

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

STUDENT M. DOE

V.

NORTH KINGSTOWN SCHOOL COMMITTEE

Decision

Held: Request for “stay put” order under R.I.G.L. 16-39-3.2 is denied in light of the student’s current educational placement.

June 26, 2006

Introduction

This interim protective order request seeks a “stay-put” order with regard to extended school year and speech and language services for student Doe.

Background

Student Doe has a diagnosis of immune deficiency disease. The area and items with which he comes into contact must be thoroughly disinfected. Doe attends a private pre-school and receives special education services pursuant to an individualized education program (IEP). Following a dispute regarding services to be provided to Doe, the parties entered into a settlement agreement on November 17, 2005. The following provisions were included in the agreement:

The school department agrees to provide the student with 10 additional speech and language therapy sessions, above those currently in the student’s IEP, such additional sessions to be scheduled over the remainder of the current school year by mutual agreement . . .”

The school department will provide speech and language and occupational therapy sessions at the student’s home as scheduled in the student’s current IEP.

The team will meet as soon as possible to modify the current IEP to reflect the changes in this Agreement. [Petitioner’s Exhibit 2].

A new IEP was developed for Doe in December 2005. In addition to an out-of-district private school placement, it provides for speech and language therapy and occupational therapy at Doe’s home. The services are listed to continue until June 23, 2006, with the further notation “Extend 9/1/2006 to 10/5/2006.” [Ibid.]. The IEP’s “Comments” section further states:

Extended School Year services to be determined by the Team before May 1, 2006.¹
Academic Goals, instruction, and progress monitoring to be provided by RIDE certified Early Childhood Special Educator . . .
10 additional SLT sessions to be provided prior to 6/20/06.

¹ On each of the 6 goals pages of the IEP, the “Consideration for Extended School Year” item has been left blank.

Doe received the additional 10 speech and language sessions at home during the 2005-06 school year. The parties met in March and April of 2006 to review Doe's IEP and to discuss the need for extended school year (ESY) services. The meeting notes show that Doe was meeting his educational goals but having cooperation and compliance issues. As for ESY services, Doe's pre-school had concerns with regard to social interaction regression. The parties agreed that Doe needed 6 additional speech and language sessions during the summer, but they disagreed as to the location of these services.²

Earlier this month, Doe's parents requested a special-education due process hearing. The hearing is pending.

Positions of the Parties

Doe's parents contend that their child's difficulty with recouping goals following absences from school and his teachers' fears of regression warrant the provision of ESY literacy, math and science services. The parents also argue that for "stay put" purposes, the location for Doe's summer speech and language services is the home.

The School Committee contends that Doe met his educational goals for the year, that the regression criteria for ESY services have not been met, and that Doe's current IEP does not provide for any ESY services. The Committee also maintains that Doe's IEP provided for speech and language therapy in the home because of medical concerns regarding the level of Doe's exposure to germs while he was attending the private pre-school. Because Doe will not be attending the private school this summer, and thus limiting his exposure to germs, he may safely receive the half-hour summer speech and language sessions in a school setting, where the same disinfectant procedures will be followed and the controlled environment will enhance the effectiveness of the services.

² It also was agreed that Doe did not require occupational therapy during the summer.

Discussion

In the case of John A. Doe v. Cumberland School Committee,³ we stated that

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 . . .’⁴ [Decision, p. 3].

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⁴ 20 USC §1415(j); see also Board of Regents for Elementary and Secondary Education Regulations Governing the Education of Children with Disabilities, §300.541(a).

In the case of In the Matter of Kerry H.,⁴ we discussed the fact-driven approach that is used to determine the student’s “current educational placement” for purposes of the “stay-put” provision [Decision, p. 5]. We stated that the “current educational placement” was the “last uncontested (i.e., acquiesced to) placement . . . in which the student was receiving services from the school district.” [Ibid.]. This, then, is the scope of the narrow inquiry that we conduct in a “stay put/status quo” case.

The last agreed-upon placement in this case is contained in the December 2005 IEP, as supplemented by the parties’ verbal agreement in the spring of 2006 to provide 6 additional speech and language sessions to Doe. The IEP does not mention ESY services. The ESY section for each of Doe’s goals is blank, the “Special Education and Related Services” section of the IEP provides for a June 23, 2006 cessation of services,⁵ and the “Comments” section states that “Extended School Year services to be determined

³ Commissioner’s decision of July 18, 2002.

⁴ Commissioner’s decision of November 16, 2001

⁵ With a resumption of speech and language and occupational therapy services on September 1, 2006, after the summer vacation.

by the Team before May 1, 2006.” Based on the December 2005 IEP, there is no agreement between the parties that will support a “stay put” order for ESY services while the due process matter is pending.

There is agreement, however, to provide Doe with 6 additional speech and language sessions during the summer. For reasons previously described, the School Department has changed the location of these services from the home to a school setting. In applying the “stay put” provision in the context of a disciplinary case, the Fourth Circuit Court of Appeals recently held that

Consideration of the structure and the goals of the IDEA [Individuals with Disabilities Education Act] as a whole, in addition to its implementing regulations, reinforces our conclusion that the touchstone of the term ‘educational placement’ is not the location to which the student is assigned but rather the environment in which education services are provided. AW Ex Rel. Wilson v. Fairfax County School Board, 372 F.3d 674 (2004), p. 683.

While the School Department is proposing to change the precise location of Doe’s speech and language services for the summer, we find that the change does not alter Doe’s overall instructional setting. Whether the services are delivered in the home or in a private location at a school, we find the summer therapy setting to be essentially the same. This assumes, however, that appropriate disinfectant procedures are used at the school setting. We therefore require that before any summer speech and language services are provided in a school setting, the School Department meet with Doe’s parents at the school for the purpose of explaining and illustrating the disinfectant protocol. If the parties cannot agree on a protocol, or if cleanliness issues arise during the course of the summer tutoring, we will entertain a request from the parents for appropriate interim-order relief.

Conclusion

The request for a “stay put” order is denied because Doe’s current educational placement does not include ESY services and the School Department did not change

Doe's placement by altering the location of his speech and language services for the summer.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

June 26, 2006