

0013-96

STATE OF RHODE ISLAND COMMISSIONER OF EDUCATION
AND
PROVIDENCE PLANTATIONS

JANE A.M. DOE

V.

PAWTUCKET SCHOOL DEPARTMENT

INTERIM ORDER DECISION

HELD: This student must be allowed
to return to school.

Date: June 6, 1996

It is alleged in this case that Student Jane Doe, who is a 13-year-old student in the Pawtucket School system is a “danger to herself and others”. In her prior school district Jane Doe had been referred for special education. Pawtucket knew of this referral. Under these circumstances Jane Doe was entitled to the procedural protection of the Individuals with Disabilities Education Act and the Special Education Regulations of the Board of Regents. These regulations establish a procedure for dealing with special education students who are alleged to present a danger to themselves or others. The regulations state:

4.3 Superintendent of School District’s Actions. If a student is substantially likely to cause injury to himself or herself or to others in his or her current placement, the superintendent may suspend the student for ten (10) or fewer days in order to seek a court order or to obtain written parental approval to remove the student from school until an appropriate placement is identified. (Emphasis added).

These regulations recognize that in accordance with the decision of the United States Supreme Court in Honig v. Doe only a court can remove a special education student from school for a period of more than 10 days without requiring the exhaustion of all applicable due process procedures. If, therefore, Pawtucket wishes to bar this student from school on a long term basis the Pawtucket School district will have to apply to the Courts for appropriate injunctive

relief. The Commissioner of Education lacks authority to grant such relief. This fact was explained to Pawtucket at the hearing in this matter so that Pawtucket could take whatever steps it deems to be appropriate.

In the present case the petitioning student is seeking an order from the Commissioner ordering her return to school. She points out that under Honig, supra, a suspension of a special education student for a period of more than 10 days constitutes a “change in placement” and that only a Court can authorize the immediate imposition of such a long term suspension. This student is charged with acting aggressively towards a teacher and of committing what amounted to be assault on the teacher when she tried to seize an object from the teacher. No weapon was involved in this case. The student is not seeking an order which would return her to this teacher’s class. She is, however, seeking an order which would return her to a status quo placement in another classroom or in another school in Pawtucket.

Under the applicable law we have no real choice in this matter. Since more than 10 days have elapsed since the imposition of the suspension and since the school district has not obtained a court order barring this student from school, we have no option other than to order that this special education student be allowed to immediately return to school.

Conclusion

This student is ordered to be returned to her status quo placement in a class not conducted by the teacher she is alleged to have assaulted. Nothing in this decision should be read to prohibit Pawtucket from seeking a court order in this case.

Forrest L. Avila
Hearing Officer

Approved:

Peter McWalters
Commissioner

Date: June 6, 1996