

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

* * * * *

Student S.

v.

**North Kingstown
School Committee**

* * * * *

INTERIM ORDER
DECISION

Held: This is a request for an interim order to maintain a child's status quo placement in a pre-school program as defined in the child's Individualized Education Program. Since a new placement for the student in this case has not yet been agreed to, we must order that his present placement in his pre-school program be maintained in accordance with 34 CFR 300.514.

DATE: November 15, 2006

Jurisdiction and Travel of the Case

This is a request for an interim order to maintain a child's status quo placement in a pre-school program as defined in the child's Individualized Education Program (IEP). Jurisdiction is present under R.I.G.L. 16-39-1, R.I.G.L. 16-39-2, and R.I.G.L. 16-39-3.2.

Position of the Parties

The Parents

The parents contend that the District must maintain their child's placement at an out-of-district pre-school because (1) they have not agreed to a new placement and (2) they have now filed a request for a special education hearing.

The School District

The school district contends that the parents in this case have agreed to allow the district to cease paying for the child's pre-school placement by virtue of an agreement signed on November 17, 2005.

Findings of Fact

1. The child in this case was born on September 26, 2001. His present IEP was scheduled to run from October 5, 2005 through October 5, 2006.¹
2. The parties to this case have entered into the following agreement in a due process resolution session held November 17, 2005²:
 - (1) 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. Each session is 30 minutes.
 - (2) *The school department agrees to fund the student's placement at the community pre-school for the remainder of the current school year, as currently enrolled. (Emphasis added)*
 - (3) 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.
 - (4) The team will meet as soon as possible to modify the current IEP to reflect the changes in this agreement.

¹ Exhibit 2

² Exhibit 1.

- (5) The parties agree that either the school department or the parents may rescind this agreement within three (3) calendar days, by written notice to the other party.
- (6) This is a full and final settlement of all disputes between the parties.

Agreed this 17th day of November, 2005

3. After this agreement was signed the student in this case received a neurological evaluation that concluded that this student should be diagnosed as having high functioning autism.³
4. The school district, in reliance on the agreement signed on November 17, 2005, has ceased paying for the student's placement at the community pre-school. The parents, at their own expense, have elected to continue tuition payments to this child's pre-school.
5. The parents have filed a request for a special education due process hearing.⁴
6. The IEP in this case, as amended by the *Agreement of November 17, 2005*, fails to define a placement for this child. This is so because, while the child's original IEP defined his placement as being an "OUT OF DISTRICT" preschool, the IEP, as modified by the Agreement of November 17, 2005, fails to specify a new agreed to placement for this student. The statement in the *Agreement of November 17, 2005* that, "the school department agrees to fund the student's placement at the community pre school for the remainder of the current school year [Fall 2005—Spring 2006] is not the equivalent of defining the child's placement for the 2006-2007 school year.

Conclusions of Law

The *Stay-put* rule (34 CFR 300.514)⁵ requires that during the pendency of any administrative or judicial proceeding regarding the identification, evaluation, or educational placement of a child, the child must remain in his or her current educational placement unless:

- The parent and the school agree on a different placement.
- The parent and the state agree on a different placement
- A state level hearing or review officer "agrees with the child's parents that a change in placement is appropriate."⁶
- Certain disciplinary exceptions to the Stay-Put provision are applicable.⁷

³ Exhibit 1.

⁴ Exhibit 1

⁵ 34 CFR 300.514 See: *The Many Faces of the... "Stay-Put" Provision*, 62 Ed.Law Rep. [833] See: *Mills v. DC School Bd.*, *supra*.

⁶ *Burlington Sch. Comm. v. Dept. of Education of Massachusetts*, 471 U.S. 359 (1985)

⁷ 34 CFR 300.514 and 34 CFR 300.526

Conclusion

Since a new placement for the student in this case has not yet been agreed to, we must order that his present placement in his pre-school program be maintained in accordance with 34 CFR 300.514.

APPROVED:

Forrest L. Avila, Hearing Officer

Peter McWalters, Commissioner

November 15, 2006
Date