

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

DEREK S.

V.

EAST PROVIDENCE SCHOOL COMMITTEE

INTERIM ORDER

Held: School district is ordered to provide student with aide for summer camp as provided in IEP.

July 7, 2003

Introduction

Petitioner is appealing the East Providence School Department's refusal to provide her son Derek with an aide at summer camp. Petitioner is seeking an interim order requiring the assignment of an aide.¹

Background

Derek is a special-needs student who completed the fourth grade in June 2003. He has had a consistent history of having an "educational specialist"² assigned to him in the classroom to assist with his behavioral issues. Furthermore, an IEP dated June 17, 2002 provided Derek with a one-on-one aide at summer camp on an "as needed" basis.³ Derek's subsequent IEP, dated October 2, 2002, was effective from September 2002 to June 2003. The IEP's special education services included an educational specialist in the classroom. The IEP did not address Derek's needs beyond the school year.

An IEP review commenced in May 2003. The parties met twice in May and again on June 6, 2003. On that date, Petitioner was presented with an IEP marked "draft" for signature. The document was not signed by a representative of the school district. After reviewing the IEP, Petitioner met with IEP team members on June 18, 2003, the last day of school. Modifications were made to the IEP, including the service of an aide at YMCA summer camp, "to be provided if Derek needs behavioral support." [Petitioner's Exhibit 2]. The summer-camp aide service was written into the IEP by a special-education teacher. The IEP also provided for a tutor from June 2003 to May 2004. Petitioner signed the revised IEP and gave it to the school psychologist.⁴ Petitioner did not receive a copy of the signed IEP on June 18th, but was told that a signed copy would be sent home with Derek that day. Derek returned home on June 18th without a copy of the IEP.

On June 20th, the East Providence special education director left a message on Petitioner's telephone answering machine in which he stated that

¹ This matter was heard on June 27, 2003.

² This is the term used in Derek's individualized educational programs (IEPs).

³ The summer camp was funded by Derek's mother, not the school district.

⁴ The special-education director was present for parts of this meeting.

. . . I just spoke to the superintendent and although it was put in the IEP for Derek to have a TA at Barrington Y, we don't have the funds, the superintendent told me, to support that. As LEA I didn't sign the IEP yet. So we won't be able to provide a TA for Derek at the Barrington Y. And again, that comes right from the superintendent to me. . . [Petitioner's Exhibit 5].

The special education director left a subsequent message shortly thereafter:

. . . I'm calling again to let you know that both Dr. Herbowy and I have decided that we do not have the resources this summer to give Derek a one-to-one aide at the Barrington Y. I have not signed the IEP and your due process on this is we can go to mediation if you want . . . [Ibid.].

No additional IEP meetings have been scheduled. A tutor was assigned to Derek and tutoring sessions began on June 24, 2003. Summer camp started on June 23rd. Derek was unable to attend camp on June 24th because of his behavior.

Positions of the Parties

Petitioner contends that the School Department's unilateral decision to deny Derek an aide at summer camp violated the IEP she signed on June 18, 2003. Petitioner cites Derek's need for an aide in order to participate in camp activities, the resulting benefits to Derek from developing positive peer relationships at camp, and the regression he will suffer if he is unable to attend camp. Petitioner also asserts that the denial of a special-education service for financial reasons is illegal.

The School Committee contends that the IEP presented to Petitioner on June 18th was only a draft and never signed by a representative from the school district. The IEP therefore never took effect, and the last agreed-upon IEP is the one dated October 2, 2002. That IEP does not mention summer camp and cannot serve as the basis for a stay-put order.

Discussion

We find in the circumstances of this case that an IEP came into existence on June 18th when Petitioner signed the IEP document after it had been revised by members of

the IEP team. We are convinced that on this date the parties reached mutual agreement on the provisions of the IEP, including the aide for summer camp. The evidence shows that the IEP document under review was modified by members of an IEP team, in the presence of the special-education director, following discussions with Petitioner. The document then was presented to Petitioner for signature. At this point, the document no longer was a “draft.” Instead, it became a proposed IEP offered for Petitioner’s acceptance. When Petitioner accepted the proposed IEP by signing it on June 20th, it became binding on the parties. This finding is further supported by the fact that the school district immediately implemented the tutoring service set forth in the IEP. The fact that the IEP was not signed by a representative of the school district does not alter the equities and obvious consequences of the parties’ actions. School district members of an IEP team generally have the authority to enter into a binding IEP with a parent, and there is no evidence to suggest that the exercise of this authority was tainted by any unfairness or misunderstanding.

The evidence does show, however, that the school district repudiated the June 18th IEP when it refused to provide an aide for summer camp, and that it did so for funding reasons. This action cannot stand.

A child with a disability is entitled to a free appropriate public education. The education program that is developed for the child must be geared to his or her individual needs. The child’s IEP is to include related services that the IEP team deems are appropriate in order for the child to receive an educational benefit.

Services that are included in an IEP must be funded and provided. While in certain circumstances the cost of supplemental aids and services may be considered by a school district in determining the appropriateness of an educational placement,⁵ a service cannot be denied on the basis of cost once it is included in an agreed-upon IEP.

As previously noted, the June 18th IEP is binding on the school district. We are deeply troubled by the school district’s repudiation of the IEP because of the cost of a service that members of the IEP team saw fit to include in the IEP in light of Derek’s needs. We shall order the district to immediately provide Derek with an aide for summer camp, and we are referring this matter to the Rhode Island Department of Education

⁵ See, e.g., Greer v. Rome City School District, 950 F.2d. 688 (11th Cir. 1991); 967 F.2d. 470 (1992).

Office of Special Needs for the purpose of reviewing the East Providence school district's compliance with the assurances it has provided in order to receive federal and state special education funding.⁶

Conclusion

The East Providence school district is hereby ordered to immediately provide Derek S. with an aide for summer camp as set forth in the IEP signed by Petitioner on June 18, 2003.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date:

⁶ We do not address the question of whether Derek is entitled to a summer-camp aide on a stay-put basis nor do we express any opinion regarding the summer camp itself in terms of Derek's educational needs.