

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

IN THE MATTER OF JANE A.H. DOE :
: :

DECISION ON JURISDICTION

Held: In a case concerning a dispute regarding the educational placement of a child with disabilities, the Commissioner has jurisdiction to entertain the parents' request for a hearing under R.I.G.L. 16-39-1 provided the dispute has first been considered at the local level.

Date: April 4, 1996

Introduction

This matter concerns a request on behalf of student Doe for a hearing pursuant to Rhode Island General Law 16-39-1 with regard to an allegation that "the Coventry School Department has violated Rhode Island law as well as 20 U.S.C. Sec. 1415, the Education of Individuals with Disabilities Act."¹

For the reasons set forth below, we find that we have jurisdiction to hear Petitioner's request provided the matter is first presented to the School Committee for its consideration.

Background

Student Doe is a 5 year old child with multiple disabilities who resides in Coventry. After receiving early intervention services, she was evaluated for placement in a preschool program. In November 1994 student Doe's parents agreed to a placement at the Washington Oak School in Coventry. A draft individualized education plan (IEP) also was developed in November 1994. Student Doe's parents obtained a review of the draft IEP by staff at Newington Children's Hospital. The parents attended an IEP meeting on February 2, 1995, but no agreement was reached.

1 Petitioner also attached a "special education complaint report" to the Office of Special Needs at the Department of Education. [Petitioner's Exhibit 1]. The undersigned hearing officer was designated to hear and decide Petitioner's request under R.I.G.L. 16-39-1. At the same time, the Office of Special Needs commenced an investigation of the special education complaint and requested a response from the Coventry School Department. [Joint Exhibit 1]. The Office of Special Needs issued a written decision, with findings of fact, on August 8, 1995. [School Committee Exhibit 11]. Hearings were conducted in the 16-39-1 proceeding on August 4 and August 25, 1995. The parties agreed to limit this phase of the 16-39-1 proceeding to the issue of the Commissioner's jurisdiction to decide this dispute. Petitioner filed a memorandum of law on September 18, 1995, and the School Committee filed its memorandum on October 2, 1995.

In a February 17, 1995 letter to the Coventry department of special education, counsel for student Doe asserted that Washington Oak School was incapable of meeting her physical needs. [Petitioner's Exhibit 11]. The letter also indicated that student Doe's parents were requesting that student Doe "be placed into Meeting Street Center, and that a certified nurse-teacher accompany [her] on the bus ride to Meeting Street and back home . . ."

Another IEP meeting was held on March 27, 1995. Student Doe's parents did not attend. A proposed IEP developed at the meeting recommended a placement at the J. Arthur Trudeau Memorial Center. Despite the disagreement over student Doe's placement, no due process hearing was requested.² Instead, counsel for student Doe filed the previously-mentioned special education complaint and request for a 16-39-1 hearing.

Contentions of the Parties

Petitioner requests an order directing the School Committee to place student Doe at the Meeting Street Center. It contends that such an order is necessary in light of the procedural violations committed by the School Department in developing the proposed placement at the Trudeau Center. Petitioner argues that the Commissioner of Education has jurisdiction to decide this matter under R.I.G.L. 16-39-1 based on the language of the statute³ and the fact that the Department of Edu-

2 As discussed later, the due process hearing is one of the procedural safeguards provided for in the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Sec. 1401 et seq., and the Board of Regents' Regulations Governing the Special Education of Children with Disabilities.

3 R.I.G.L. 16-39-1 states that "Parties having any matter of dispute between them arising under any law relating to schools or education may appeal to the commissioner of elementary and secondary education . . ."

cation makes findings in relation to violation of federal law pursuant to a complaint process mandated by IDEA.⁴ Petitioner also relies on the Rhode Island Supreme Court's decision in the case of In re Michael C.,⁵ and contends that no federal or state law or regulation prohibits a parent from initiating a due process hearing at the Commissioner's level or limits the subject matter of a hearing under R.I.G.L. 16-39-1.

The School Committee contends that the Commissioner does not have jurisdiction to hear this matter. It argues that the Board of Regents special education regulations clearly set forth a dispute-resolution procedure which comports with IDEA. The regulations require the appointment of an impartial hearing officer when a parent initiates a hearing regarding a child's educational placement, the appointment of an impartial review officer when the impartial hearing officer's decision is appealed to the Commissioner, and resort to the courts when review of the impartial review officer's decision is sought.

The School Committee asserts that Michael C. held that a third-level review by the Board of Regents was not preempted by the federal statute because the minimum safeguards were in fact being exceeded and such review did not conflict with the federal two-tier process. The School Committee contends, however, that the first-level review under

4 The federal implementing regulations for IDEA require each state educational agency (SEA) to establish a complaint procedure which provides for the filing of written complaints by organizations or individuals, an investigation of the complaint and written decision by the SEA, and the right of the complainant or public agency to request the Secretary of Education to review the SEA's final decision.

