

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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ERIC D.

V.

NORTH PROVIDENCE SCHOOL COMMITTEE  
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**INTERIM ORDER**

Held: Special-education student entitled to stay-put order maintaining his last agreed-upon educational placement.

Date: March 22, 2002

**Introduction**

Petitioner seeks an interim order directing that Eric D. remain in his last agreed-upon educational placement.<sup>1</sup>

## **Background**

Eric is a 7-year-old resident of North Providence. He is receiving special-education services through the Northern Rhode Island Collaborative. Last year he attended first grade in a highly structured classroom at a school in Lincoln. An individualized education program (IEP) documenting that placement was signed in March 2001.<sup>2</sup> A behavior management plan also was developed for Eric.<sup>3</sup>

Eric's behavior is addressed in numerous areas of the March 2001 IEP: (1) his strengths/needs; (2) performance levels; (3) goals; (4) objectives; (5) supportive modifications and accommodations; (6) and special education providers/services. The IEP, as supplemented, relates a range of inappropriate behavior by Eric, from covering his ears and ignoring directions, to yelling, kicking, and throwing, pushing and banging objects. His behavioral program contains the following description of his behavior: "When Eric is angered or frustrated by a request made of him, his distress is evidenced by him covering his head, turning away from staff, ignoring request and support, and at times will make faces." [School Committee Exhibit 5]. The behavior management plan contains strategies and measures to address the above-described behaviors.

For the second grade, the Collaborative placed Eric in a less structured classroom in a school in Pawtucket. A June 2001 addition to the March 2001 IEP conditioned the continuation of the placement on Eric's earning 80% of the points in his behavior management program system, his maintaining a point level above "ground level," and his remaining free of physical interventions. The June 2001 IEP provision also stated that Eric's "progress and consideration for individual mainstreaming to be reviewed at 6 weeks." [School Committee Exhibit 1].

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<sup>1</sup> The Commissioner of Education designated the undersigned hearing officer to hear and decide the interim-order request. A hearing was held on March 14, 2002.

<sup>2</sup> The March 2001 IEP was supplemented following subsequent meetings during the 2000-2001 school year.

<sup>3</sup> The behavior management plan is undated. It contains references to two dates in December 2000.

Eric's performance in the new classroom in September 2001 went well.<sup>4</sup> In October his behavior began to regress. He had difficulty following directions and transitioning from activity to activity, and he was yelling in class. In early October, Eric's teacher contacted his mother to arrange the meeting to review Eric's progress. Eric's mother asked to meet with the teacher alone, unaccompanied by the rest of the IEP team. The teacher complied with the request.

Eric's behavior deteriorated further in November. In addition to yelling in the classroom, Eric pushed desks, threw chairs and other objects, and had numerous episodes of emotional duress. Physical interventions were occurring almost daily.<sup>5</sup> In late November, Eric's mother met with the classroom teacher and a team of consultants trained to address therapeutic issues. A second teacher assistant was assigned to the classroom.

December was a month of good and bad days for Eric. While he scored very well on the point system several days, he threw, banged and kicked objects, ran and climbed in the classroom, yelled, banged his head and verbally threatened his teacher. Physical interventions again were necessary.

An IEP meeting was conducted on January 8, 2002. The IEP noted Eric's aggressive and antagonistic behaviors. The IEP's behavior-related objectives were as follows: "(1) Utilize strategies provided in his behavior plan; (2) With staff cueing, make positive behavioral choices; (3) Comply with adult requests within a school setting; (4) Demonstrate safe nonaggressive behavior within a school setting; (5) When upset, with staff cueing and proximity, decrease the duration, and (6) Reduce his emotional outbursts by 50%." [School Committee Exhibit 7].

On January 30, 2002, Eric had an extended screaming episode and was sent home. The school district advised Eric's mother to keep him on "home time-out" for a few days. An IEP meeting was held on February 14th, at which the school district recommended that Eric return to the Lincoln classroom. His mother disagreed and requested a special education due process hearing. There was agreement to keep Eric at home and tutoring services were eventually established. On February 25th, Eric's mother wrote to the

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<sup>4</sup> Eric was one of 8 students in the class, to which a teacher assistant was assigned.

<sup>5</sup> Due to the physical arrangements of this setting, there was no space outside the classroom to establish a time-out area for Eric.

school district and asked that Eric be allowed to return to school. In a letter dated March 4th, Eric's mother filed the request herein, asking that Eric be returned to his classroom in Pawtucket.

At the hearing, a clinical psychologist who consults for the Collaborative testified that Eric is overwhelmed by the expectations of the Pawtucket classroom. Eric is experiencing emotional duress and acting aggressively because of his inability to complete his schoolwork. The psychologist is of the view that Eric currently presents a substantial risk of physical harm to himself and others, and that he risks physical and emotional damage by remaining in the Pawtucket classroom.

The school district also offered a "Behavioral Review" of Eric, dated February 7, 2002. One paragraph of the document describes the classroom interventions and behavioral program modifications that have been developed by Eric's teacher and the school social worker.<sup>6</sup> The document also reports that Eric's last psychiatric evaluation took place in October 1998.

