

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

R. DOE

V.

NORTH KINGSTOWN SCHOOL COMMITTEE

Interim Order

Held: Student was subjected to an inappropriate physical restraint/ behavior intervention. School district is ordered to obtain review of behavior management plan and arrange for additional training of staff in the implementation of the plan.

Date: February 15, 2005

Introduction

The parents of student Doe are seeking interim protective relief following an alleged improper physical restraint of their son.¹

Background

Student Doe is 7 years old. He is diagnosed with pervasive developmental disorder, not otherwise specified. He spends the majority of his school day in a self-contained classroom with 5 other students, all of whom have a diagnosis on the autism spectrum. A teacher and two teacher assistants are assigned to the classroom.²

Doe's verbal communication is very limited. His speech is often difficult to understand. Doe supplements his verbal speech by communicating through gestures, signs, pictures and a hand-held communication device.

Doe's individualized education program (IEP) states that "[a]t times he will engage in disruptive behaviors (hitting, kicking others, whining, and extended crying/tantrum) to avoid work, [when] told a preferred activity is finished, when a preferred activity is not available or [to] seek adult attention." [Joint Exhibit 1]. Doe's IEP includes a behavior management plan written by a consultant from the Groden Center. The plan relies on a relaxation procedure to help prevent Doe from engaging in disruptive behavior and/or de-escalating such behavior if it occurs. The plan also includes a sequence of prompts and cues to deal with target behaviors.

The behavior management plan identifies two target behaviors for Doe: (1) hitting or kicking others and (2) whining, extended crying/tantrum. As for the first, the plan states that Doe "will occasionally hit, and less frequently, kick another child or adult." The identified antecedents of this behavior are described as "[t]eacher working with another child, being given an instruction, interrupting

¹ The Commissioner of Education designated the undersigned hearing officer to hear and decide the interim-order request. A hearing was held on February 8, 2005.

² The teacher and teacher assistants have been assigned to Doe for the past three years.

a preferred activity or thing, and not having access to a desired activity or thing.” According to the plan, this behavior occurs “a few times weekly.”

The second behavior includes “an outright tantrum (on the floor, crying, work refusal).” This behavior, which can last up to half an hour, can be Doe’s way of releasing anger and/or frustration.

The behavior management plan also includes the following provisions:

If [Doe] attempts to communicate that he wants to stop an activity, try to give positive prompts to reengage him. If this is unsuccessful, prompt him to use one of his “break cards.” [Doe’s] presentation of the break card is considered an appropriate way to communicate a need and will always be honored. Give [Doe] a 5 minute break (use a timer), then prompt him back to the classroom activity.

If [Doe] does not engage in the appropriate positive target behavior the following prompting strategy is recommend. Hitting Others: Immediately say “hitting is not allowed, go to the calm area.” Follow procedures described for use of the calm area (next section). Whining/Crying/Tantrum: If [Doe’s] behavior is disruptive enough to interfere with instruction or be potentially hurtful, direct him to the calm area and follow those guidelines.

Use of a “Calm Area:” A “calm area” will be located in a quiet, low distraction area in the classroom. . . A visual representation (picture or pictograph) will be visible in the calm area representing “no hitting” and “no whining/crying/tantrum.” [Doe] may use the calm area to practice relaxation or other self-management techniques. . . At times, [Doe] may hit others, prompt him according to the prompt sequence previously described (repeat, reminder of contingencies, give warning). If he continues to be disruptive to the point of interfering with instruction in the classroom and/or is engaging in potentially unsafe behavior, [Doe] will be told to go to the calm area. Criteria for instructing [Doe] to go to the calm area are behaviors that cannot be ignored because they are interfering with instruction in the classroom or behavior that is potentially hurtful. Use clear and simple language to tell [Doe] to go to the calm area. For example, “Hitting others is not allowed. Go to the calm area.” Give him the prompt sequence and a 1,2,3 count if necessary.

All staff needs to be familiar with [Doe's] general needs and communication style to properly implement this plan. All staff who work with [Doe] must be familiar with and trained to implement this plan. Classroom teacher will provide training to paraprofessional and support staff with assistance from Groden consultant, as needed.

In October 2004, Doe's family contacted a family services agency in order to obtain home-based therapeutic services for Doe. The family services agency conducted a clinical assessment, which included an observation of Doe at school on December 7, 2004. An incident occurred during the school observation that became the basis for this proceeding. As described by the agency's licensed clinical social worker in the written assessment

During speech therapy, [Doe] immediately became frustrated because he wanted to play with a certain activity, but was told he needed to complete something else first.³ He began hitting his head with his hands and repeatedly using his communication device to say he was mad. After a few minutes, [Doe] hit his speech therapist with an open hand and was immediately picked up and brought back into his classroom where he was placed in a face-down restraint. It took him about 15 minutes to fully calm down before being released. At that time, [Doe] returned to speech therapy in his classroom. His teacher . . . sat next to him and provided him with additional structure and redirection. With these added supports, [Doe] successfully completed speech therapy. [Petitioner's Exhibit 2].

