

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

STUDENT R.C.

V.

CRANSTON SCHOOL COMMITTEE

INTERIM ORDER DECISION

Held: Request for interim order directing special-education student's return to high school placement is denied in light of scheduled expedited due process hearing to determine if student is a danger in current placement.

Date: March 11, 2004

Introduction

This matter concerns a request for an interim protective order directing student R.C.'s immediate return to school.¹

Background

R.C. is a 16-year-old high school student receiving special-education services.² Despite behavioral modifications to his educational program, R.C.'s disruptive and noncompliant behaviors at school have increased during the school year. On February 13, 2004, R.C. underwent a psychiatric evaluation.

The psychiatrist confirmed R.C.'s pre-existing diagnoses, but also found that R.C.'s thinking is delusional, with symptoms suggestive of bipolar disorder. The evaluation states that:

In order to develop a more effective plan for school, [R.C.] needs a complete psychiatric evaluation as soon as possible. . . . Until a more complete evaluation has been made available, I would remove [R.C.] from school. I believe that his delusional thinking prevents him from fully participating in an entire school day. I would suspect that his behavior would continue to be disruptive and disorganized. He reports a more agitated and explosive internal mood state that he has controlled so far, but I am concerned that under the right circumstances he could be aggressive, although he is at no risk today. [School Committee Exhibit 2].

R.C. was suspended from school for one day on February 13th for a disciplinary infraction. School vacation followed, after which his parents and school officials commenced discussions about how to proceed in light of the psychiatric evaluation. Home tutoring was discussed in some detail. R.C. has not been allowed to attend school during this time.

R.C.'s parents had their son evaluated by a clinical neuropsychologist on February 28, 2004. The evaluation included the following statement:

¹ The request for interim relief under Rhode Island General Law 16-39-3.2 was filed on March 1, 2004. The Commissioner of Education designated the undersigned hearing officer to hear and decide the request. A hearing was held on March 5, 2004.

² R.C. has been diagnosed with attention deficit/hyperactivity disorder, oppositional defiance disorder, chronic motor tic disorder, and disorder of written expression.

[R.C.] denies delusional thinking and examples were reviewed with him and he attributed his thoughts to being mischievous with the psychiatrist. Although this may seem plausible given his history of ODD, psychological testing suggests otherwise and that his denial of delusions on the present examination was simply defensive and in fact he experiences a delusional thought process. Psychological testing also suggests that [R.C.] experiences significant emotional disturbance that may be at the level of thought disorder or bipolar disorder. [Petitioner's Exhibit 2].

The neuropsychologist concluded that “[a]lthough I feel [R.C.] experiences a significant mental illness I do not feel that keeping him out of school at this time is helpful to him.” [Ibid.]. The neuropsychologist noted that a recently-implemented escort arrangement was helping R.C., and that the structure of the school day would assist R.C. emotionally at this time.³

It appears that the parties' discussions regarding R.C.'s educational programming ended abruptly on March 1, 2004 with the filing of this interim-order request. On March 2nd, the School Committee filed a request for an expedited due process hearing for the purpose of demonstrating that the maintenance of R.C.'s high school placement at this time is substantially likely to result in injury to R.C. or others.

We take official notice of the fact that the expedited due process hearing requested by the School Committee has been scheduled for March 15, 2004.

Positions of the Parties

Petitioner contends that it is in R.C.'s best interest to remain in his current placement pending further evaluation. It claims that the psychiatrist's brief session with R.C. resulted in an incomplete and distorted report regarding R.C.'s mental status. It argues that the neuropsychologist's report is the more thorough and credible assessment of R.C., and that R.C. should be returned to school subject to the conditions outlined in the neuropsychologist's report.

³ The neuropsychologist states that R.C.'s return to school should be subject to the condition that “cutting classes or engaging in any oppositional or defiant behavior” should not be tolerated. [Petitioner's Exhibit 2].

The School Committee contends that it refrained from requesting an expedited due process hearing to remove R.C. from school in deference to the parties' efforts to reach agreement on a temporary program for R.C. Once the parents abandoned this effort, the School Committee invoked the appropriate process to determine whether R. C. presents a danger in the school setting at this time. The Commissioner should not subvert the regulatory-prescribed process, and the issue of whether R. C. is fit to continue in his high-school placement should be determined in the expedited due process hearing.

Discussion

We have previously held that a school committee may not assert that a student is dangerous as a defense to an interim-order request for a "stay-put" order.⁴ If a school district believes that a student is likely to harm him or herself or others, it may seek a court order or expedited due process hearing to change the student's educational placement.⁵ Barring an emergency, special-education students are not to be unilaterally removed from school without due process.⁶

In this case, the School Committee's request for an expedited due process hearing followed Petitioner's request for interim relief by one day. We find that the parties were engaged in an effort to try to reach agreement on an appropriate educational and diagnostic course for R.C. in light of the psychiatrist's report. Upon learning of Petitioner's request for an order returning R.C. to school, the School Committee immediately invoked one of its procedural options, i.e., the expedited due process hearing, to address its concerns with R.C.'s behavior.

The School Committee is not presenting R.C.'s alleged dangerousness as a defense to the request for interim relief. Instead, it is urging that we defer to a timely-

⁴ James M. v. Warwick School Committee, January 22, 2002.

⁵ Section 300.521 of the Board of Regents Regulations Governing the Education of Children with Disabilities authorizes a special-education hearing officer to conduct an expedited due process hearing for the purpose of determining whether a change in the student's placement is warranted. It is the school district's burden to demonstrate "by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others." "Substantial evidence" is defined as "beyond a preponderance of the evidence." Among the factors to be considered by the hearing officer is "whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services."

⁶ A child with a disability who presents an immediate threat to him or herself or to others may be removed from school for the remainder of the school day.

requested proceeding that is intended to determine the precise issue that divides the parties. Given the background of this case, we find that such deferral is appropriate.

Conclusion

The request for interim relief is denied in light of the expedited due process hearing that is scheduled for March 15, 2004. Petitioner is granted leave to refile this matter if the due process proceeding does not yield a timely decision.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date: March 11, 2004