

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

IN THE MATTER OF JOHN B.W. DOE :
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: :

INTERIM ORDER

This matter concerns a request for an interim protective order requiring the East Providence School Department to immediately reinstate student Doe to his educational placement pending a special¹ education process hearing.

For the reasons set forth below, we grant Petitioner's request.

Student Doe's current Individualized Education Plan (IEP) provides for a placement in the regular education program at the East Providence Senior High School with resource services in several subjects. [Petitioner's Exhibit 2]. His IEP states that "[h]e has been diagnosed with Oppositional Defiant Disorder."

Student Doe entered the 11th grade in September 1996. On November 6, 1996 he was alleged to have been in possession of a marijuana pipe on school premises and to have admitted using marijuana. He was immediately suspended from school for 10 days pending a formal disciplinary hearing.

Student Doe's guardian received notice of a disciplinary hearing to be held on November 18, 1996. At the guardian's request,

1 The Commissioner of Education designated the undersigned to hear and decide this request. A hearing was held on November 27, 1996. Petitioner specifically reserved the right to appeal any issues related to student Doe's November 22, 1996 disciplinary hearing.

the hearing was rescheduled to November 22, 1996. Prior to meeting with student Doe's guardian and educational advocate on that date, school officials briefly discussed whether student Doe's misconduct was related to his disability. No relationship was found, the disciplinary hearing ensued, and student Doe was suspended for an additional 18 days.² An attempt to discuss student Doe's IEP with his guardian and advocate after the hearing was unsuccessful.

In requesting a "stay-put" order reinstating student Doe to his current educational placement pending the due process hearing,³ Petitioner contends that at no time since November 6th has a properly-constituted IEP team met to determine whether the alleged misconduct is related to student Doe's disability. The School Department argues that it substantially complied with applicable laws and regulations, particularly given the nature of student Doe's offense and the time constraints involved.

Section One, Part IV of the Board of Regents' Special Education Regulations contain the following provisions:

4.2 Suspension for More than Ten Days/Relationship to Student's Disability. If a student is to be suspended for longer than ten (10) days, or if the cumulative number of days suspended is going to exceed ten (10) days, the Individualized Education Program (IEP) Team must convene prior to the suspension and determine whether the disciplinary infraction was a manifestation of the student's disability.

4.2.1. If the Individualized Education Program (IEP)

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- 2 Student Doe's discipline also included community service and drug counseling. Provision was made for home tutoring during his suspension.
 - 3 See 20 U.S.C. 1415(e)(3)(A) ("Procedural safeguards") and Section One, IX, 13.1 of the Regulations of the Board of Regents for Elementary and Secondary Education Governing the Special Education of Students with Disabilities.

Team determines that the disciplinary infraction is a manifestation of the disability, the provision of the individualized education program (IEP), including placement, must be reevaluated and the student cannot be suspended.

4.2.2. Parental Notice of Procedural Safeguards. If the infraction is not related to the disability, the normal disciplinary procedures set forth by the school board shall be imposed. However, the parent must be provided with prior notice and notified of procedural safeguards.

4.3.3. Continuation of a Free Appropriate Public Education (FAPE). Any student with a disability who is excluded from school, whether or not the reason for exclusion is related to the student's disability, must continue to be provided with a free appropriate public education (FAPE).

4.3 Superintendent of School District's Action. 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.

Under Section One, Part V, 5.1.2 of the Regents' Regulations, a secondary-school IEP team must consist of (1) the special education director (or the school principal or another qualified representative of the school district other than the student's teacher), (2) a special education teacher who has a direct contributive part in the student's special education program, and (3) one or both of the student's parents. The latter must also be provided with notice of the meeting, including the purpose of the meeting.

The evidence in this matter shows that the School Department failed to properly convene the required IEP team to address the "manifestation" question prior to student Doe's suspension. Contrary to the claims of the School Department, these procedural omissions are more than technical violations of law and regulation. As the

United States Supreme Court has stated,

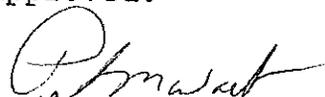
When the elaborate and highly specific procedural safeguards embodied in Section 1415 are contrasted with the general and somewhat imprecise substantive admonitions contained in the Act, we think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process, see, e.g., Sections 1415(a)-(d), as it did upon the measurement of the resulting IEP against a substantive standard. Hendrick Hudson District Board of Education v. Rowley, 458 U.S. at 205-206 (1982).

We therefore order the East Providence School Department to immediately return student Doe to his status quo placement at the East Providence Senior High School pending further action by the school district in accordance with federal and state law and regulations.



Paul E. Pontarelli
Hearing Officer

Approved:



Peter McWalters
Commissioner of Education

Date: December 4, 1996