

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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JOHN A. DOE

V.

CUMBERLAND SCHOOL COMMITTEE  
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**Interim Order**

Held: Student is entitled to stay-put order  
maintaining his previous summer's ESY  
placement.

Date: July 18, 2002

## **Introduction**

This request for an interim protective order seeks to maintain an extended school year placement pending the outcome of a due process hearing.<sup>1</sup>

## **Background**

John Doe is 6 years old. He is eligible for special educational services. The past two summers, John has received extended school year (“ESY”) services. He did so by attending the Trailblazers I summer camp program conducted at the Kent County YMCA.

The record in this matter contains the individualized education program (“IEP”) developed for John in April 2001. The IEP’s listing of special education and related services includes the following: “Summer Program (for 2001 – YMCA Trailblazers).” [Petitioner’s Exhibit 5].

John’s IEP was reviewed in the spring of 2002. At the time, his parents had plans to be out of the country during the summer of 2002. Consequently, ESY services were not discussed at the IEP meetings nor were they addressed in the IEP that was signed on April 26, 2002.<sup>2</sup>

Shortly after the April 2002 IEP was signed, John’s parents canceled the family’s summer travel plans. At the request of John’s parents, IEP-review meetings were held in June 2002 to discuss, among other things, ESY services for John. John’s parents asked that he be placed at Trailblazers I again. The School Department felt that John’s needs would best be addressed at its Summer Smart Plus program.

John has been diagnosed with pervasive developmental disorder. He has communication, social, sensory and motor skill difficulties. His current IEP provides for speech/language therapy, adaptive physical education, and occupational therapy.

John attended the Trailblazers I program with other children having social, emotional, physical and educational needs. These children participated in camp activities with non-disabled children. John’s activities included daily swimming, canoeing, hiking, arts and crafts, and sports and games. John also received speech/language therapy and occupational therapy at

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<sup>1</sup> The request was received on July 3, 2002. The Commissioner of Education designated the undersigned hearing officer to hear and decide the request. A hearing was held on July 11, 2002. The parties subsequently submitted memoranda

<sup>2</sup>On four of the seven annual-goal pages in John’s April 2002 IEP, the item entitled “consideration for extended school year” is followed by the notation “to be determined on or before March 2003.” The entry stating that ESY services are “not needed for this goal” is not checked on any of the pages.

Trailblazers. The camp does not have a reading or mathematics program. John goes to the library as part of his home-based program, and his parents read to him.

The Summer Smart Plus program is operated by the Cumberland School Department. The program is at the same site as the Cumberland Town Recreation Program, and participants spend part of the day at the Town program. It provides the social and motor skill services John needs as well as an academic program. Certified special education teachers are on staff to provide John with a reading and math skills program.

John's ESY placement is presently an issue in a pending due process hearing.

### **Positions of the Parties**

Petitioner contends that John's last agreed-upon ESY placement is the Trailblazers I program, as reflected in his 2001 IEP. The 2002 IEP is not the stay-put placement because summer services were not discussed in the spring of 2002 due to the parties' belief that John would be overseas and unavailable to receive any ESY services. According to Petitioner, this belief, which later turned out to be incorrect, cannot transform the 2002 IEP into an agreement that John not receive ESY services this summer, especially when both parties agree that John needs ESY services to prevent regression. Petitioner further argues that the Summer Smart Plus program is significantly different than Trailblazers, and therefore constitutes a change in John's ESY placement.<sup>3</sup>

The School Committee contends that the 2002 IEP was implemented and therefore serves as John's current educational placement for determining the status quo. Because this IEP does not contain a provision for ESY services, John does not have a current ESY placement for stay-put purposes. The Committee argues that the 2001 IEP is not applicable to this matter because the parties signed a new IEP a year later. It also maintains that the circumstances of this case establish that the Summer Smart Plus program is the appropriate ESY placement for John, and the Commissioner should issue an order to that effect. A placement at Summer Smart Plus

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<sup>3</sup> Petitioner states in its memorandum: "Among other differences, Summer Start (sic) Plus has a significant 'direct academic instruction' component, which Trailblazers I does not have. Additionally, the children enrolled in the Summer Start Plus program are all children with disabilities, and they spend at least the academic component of their day without any contact with children without disabilities. Trailblazers, in contrast, is a full-inclusion program, in which [John] participates in activities with non-disabled peers who can serve as peer models for the full camp day, and thus has the opportunity, throughout the day, to maintain social skills and participate in communications and interactions with typically-developing children. Trailblazers also provides more time, on a daily basis, when [John] can be involved in activities which can address sensory integration, sensory defensiveness and gross motor skill development, including canoing, hiking and daily swimming." [Petitioner's memorandum, pp. 11-12].

would prevent the regression of John’s recent academic progress that would likely occur if John were placed in the inappropriate Trailblazers program or no ESY program at all.

