

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

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**In Re: Hillary N.**

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**DECISION**  
**on**  
**Request for an**  
**Interim Protective Order**

Held: Parent did not establish that a valid Individualized Education Program called for her daughter's trial placement in a classroom in the North Providence school system. There was some evidence that the North Providence school department did not ensure that the IEP team was properly constituted, and this information is referred to the Office of Special Needs for appropriate follow up.

DATE: February 20, 2002

## **Travel of the Case**

On February 6, 2002, the parent of Hillary N. requested that an interim order hearing be convened pursuant to R.I.G.L. 16-39-3.2. Allegedly, her local school district (North Providence) was not implementing the provisions of her most recent IEP calling for her transition from the George N. Hunt Campus School (on the grounds of St. Mary's Home for Children, where Hillary resides) to a less restrictive setting in the North Providence public school system. The matter was assigned to the undersigned for hearing and decision, and a hearing was held on February 13, 2002. Notice of the hearing was provided to the North Providence school district, where Hillary resides, Woonsocket, where her mother currently resides, as well as the Department of Children, Youth and Families, since Hillary is currently in DCYF custody.

## **Positions of the Parties**

### **Hillary's Mother**

Mrs. N. requested that the Commissioner order the immediate implementation of Hillary's IEP, prepared on January 16, 2002 (Hearing Officer Exhibit 1). This IEP calls for a trial placement in the North Providence public schools for one period per day for a two-week period, starting January 28, 2002. Despite the conclusion of the members of the IEP team that such trial placement should take place beginning January 28, 2002, and the incorporation of this provision in the "Comment" section on the last page of the IEP, the trial placement did not take place. Given that the team reached consensus on this issue, Hillary's mother requests that the trial two-week placement be ordered so that her child's transition to a less restrictive educational setting can begin. Implicit in her argument is that Hillary's attendance in the local public school, and in a less restrictive educational setting than she presently is, will provide her daughter with a free appropriate public education as required under federal and state education law.

### **Woonsocket School Department**

Counsel for the Woonsocket School Department stated that the school department had no objection to the immediate implementation of the IEP developed by the team on January 16, 2002. While it was noted that Mrs. N. disagreed with a proposed placement at a fifth grade level, the lack of consensus on this issue was not viewed as an impediment to immediate implementation of this trial, two-week IEP.

### **Department of Children, Youth and Families**

Although DCYF presently has custody of Hillary, and has placed her for residence purposes at St. Mary's Home for Children, DCYF does not function as her LEA, and thus counsel stated that his agency did not have standing to question the decision with respect to her educational placement that was made by the IEP team on

January 16, 2002. He also noted that Hillary's mother retained the right to make educational decisions with respect to her child when the court placed her in DCYF custody. DCYF did present Hillary's assigned caseworker at the hearing in the event any factual issues required her testimony.

### North Providence School Department

Both on the record, and in a written communication to Hillary's mother dated February 13, 2002 and hand delivered to her at the hearing, counsel for the school department indicated that the January 16, 2002 IEP was not enforceable as to North Providence. The reason cited by counsel was the absence from the IEP meeting of "a representative of the LEA who:

- (i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities
- (ii) is knowledgeable about the general curriculum;
- (iii) is knowledgeable about the availability of resources of the public agency and has the authority to commit those resources;"

Since the only person attending the IEP meeting on behalf of the North Providence School Department was its school psychologist, and that person did not meet the requirements of regulation cited above, the IEP was not enforceable through an interim order on the child's behalf. The district acknowledged its willingness to reconvene the IEP team, including representatives of Woonsocket and St. Mary's, within ten days for the purpose of discussing a plan to integrate Hillary into the public schools of North Providence. The district does not concede that it has a legal obligation to do so pursuant to the trial placement language contained in the January 16, 2002 IEP.

### **Findings of Relevant Facts:**

- Hillary N. is an eleven-year-old child in DCYF custody and presently residing at St. Mary's Home for Children in North Providence, Rhode Island. She currently attends the George N. Hunt Campus School at St. Mary's.<sup>1</sup>
- Hillary's mother currently resides in the city of Woonsocket, Rhode Island.
- An IEP meeting was initiated by the special education administrator of the George N. Hunt Campus School, to which representatives of the North Providence and Woonsocket school districts, as well as Hillary's mother were invited.

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<sup>1</sup> The record in this case does not indicate how long Hillary has been in DCYF custody or been a resident of St. Mary's Home. The record does not reflect if her attendance in the on-grounds school there is pursuant to a current IEP.

- At the January 16, 2002 IEP meeting, a school psychologist from the North Providence school district was in attendance. She indicated to the team that she had not been designated to serve as the LEA representative for North Providence<sup>2</sup> as she did not have the authority to commit the agency's resources.
- At or about the time of the IEP meeting a written IEP was developed, and some steps were taken to implement its provisions by the North Providence School Department.

### **DECISION**

Given that the composition of the IEP team on January 16, 2002 did not meet the requirements of Section 300.344 (a) (4), as has been argued by counsel for the North Providence School Department, the IEP developed on that date is defective and probably invalid. Although the record does indicate that some steps toward its implementation were taken by North Providence school officials, the record is incomplete on this point, and there is insufficient evidence that an otherwise-invalid IEP has become Hillary's de facto IEP, such that it can or should be enforceable by the Commissioner in an interim order context. Thus, we conclude that Hillary's mother's request that the Commissioner order the implementation of the January 16, 2002 IEP must be denied.

We must note, however, that the absence of an LEA representative, and the resulting invalidity of the IEP, attains potential legal significance in that under Section 300.344(a) of our state Regulations Governing The Education of Children With Disabilities: The LEA shall ensure that the IEP team for each child with a disability includes a representative of the LEA who does possess the requisite qualifications, knowledge, and authority to commit resources. Thus the very fact to which North Providence points in arguing that it is not required to honor this IEP is some evidence of a violation of its responsibility under our regulations. Certainly it is clear that the City of Woonsocket, which evidently bears ongoing financial and educational responsibility for Hillary because of her mother's residence there, did what it could do to fulfill its responsibilities. However, because Hillary has been placed in a child caring facility by DCYF and that facility is located in the town of North Providence she is deemed to be a resident of North Providence for purposes of school enrollment. R.I.G.L. 16-64-1. Thus, even though Woonsocket clearly has ongoing financial and educational responsibilities to this student under state law, North Providence is her LEA and had the legal obligation to ensure that all the necessary individuals were in attendance on January 16, 2002 for the meeting of the IEP team. While there is some information in this record that the absence of a necessary participant from the North Providence school system was due to exceptional circumstances, all relevant information should be presented to those in the Rhode Island Department of Education's special education office to determine if a

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<sup>2</sup> our state regulations permit the designation of another LEA member to serve as the agency representative, if the criteria of 300.344 (a) (4) are satisfied.

violation of regulations has occurred. A copy of this decision will be forwarded to the Office of Special Needs for such determination.

We direct that the IEP team be reconvened, with all necessary participants, within the time frame indicated in the letter submitted by counsel for the North Providence School Department dated February 13, 2002.

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Kathleen S. Murray, Hearing Officer

APPROVED:

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Peter McWalters, Commissioner

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February 20, 2002  
Date