

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

AND

PROVIDENCE PLANTATIONS

JOHN B.O. DOE

V.

PROVIDENCE SCHOOL COMMITTEE

DECISION

Held: John Doe is entitled to
a status quo placement.

Date: December 21, 1995

John Doe is a 12 year old special education student in the Providence School system. He has a language processing learning disability in the mild to moderate range. He was placed in a self contained classroom but he was integrated with his non-handicapped peers during elective subjects and during non-academic portions of the school day. On November 2, 1995, John Doe brought a small knife to school in violation of school policy and was given a 60 days suspension from school. John Doe's foster mother signed a paper waiving John's right to a hearing on this suspension. A multi disciplinary team found that John knew the difference between right and wrong and that therefore his violation of school rules by bringing a knife to school was not related to or a product of his handicapping condition¹. John Doe, with the apparent support of Providence is now attending the "Interim School" which is founded by Providence. Providence contends that John's IEP may be fully implemented at the Interim School.

The law on this subject was thoroughly reviewed in Honig v. Doe, 484 U.S. 305. In Honig the United States Supreme Court held that a special education student may not be removed from school for disciplinary reasons for more than 10 days without triggering the procedural due process provisions of the Individual with Disabilities Education

¹As an aside we point out that the correct test is not the ability of the student to distinguish between "right and wrong" but rather whether the conduct was a manifestation of the student's handicapping condition, S-1 v. Turlington, 635 F.2d 342.

Act, 20 U.S.C. 1415. A suspension of more than 10 days amounts to "a change in placement" under the Individuals with Disabilities Act and under the law such a change in placement cannot take place until all applicable due process procedures have been exhausted. 20 U.S.C. 1415 (e)(3). This includes any appeal that might be filed challenging the "relatedness" findings of an MDT team. The only exemption from the requirement of exhaustion of all appellate remedies is a provision that a Court of competent jurisdiction can enjoin a special education student from attending school if the Court finds that the student is a danger to himself or to others. Honig v. Doe, supra.

In the present case Providence is aware of its right to petition the Courts for relief. Instead of following this route Providence simply wishes to argue that John's placement at the Interim School does not amount to a change in the nature of John's special education placement but rather is only a change in the location of John's placement.

At the outset we find that John's foster mother had no right to surrender any procedural rights John might have under the Individuals with Disabilities Education Act. Under the applicable law and the consent decree which govern this area only an educational advocate (i.e., surrogate parent) can waive the procedural rights belonging to a student. 34 CFR 300.505. In the case at hand the educational advocate has not surrendered any rights belonging to the student and she has, in fact, requested a

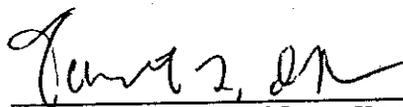
hearing on the issue of the relatedness of John's misconduct to his handicapping condition. As we have already noted John's special education placement may not be changed during the pendency of this "relatedness" appeal. We must therefore decide whether John's placement at the "Interim School" amounts to a change in placement.

We think that it is the School Department's burden to demonstrate that John's placement at the Interim School is the same as his prior special education placement. Neither party to this hearing put much information on the record to show the nature of the program offered by the Interim School. The only witnesses offered on this issue were, in fact, not very familiar with the organization or program offered at the Interim School. It should be noted for the record that the Director of Special Education in Providence made several attempts to get this student's mother to sign a consent to a change in placement form to transfer John to the Interim School. We see in this action evidence that the Director saw the move to the Interim School as a change in placement. In the end the record in this case forces us to conclude that John's move to the Interim School constitutes a prohibited change in placement. On the record before us the placement at the Interim School appears more restrictive than his prior middle school placement.

Conclusion

John Doe is to be returned to his prior placement pending completion of his due process appeals. Providence

also has the option, as stipulated to by John's representative, to place him in an equivalent program at Bridgham or Green Middle School. If Providence believes this student to be a danger to himself or to others Providence may petition the appropriate court for an order excluding John Doe from school.



Forrest L. Avila, Hearing Officer

Approved:



Peter McWalters, Commissioner

December 21, 1995
Date