

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

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Student M. Doe

v.

Newport School Committee

.....

DECISION

Held: In this case the parents of Student Doe are appealing the school district’s denial of their request to transfer their son to another school within the district. The parents contend that their son’s current school does not provide him with a safe environment adequate to deal with his peanut allergy. We find that, while the school district has made commendable efforts to accommodate this student’s disability, the possibility is not foreclosed on this record before us that there may be small amounts of time when the student’s epi-pen is not easily accessible to him should the need for its use arise. This matter is remanded to the school district for a medical determination as to whether the time needed to obtain the epi-pen from the school administration building is or is not excessive. If, after a physician review, a dispute still exists in this case, we will reconvene this hearing to receive medical evidence to aid in making an appropriate decision.

DATE: December 6, 2006

Travel of the Case and Jurisdiction

The elementary school student in this case is so allergic to peanuts that exposure to them may cause him to go into a potentially lethal anaphylactic shock. The parents in this case contend that the school their son is now attending does not provide him with a safe environment adequate to deal with this allergy. The parents have therefore requested that the school district transfer their son into another school, within the district, where they think their son might be safer. The local school committee has reviewed this request and it has concluded that (1) the request for a transfer should be denied and that (2) the school the student is now attending has a solid program to safely deal with this student's allergy. The parents have appealed to the Commissioner from these decisions of the local school committee. Jurisdiction is present under R.I.G.L.16-39-1, R.I.G.L.16-39-2, and R.I.G.L.42-87-5.

Positions of the Parties

The Parents

The parents contend that the school's emergency action plan is insufficient to ensure that their son will receive timely treatment if his peanut allergy causes him to go into anaphylactic shock.

The School District

The school district contends that it has made more than sufficient efforts to ensure the safety of this student and that the district's emergency action plans meet all required standards.

Findings of Fact

1. In accordance with applicable law and regulation the district's school physician has established "standing orders" to govern the treatment of cases of anaphylaxis occurring at school.¹ These standing orders, in the case of children with known allergic conditions, include parental review of the student's individual *Anaphylaxis Emergency Action Plan* and parental opportunity to give consent to having a picture of the student attached to the student's individual *Action Plan*.²
2. These standing orders specify that if a student with a known allergy has been exposed to, or thinks he or she may have been exposed to, a substance that may

¹ Exhibit 6, pages 5-7. (Copy of pages attached to this decision)

trigger an anaphylactic event, then school personnel are required, in accordance with the student's individual plan *Action Plan*, to:

- Administer an Epi-pen or Benadryl
 - Call 911.
 - Notify the student's parents or guardians
 - Accompany the student in the rescue wagon (a health card or copy should be sent with student) if a parent is not present.
3. Since the beginning of the 2005-2006 school year the school district has been aware that this student is allergic to peanuts and that exposure to peanuts could put this student into an anaphylaxis shock that could become fatal within minutes.
 4. To address this situation this student's classroom has been posted a peanut free zone.³
 5. A separate cafeteria table for students with allergic conditions has been set up. This separate cafeteria table is available to friends who are not eating food that presents a danger of prompting an allergic reaction. Individual student *Emergency Action Plans* are kept in the school cafeteria, and cafeteria staff have been trained in implementing these action plans.⁴
 6. School personnel, including the student's teacher and the two aides in the student's class, have been trained in how to implement this student's *Emergency Action Plan*.
 7. In the case of this student, anaphylaxis is treated by the immediate administration of proscribed medication by means of an epinephrine auto-injector—an *epi-pen*. The student's allergist has prescribed such a device for this student.
 8. In many situations older students will carry such an epi-pen with them so that they may self-administer the needed medication in an emergency. The student in this case is too young to self-carry or self-administer this medication. This student also has behavioral difficulties that would make it inadvisable for him to have physical possession of an epi-pen.
 9. Since this student cannot self-administer or self-carry his medication the school has had to design an alternate method to be sure that, if it is needed, his medication is administered in a timely fashion.
 10. The school's certified school nurse teacher, whose office is 12 feet from the student's classroom, has an Epi-pen in her *Emergency Medical Bag*. The certified nurse teacher is at the school for four and three-quarters days a week.⁵ However, when the nurse is not at the school, her office door is kept locked for security reasons.

³ Exhibit 4.

⁴ Exhibit 3.

⁵ Transcript, page 15.

11. If the nurse teacher is not available to respond to an anaphylactic event, staff may obtain the student's *Emergency Action Plan* from the school's main office building, which is located some 312 feet from the student's classroom. A picture-identified Ziploc bag, containing the student's individual epi-pen, is kept hanging on a back wall in the rear of the main office. A key is not needed to access the Ziplocked bag.
12. The school is about three miles from the Newport Hospital

Conclusions of Law

The School Health Regulation relevant to the present controversy states:

17.9 If appropriate, a child identified as being at risk for anaphylaxis should carry the epinephrine auto-injector with him at all times. If this is not appropriate, the epinephrine auto-injector shall, if necessary for the student's safety, *as determined by the physician*, or other licensed prescriber, be *available in* the classroom, cafeteria, physical education facility, health room and/or other areas where the epinephrine auto-injector *is most likely to be used*. Reasonable provisions shall be made for the availability, safekeeping and security of the epinephrine auto-injector. The school shall develop protocols and procedures related to the availability, safekeeping and security of the epinephrine auto-injector. (Emphasis added)

Discussion

We must find that the school district has made commendable efforts to accommodate this student's disability. In fact it is obvious that when the school nurse teacher is in her office, which is less than twelve feet from this student's classroom, an epi-pen is, from any practically viewpoint, functionally available for use in the student's classroom. The difficulty in this case, however, is the situation that prevails when the school nurse teacher is not in her office. When the nurse teacher is not present, the epi-pen must be procured from an administrative building, which is 312 feet from the student's school building. While the amount of time needed to traverse this distance is a fact within the competence of the hearing officer to determine, the question of whether the expenditure of this amount of time might prevent the timely arrival of the epi-pen requires a medical opinion.

Given this fact we must remand this matter to the school district for a determination by the school physician, in consultation with the student's physician, for a medical determination as to whether the time expended in obtaining the epi-pen from the school administration building, which is 312 feet from the student's school building, is not so excessive as to prevent the timely arrival of the epi-pen, if the need for it's use should arise. If, after this physician review takes place, a dispute still exists in this case, we will reconvene this hearing to receive appropriate medical evidence to aid in making an appropriate decision in this case.

Conclusion

This matter is remanded for action in accordance with this decision. If this matter is not resolved at the local level, the hearing will be reconvened to take appropriate medical testimony.

APPROVED:

Forrest L. Avila, Hearing Officer

Peter McWalters, Commissioner

December 6, 2006
Date