

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

STUDENT R. DOE

V.

NARRAGANSETT SCHOOL COMMITTEE

Decision

Student Doe attends public school in Narragansett. His most recent individualized education program (IEP) expired in December 2005. Since that time, the IEP team has met on 7 occasions. The parties have not been able to agree on a placement for Doe.

In a letter dated June 15, 2006, student Doe’s parents requested an interim protective order hearing under R.I.G.L. 16-39-3.2. The letter expressed concern regarding Doe’s “placement into his seventh consecutive summer program at Narragansett, as well as his fifth grade placement for September.” An interim order hearing was scheduled for June 20, 2006.

In response to a request for a statement of the specific relief being sought, Doe’s parents wrote that they are requesting an “out-of-district placement both for summer programming and September placement” for Doe. Doe’s parents have not requested a special education due process hearing.

On June 19, 2006, the Narragansett School Committee requested that the hearing be canceled on jurisdictional grounds in light of the absence of a due process hearing request and the nature of the relief sought.

R.I.G.L. 16-39-3.2 authorizes the Commissioner “to issue any interim orders pending a hearing as may be needed to ensure that a child receives education in accordance with applicable state and federal laws and regulations during the pendency of the matter.” Section 300.514 of the Board of Regents’ Regulations Governing the Education of Children with Disabilities states that, except for cases involving interim alternative educational settings, “during the pendency of any administrative or judicial proceeding regarding a complaint for due process, unless the State or

local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.”

In the case of In Re: John C.L. Doe, we stated that

For a child with disabilities who is eligible for special education and related services, interim order authority can be utilized to maintain a “status quo” placement pending resolution of a dispute between parents and a school district as to what constitutes an appropriate placement. . . Although ‘the state’ does have the discretion to alter a status quo placement at the request of the parents [citation omitted] we have consistently ruled that the exercise of such discretion should not short-circuit the due process procedures established by Congress unless there is a clear need to do so to protect the rights of a student. See John A.U. Doe v. Coventry School Committee, Commissioner’s decision, March 4, 1994. The Commissioner of Education has consistently declined the invitation to create or change placements, absent extraordinary circumstances. See John A.U. Doe, supra; In the Matter of John B.B. Doe, decision of the Commissioner, July 29, 1994; Parents of Jane A.G. Doe v. Warwick School Committee, June 23, 1995 decision of the Commissioner. [October 21, 1997 decision of the Commissioner, p.5].¹

While the alleged circumstances surrounding the disagreement concerning Doe’s placement appear to be unfortunate, they do not rise to the level of “extraordinary.” Therefore, Doe’s parents need to invoke their procedural safeguards, particularly their rights to mediation and a due process hearing, to reach the proper forum for this dispute.²

The request for an interim protective order is denied.³

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters

June 21, 2006

¹ See also The Parents of Jane A.I. Doe v. Gloucester School Committee and Northwest Special Education Region, August 2, 1995 and John A. Doe v. Cumberland School Committee, July 18, 2002 as examples of the availability of “stay put” orders under §16-39-3.2 to maintain a child’s previously-agreed upon extended school year service program during the pendency of a due process hearing.

² Board of Regents’ Regulations Governing the Education of Children with Disabilities, §300.500 *et seq.*

³ We have treated the School Committee’s hearing-cancellation request as a motion to dismiss. Our denial of the interim-order request is not to be construed in any manner as a comment on the merits of the underlying dispute in this matter.