

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

AND

PROVIDENCE PLANTATIONS

JOHN DOE

V.

A RHODE ISLAND SCHOOL DISTRICT

INTERIM ORDER

Held: Student Doe's current educational placement is the Providence public schools for purposes of the stay put provision of 20 USC 1415 (e)(3)(A). However, maintenance of the status quo would result in denial of a free appropriate public education and an appropriate interim placement is needed under the facts presented.

DATE: DECEMBER 24, 1996

Travel of the Case

This matter was heard on a Petition for an Interim Order filed with the Commissioner of Education on November 20, 1996. A hearing was conducted by the Commissioner's designee on November 27, 1996. At the conclusion of the hearing, counsel for both parties agreed to supplement the record by stipulations of fact and memoranda outlining their positions. The stipulation and memoranda were filed on December 11, 1996.

Positions of the Parties

Student Doe

Through counsel, Student Doe asserts that he is a student with disabilities qualifying him for a free appropriate public education pursuant to the Individuals with Disabilities Education Act, 20 USC §1400 et seq. Despite this entitlement, since early October 1996 he has been receiving instruction pursuant to a home tutoring program set up by the Special Education Office of the Providence School Department. Counsel for Student Doe argues that permission for home tutoring for Student Doe was initially to allow a short period of time for school officials to get updated evaluations and convene the IEP team to determine an appropriate placement. Counsel notes that her October 3, 1996 letter to the Special Education Director clearly indicated that consent to home tutoring was limited in duration and not to be construed as consent to a change in his placement. As the period of evaluation has

been extended, and no special education placement has been effectuated for this student, counsel argues that home tutoring must end. She argues that he is entitled to be placed immediately in a public school, and have the goals of the individualized education program (IEP) in place when he resided at St. Vincent's Home¹ implemented in the public school setting. Implementation of the St. Vincent's IEP in a self-contained class in the public school would, the Petitioner argues, maintain the status quo pending resolution of any dispute as to the appropriate placement for this student.

Providence School Board

Counsel for the School Board argues that it is not the district's intent to educate Student Doe through home tutoring "over the long term". This situation resulted from a need to complete certain evaluations and to convene the IEP team to develop an appropriate placement for him. Given the parent's consent to home tutoring pending placement by the Providence School Department and given that evaluation is still ongoing, Counsel argues that such an "interim" IEP is in compliance with law, provided that a permanent IEP is implemented as soon as possible following the IEP meeting.

Acknowledging that extended home tutoring could not be Student Doe's "current educational placement" and recognizing the conditions under which consent to home

¹A residential treatment center and Special Education Facility in Fall River, Massachusetts.

tutoring for a limited period was given, Counsel addresses the issue of what the "current educational placement" is. He points out that the parties have stipulated that "the last mutually acceptable IEP ... was the 7-11-95 through 7-11-96 IEP document developed and implemented by St. Vincent's ..." He argues that a stay put order should direct that Student Doe be returned to St. Vincent's during the pendency of any due process proceedings.

Issue

What is Student Doe's current educational placement?

Findings of Relevant Facts

- From April 1995 until April 9, 1996 Student Doe resided at St. Vincent's home, where he had been placed by the Department of Children, Youth and Families. Stipulation dated December 5, 1996.
- During his residency at St. Vincent's home, the Providence School Department was Student Doe's local education agency and contributed its per pupil share of the cost of his education there. Stipulation December 5, 1996.
- Although she did not sign the document, Student Doe's mother accepted and agreed with the program of special education provided for in the IEP developed and implemented by St. Vincent's covering the period 7-11-95 through 7-11-96. Stipulation December 5, 1996. Tr. p. 92.
- While at St. Vincent's, Student Doe resided at the Westport campus. This is the most restrictive environment available to residents there. App. Ex. L.
- His St. Vincent's IEP (App. Ex. K) notes that Student Doe does not participate in regular education and as "justification" states that he "needs to establish effective techniques for developing appropriate school behaviors. He needs to respond appropriately to adult direction, correction, and limit settings". App. Ex. L.

- On April 9, 1996 Student Doe was discharged from St. Vincent's at the request of his mother. Stipulation December 5, 1996.
- On or about April 26, 1996 Student Doe was enrolled at Mt. Pleasant High School and was "signed out" of special education by his mother. App. Ex. C, E.
- An incident occurred on the grounds of Mount Pleasant High School which resulted in Student Doe's exclusion from school for a period of sixty (60) school days, i.e. up to September 25, 1996. App. Ex. C,D,E,G and H. The reason for Student Doe's exclusion for the sixty (60) school days was his possession of a weapon, a baseball bat.²
- Prior to excluding Student Doe from school, there was no multi-disciplinary team determination that his misconduct was unrelated to his disability since his mother had "signed him out of special education" on the same day as the incident. He was, therefore, not considered a special needs student for purposes of his exclusion from school. App. Ex. C.
- On May 29, 1996 the Superintendent wrote to Student Doe's mother that he would be eligible to return to another high school in the City of Providence when the period of exclusion ended, provided that he made a formal written request to the Student Services Administrator, App. Ex. G.
- On October 15, 1996 Student Doe was readmitted to the Providence Public Schools for assignment by the Superintendent. App. Ex. G.³
- Upon his application for readmission to the public school, he was placed on "home instruction" pending evaluation and placement, and has been receiving tutoring at the group home in Providence where he presently resides.⁴

²Although the memorandum from the Assistant Principal described Student Doe as "fighting" with another student, this is not the reason documented for his exclusion from school.