### **Positions of the Parties**

Petitioner requests a "stay put" order returning Eric to his last agreed-upon placement, i.e., the classroom in Pawtucket. Home tutoring is no longer acceptable, and the Lincoln classroom is not appropriate for Eric because it is a step back educationally and a change that he is unable to handle at this time. Eric's anger and aggression is his way of expressing his difficulty with schoolwork. He needs outside assistance to learn how to express himself in a calm manner and to control his impulsivity. Educationally, Eric has benefited greatly from the placement in Pawtucket.

The North Providence School Committee contends that the parties agreed to a 6-week diagnostic placement at the Pawtucket classroom with certain conditions in place. Because Eric has not been able to fulfill the conditions, he needs to return to the last unconditionally agreed-upon placement, i.e., the Lincoln classroom. The district also

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<sup>6</sup> The document reports that Eric's "day has been broken down into smaller time blocks, with only two goals . . . Additional incentives were built into his program. Sensory breaks were incorporated into his day in which Eric could use putty or a pegboard. Another staff person was added to the room to provide Eric with more 1:1 attention." [School Committee Exhibit 2].

asserts that the IEP-development process has been flawed by Petitioner's lack of communication regarding Eric's medication and family counseling. Alternatively, the district argues that the Pawtucket classroom is clearly inappropriate for Eric because his continued presence there presents a substantial risk of harm to himself and others.

## **Discussion**

Initially, we find that Eric's enrollment in the 2nd-grade classroom in Pawtucket constituted an agreed-upon educational placement. In so finding, we rely on the circumstances surrounding Eric's attendance at this school, particularly the meetings that occurred in October and November, and the meeting that produced the January 8, 2002 IEP. These circumstances establish that, despite Eric's escalating behavior problems, the parties interacted in a manner consistent with a mutually-held belief that the Pawtucket classroom was Eric's educational setting. The school district's maintenance of Eric in this classroom went far beyond what one would reasonably expect of a trial or contingency placement. Eric's difficulties were well established as of January 8th, the date the parties signed a second IEP addressing Eric's attendance in the Pawtucket classroom. We therefore find that the Pawtucket classroom was the last agreed-upon educational placement for Eric.

We further find that the Pawtucket classroom is significantly different than in the Lincoln classroom in which Eric was previously placed. The increased structure and fewer transition phases of the Lincoln classroom resulted in a more restrictive setting than that in Pawtucket. The school district's belief that a return to Lincoln would alleviate Eric's difficulties in Pawtucket implies as much.

We find our decision in James M. v. Warwick School Committee<sup>7</sup> to be directly controlling here. In that case, the school district presented the special-education student's alleged dangerousness as a defense to a stay-put request in an interim-order proceeding that was initiated following the student's long-term suspension from school. We held

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<sup>7</sup> January 22, 2002

that an interim-order proceeding under Rhode Island General Law 16-39-3.2 is not the proper forum to assert such a position. In so holding, we stated that

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.\* A district also may seek to change the educational placement of a dangerous student by requesting an expedited special-education due process hearing. [footnote omitted].

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\* 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 . . .

Given the present status of this case, the Commissioner is without authority to supplement the established mechanisms to change a student's placement, i.e., court intervention or a due process hearing.

As an aside, however, we are of the view that the behavioral interventions that occurred in this case were done in an *ad hoc* manner, and were not the product of a true planning process. The Analysis of Comments and Changes to the final federal special education regulations provides that:

IDEA now emphasizes a proactive approach to behaviors that interfere with learning by requiring that, for children with disabilities whose behavior impedes their learning or that of others, the IEP team consider, as appropriate, and address in the child's IEP, 'strategies, including positive behavioral interventions and supports to address that behavior.'<sup>8</sup>

The record in this matter contains a behavior management plan for Eric. It appears to have been developed in December 2000, when he was a student at the school in Lincoln. While additional interventions and accommodations have been devised since that time, it does not appear that this activity occurred in the IEP-team setting, with the

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<sup>8</sup> Attachment 1 to Final Part B regulations, 64 Fed. Reg. At 12618 (Mar. 12, 1999). See 20 U.S.C. §1414(d)(3)(B)(i) and 34 C.F.R. §300.346(a)(2)(i).

benefit of a current psychological or psychiatric assessment of Eric. Moreover, Eric's behavioral plan is not spelled out in his IEP. In fact, Eric's behavioral program has never been amended. It does not remotely address the type of disruptive behaviors that the school district detailed at the hearing. Again, the evidence does not paint the picture of an IEP team engaged in behavioral assessment or planning. Given the absence of meaningful process here, we are not confident that any "strategies" in the true sense of the word were developed to deal with Eric's behavior. Clearly, the IEP team needs to review Eric's behavior management plan and its implementation, and modify the actual plan and its implementation to address Eric's current behavior.<sup>9</sup>

Accordingly, we grant the request for a stay-put order. Eric must be returned to his last agreed-upon placement, i.e., the 2nd grade classroom at the school in Pawtucket.

### **Conclusion**

The North Providence School Committee is hereby ordered to return Eric D. to his 2nd grade placement.

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Paul E. Pontarelli  
Hearing Officer

Approved:

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Peter McWalters  
Commissioner of Education

Date: March 22, 2002

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<sup>9</sup> In this regard, we find that a reevaluation of Eric is needed to obtain the type of information that would allow the school district to determine the behavioral aspects of Eric's disability so that the IEP team will have the information it needs to consider and develop strategies to address that behavior.