self-contained" portion of the program lasted for approximately 3 hours a day. A "self-contained"

program is a program made-up of exclusively special education students. Class size would be limited to 8 student or to 10 students if an aide were to be assigned to the class.

John's parents have refused to accept this 1994-1995 placement. They contend that this placement is more restrictive with respect to providing John with opportunities to interact with regular education students. John's parents have refused to send him to school during the pendency of this dispute. We in no way condone the decision of the parents not to send this student to school to take advantage of the educational benefits available to him while a Due Process Hearing is pending. Of course, enforcement of the compulsory school attendance law is not within our jurisdiction, but rather belong to the Family Court.

The school district has requested a due process hearing under IDEA. They contend that John's third grade placement in the 1993-1994 school year was a unique event. The program being offered was an experimental one not offered at the next grade level. The district points out that in prior years John's placement had been a part-time self-contained classroom. The district argues that it can see no difference between John's placement in a self-contained program and his prior placement in a team teaching program which included mostly regular education student.

Discussion

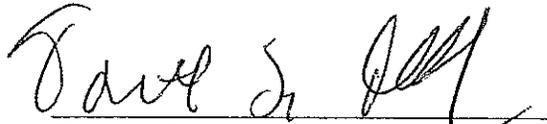
Under the circumstances of this case, we are constrained to rule that a "change

in placement" has taken place and that this change in placement is in violation of the "stay-put provision" of the IDEA regarding student placement during the pendency of a Due Process Hearing. The record established that in John's prior placement he had the opportunity to associate with many more non-disabled students. When John was moved to a self-contained classroom, his opportunities to associate with his non-disabled peers became much more limited and his placement became much more restrictive.

Conclusion

The parties are directed to confer on a remedy to this situation.

Jurisdiction is retained on the development of a remedy.



Forrest L. Avila, Hearing Officer

Approved:



Peter McWalters, Commissioner

January 6, 1995

DATE