³A note was later attached to the School Board resolution indicating that Student Doe was currently being re-evaluated by special education and would continue to receive home instruction until testing was finished.

⁴The record does not reflect the exact nature and extent of the home tutoring at the present time. There is no indication that the expansion of home tutoring to 2.0 hours per day took place as provided for in App. Ex. J, the "rejected" home tutoring proposal. The initial home tutoring IEP provided for only 1.0 hour per week of tutoring.

- Evaluation of Student Doe is completed and the IEP team meeting was scheduled at the time of hearing.

Decision

The Commissioner's authority to issue interim orders under R.I.G.L. 16-39-3.2 is for the purpose of ensuring that a child receives education in accordance with applicable state and federal laws and regulations during the pendency of disputes. The authority to issue interim orders has been utilized in special education matters to ensure that pending due process hearings or other proceedings a child remains in his or her current educational placement. The Commissioner of Education has consistently declined the invitation to create or change placements, absent extraordinary circumstances. See John A.U. Doe v. Coventry School Committee, decision of the Commissioner dated March 4, 1994; In the Matter of John B.B.Doe, decision of the Commissioner dated July 29, 1994. Parents of Jane A.G. Doe v. Warwick School Committee, decision of the Commissioner dated June 23, 1995.

Application of these general legal principles is very difficult under the facts presented here. While in most cases current placement can be determined by reference to the last agreed-upon IEP, it clearly cannot here. The last agreed-upon IEP was implemented when Student Doe resided at a highly restricted unit of a residential facility. Student Doe now presently resides at a group home in the City of Providence, where he has been placed by the Family Court. The change in his residential setting has already changed

his educational placement, in that the group home has no approved, on-grounds special education program. See Robert N. v. A Rhode Island School District, decision of the Commissioner dated July 6, 1993. Robert N. analyses the relationship between a placement made for residential or other reasons and a child's educational placement.

Additionally, the St. Vincent's IEP has not been determinative of his placement or program since April 9, 1996. Student Doe has since been enrolled and accepted as a regular education student in the Providence public schools. His status has been that of a student with disabilities but by agreement of parent and school district he has been categorized as a regular education student. Prior to his actual attendance, he received a disciplinary exclusion for a sixty day period, without any dispute by either school officials or his parent as to his status during that time.⁵ He has not been provided a free appropriate public education since April 1996.

Both parties have changed their positions and now evidently agree that Student Doe is in need of a program of special education. They also agree that he cannot be maintained on home instruction status consistent with the requirement that he receive a free appropriate public education. He has no current special education placement, or program of instruction designed to meet his special needs

⁵No objection was raised by school officials to his removal from a program of special education on April 26, 1996.

which are substantial.⁶ There is not yet a decision of the IEP team identifying an appropriate school placement. We must conclude that this Student has the status of any other student awaiting evaluation and placement - the regular public school program.

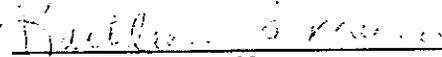
However, given the agreement of both parties at this point in time as to the significant special education needs of this student, one would expect that substantial areas of agreement could be identified to modify a placement in the regular school program. To the extent that such agreement and services are not forthcoming, it is clear that Student Doe will sustain an ongoing and significant deprivation of a free appropriate public education.

We believe that this case presents the type of extraordinary situation which would justify exercise of our interim order authority to establish an interim placement for Student Doe. We are constrained to do so when there is a clear need to protect the rights of a student.⁷ The record before us is inadequate to make such determination. The only issue at the time of hearing was maintenance of the status quo. As we have observed, the status quo will not provide this student with the educational program to which he is entitled by both state and federal law.

⁶Student Doe's current disabilities include Bipolar Disorder, Conduct Disorder, Obsessive Compulsive Disorder, Attention Deficit Hyperactivity Disorder, and Tourette's Syndrome.

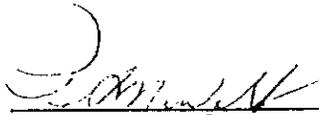
⁷John A.U. Doe v. Coventry School Committee, supra.

If the parties are unable to agree on an interim placement, pending any proceedings establishing a final placement for Student Doe, we will reconvene the hearing to take additional evidence from the parties on the issue of an appropriate interim placement. In the meantime, absent a court order excluding him from the public school,⁸ Student Doe is to be readmitted immediately. The request for an interim order is granted with the modifications indicated in this decision.



Kathleen S. Murray
Hearing Officer

Approved:



Peter McWalters
Commissioner

Date: DECEMBER 24, 1996

⁸Counsel for the School Board has stipulated that the appropriate forum for any determination as to whether Student Doe's attendance at a public school would present a danger to himself or others would be a court of competent jurisdiction. See Transcript page 6. This is not a determination made as part of determining or maintaining the current educational placement.