

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

In the Matter of J.R. Doe

Interim Order Decision

Held: One-on-one nurse for the student is ordered on a “stay-put” basis during the pendency of the due process hearing; Petitioner is to provide the school district with a response to the proposed health care plan.

September 13, 2007

Introduction

This request for an interim protective order claims that student Doe, a child with a disability, is entitled to a one-on-one nurse on a “stay-put” basis.¹

Background

Student Doe is entering the first grade at her local elementary school. Her medical history, according to her pediatrician, is “complicated . . . resulting from her premature delivery at 25 weeks gestation. Her history is significant for bilateral intra-ventricular hemorrhages with resulting hydrocephalus. This has required a shunt placement and multiple surgical revisions.” [Petitioner’s Exhibit 3]. Doe also had bilateral ostetomies and is legally blind in her right eye. She requires a gastric feeding tube and suffers from seizures. Her ability to communicate is extremely limited.

Doe has received educational services from the school district since 2003. Her most recent signed individualized education program (IEP) was developed in October 2005. The IEP provided for a pre-kindergarten self-contained classroom for Doe with several related services and supportive aids and program modifications.² The IEP also stated that Doe “needs an assigned assistant/nurse to help during personal care needs, transitioning from one activity to another, during activities, and unstructured times throughout her school day.” [Joint Exhibit 1]. As in previous years, Doe was assigned a one-on-one registered nurse.

In June 2006, the school district proposed a kindergarten IEP for Doe for the 2006-07 school year. The IEP repeated the “assigned assistant/nurse” language from the previous IEP. It also included the comment that Doe’s “[m]edical care plan should be updated by school nurse teacher in conjunction with [Doe’s] treating physician(s).” [Joint Exhibit 2]. Doe’s parents did not sign the IEP nor did they request a due process hearing concerning their daughter’s

¹ The Commissioner of Education designated the undersigned hearing officer to hear and decide the request. A hearing was held on September 6, 2007.

² Doe’s assistive technology devices included a walker, stander, adaptive classroom chair, and stroller.

placement. Doe completed her kindergarten program this past summer. She again was provided with a one-on-one registered nurse.

Doe's IEP was reviewed in June 2007. The parties agreed that Doe would move to the first grade on an inclusion basis. Doe would be with her classmates in the first-grade classroom to the extent permitted by her condition and overall circumstances. She also would have access to the specialized learning center when she was unable to be included in the first-grade classroom activities. The parties were unable to agree, however, on nursing services for Doe.

The school district assigned Doe's former one-on-one nurse to the specialized learning center. A total of 5 students, including Doe, have been assigned to the center. All of the students require nursing services. Some of the students have had seizures. A full-time certified school nurse-teacher is assigned to the school, and, for the first time, a one-on-one teacher assistant has been assigned to Doe. The teacher assistant has received training to meet Doe's medical needs, including those associated with seizures.³ The nurse in the specialized learning center would have immediate access to Doe if a medical problem arose. The school district also included an individualized health care plan for Doe with its proposed IEP.

Doe's mother testified that her daughter's seizures have become more frequent and severe since June 2005. She described two seizures that occurred the week before the hearing, and she emphasized the importance of spotting the early signs of a seizure so that the seizure may be halted without the use of the increasing amount of medication Doe has needed.

A request for a due process hearing has been filed in this matter.

While Doe's pediatrician has communicated with school officials, Doe's neurologist has not been authorized by Doe's family to share information about Doe's condition. The school district has not received a response to its proposed individualized health care plan from any of Doe's doctors.

³ The teacher assistant has worked in the learning center for the past two years and therefore has come to know Doe during that time.

Positions of the Parties

Petitioner requests a “stay-put” order for a one-on-one nurse for Doe while the due process hearing is pending. Petitioner relies on Doe’s IEPs and the school district’s 4-year practice of providing Doe with a one-on-one nurse.

The school district contends that its proposed “assistant/nurse” arrangement is not likely to affect in some significant way Doe’s learning experience, and therefore does not constitute a change in Doe’s educational placement for purposes of a “stay-put” order. Doe’s IEP requires an assigned assistant or nurse and she has been assigned a one-on-one teacher assistant who has had appropriate training. Despite the efforts of school officials, Doe’s doctors have not spoken to school staff or reviewed Doe’s proposed program. The teacher assistant/nurse combination will meet Doe’s medical and health needs.

Discussion

Under federal and state law, students with disabilities are entitled to remain in their current educational placement pending the resolution of due process hearing procedures, unless the parties agree otherwise.⁴ Placement under this provision is commonly referred to as “stay put.” The purpose of “stay put” is to protect students from unilateral changes in placement that do not comply with the due process requirements of federal and state law. A district’s alteration of a student’s program will constitute a change in the “educational placement” if a party is able to “identify, at a minimum, a fundamental change in, or elimination of a basic element of, the education program”⁵ As the school district correctly observes, only matters that are “likely to affect in some significant way the child’s learning experience” qualify as changes in educational placements for purposes of “stay put.”⁶

Doe’s signed 2005-06 IEP and her implemented 2006-07 IEP contain the same pertinent language: She “needs an assigned assistant/nurse to help during

⁴ 20 U.S.C. §1415); Board of Regents Regulations Governing the Education of Children with Disabilities, §300.514.

⁵ Lunceford v. District of Columbia Board of Education, 745 F.2d 1577 (D.C. Cir. 1984).

⁶ DeLeon v. Susquehanna Comm. School District, 747 F.2d at 153 (3d. Cir. 1984).

personal care needs, transitioning from one activity to another, during activities and unstructured times throughout her school day.” There is no dispute that the IEPs require a one-on-one assignment. The parties’ dispute concerns the qualifications of the person to be assigned. In this respect, we find the IEP language to be unclear.

The descriptive language following “assistant/nurse” does not specifically refer to nursing duties. In fact, a nurse is not ordinarily responsible for “personal care needs.” We therefore cannot definitively say that the phrase “assistant/nurse” in the IEP presents an “either/or” proposition. Also, the fact that the school district has assigned a one-on-one nurse to Doe for each of her 4 years in the school system does not support the construction of the language advanced by the district.

We are not prepared to state on this record that Doe’s needs have now changed. She is a severely and profoundly impaired child who is subject to seizures. She is not able to communicate any feelings or sensations she may have when a seizure is coming on. There is contradictory evidence in the record regarding her recent seizure activity. There is no evidence of Doe’s neurologist’s opinion concerning Doe’s current state of health. Obviously, the condition of the electrical neuronal activity in Doe’s brain is fundamental to her very existence. It therefore follows that proper seizure-related monitoring is a basic element of Doe’s education program and that an ill-advised change in that function could have a significant impact on Doe’s learning experience, not to mention her life.

In light of the IEP language, past nursing assignments, and the nature of and present concerns about Doe’s seizure disorder, we find that the requested “stay-put” order is warranted in this matter. Further evidence of Doe’s present condition can be developed in the pending due process hearing, which inevitably will shed more light on the type of personnel assistance Doe needs at school. Finally, it is evident that Petitioner needs to provide the school district with a written response from Doe’s neurologist to the individualized health care plan previously proposed by the district.

Conclusion

It is hereby ordered on a “stay-put” basis that a one-on-one nurse be provided to student Doe during the pendency of the due process hearing. We also order Petitioner to take the necessary steps to provide the school district with a written response from Doe’s neurologist to the individualized health care plan proposed by the district.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

September 13, 2007