



Petitioners seek an interim order directing the Warwick School Committee to execute by the end of the day an agreement with the May Institute in Chatham, Massachusetts for a full-time residential placement for their severely-retarded 15 year old daughter.<sup>1</sup>

Student Doe is currently receiving educational services in a day program at the J. Arthur Trudeau Memorial Center in Warwick, Rhode Island. Student Doe's program is outlined in an individualized education program (IEP) dated June 23, 1994. The IEP was developed by Trudeau Center staff, student Doe's mother, and a representative of the Warwick Special Services Division.

The record shows that student Doe's behavior deteriorated significantly over the summer of 1994. Her abusive and destructive behavior adversely affected her education as well as other aspects of her life. Student Doe's behavioral problems were discussed at a September 22, 1994 meeting attended by Trudeau Center staff, a representative of the Warwick Special Services Division, and her mother. Two weeks later, the director of education services at the Trudeau Center stated in a letter to the Director of Special Services in Warwick that student Doe's "behavioral status has reached a crisis stage which requires a 24 hour structured program in order to provide the consistency essential to her educational and daily living capabilities." [Petitioners Exhibit 5].

Shortly thereafter, student Doe's parents requested the Department of Children, Youth and Families (DCYF) to accept their daughter for a voluntary placement in a residential facility. The record shows

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1 Petitioner's request was filed on June 22, 1995. The matter was referred to the undersigned hearing officer and heard the following day.

that by the end of November 1994, it was the understanding of student Doe's parents, the Trudeau Center, and the Warwick Special Services Division that student Doe had been accepted for voluntary placement by DCYF.

No request to review student Doe's IEP was filed in the ensuing months. Student Doe remained in the Trudeau Center day program. The May Institute was identified by DCYF as an appropriate residential facility, and student Doe was accepted there. The Warwick School Department agreed to reimburse DCYF the district's average per pupil cost for the educational services to be provided student Doe at the May Institute. Furthermore, it was generally agreed that the June 22, 1995 IEP review meeting scheduled for student Doe would focus on her goals and objectives at the May Institute.

By letter dated June 13, 1995, DCYF notified Petitioners that the agency "cannot fund or contribute to the funding of the May Center" for their daughter. [Petitioners Exhibit 2]. The letter concluded with the recommendation that Petitioners "contact the Warwick School Department to engage their assistance in funding this or another appropriate placement."

The Warwick Special Services Division asked for a one-week postponement of the June 22, 1995 IEP meeting in order to better prepare for that meeting in light of the communication from DCYF. Petitioners filed this request for interim order relief on the same day.

Petitioners contend that the Trudeau Center cannot provide their daughter with adequate educational services, that the evaluations and medical statements in the record establish that student Doe needs to

be placed immediately in the full-time residential program at the May Institute, and that the School Committee has a duty to pay for the full-time residential program because it is needed to facilitate the provision of a free appropriate public education to student Doe. Petitioners urge us to order this placement before the space is taken by another child.

The School Committee contends that the evidence does not establish that student Doe will suffer irreparable harm if an agreement to place her in the May Institute is not executed today. The Committee further argues that Petitioners' request is contrary to the procedures to be followed in developing an IEP, and that it has a legal duty to explore all possible educational options for student Doe without being ordered to agree to a placement selected by another state agency.

In the aftermath of the June 13th DCYF letter declining to fund a voluntary placement, a dispute has arisen between the parties with regard to what type of educational programming is appropriate for student Doe. Federal and state law provide that the student must remain in his or her current educational placement during the pendency of any administrative or judicial proceeding to resolve the dispute unless the state or local education agency and the parents agree otherwise. As noted by Petitioners, the state has discretion to change a "status quo" placement at the request of the parents.<sup>2</sup> In this case, we are being asked to do so prior to the issuance of a decision by a due process hearing officer.

In John A.U. Doe vs. Coventry School Committee (Commissioner's

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<sup>2</sup> See Burlington School Committee v. Department of Education, 471 U.S. 559 (1985).

decision, March 4, 1994), we stated that

as a general rule we think that the better procedure is to allow completion of at least the local level special education hearing before we act in a matter. In this way we have the benefit of a complete record and the hearing officer's decision before we decide whether or not a student is receiving education in accordance with applicable state and federal law and regulations. G.L. 16-39-3.2. We do not believe that we should "short circuit," even in a small measure, the due process procedures established by Congress unless there is a clear need to do so to protect the rights of a student. [Decision, p. 2].

In this matter, due to the unfortunate circumstances concerning DCYF's communication of June 13th, the School Department has not had an opportunity to perform the type of evaluation and review by its multidisciplinary team that is required by federal and state law. This process is essential to the development of an IEP, which the Supreme Court in the Burlington case called the "modus operandi" of the Individuals with Disabilities Education Act. Given these circumstances, and our contact with the May Institute in which we were informed that there is nothing at this time to preclude student Doe's later placement at the facility, we deny the request for interim relief.<sup>3</sup>

  
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Paul E. Pontarelli  
Hearing Officer

Approved:

  
Peter McWalters, Commissioner

June 23, 1995

<sup>3</sup> We do so, however, without prejudice to Petitioners' right to file an interim-order request following the decision of a due process hearing officer. We also note the availability of compensatory education for student Doe if the School Committee fails to act expeditiously in proposing a new IEP.