At the hearing, the social worker testified that Doe was receiving speech therapy just outside his classroom when he slapped the speech therapist in the face. The therapist pulled Doe by the arm into the classroom. The social worker remained outside the classroom for a few minutes. When she entered, she saw Doe on the floor on his stomach with one teacher assistant holding his hands above his head on the floor and the other teacher assistant holding his feet to the floor.⁴ Doe's face was turned to the side and he could breathe.

³ Doe wanted to play with his farm animals, but the speech therapist told him he needed to work with his cards first.

⁴ The social worker did not see how Doe got on the floor.

According to the teacher assistants and the teacher, another student was in the calm area when Doe entered the classroom. A teacher assistant pulled out a chair for Doe to sit on, but Doe dropped to the floor, kicking. The teacher assistant backed up, but Doe moved toward her on his side, still kicking. When the teacher assistant slid Doe's feet against her legs, Doe sat up and started hitting her. The other teacher assistant came over to assist and took Doe's hands. Doe rolled over onto his stomach as the assistants held his hands and feet. The assistants massaged Doe's limbs and performed relaxation therapy. They asked an aide to summon the teacher, who was out of the classroom at the time. The teacher arrived and, under her direction, relaxation therapy was performed until Doe was calm enough to stand up on his own.⁵

As was his practice, Doe's father came to school to pick up Doe at the end of the day. Doe's teacher told him that Doe had had a bad day, that he hit the speech therapist, and that staff had to hold Doe's hands. The teacher further testified that she completed an incident report shortly thereafter, but due to illness and school vacation, she did not submit the report to the principal until the latter requested it in January.

The social worker's assessment notes that she spoke to Doe's father on December 30, 2004. The assessment further states that

[s]ince the beginning of December, [Doe] has struggled with managing his behaviors safely at school. He has been hitting, kicking, and pushing staff on a weekly basis, resulting in physical restraints. [Doe's father] reported that these behaviors might have been a result of sleep disturbances and [Doe's] excitement about Christmas. It is hoped that the aggressions will diminish after the New Year.⁶ At the beginning of January . . . a behavioral consultant from the Groden Center began observing [Doe] at school and at home to help the family identify strategies to use to manage his behaviors. [Petitioner's Exhibit 2].

The social worker met with Doe's family on January 5, 2005 to share her report. After reading the social worker's observations of the December 7th

⁵ Doe is a small child, weighing about 45 pounds.

⁶ Doe's father testified that he understood "physical restraints" to mean that his son's hands were being held.

incident, Doe's father immediately wrote a letter of complaint to the school principal. He also spoke to the principal, asking for a copy of the incident report and an opportunity to meet with the teacher assistants. A meeting was scheduled for January 31, 2005. The incident report was never provided. In the meantime, school officials spoke with staff of the family services agency regarding the December 7th incident. At the January 31st meeting, the teacher assistants appeared with union representation. Doe's parents objected to the presence of the union representatives, but the meeting went forward with the union representatives present.

The request for interim protective relief was filed on February 2, 2005. Doe's parents also have requested a due process special-education hearing.

In January 2003, the North Kingstown School Committee adopted a policy entitled "Procedures Regarding Prevention and Behavioral Intervention/Physical Restraint." The procedures are designed to ensure that students are "free from unreasonable and unnecessary physical restraint and that such intervention is used only in emergency situations after other less intrusive alternatives have failed or been deemed inappropriate." [Joint Exhibit 2]. According to the policy, physical restraint/behavioral intervention is used only in circumstances where "non-physical interventions were not or would not be effective and the student's behavior poses a threat of imminent, serious physical harm to self and/or others and, where applicable, in circumstances where a behavioral intervention plan is already developed for the student, the plan has been fully implemented as specified." (emphasis in original).

The policy also contains the following reporting requirements:

Any staff member who administers a physical restraint/behavior intervention must submit a written report to the building principal as soon as possible, but not later than the next school day, using the reporting format in Appendix A. . . The building principal will notify the student's parent(s) or guardian(s) of the physical restraint/behavioral intervention incident on the day of the occurrence. Upon receipt of the written reports, the building principal will review it with the parent(s) or guardian(s) via a telephone conference or personal

conference and confirm the procedures followed. A written notice confirming the conference will be sent to the parent(s) or guardian(s) using the form letter in Appendix B.

