

**STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS**

**COMMISSIONER OF  
EDUCATION**

.....

**Student T.B. Doe**

**v.**

**North Kingstown School Department**

.....

**INTERIM ORDER  
DECISION**

**Held: The petition for an interim order is denied without prejudice. The petitioner is directed to give notice of the pendency of this matter to Pawtucket. This matter will be heard on an expedited basis as soon as proper notice is provided to Pawtucket.**

**DATE: March 26, 2009**

## **Travel of the Case**

This is an interim order case. The petitioner is the parent and legal guardian of a student with special needs. The petitioner has requested an IDEA due process hearing in order to challenge the effect of North Kingstown's decision to award a regular high school diploma to the petitioner's son. The petitioner's son now lives in a group home in Pawtucket. Pawtucket has refused to provide this student with special education services because North Kingstown has informed Pawtucket that the student has graduated with a regular diploma from the North Kingstown high school. The award of this diploma is said to have had the effect of terminating the student's eligibility to receive further public education services – in particular transition services from any Rhode Island school district. Rhode Island Special Education Regulations (RISER) 300.102 (a) (a) (1) (i)

The petitioner is seeking an interim order maintaining her son's eligibility to receive public education services at least until an IDEA due process hearing officer can rule on the student's claim. Jurisdiction is present under R.I.G.L.16-39-1, R.I.G.L.16-39-2, and R.I.G.L. 16-39-3.2. It is to be regretted that the Pawtucket school district was not made a party to this hearing since it is from Pawtucket that the special education services now at issue are being requested.

## **Positions of the Parties**

### **The Parent**

When a school district awards a special education student a regular high school diploma, regulations require it to, "provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's post secondary goals." The parent contends that since no such summary was provided to the student, his graduation cannot yet take place and that he therefore remains eligible to receive public schools services. The services the parent is seeking on behalf of the student transition services preparing him for independent living and employment.

### **The School District**

The school district contends that the student has completed his IEP goals, earned the requisite 22 credits needed for graduation, and that he has completed all applicable graduation by proficiency projects and transitional goals.<sup>1</sup> It therefore submits that it has correctly awarded this student a regular high school diploma. It therefore contends that neither it, nor any other Rhode Island school district, is obligated to provide further public school educational services to this student.

## **Findings of Fact**

1. The student's parent has been appointed his legal guardian for educational purposes. This student has been found to be eligible for special education since 1997.

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<sup>1</sup> Exhibits 2, 3, & C.

2. This student attended North Kingstown public schools until he was placed under the supervision of the Department for Children, Youth and their Families (DCYF). DCYF placed this student in a therapeutic placement which operates its own private special education program approved by the Rhode Island Department of Education. It was at this private special education school, which for educational purposes was acting as an agent of North Kingstown school district, that this student completed some final course credit work and met his graduation by proficiency requirements.
3. On September 5, 2008, an IEP meeting was held to review the student's progress and services. At this meeting the parent and the student were informed that the student had completed the academic work the student needed to graduate from North Kingstown high school with a regular diploma.
4. On September 13, the student's parent sent a letter to the North Kingstown school department informing it that she did not want the student to graduate until there had been an IEP meeting with representatives from the Office of Rehabilitative Services and DCYF to discuss transition needs.<sup>2</sup> (See: RISER 300.321 IEP Team (b) *Transition services* participants.)
5. In a letter dated September 19, 2008 the district informed the petitioner that: "It is the position of North Kingstown school district that according to his team [the student] did complete the current requirements to receive a high school diploma and attained the transition goals that were outlined in his IEP. It is also the position of the district that that they not only met but exceeded their obligation of providing a Free and Appropriate Public Education in his Least Restrictive Environment."<sup>3</sup>
6. When this student attempted to obtain transitional services from the Pawtucket school district the district informed him that since he had graduated from the North Kingstown High School he was not eligible to obtain further public school services.
7. The petitioning student was a student in North Kingstown. He now resides in a group home in Pawtucket pursuant to a voluntary placement with DCYF.
8. Pawtucket is presently declining to provide special education services to this student because North Kingstown has informed Pawtucket that this student has graduated from North Kingstown with a regular high school diploma. Pawtucket has not yet been made a party to this matter.
9. North Kingstown has not yet provided this student with, "a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's post secondary goals."  
**(300.305 Additional requirements for evaluations and reevaluations.)**

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<sup>2</sup> Exhibit 1.

