

**0031-99**

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER  
OF  
EDUCATION

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IN THE MATTER OF STUDENT JOHN DOE, M. F. :  
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### **Interim Orders and Decision**

Held: Parents must authorize, and testing facility must release to school department, complete results of evaluation of student.

DATE: December 1, 1999

## **Introduction**

The North Kingstown School Department has requested interim protective orders under R.I.G.L. 16-39-3.2 so that it may obtain the results of evaluations and tests performed on student Doe at the Child Development Center at Rhode Island Hospital<sup>1</sup>.

## **Background**

Student Doe is 9 years old. He currently is repeating the third grade. He exhibits what the School Department calls “selective mutism,” in that he does not speak to adults at school<sup>2</sup>. As a result, student Doe’s teachers are unable to assess his comprehension of classroom instruction.

The School Department is concerned that student Doe may have a disability that requires special education services. Acting on this concern, the School Department obtained the agreement of student Doe’s parents to have a complete evaluation of student Doe performed at School Department expense by an independent agency, the Child Development Center. The evaluation, which was completed in March 1999, consisted of educational, psychological, social, mental health and speech and language components. Student Doe’s father, however, refused to consent to the release of all but the educational portion of the evaluation report.

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<sup>1</sup> The Commissioner of Education designated the undersigned hearing officer to hear and decide this request. A hearing was conducted on October 27, 1999. Student Doe’s father attended the hearing. Despite being provided with notices of the request and the hearing, the Child Development Center was not represented at the hearing. Following the hearing, this matter was held in abeyance to provide student Doe’s parents with an opportunity to obtain the services of a health care professional to assist them in addressing the School Department’s concerns about student Doe’s possible needs.

<sup>2</sup> Student Doe has begun to speak to the school principal this year, but not in the presence of other children or adults.

The School Department submitted the dispute for a special education due process hearing. On August 25, 1999, the hearing officer found it “essential that the entire evaluation prepared by the Child Development Center be given to the North Kingstown School Department.” [Petitioner’s Exhibit 2]<sup>3</sup>. The hearing officer ordered student Doe’s parents to execute the necessary releases to enable the School Department to obtain all evaluations, tests, or reports from the Child Development Center. Student Doe’s parents did not appeal the decision nor did they sign a consent form as again requested by the School Department.

The School Department contends that it needs the results of the entire evaluation and testing conducted at the Child Development Center in order to properly evaluate student Doe. Student Doe’s father asserts that he reserved the right to withhold the non-educational portions of the evaluation from the School Department. He further maintains, citing racial and cultural considerations, that School Department personnel are incapable of gaining any constructive insight into his son even if the remaining test results are provided. Finally, student Doe’s father argues that the release of the remaining evaluation results would violate his son’s constitutional rights, and he vigorously opposes having his son educated in a special education setting.

## **Discussion**

As a local educational agency, the North Kingstown School Department is legally required to identify, locate and evaluate all students residing within the school district

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<sup>3</sup> The due process hearing officer specifically found that the School Department and the parents “agreed to have a complete evaluation” of student Doe performed at the Child Development Center. She further quoted from the educational evaluation’s findings that student Doe has “significant academic delays and is essentially functioning at a 1<sup>st</sup> grade level in terms of reading and spelling as well as math problem solving.” [Petitioner’s Exhibit 2].

who have disabilities and therefore are in need of special education and related services. The School Department is required to have a referral system that will identify students with suspected disabilities. When evaluation of the student is found to be necessary, the student is to be assessed “in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, reading skills, communicative status and motor abilities.” 34 CFR §300.532(f); Board of Regents Regulations Governing the Special Education of Students with Disabilities, Part One, Section V, 4.4.2.6.<sup>4</sup> Parental consent is required for a pre-placement evaluation.

To the extent an assessment of student Doe’s academic performance can be made at this time, it reveals serious deficiencies. We find that the School Department’s concerns about a possible disability are justified. We further find that parental consent was given for a full evaluation at the Child Development Center at School Department expense. A comprehensive evaluation is appropriate in these circumstances. We have provided the parents with an opportunity to obtain professional expertise to work with the School Department to address the parties’ concerns. The parents have declined this opportunity.

## **Conclusion**

Because the full evaluation is needed to determine whether student Doe has a disability, we grant the School Department’s motion for interim protective orders.

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<sup>4</sup> In addition, testing and evaluation materials and procedures must be selected and administered so as not to be racially or culturally discriminatory. Board of Regents Regulations, Part One, Section V, 4.4.2.4.

We hereby order the parents of student Doe to authorize the release of the complete results of the evaluation performed on student Doe at the Child Development Center at Rhode Island Hospital to the North Kingstown School Department forthwith.

We hereby order the Child Development Center at Rhode Island Hospital to release to the North Kingstown School Department the complete results of the evaluation performed on student Doe as contracted by the North Kingstown School Department.

We issue these interim orders as our final decision in this matter<sup>5</sup>.

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Paul E. Pontarelli  
Hearing Officer

APPROVED:

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Peter McWalters  
Commissioner of Education

Date: December 1, 1999

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<sup>5</sup> See Narragansett School Department vs. Parents of John C.V. Doe, June 16, 1998.