

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER
OF EDUCATION

.....

Student K.S.

v.

**Chariho Regional
School Committee**

.....

**DECISION ON
INTERIM ORDER**

Held: This appeal concerns whether this student should be returned to his regular classroom placement. While this 4th grade student has been academically successful, he has a tendency to be disruptive in class by striking, shoving, or verbally abusing other students, screaming or throwing objects. Returning this student to his prior classroom situation would place other students at a measure of physical and educational risk. The petition for an interim protective order is denied. The school district will review this student's current placement in the context of the Board of Regents Restraint Regulations and will file a report on its compliance with these regulations with us, and with the parents, within 10 days of the issuance of this decision.

DATE: May 25, 2007

Jurisdiction and Travel of the Case

Jurisdiction is present under R.I.G.L.16-38-1, R.I.G.L.16-39-2, and R.I.G.L.16-39-3.2. This is a petition for an interim order.

Positions of the Parties

The Parents

The parents in this case contended that their child, who is a regular education student, should be returned to his regular classroom placement.

The School District

The school district contends that it cannot return this student to his regular location in the classroom without putting other students at a measure of physical and educational risk due to this student's physical acts of misbehavior.

Findings of Fact

1. The student in this case, who has always been academically successful, is a fourth grader at the school he has attended since he entered kindergarten.
2. While this student has been academically successful, the record before us shows that during the past five years he has evinced a significant, though not constant, proclivity to strike other students, shove them, and to verbally abuse them. These incidents are not insignificant. They have reached a level where some parents have become concerned about the safety of their children. They have therefore requested that their children be transferred into other classes, away from this student.
3. This student also has a tendency to be disruptive in class by at times screaming, swearing, and tossing things.
4. The parents of this student contend that while this student may occasionally be a bit rambunctious, the school is simply overreacting to his occasional behavioral foibles. They note, after all, that this student's misconduct has not yet resulted in a significant physical injury to another student. We respectfully, but completely, reject this view of the present situation. We find that this student's misbehavior is quite excessive, and that this misbehavior is an issue which the school must properly address, not only for the good of this student, but also for the safety of other students. One witness, whom we find to be credible, stated that this student, "has injured kids. That's really why we ended up in the meeting on May 7, because repeatedly throughout the years he has injured kids."¹

¹ Transcript, page 67

5. The record before us shows that, since this student has been in kindergarten, the school has attempted to work with this student, and with his parents, to address this student's misbehavior. The student's parents have been cooperative in this endeavor but, as of late, they appear to have become less tolerant of what they view as the school's constant overreaction to what they regard as their son's occasional harmless peccadilloes. These parents have now made it clear that they are not now much receptive to being called at work about their son's alleged misbehavior, and that they are not receptive to him being given a suspension from school, since such a suspension would cause them to miss work.

6. At various times the school has attempted to arrange counseling for this student but this counseling has not met with satisfaction of the student's parents. The parents have also made commendable efforts to obtain private counseling for their son and they are in the process of renewing such counseling. Various behavior management methods have been used with this student, both at home and at school. These efforts include social skills training and various functional behavior assessments and behavior management techniques. All these efforts do not appear to have met with much success in changing this student's behavior.

7. Neither the parents nor the school, after due consideration, believe that this student is in need of special education. Neither the parents nor the school believe that this student is in need of any accommodation under Section 504 of the Rehabilitation Act of 1973.

8. During the course of the present school year this student has engaged in numerous significant acts of misbehavior. On one occasion he slammed an open desktop onto the fingers of another student. Most recently, on or about May 3rd, this student struck another student on the head with a paperback book, and screamed into the other student's ear. At this point school authorities decided that they needed to take more strenuous actions to protect other students from harm.

8. It should be noted that there are four fourth grade classrooms at this student's school. In three of these classrooms there are students whose parents have requested that their child not be put in the same classroom with this student. Simply transferring this student to another classroom therefore does not appear to be a very viable alternative for addressing this student's misbehavior.

9. The school district operates a state approved alternative learning program in another school building. This program has been designated as a Board of Regents commended school. This program is a regular education program in which students have access to the regular school curriculum. Since this is a program which is housed in a building which contains the school district's clinical day program some special education students also receive special education there. A full range of mental health services, "including multiple licensed clinical psychologists and an adolescent and child psychiatrist" are available, if parents wish these services to be provided to their child. Diagnostic services are also available, if the parents wish these services to be provided.

10. The school district has proposed that this student be moved into the regular education program in this alternative learning program. The parents in this case object to this move.

11. At present, since no alternative placement has been agreed to, this student has been assigned a desk at the doorway to his classroom where he is under the supervision of his regular classroom teacher. He receives regular classroom instruction there. He also has the option to do his schoolwork in the principal's office or to sit with the school counselor whenever he feels that this would be helpful for him. This student is not being physically isolated or sealed away from instruction or supervision. On the other hand, it must be conceded that he is being physically separated a prudent distance away from those students he might physically touch. No one suggests that this arrangement is anything like a permanent solution to this student's difficulties. It is being resorted to as a result of lack of agreement with the student's parents on another placement for this student.

12. This student has not been suspended from school. The present physical arrangement of his seating location is not a disciplinary measure, but rather a classroom management safety measure meant to protect other students.

13. Returning this student to his prior classroom situation would place other students at a measure of physical and educational risk.

14. As we write there no more than about three weeks left in the school year. This student will be moving on to the district's middle school next year.

Conclusions of Law

1. No party has briefed, argued, or presented evidence concerning how the Board of Regents Restraint Regulations might affect this matter. We suspect that they are not being abridged here, but we will require the school district to review the student's present classroom placement and to file a report with us, and with the student's family, concerning this issue.

2. Neither the parents nor the school district contended that this student is in need of special education under the IDEA or that he has a handicapping condition that would bring him within the ambit of Section 504 of the Disabilities Act of 1973.

3. While this is not a disciplinary case, there is good authority to the effect that a short term placement in an alternative education program in which a regular student has access to the regular school curriculum does not violate a student's federal rights. *Casey v. Newport*, 13 F.Supp.2d 242 (D.RI. 1998) We have not been cited to any state authority which bars such transfers, when it has been made through a sound professional deliberative process, with parental input in the decision making. A transfer to an alternative learning program may be something the parties should review.

4. No cause has been shown for issuing an interim protective order at this time.

Conclusion

1. The petition for an interim protective order is denied.
2. The school district will review this student's current placement in the context of the Board of Regents Restraint Regulations and will file a report on its compliance with these regulations with us, and with the parents, within 10 days of the issuance of this decision.

APPROVED:

Forrest L. Avila, Hearing Officer

Peter McWalters, Commissioner

May 25, 2007
Date