

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

STUDENT C. DOE

V.

WEST WARWICK SCHOOL COMMITTEE

Interim Order and Decision

Held: Special-education student is entitled to interim protective order directing immediate enrollment in cosmetology program on trial basis; jurisdiction is retained to address program-approval issues, review placement concerns, and monitor Doe's performance.

Date: September 4, 2008

Introduction

This matter concerns a request by a West Warwick special-education student to attend a cosmetology program at the Regional Career & Technical Center at Coventry High School.¹

Background

Student Doe is a 16-year-old West Warwick resident who repeated the 10th grade at West Warwick High School during the 2007-08 school year. In addition to failing most of her classes, Doe was absent for 41 school days.²

During the 2007-08 school year, Doe became aware of a cosmetology program being started at the Regional Career & Technical Center at Coventry High School. She applied for the program.

West Warwick is served by the Warwick Area Career & Technical Center. The Warwick Center does not have a cosmetology program. The Coventry cosmetology program is not approved in accordance with the Regulations of the Board of Regents Governing the Management and Operation of Area Vocational-Technical Centers in Rhode Island.

Doe is a special-education student. A revised individualized education program (“IEP”) was developed for her in May 2008. The IEP identifies West Warwick High School as Doe’s current school. It provides that a “small group setting is needed” for Doe’s core academic subjects. [School Committee Exhibit 2]. Doe’s parent signed the IEP on May 23, 2008.

In a letter dated July 21, 2008, Doe was notified that she had been selected for the Coventry Career & Technical Center cosmetology program. The West Warwick School Department opposed Doe’s enrollment in the program. Doe’s parent appealed to the Commissioner of Education.

Following an abbreviated hearing on August 14th,³ another IEP meeting was held. The parties were unable to agree on an IEP, however. The IEP proposed by the

¹ The Commissioner of Education designated the undersigned hearing officer to hear and decide this appeal. Hearings were held on August 14 and 26, 2008.

² She also had many tardies and early dismissals. Doe had a similar attendance record the previous school year.

West Warwick School Department places Doe in special academic classes at West Warwick High School with a counseling component.⁴

Positions of the Parties

Doe's parent cites state law and regulations granting access to career and technical education for students. Because cosmetology is Doe's passion, she will want to attend school and obtain good grades. Adjustments to address Doe's special needs can be made to her Coventry program as circumstances warrant. Doe's parent offered to have Doe attend the Coventry program on a trial basis with weekly progress reports, with the understanding that Doe would be removed from the program if she did not attend school or achieve passing grades.

The West Warwick School Committee contends that Doe cannot be placed in an unapproved program. It further argues that Doe is not a "qualified" student under the Regents' vocational-education regulations because of her low grades, poor attendance and the signed May 2008 IEP, which places Doe at West Warwick High School. Doe needs a small-class setting with the support of a school social worker this year in order to improve her academics to the point where a future career and technical placement is more likely to succeed. Finally, special-education placement disagreements are subject to due process hearings, and the Commissioner of Education does not have jurisdiction over this matter other than to issue a "stay-put" order, which is the placement at West Warwick High School per the signed May 2008 IEP.

³ The Warwick and Coventry school departments were given notice of the hearing. The Department of Education's Office of Adult and Career & Technical Education was represented at the hearing.

⁴ The IEP explains that Doe "requires small group instruction to address her academic needs along with monitoring her attendance difficulties over the past two years along with her social/emotional needs." [School Committee Exhibit 3]. West Warwick is proposing a maximum class size of 8 students, taught by a special-education teacher with a teacher assistant. The record further shows Doe's educational disability to be "Other Health Impairment," but that further information concerning a sexual assault, suicide attempt and a diagnosis of bipolar disorder has subsequently surfaced. Doe previously terminated an enrollment in the fashion merchandising and management program at the Warwick Career & Technical Center.

Discussion

The stalemate that currently exists with regard to Doe's educational placement for the beginning of the 2008-09 school year is due to the conflict between two sets laws that are designed to enhance a student's educational opportunity. The first of these, invoked by student Doe's parent, primarily revolves around Rhode Island General Law 16-45-1.1. That law states, in part, that "[a]ll youth and adults who choose vocational education shall have access to those programs" and that "[a]dmissions criteria and assessment procedures shall promote equal access, enrollment, and participation in vocational programs regardless of age, sex, race, limited English proficiency, disadvantage, or disability."⁵ The Regents' vocational-technical regulations provide that "[e]very student who chooses vocational-technical education and who is qualified for admission shall have access to such programs," that "area vocational-technical centers shall actively recruit students and provide accessible vocational programs for disabled students . . .,"⁶ and that

If a particular program has no openings or is not available at a student's area center, he/she shall have the right to attend the programs in the center nearest to the student's legal residence offering the program which has an opening and for which he/she is qualified. Tuition and transportation expenses must be provided by the community where the student legally resides.⁷

The other legal authority, cited by the School Committee, concerns the education of children with disabilities. Consistent with federal law, the Regents' regulations in this area seek, in part,

(a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs

⁵ Section 300.110 of the Board of Regents Regulations Governing the Education of Children with Disabilities states that "[e]ach public agency must take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education."