## **Discussion**

Under Rhode Island General Law 16-39-3.2, the Commissioner has authority to issue interim orders to ensure that children receive an education in accordance with applicable state and federal laws and regulations. Children with disabilities receiving special education and related services may invoke the Commissioner’s interim-order authority to maintain a placement on a “status quo” basis pending the resolution of a dispute regarding the appropriateness of a proposed placement. Federal and state law provide that, in cases such as this, “unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of such child . . .”<sup>4</sup>

We recently stated that, absent parental acquiescence to a proposed change in placement, we will look to “the last actual, peaceable, uncontested status that preceded [the] pending controversy” for purposes of applying the “stay-put” provision.<sup>5</sup>

Undertaking that inquiry in this case is somewhat difficult. On one hand, the School Committee’s contention that the agreed-upon 2002 IEP does not address ESY services is technically correct. Looking within the four corners of the IEP document, there is no mention of an ESY placement. It therefore follows that the 2002 IEP can not support the finding of a status quo ESY placement at Trailblazers or at any other summer program. On the other hand, it is undisputed that the parties agreed to exclude ESY services from the discussions that yielded the 2002 IEP because John’s parents had plans to be out of the country this summer. While the IEP does not address ESY services, it does not indicate that such services are unnecessary. None of the annual-goal pages in the 2002 IEP bear a checkmark next to the entry “not needed for this goal” in the “consideration for extended school year” section of the page. Furthermore, several of the pages indicate that the need for ESY services is to be considered in March 2003, the annual review of John’s IEP. In these circumstances, one can readily conclude that the last actual ESY status for John is Trailblazers, i.e., the last ESY placement to which the parties agreed the last time the subject of ESY services was actually considered.

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<sup>4</sup> 20 USC §1415(j); see also Board of Regents for Elementary and Secondary Education Regulations Governing the Education of Children with Disabilities, §300.514(a).

<sup>5</sup> In the Matter of Kerry H., November 16, 2001, p. 5.

Given the particular circumstances of this case, we find the Trailblazers-as-status-quo to be the more reasonable conclusion. There is no dispute that John needs ESY services this summer. Yet this need is not reflected in the 2002 IEP due to the assumption that John would be out of the country for the summer. Once this assumption became invalid, John's 2002 IEP became an anomaly with regard to ESY services. In our view, to rely on that IEP for status quo purposes would elevate form over substance. This would be totally at odds with the objectives of the inquiry we are conducting here.<sup>6</sup>

Accordingly, we find that the Trailblazers I summer program is John's current ESY placement. While we recognize the validity of the School Committee's comments regarding appropriate services for John, we are unable to find that the Trailblazers I program is inappropriate for John or violative of his rights.<sup>7</sup> We therefore shall order that John be placed at the Trailblazers I summer program.

### **Conclusion**

Petitioner's request for interim relief is granted. It is ordered that John be placed at the Trailblazers I summer program on a stay-put basis pending the resolution of the pending due process hearing. The Cumberland School Committee shall pay the cost of the placement and provide suitable transportation.

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Paul E. Pontarelli, Hearing Officer

Approved:

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Peter McWalters, Commissioner of Education

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July 18, 2002

Date

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<sup>6</sup> An IEP should document the recognized needs of a student and provide for services to meet those needs. Regardless of the family's plans to travel this summer, John's uncontroverted need for ESY services should have been stated in his IEP. Had it been so, even without mention of an ESY placement, an explicit link to the 2001 IEP would have been established for status quo purposes. We further note that had the parties discussed an ESY placement during the 2002 IEP review, and a disagreement arose which prevented John's parents from signing the IEP, they clearly would have been entitled to a stay-put order for the Trailblazers program for the summer of 2002.

<sup>7</sup> John has extensive needs and we recognize that there are advantages to each of the different strategies that may be adopted to assist John in the context of an ESY placement.