

Jurisdiction and Travel of the Case

This is an interim protective order hearing. Jurisdiction is present under R.I.G.L.16-39-3.2, R.I.G.L.16-39-1, and R.I.G.L.16-39-2. The Cranston school committee has denied the petitioning parent's request that her son, who is entitled to the protections of state and federal special education laws and regulations, including the "stay-put provision", be allowed to continue to attend the Orchard Farms Elementary School during the pendency of a due process hearing she has requested. The school committee has refused to grant this request because it believes that all the elements of the student's present IEP are available at the Bain Middle School, which the student is presently assigned to attend.

Positions of the Parties

Position of the Parent

The parent contends that her son has made good progress at the Orchard Farms Elementary School during the past year and that an assignment to the Bain Middle School might put this progress at risk.

Position of the School Committee

The school committee contends that the entire agreed-to IEP services for this student can be met at the Bain Middle School. The committee also submits that under Rhode Island Special Education Regulation 300.522 a student should be educated in the school he would attend if he or she or he did not have a disability. In this case, this is the Bain Middle School.

Findings of Fact

1. The twelve year old student in this case, who has multiple special needs, has been enrolled in the Cranston public schools for nine years. He has now completed the fifth grade at the Orchard Farms Elementary School, which he has attended for the last three years. Previously he attended the Woodridge School (1998 to 2001) and the Glenn Hills School (2001 to 2004). All these three schools are said to be on the "western side of Cranston".
2. The student's last agreed-to IEP extends until March, 2008. This student has need of a feeding machine and a breathing machine. He is also a child with retardation who is almost nonverbal. He is scheduled for surgery and he will be in a wheelchair after the surgery for at least two months.
3. The school district now proposes to assign him to the Bain Middle School, a school which is said to be "on the eastern side of Cranston." The parent and the student in

this case live in the eastern side of Cranston. The parent has filed for a due process hearing at which she will argue, inter alia, that her son should be assigned to the Western Hills School, in Cranston. The Bain Middle School is the school that, under the school district's administrative plan, receives children who have completed school at the Orchard Farms Elementary School.

4. The student's mother testified that she believes her son has made great progress at the Orchard Farms Elementary School in the 2006 to 2007 school year. He is more vocal and social. She testified that she didn't, "want him to get into a new place and go backwards, because it's taken him so long to get here. I want him to stay with the people that he moved up with all along and not switch to a whole — I don't want him to go backwards."
5. A special education director from the public schools of Cranston, who is very familiar with this student's needs, testified that at the Bain Middle School the student's present IEP, "as it was written, in regards to student/teacher ratios, the goals and objectives can be met very nicely at the [Bain Middle School]. There is an appropriate program in that building that can meet all of his needs in regards to goals and objectives, in regards to what mom said, he is a bit of a wanderer and he needs some support when he is out of the room, one-on-one support and guidance to his direction, and that's how the IEP is written, and the types of services he needs can be provided in that program." We credit the testimony.

Conclusions of Law

1. A change in the location of IEP services is not a change in the IEP which warrants the application of the "Stay-Put Provision." *Student M. Doe V. North Kingstown School Committee*, Commissioner of Education, June 26, 2006.
2. Under Rhode Island Special Education Regulation 300.522 a student should be educated in the school he would attend if he or she or he did not have a disability.

Discussion

Based upon the testimony we heard, we conclude that the student's IEP services can all be provided at the Bain Middle School. Bain Middle School is also the school the student would attend if he did not have a disability. Rhode Island Special Education Regulation 300.522

Conclusion

Since no change in the student's IEP has been made in this case, the request for an interim protective order must be denied and dismissed.

APPROVED:

Forrest L. Avila, Hearing Officer

Peter McWalters, Commissioner

September 7, 2007
Date