

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

D.L.J., By Her Mother
v.
Cumberland School Committee

INTERIM ORDER

Holding: A relatedness determination does not have to be made in cases involving suspensions of less than 10 days.

DATE: June 11, 1998

In special education law the consensus opinion has been that suspensions of less than 10 days do not constitute a change in placement. They may therefore be imposed with no more due process protection than is afforded by Gosz v. Lopes, 419 U.S. 565. Suspensions of more than 10 days, however, are viewed as changes of placement and therefore must be attended by the fully panoply of protections afforded by the Individuals with Disabilities Act, 20 U.S.C. 1400, et seq. See: Honig v. Doe, 48 U.S. 305. These protections include the convening of an IEP team to determine whether the misconduct alleged was a product of the students handicapping condition. Honig, supra.

In the present case the petitioning special education student has been suspended for a period of less than 10 days. No issue arises in this case of cumulative suspensions going over the 10-day limit. The petitioner contends, however, that under the new language of the Individuals with Disabilities Act a team must be convened to make a relationship determination even for suspensions of less than 10 days. The petitioner does not contend, at least at this time, that the suspension should be stayed while a relatedness determination is made.

While the issue is not free from doubt we concur with the position of the United States Department of Education that even under the new language of the Act (615{K})(14)(A) a relatedness determination is not required for suspensions of less than 10 days. (See attached memo of the United States Department of Education).

We think that the argument advanced by the petitioner calls for a change in position never envisioned by Congress. We think the interpretation advanced by the United States Department of Education is entitled to weight since it does no violence to the applicable statutory language and is a practical interpretation of the law. We

therefore conclude that a relatedness determination does not have to be made in cases involving suspensions of less than 10 days. For this reason the petition for an interim order must be denied.

Conclusion

The petition for an interim order is denied.

Forrest L. Avila, Hearing Officer

Approved:

Peter McWalters, Commissioner

DATE: June 11, 1998