

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JAMES M.

V.

WARWICK SCHOOL COMMITTEE

INTERIM ORDER

Held: Suspended special-education student
must be returned to last agreed-upon
educational placement.

Date: January 22, 2002

Introduction

Petitioner seeks an interim order directing the immediate reinstatement of James M. to his 8th grade class at Gorton Junior High School.¹

Background

James is a special-education student. His current individualized education program (IEP) was signed on October 15, 2001. The IEP provides for a placement at Gorton Junior High School.

James was suspended from school in October 2001 for assaulting another student. He was suspended again in November 2001 for threatening a teacher and engaging in “explosive, uncontrollable behavior.” [Petitioner’s Exhibit 3]. In total, the suspensions exceeded 10 days.

On December 14, 2001, school officials discovered a cartoon that depicted a figure designated as “Me” perpetrating repeated and assorted violence against a character named “Mike.” School officials concluded that James drew the cartoon and that “Mike” was a classmate named Mike. On December 18th, a meeting was held to conduct a manifestation determination regarding the possible relationship between James’ conduct and his disability. James’ parents were not invited to the meeting and consequently did not participate in the manifestation determination. On December 19th, James was suspended from school “until such time as there is clear evidence that (1) the police have investigated the situation and (2) the KCMH Center or other qualified person has given a written statement that the student does not present a danger to himself or others at the time of his release from care.” [Petitioner’s Exhibit 4].

James’ suspension was imposed consistent with the school district’s procedures regarding “death threats” involving students and faculty. [School Committee Exhibit 1].

A special-education due process hearing was requested on James’ behalf regarding his exclusion from school. The instant request for a stay-put order was filed under Rhode Island General Law 16-39-3.2.

¹ The Commissioner of Education designated the undersigned hearing officer to hear and decide the interim-order request. A hearing was held on January 15, 2002.

Positions of the Parties

Petitioner contends that James' December 19th suspension is invalid because it is indefinite, violates due process, and does not comply with special-education procedural requirements.

The School Committee argues that James presently is a danger to students and staff and therefore should be excluded from school.

Discussion

It is well established that public school students may not be suspended indefinitely.² Before a special-education student can be removed from school for more than 10 days cumulative during the course of a school year, a school district must notify the parents of its decision to exclude the student, provide the parents with notice of the special-education procedural safeguards, and conduct a manifestation determination to review the student's misconduct and disability.³ The manifestation determination must be conducted by the IEP team, which includes the student's parents, and other qualified professionals, as appropriate.⁴ Board of Regents regulations also require that formal due process be provided in suspensions exceeding 10 days.⁵

A school district has recourse in dealing with a special-education student that it believes is dangerous. A district may seek a court order at any time to remove a student with a disability from school or change the student's educational placement if the district believes that maintaining the student in the current placement is substantially likely to result in injury to the student or others.⁶ A district also may seek to change the educational placement of a dangerous student by requesting an expedited special-education due process hearing.⁷

² John B.I. Doe v. Chariho School Committee, January 20, 1995, and cases cited therein. As we did with the counseling requirement in that case, we need not reach the issue of whether a student's return to school can be conditioned on the student's undergoing a mental health assessment.

³ Board of Regents Regulations Governing the Education of Children with Disabilities, §300.523.

⁴ Ibid., §300.344.

⁵ Regulations for Governing Disciplinary Exclusions of Students from School, F-6.3.

⁶ Honig v. Doe, 484 U.S. 686 (1988). Ordinarily, a functional behavioral assessment should be conducted and a behavioral intervention plan implemented before a court order is sought. Board of Regents Regulations Governing the Education of Children with Disabilities, §300.520. In cases involving weapons or drugs, a school may impose an interim alternative educational setting for up to 45 days. Ibid., §§300.520 and 522.

⁷ Board of Regents Regulations Governing the Education of Children with Disabilities, §§300.521, 526 and 528.

The school district did not pursue any of its available options in responding to the cartoon in this matter. Instead, it asserted James' dangerousness as a defense to the interim-order request. As indicated above, this is not the proper forum to assert such a position.⁸ Furthermore, the school district failed to follow special education and due process requirements in suspending James from school on December 19, 2001.

For those reasons, we grant the request for a stay-put order. Accordingly, James must be returned to his last agreed-upon educational placement, i.e., the 8th grade at Gorton Junior High School.

Conclusion

The Warwick School Committee is hereby ordered to reinstate James M. to his placement at Gorton Junior High School.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date: January 22, 2002

⁸ Because our decision is based on procedural and jurisdictional considerations, we need not make any comment regarding the alleged misconduct at issue in this case.