⁶ Section IV, C, 4.

⁷ Section IV, C, 7.

and prepare them for further education, employment, and independent living;

(b) To ensure that the rights of children with disabilities and their parents are protected;

(d) To assess and ensure the effectiveness of efforts to education children with disabilities.

The primary means to achieve these objectives is the IEP, a written document that is developed, reviewed and revised in accordance with numerous procedural and substantive requirements. The School Committee arguments in this case also involve the Regents' vocational-technical regulations for requirements concerning the establishment of area programs, computation of tuition, approval of programs, qualified students, and program placement criteria .

According to the Regents' regulations, applications for admission to career-technical centers

shall be distributed no later than February 1 to all interested students in the grade prior to the earliest grade of admission and to age appropriate students . . . Students may submit applications either through their participating school guidance counselor or directly to the area center.

As for placement of students in programs, the regulations state as follows:

A placement committee shall be formed at each area vocational-technical center to review applications for placement into all vocational programs except the pre-vocational program. The membership of the committee shall include the vocational counselor and a vocational teacher. At the discretion of the director, an academic teacher, a special education representative, a representative of the participating school, and anyone else, including the director may be included. The area center director is responsible for ensuring that the committee representation appropriately addresses the needs of LEP, minority and disabled students. In the case of students with disabilities the MDT⁸ and IEP process must be adhered to. Whatever the composition, responsibility for student placement shall rest with the director.

While these vocational-technical regulations appear to raise questions concerning their compatibility with federal and state special-education laws and regulations, they

⁸ The acronym for "multi-disciplinary team," a special-education term that presently is not used.

clearly demonstrate the broad access to vocational education that is provided to students under state law and regulations. As we previously noted in the regulations, area career-technical centers must “actively recruit” and “provide accessible vocational programs” for students with disabilities.⁹ Under the law, career-technical education cannot be withheld from students without good reason.

These circumstances call to mind a case involving another type of access, that of an appeal to the Board of Regents, for a student with a disability. In the case of In Re Michael C., the Rhode Island Supreme Court held that students with disabilities could appeal decisions of special-education due process hearing officers to the Board of Regents, just as students without disabilities could appeal decisions of the Commissioner to the Board. In rejecting the school district’s argument that the federal statute precluded such an appeal, the Court observed that “the federal act never anticipated that handicapped children would be denied the rights enjoyed by nonhandicapped children under state law.”¹⁰

Our objective in this case, therefore, is to accommodate these two sets of laws so as to not deny Doe any right enjoyed by nondisabled students under state law.

Doe is 16 years old and in the 10th grade. She is age and grade appropriate for the Coventry cosmetology program.¹¹ Her parent credibly testified that the cosmetology program is the educational opportunity for which Doe has been waiting, and she expects good attendance and grades from Doe in response. On the other hand, the proposals made by West Warwick to address Doe’s academic and emotional needs are borne out by the record. We share West Warwick’s concerns about large classes and inadequate emotional support for Doe at the Coventry center.

In light of the access provisions of state law and regulation, we conclude that student Doe qualifies for an interim protective order directing that she immediately be enrolled in the Coventry cosmetology program. We further conclude that the best accommodation of interests and rights in this case is along the lines offered by Doe’s parent at the hearing: a trial enrollment. Doe’s enrollment is therefore conditioned upon satisfactory attendance and passing grades in the Coventry program. Coventry will

⁹ Section IV, C, 4.

¹⁰ 487 A.2d at 497 (1985).

¹¹ Doe’s academic deficits do not negate the fact that she has been promoted to the 10th grade.

provide weekly progress reports for Doe. We will retain jurisdiction in this matter to assist in addressing the program-approval issues that West Warwick has properly raised under the vocational-technical regulations,¹² to review Doe's placement at Coventry in light of the class-size concerns and counseling services discussed at the August 2008 IEP meeting, and to monitor Doe's effort and performance in the cosmetology program.¹³

Conclusion

An interim protective order is hereby entered directing that student Doe immediately be enrolled in the cosmetology program at the Regional Career & Technical Center at Coventry High School. The enrollment shall be on a trial basis, as discussed above, and we shall retain jurisdiction of this matter for the purposes described above.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date: September 4, 2008

¹² No tuition payments will be due from West Warwick until these issues are resolved consistent with applicable regulations.

¹³ In the circumstances of this case, we are not precluded by the "stay put" provisions of special education law from exercising our authority under §16-39-3.2 to issue an interim order "to ensure that a child receives education in accordance with applicable state and federal laws and regulations during the pendency of the matter," particularly where we are retaining jurisdiction to oversee the implementation of both vocational-technical and special-education laws as they relate to Doe's education.