

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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| THE PARENTS OF JOHN B.J. DOE | : |
| | : |
| VS. | : |
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| WEST WARWICK SCHOOL COMMITTEE | : |
| | : |

INTERIM ORDER

Held: Student must be returned to his current educational placement at a private facility pending resolution of a dispute concerning the provision of IEP programs and services.

Date: February 8, 1995

Introduction

This is an interim order request by the parents of student Doe, a learning-disabled child. They are seeking an order directing the West Warwick School Committee to maintain student Doe's educational placement at the Sargent Rehabilitation Center pending the resolution of a dispute concerning the manner in which several objectives of the child's individualized education plan (IEP) are to be achieved.¹

Background

Petitioners and the West Warwick school district developed an IEP for student Doe on June 1, 1994. The IEP covers the period June 1994 to June 1995 and provides for an educational placement at the Sargent Rehabilitation Center, a private facility located in Providence. The IEP addresses student Doe's functioning levels, educational strategies, evaluation results, and goals and objectives in great detail. It also provides for extensive special education programming and related services, including several types of therapy. [Petitioner's Exhibit 1].

One of the general goals in student Doe's IEP is that he "increase social peer interaction play and work skills as evidenced by his ability to play cooperatively in an integrated setting." Beginning in September 1994, student Doe received this "inclusion activity" at a school located in West Warwick. During the fall of 1994 student Doe's inclusion activity time was increased which, in the view of the school district, created difficulties in meeting the IEP's therapy requirements.

1 This request was referred to the undersigned hearing officer and a hearing was conducted on February 3, 1995. In view of the circumstances of this case, particularly student Doe's extended absence from school, this decision has been prepared prior to the receipt of the transcript and is based on the hearing officer's notes and the exhibits introduced at the hearing.

In December 1994 it became necessary to remove student Doe from the school where he was receiving his inclusion activity. A dispute then arose between Petitioners and the school district as to whether the inclusion activity could be provided at the Sargent Center and whether student Doe was receiving the different types of therapy as set forth in the IEP.

On or about December 14, 1994, Petitioners withdrew student Doe from the Sargent Center. Shortly afterward, the president of the Center wrote to the West Warwick special education director and informed him of the programs and services it could provide "[i]f the West Warwick School System and [student Doe's] parents wanted to consider Sargent Rehabilitation Center for return placement" [School Committee Exhibit 8]. The president also indicated that, as a condition of student Doe's return to the Sargent placement, the Center would require a neuropsychological evaluation of student Doe, a family meeting with the neuropsychologist, the family's agreement to counseling if recommended by the neuropsychologist, the inclusion of student Doe's paternal grandmother in the interdisciplinary process, a family discussion to consider the resumption of Ritalin medication, and an interdisciplinary planning conference to plan at least four months of programming strategy.²

Concerned about the absence of any educational services for student Doe, the school district attempted to resolve the dispute with Petitioners. These efforts, which included a request for mediation, were unsuccessful. Consequently, student Doe has not received any

2 This position was confirmed at the hearing through the testimony of student Doe's Sargent Center case manager.

educational services since his removal from the Sargent Center. In addition, there are no pending requests for mediation or a due process hearing.

Contentions of the Parties

Petitioners request an order that student Doe be returned to his placement at the Sargent Center without any prerequisites. They ask that the June 1994 IEP be reinstated, and that the disputed IEP issues be referred to the mediation and hearing process, in which they are willing to participate.

Noting the absence of any educational services for student Doe since his unilateral removal from the Sargent Center, the School Committee also contends that student Doe must be returned to the educational placement in his current IEP. The School Committee argues that the requirements set forth in the letter of the Sargent Center's president are part and parcel of the special education programs and services listed in the IEP. According to the Committee, these requirements do not constitute a change in student Doe's IEP, but merely reflect the measures which must be taken to address the effects of Petitioners' withdrawal of student Doe from the Sargent Center. The School Committee therefore requests that Petitioners be made to comply with the terms of the president's letter, and that they be required to submit any IEP-related disputes to mediation.

Discussion

We find that the Commissioner's interim order in the case of Parent of John A.G. Doe vs. A Rhode Island School District and the Groden Center, June 30, 1988, controlling here.

The John A.G. Doe case arose when the Groden Center, a private

facility, informed the school district and the student's parent that it would not renew its contract with the school district to continue the child's placement at the Center because it did not believe it was an appropriate placement for the student. After finding the dispute to be within his jurisdiction, the Commissioner found that the procedural safeguards of the federal and state special education regulations apply to private facilities which accept public school students for placement. These safeguards include the "stay-put" provision, which, in the absence of agreement otherwise, requires that the child remain in his or her current educational placement pending the resolution of a dispute pursuant to the applicable due process procedures.

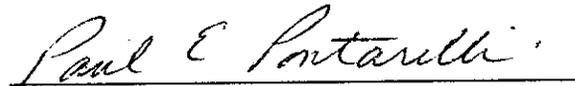
Given Petitioners' pledge to invoke and abide by the special education due process procedures, we order that student Doe be returned to his placement at the Sargent Center immediately. While we are unable to make a definitive finding based on the record in this interim-order proceeding that all the measures discussed in the letter of the Center's president are included in the IEP's programs and services, we direct that any disagreements among the parties concerning these items be joined with the inclusion activity and therapy issues discussed previously. In accordance with the representations of Petitioners at the hearing, these latter issues shall be submitted to mediation immediately.

Conclusion

We order that student Doe be returned immediately to his

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- 3 While Petitioners are entitled to exercise their discretion with regard to their due process rights, the School Committee correctly observed at the hearing that student Doe falls within the compulsory attendance law and Petitioners must fulfill the obligations imposed on them by that statute.

placement at the Sargent Rehabilitation Center and that this placement be maintained pending the resolution of any disputes concerning the provision of programs and services pursuant to his current IEP.


Paul E. Pontarelli
Hearing Officer

Approved:


Peter McWalters
Commissioner of Education

Date: February 8, 1995