Section 2.3 of the Board of Regents' Physical Restraint Regulations provides, in part, that "[p]hysical intervention, the use of manual or mechanical restraint or escort involving physical contact should only be used as a crisis intervention for the purpose of preventing harm or injury." Section 3.10 of the Regulations defines "forceful physical guidance" as "an inappropriate response to a child's perceived misbehavior that consists of an adult/supervisory person physically forcing [the child] to engage in the desired behavior or to comply with a directive."

Positions of the Parties

Petitioner contends that the teacher assistants violated district policy by using a physical restraint on student Doe without following the behavior intervention protocol in his IEP, and that the School Department violated the policy by failing to document the restraint and notify the parents. Petitioner further argues that the School Department violated Doe's parents' confidentiality rights by allowing union representatives to attend the January 31st meeting and by questioning staff from the family services agency about the December 7th incident. Petitioner seeks an order directing the School Department to follow the behavior plan in Doe's IEP, to refrain from violating the parents' confidentiality rights, and to provide Doe with his own one-on-one teacher assistant who is trained to work with students who have a diagnosis on the autism spectrum.

The School Committee contends that staff followed Doe's IEP and that no physical restraint occurred. It maintains that the incident was documented and that Doe's parents were informed of the events of December 7th. Any reporting or confidentiality violations that may have occurred are *de minimus*, and there is no evidence that a one-on-one aide would be of any educational benefit to Doe.

Discussion

It is evident from the petition in this matter that Doe's parents' trust in the school personnel who are involved in their son's education has been seriously shaken by the sequence of events that commenced on December 7th. Given Doe's limited ability to communicate, we certainly understand his parents' concern. We hope that our resolution of this matter will bring some perspective to this situation and help restore the parties' relationship so that it serves Doe's best interests in the long term.

Based on the evidence presented at the hearing, we find that an inappropriate restraint/intervention occurred on December 7, 2004 during Doe's speech therapy session. While we certainly do not intend to minimize the impact of a slap to the face, Doe's act did not provide any basis to ignore his behavior management plan and forcibly remove him from his assigned service area. To the contrary, Doe's behavior on December 7th is specifically referenced in his IEP and behavior management plan and therefore should not have taken any of his educators by surprise.

As previously noted, one of Doe's target behaviors is hitting. A behavioral antecedent to hitting is Doe being denied access to a preferred activity or object. On December 7th, Doe clearly became upset when the speech therapist would not allow him to play with the farm animal figures. Doe's anger and frustration culminated in a slap to the speech therapist's face. According to Doe's behavior management plan, staff is to use a prompting strategy when Doe hits. If the prompts fail, Doe is to be told to go to the calm area. There is no provision in Doe's plan for a forcible escort, yet that is what immediately occurred after Doe's misbehavior during speech therapy. Doe's tantrum and dropping to the floor after being pulled into the classroom should not surprise anyone who has read his behavior management plan. We find that the teacher assistants, with the eventual help of Doe's teacher, responded reasonably to the predicament that was delivered to their classroom.

Given our view of what occurred during speech therapy on December 7th, it necessarily follows that, consistent with district policy, the incident should have

been promptly documented, reported to Doe's parents and discussed at a conference between the parents and the principal. We do not find that the school's efforts to investigate this incident by speaking to witnesses employed by the family services agency violated Doe's parents' confidentiality rights, nor do we find that those rights were violated by the teacher assistants' desire to have union representation while meeting with the parents to discuss their involvement in an incident that could potentially lead to disciplinary action.⁷ Furthermore, we do not view the evidence in this case as establishing the need for a one-on-one aide for Doe.

Instead, we find that this situation can best be remedied by improving the communication between the parties and returning to the terms of Doe's behavior management plan. In the latter regard, we shall require the School Department to make arrangements with the Groden Center to review Doe's plan in light of his most recent behaviors and to obtain additional training for staff in the implementation of the plan.⁸ While the plan is under review, the school shall provide Doe's parents with weekly behavior reports. It is our hope that with better communication and additional training, the parties can use this episode to strengthen their relationship and become better partners in the education and development of student Doe.

Conclusion

Student Doe was subjected to an inappropriate physical restraint/behavior intervention on December 7, 2004. The school failed to document and report the matter as required by district policy. The School Department is hereby ordered to arrange for the assistance of the Groden Center in conducting a review Doe's behavior management plan, obtain additional training from the Groden Center for staff involved in the implementation of the plan, and provide Doe's parents with

⁷ Our view of this issue would be different if the parents had wished to meet with the teacher assistants to discuss Doe's education program after the investigation of the incident had been completed and a decision with regard to discipline had been made.

⁸ The involvement of the Groden Center behavioral consultant who began observing Doe in early January should be helpful in this regard.

weekly behavior reports while the review of the plan and the staff training is underway.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date: February 15, 2005