<sup>3</sup> Exhibit 2.

## Applicable Statutes and Regulations

### 300.43 Transition services.

- (a) Transition services means a coordinated set of activities for a child with a disability that -- (Is designed to be within a results oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- (2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and
- (3) Includes—
- (i) Instruction;
  - (ii) Related services;
  - (iii) Community experiences;
  - (iv) The development of employment and other post-school adult living objectives; and
  - (v) If appropriate, acquisition of daily living skills and provision of functional evaluation.
- (b) Transition services for children with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a child with a disability to benefit from special education.

### 300.102 Limitation – exception to FAPE for certain ages.

- (a) General. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:
- (1) (i) Children with disabilities who have graduated from high school with a regular high school diploma.
- (iii) Graduation from high school with a regular diploma constitutes a change in placement requiring written prior notice in accordance with Part E of these regulations at Rhode Island Special Education Regulations Section 300.503.
- (iv) As used in this section, the term *regular high school diploma* does not include an alternative degree that is not fully aligned with the state's academic standards, such as a certificate or a general educational development credential (GED)

### 300.305 Additional requirements for evaluations and reevaluations.

\*\*\* (a through c, omitted)

- (d) *Evaluations before change in eligibility.* (1) Except as provided in paragraph (d) (2) of this section, a public agency must evaluate a child with a disability in accordance with Sections 300.304 through 300.311 before determining that a child is no longer a child with a disability.

(2) The evaluation described in paragraph (d) (1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.<sup>4</sup>

(3) For a child whose eligibility terminates under circumstances described in paragraph (d) (2) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's post secondary goals. (Emphasis added)

### **300.320 Definition of individualized education program.**

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(b) Transition services. For a child with a disability, beginning at age fourteen (14), or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include

—  
(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skill; and

(2) The transition services (including courses of study) needed to assist the child in reaching these goals.

**R.I.G.L. 16-64-1.3 Educational responsibility for children in group homes and other residential placements.** – (a) The city or town in which a foster home, group home, or other residential facility that does not include the delivery of educational services is located shall be responsible for the free appropriate public education of any child residing in those placements, including all procedural safeguards, evaluation, and instruction in accordance with regulations under chapter 24 of this title, for any period during which a child is residing in the city or town. The city or town shall coordinate its efforts with any other city or town to which a child moves when exiting the city or town responsible under this subsection. (Emphasis added) \*\*\*

**R.I.G.L. 16-24-1 Duty of school committee to provide special education.** – (a) In any city or town where there is a child with a disability within the age range as designated by the regulations of the state board of regents for elementary and secondary education, who is functionally limited to such an extent that normal educational growth and development is prevented, the school committee of the city or town where the child resides shall provide the type of special education that will best satisfy the needs of the child with a disability, as recommended and approved by the state board of regents for elementary and secondary education in accordance with its regulations governing the education of children with disabilities. \*\*\*

### **Discussion**

A due process hearing under RISE 300.500 (Procedural Safeguards) has been requested to decide the merits of this case. Our role in this interim order hearing is simply to decide whether the student should remain eligible for special education transition services until a due process

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<sup>4</sup> See: Commissioner's Review & High School Diploma System Materials, RISSA and RIASP, January 18, 2007. (Attached)

hearing can rule on what we presume will be issues relating to consent, transition planning, and graduation. That is to say, that for the limited purposes of the present hearing, the only issue before is whether the district's apparent failure to provide the student with a, "with a summary of [his] academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's post secondary goals" provides sufficient grounds to support the issuance of an interim order directing Pawtucket, where the student now lives, to provide him with continued special education services.

We, however, must reluctantly conclude that this matter is not now properly before us for disposition since Pawtucket, the district that would have to provide the services now at issue is not a party to this action.

### **Conclusion**

The petitioner for an interim order is denied without prejudice. The petitioner is directed to give notice of the pendency of this matter to Pawtucket. This matter will be heard on an expedited basis as soon as proper notice is provided to Pawtucket.

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Forrest L. Avila, Hearing Officer

APPROVED:

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Peter McWalters, Commissioner

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March 26, 2009  
Date