5 487 A.2d 495 (1985).

IDEA does in fact conflict with R.I.G.L. 16-39-1. It notes that IDEA provides for impartial due process hearing officers who are not associated with any school district or the Department of Education and that appeals from the decisions of those hearing officers are to the Commissioner of Education. Furthermore,

Since the regulations under the IDEA provide for an appeal to the Commissioner from the [impartial hearing officer], and 16-39-1 starts the appellate process with the Commissioner's office, the two do conflict. Therefore, where there is a conflict, as there is here, the Federal Act and the regulations promulgated thereunder, must preempt the general statutory scheme of Chapter 16-39. (emphasis in original). [Memorandum, p. 3].

The School Committee also argues that it is not a proper party to this case and that Petitioner has failed to exhaust its administrative remedies because this dispute was never presented to the School Committee for its consideration.

Discussion

The case of In re Michael C. also concerned a dispute between a parent and the Coventry school district with regard to the appropriate educational placement for a child with disabilities. The parent in that case invoked her right under federal and state law to a hearing before an impartial hearing officer to determine whether Coventry's proposed IEP was appropriate. The impartial hearing officer decided in favor of the school district. The parent appealed to the Commissioner of Education, seeking an impartial review pursuant to the Board of Regents' special education regulations. The impartial review officer designated by the Commissioner sustained the decision of the hearing officer. The parent, invoking

R.I.G.L. 16-39-3 and 16-60-4(9)(h),⁶ filed an appeal of the review decision with the Board of Regents.

The Board of Regents denied the parent's appeal on the ground that R.I.G.L. 16-39-3 is preempted by federal law in the area of special education.

The Rhode Island Supreme Court defined the issue in the case as "the extent to which the federal and state laws in issue conflict, preempting the state-mandated review procedures." 487 A.2d at 496. The Court began its analysis with a review of the statutory procedure in Rhode Island for review of disputes in school matters, i.e., chapter 39 of Title 16. The Court observed that "the run-of-the-mill review procedure for school controversies includes three tiers: the local agency, the Commissioner of Education, and the Board of Regents." Id. The Court then turned to the federal statute, observing that Section 1415 of the Act establishes procedural safeguards that must be followed by any state or local agency that receives assistance under the Act. The Court found it "noteworthy that subsection (b)(1) of Sec. 1415 begins with the language: 'The procedures required by this section [Sec. 1415] shall include, but shall not be limited to * * *.'" Id. at 497.

The Court next reviewed the federally-mandated review procedures which, in Rhode Island, consist of an impartial due process hearing at the local level, an appeal to the Commissioner for an impartial review at the state level, and the right to bring a civil action in

⁶ These statutes establish the Board of Regents' appellate jurisdiction over decisions of the Commissioner.

state or federal court.

The Court rejected the school district's argument that the federal statute and the Board of Regents' regulations preclude the state's normal review procedure in education matters and delete the Board of Regents in the interests of expediency and finality. The Court found that Rhode Island, as a recipient of federal funds under the Act, is bound by the Act's guidelines and thus cannot follow procedures that conflict with the Act or afford lesser protections. The Court concluded that the state and federal statutory frameworks do not conflict.

As the Court stated,

A careful examination of Sec. 1415 reveals that the requirements enunciated therein establish merely a bare minimum of protective safeguards. This interpretation of the statute is mandated by the language "shall include, but shall not be limited to" appearing at the beginning of Sec. 1415. Congress clearly contemplated a certain amount of flexibility for the states in meeting the requirements of the act, provided the state protections afforded handicapped children do not fall below the level set by Congress. It is axiomatic that a state may therefore provide greater protections without running afoul of the federal framework.

The Rhode Island statutory scheme in issue here affords the handicapped child and his or her parents greater protection than the act requires. It also embodies an important public-policy decision that the resolution of most education-related controversies in this state is best accomplished by a three-level review process. Certainly the federal act never anticipated that

7 Section 1415(a) of IDEA states that the purpose of requiring educational agencies to establish and maintain the procedures discussed in subsection (b) is to assure that disabled children and their parents or guardians are "guaranteed procedural safeguards with respect to the provision of free appropriate public education . . ."

handicapped children would be denied the rights enjoyed by nonhandicapped children under state law. This would be the result of the position Coventry urges upon us. Id.

A year earlier, the United States Court of Appeals, First Circuit, relied on the first sentence of Section 1415(b)(1) to conclude that the Act gives federal courts the authority to enforce both federal and relevant state law.⁸ In Board of Education of the Hendrick Hudson Central School District v. Rowley, the United States Supreme Court stated that "Congress' intention was not that the Act displace the primacy of States in the field of education, but that States receive funds to assist them in extending their educational systems to the handicapped."⁹

In Rhode Island, the procedural safeguards mandated by IDEA are set forth in the Board of Regents' Regulations Governing the Special Education of Children with Disabilities. Those safeguards include the opportunity for an impartial due process hearing, which may be initiated by a parent or the school district. (One, IX, 7.1). No such hearing has been requested with regard to student Doe's placement. Instead, Petitioner has invoked the usual state review procedure under chapter 39 of Title 16 by requesting the Commissioner of Education to decide this dispute.

