

STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS

COMMISSIONER
OF EDUCATION

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Seth R. v. Coventry

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INTERIM ORDER

The student in this case, who has not yet been classified as a student in need of special education, has been found to have violated school rules relating to the possession of drugs on school premises. He now stands accused of further violations of these rules. On February 7th, 2001 he was placed on an interim 10-day suspension. Because of an intervening week of school vacation this suspension will extend until February 28, 2001. The school committee is scheduled to hold a hearing tonight (February 27, 2001) to decide whether to suspend this student for the rest of the year.

The petitioning student requests us to prohibit the school committee from hearing this matter tonight, and to stay the imposition of any suspension. He also requests that we find that he is a student who is entitled to the protection of the Individuals with Disabilities Education Act (IDEA), and that disciplinary action be limited to that permitted by the IDEA. The student contends that his record and behaviors at school were sufficient under state and federal special education regulations to put the school on notice that he is, or probably is, a student with a disability who is in need of special education.

The Rhode Island Special Education Regulations, which prevailed during most of the time period at issue, continued various indicators that would point to the need for a special education evaluation:

While the classroom teacher and others having professional dealings with the student and the parent will have a variety of reasons for referring a student with a suspected disability, it is strongly recommended that they give particular attention to students failing to be promoted at the end of the school year, students frequently suspended from school, students excluded from school, students with unexplained absences from school and students who demonstrate any negative change in alertness, learning or behavioral capacity upon their return to school after an illness or accident. (R.I. Special Education Regulations, One, V, 4.3.2, Note)

The student in this case had an excellent academic and disciplinary record until he reached high school. His grades and his behavior then took a turn for the worse. He has had many retentions, suspensions, unexplained absences, tardiness, incidents of bad behavior, cutting of classes, and sundry other acts of misbehavior---some of them quite serious. The record also shows a failed suicide attempt at home after the imposition of discipline for a school offense.

Conclusions

It seems clear to us that this student should have been referred for a special education evaluation. The parents have now, on the record, requested and consented to such an evaluation. A due process hearing has also been requested. We will direct that this hearing and this evaluation take place on an expedited basis.

We see no reason to bar the school committee from hearing this matter tonight. Any discipline imposed by the school committee is subject to *de novo* review by the commissioner. To the extent that civil rights, 504, ADA, or IDEA, issues are present in this case the commissioner has authority issue an interim protective order to protect the right of this student to receive a free appropriate public education. (FAPE)

We are therefore prepared to review this matter after the school committee renders its decision. We hope the parties will work together to see if this matter can be settled.

Forrest L. Avila, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

February 27, 2001
Date