

Jurisdiction and Travel of the Case

This is an interim order hearing concerning the placement of a student with an IEP into an alternative educational placement as a result of a disciplinary action. 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 parties to this action are the petitioner, an 18 year old student at the Beacon Charter School, and the respondent, the Beacon Charter School itself.

Positions of the Parties

The Petitioner

The petitioner contends that the Beacon Board of Trustees made the decision, “without any input from the IEP team. No IEP meeting, nothing.” Concerning the suspension itself, the petitioner through his mother agrees that, “he should have been suspended for the time frame he was suspended. I’m not disagreeing with the suspension.”

The Charter School

The charter school contends that it complied with all applicable laws and regulations in transferring this student to an alternative e educational placement.

Findings of Fact

On February 6th, 2008 this student, as a result of an incident in which he directed physical violence and abusive language towards other students, was given a nine day school suspension, pending a decision of the Beacon board of trustees on whether this suspension should be extended.¹ On February 26th 2008 (a week of school vacation had intervened)² the board suspended the student for the rest of the school year and assigned him to an alternative placement calling for tutoring for 6 hours a day, five days a week, for the rest of the school year. The petitioner’s mother was informed, in a somewhat opaque communication, that she had the right to appeal the merits Beacon board’s decision, back to the board itself, for hearing on the merits at a later date.³

The alternative education program ordered by the Beacon Board was intended to allow this student to make up work from last year, and to allow him to graduate on time. On February 27, 2008, the day after the Beacon Board meeting, the petitioner’s mother filed a petition for an interim protective order with the Commissioner of Education. This petition stated:

¹ Exhibit 2. Transcript, page 45.

² Transcript, page 17.

³ Transcript, page16.

I am writing to request a “Stay Put Order” based on the fact that Beacon Charter High School has violated the rights of my son.... The violations include a suspension in excess of ten days and a change of placement in the absence of an IEP meeting.

In an effort to return the horse to a position before the cart on an expedited basis, Beacon Charter School held an IEP meeting on February 28, 2008, two days after the Beacon board meeting, to decide whether this student’s misconduct was a manifestation of his disability and presumably -- if the conduct was not a manifestation of his disability -- to determine what the student’s alternative education program should be -- a placement decision seemingly already made by the Beacon board. This hastily convened IEP team meeting was the result of a good faith effort by the petitioner’s mother and a special education teacher, “to get everything into compliance by attempting an IEP meeting to discuss placement.”⁴ The IEP team concluded, without dissent, that the student’s misconduct was not a product of the student’s disability.⁵ The team then began to discuss an alternative placement for the student. The minutes of the IEP meeting, in pertinent part, state:

Student’s mother: IEP team is the only entity to decide to decide [the student’s placement] Please speak with [a member of the staff of the Rhode Island Department of education]. Team cannot make the decision of placement. [The student’s mother] has filed a stay put order. We agree to reconvene after a determination from the Commissioner. [The student’s mother] will have viable options for placement.

[The student] will meet with the tutor at the [a library] at [a specified time].

[The student’s mother] does not agree to the placement of tutoring as a permanent placement. She agrees to tutoring until the placement is made.

It is to be regretted that the IEP team did not proceed on February 28, 2008 to independently decide on an alternative placement for this student. Such a decision would have probably have obviated the need for the present hearing. Still, we appreciate the difficulty the IEP team was in, given that the Beacon board of trustees had already decided on what the alternative placement was to be. The special education teacher at the IEP meeting testified that: “...[N]one of us at the meeting there had full knowledge of other facilities that might be available at the time.” The fact that a petition for an interim protective order hearing was then pending before the Commissioner also facilitated the IEP team’s decision not to consider an alternative placement for this student.

⁴ Transcript, page 12 and page 83.

⁵ Exhibit 5 (IEP Minutes) and Exhibit A (Team Evaluation Meeting).

Conclusions of Law

1. The Federal Individuals with Disabilities Education Act provides in disciplinary matters that, “If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child’s disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in Section 1412(a)(1) [the requirement to continuously provide FAPE] of this title although it [FAPE] may be provided in an interim alternative educational setting.” 20 U.S.C. 1415 (k) (C) *See*: Rhode Island Special Education Regulations 300.530
2. Federal law requires that the student’s IEP team should determine the student’s alternative education program, even if it is found that the student’s misconduct was not a manifestation of the student’s disability. 20 U.S.C. 1415 (k)
3. The General Laws of Rhode Island provide in pertinent part:

R.I.G.L.16-21-27 Alternative education programs. – Each school district shall adopt a plan to ensure continued education of students who are removed from the classroom because of a suspension of more than ten (10) days or who are chronically truant. The plan shall be adopted by the school committee and shall be submitted to Rhode Island department of elementary and secondary education as part of its annual strategic plan submission.

Discussion

It is evident to us that the Beacon Charter school did not comply with the mandates of 20 U.S.C. 1415 (k) when it allowed the Beacon Charter School board of trustees to determine this student’s alternative education program, rather than having this placement determined by the student’s IEP team. We therefore must find that defective procedure used by the Beacon board of trustees to change this placement cannot be allowed to stand. We therefore must find that this student has the right to return to his regular program until a promptly scheduled IEP team meeting can take place to determine an alternative placement for this student. In saying this we are not finding that the present program he has been assigned to may not be an appropriate alternative placement. We are leaving this decision to the student’s IEP team. While we find that this student has a right to return to his regular program, we suggest that perhaps he and his parent might consider whether educational stability might not be better preserved by keeping this student in his current very substantial tutoring program until the IEP team consider what the student’s alternative education program is to be.

Conclusion

We find that this student has the right to return to his prior educational placement at the Beacon Charter School until the student's IEP team can convene to determine an placement for this student.

APPROVED:

Forrest L. Avila, Hearing Officer

Peter McWalters, Commissioner

March 25, 2008
Date