We find nothing in the pertinent statutes or regulations which

8 The court defined "relevant" state law as that which is not inconsistent with the federally-mandated requirements, and it specifically includes procedural safeguards which are more stringent than the required procedures set forth in Section 1415(b). Town of Burlington v. Department of Education for the Commonwealth of Massachusetts, 736 F.2d at 780 (1984), affirmed 471 U.S. 359 (1985).

9 458 U.S. at 194 (1982).

prohibits Petitioner from submitting this controversy to the usual state review procedure. To the contrary, the language of IDEA and the holding of Michael C. convince us that Petitioner, as the parent of a child with disabilities, has a choice of remedial procedures in this matter.

We find that Section 1415 of IDEA, as implemented in Rhode Island by the Board of Regents' special education regulations, was intended to supplement, not replace, pre-existing state dispute-resolution procedures. The elaborate procedural safeguards mandated in Section 1415 are designed to ensure that parents and guardians have the opportunity for meaningful participation at every stage of the IEP process. That opportunity exists for Petitioner, as the federally-mandated procedures have been established and are available. Petitioner, however, has opted to forego these procedures to resolve this dispute. We find that Petitioner, as a member of the class of persons protected by IDEA, has the right to decline to use the federally-mandated procedures and, instead, may invoke the usual state review procedure for school controversies. By doing so, Petitioner is merely asserting a right under state law enjoyed by parents of children without disabilities.

As the Supreme Court noted in Michael C., the "run-of-the-mill" review procedure in Rhode Island includes three tiers: the local agency, the Commissioner of Education, and the Board of Regents. The federally-mandated procedures, as interpreted by the Court in Michael C., cover the same three tiers: the impartial due process hearing at the local level, the impartial review provided by the Commissioner, and the opportunity for review by the Board of

Regents. Disputes involving the educational programs and services to be provided to a child with a disability, like other education-related disputes, must proceed along these tiers. We find, however, that the parents or guardians of a child with a disability have the right to select the particular forum at each of the first two tiers.¹¹ In so finding, we rely on the non-exclusive, supplementary nature of the federally-mandated procedures and the parents and guardians' status as members of the protected class under IDEA.

We also find that the exercise of this right by parents or guardians in special-education disputes does not present any conflict between federal and state law. IDEA provides additional procedural safeguards to parents and guardians of children with disabilities in order to protect their rights under the statute. These safeguards serve as an alternative to the remedial procedures generally available to all parents and guardians under state law. The parent or guardian of a child with a disability involved in a dispute over the child's educational program may elect to invoke the usual review procedure, i.e., chapter 39 of Title 16 in Rhode Island, during the course of the dispute. If the parent or guardian so elects, the federally-mandated procedure for that particular tier simply has no application at that point. Given the inapplicability of the federal procedural requirement, it cannot conflict with the usual state procedure.

10 See Altman v. School Committee of Scituate, 347 A.2d 37, 115 R.I. 399 (1975), in which a dispute concerning the appropriate program for a child with disabilities, was decided pursuant to these three tiers.

11 Although parents and guardians have the right to select the particular forum at each of the first two tiers, they are entitled to only one hearing at each tier.

Although we find that federal law does not preempt a parent or guardian's invocation of R.I.G.L. 16-39-1 in a special-education dispute, we agree with the School Committee's contention that Petitioner failed to exhaust its administrative remedies when it filed the instant request directly with the Commissioner after the last IEP meeting.

Because Petitioner did not request a due process hearing or present this dispute to the School Committee, this controversy has never been decided at the local level. Petitioner may forego the federally-mandated procedures and invoke the state review procedure under chapter 39 of Title 16, but it may not, absent some extraordinary circumstance,¹² bypass the first tier of that procedure.¹³ We do not find any such extraordinary circumstance in this matter, nor do we find that it would be futile for Petitioner to present its case at the local level, be it the School Committee or a due process hearing officer. Accordingly, we shall hold this matter in abeyance pending its consideration at the local level.

Conclusion

The Commissioner of Education has jurisdiction under R.I.G.L. 16-39-1 to entertain Petitioner's request to decide a dispute concerning the educational placement of a child with disabilities provided that the matter is first considered by the School Committee

12 Such as situations which fall under R.I.G.L. 16-39-3.2, which authorizes the Commissioner to issue interim protective orders pending a hearing.

13 See Chase v. Mousseau, 448 A.2d 1221 (1982).

or a due process hearing officer at the local level.

Paul E. Pontarelli

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters

Peter McWalters
Commissioner of Education

Date: April 4, 1996