

bilities included explaining and modifying student Doe's lessons, controlling her behavior and keeping her safe, helping her communicate with others, and protecting the other children in her class.

With regard to student Doe's ability to communicate, the aide testified that student Doe's speech is not very clear, but that her understanding of student Doe's speech is enhanced by the fact that student Doe learned to talk while the aide was working with her. The aide has also become familiar with student Doe's behavior and body language, which often indicate whether student Doe understands her teachers and classmates and whether she is about to engage in an impulsive act.

In June 1995 the parties agreed to an individual education plan (IEP) for student Doe which included the services of a one-to-one aid 4 hours a day. In March 1996 the parties agreed to increase the time of the one-to-one aide to 6 hours a day.

The increase in the aide's time had the effect of making the position subject to the job-bidding provisions of the applicable collective-bargaining agreement. An individual who had worked as an aide to regular-education students at a school which had closed, and who had more seniority than student Doe's aide, successfully bid on student Doe's one-to-one aide position.

On May 3, 1996, an IEP was developed to take effect in September 1996. [Joint Exhibit 4]. Student Doe's parents did not sign the IEP. One of the IEP's annual goals was "To establish an aide for [student Doe]." According to the IEP, "our plan is to phase in a new aide for [student Doe] in a timely manner for [student Doe]." The IEP's short-term objective for this goal sets forth a

transition plan which calls for the former aide to "try leaving the class for half-hour session starting with the resource room and then the classroom," "Work these times into longer periods," and "Discuss with [student Doe] that [her previous aide] will be working in the building in another spot before trying half day (mornings first)." The IEP further provides for the involvement of a school psychologist in the transition. The IEP states that

[Student Doe] requires a highly structured, consistent environment in order to reduce her anxiety especially surrounding changes in the school day. As a transition period intrinsically involves change it will be necessary to have direct psychologist intervention.

The aide transition plan was implemented at the beginning of the 1996-97 school year.² The transition was completed on September 24, 1996, when the new one-to-one aide spent the entire day with student Doe. On September 27, 1996 counsel for student Doe requested that the South Kingstown School Department convene hearings pursuant to Section 504 of the Rehabilitation Act of 1973 and the Board of Regents Regulations Governing Special Education. Counsel for student Doe on that date also filed the request herein for a "stay-put" order to preserve the status quo.

Section One, IX, 13.1 of the Board of Regents Regulations Governing Special Education provides that

During the pendency of any administrative or judicial proceeding regarding a complaint, unless the school district and the parents of the student agree otherwise, the student involved in the complaint must remain in his or her present educational placement.

2 On September 12, 1996 the parties agreed to a change in student Doe's IEP with regard to physical therapy and occupational therapy services.

The issue before us is whether the School Department's change in the identity of student Doe's one-to-one aide constitutes a change in her educational placement, and thus is subject to the "stay put" provision.

It has been held that a change in placement does not occur where a school district makes mere variations in a program.³ Instead, a party "must identify, at a minimum, a fundamental change in, or elimination of a basic element of, the education program in order for the change to qualify as a change in educational placement."⁴

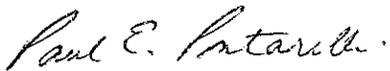
We find that the May 3, 1996 IEP in and of itself establishes that the change in student Doe's aide is a fundamental change in her educational program. The change in the identity of student Doe's aide is the subject of an annual goal in the IEP. The aide transition plan is set forth as the short term objective under this goal. The IEP mentions the former aide by name and specifically refers to "a new aide." The IEP also provides for the "intervention" of the school psychologist to assist in easing student Doe's anxiety regarding the transition to a new aide. These IEP provisions clearly demonstrate the importance of the one-to-one aide in student Doe's educational program, and that the change in her aide represents a fundamental change in that program. Furthermore, we find in light of the evidence previously discussed that the fundamental nature of this change is also manifested by the unique and longstanding relationship student Doe has had with her previous aide.

3 Concerned Parents & Citizens for the Continuing Education at Malcolm X v. New York City Board of Education, 629 F.2d 751 (2d Cir.), cert. denied, 449 U.S. 1078 (1981).

4 Lunceford v. District of Columbia Board of Education, 745 F.2d at 1582 (D.C. Cir. 1984).

As for student Doe's "present educational placement," we find that, as it relates to her one-to-one aide, the last agreed-upon placement is the transition plan set forth in the May 3, 1996 IEP. The change in the identity of student Doe's aide is the only area of the IEP in which the parties disagree. The parents of student Doe did not request a hearing upon the initial implementation of the plan to transition to a new aide. Instead, the plan was permitted to take effect in September 1996 and no complaints were filed until the school district had determined that the transition had been completed. We therefore find the transition plan to be the last agreed-upon placement of the parties and, thus, the status quo placement.

Accordingly, we hereby order the South Kingstown School Department to reinstate the transition plan set forth in the May 3, 1996 IEP with regard to student Doe's one-to-one aide. Any transition period beyond the half-hour specified in the plan must be agreed to by student Doe's parents.⁵



Paul E. Pontarelli
Hearing Officer

Approved:



Peter McWalters
Commissioner of Education

November 14, 1996

5 As previously noted in the "stay-put" provision, the parties are free to agree to treat the aide issue in a manner different from that set forth in the IEP. We suggest that the parties consider a "re-transition" to the previous aide, and that the transition plan be addressed in a more detailed manner.