

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

In the Matter of Nathan B.

.....

DECISION

Held: This is an appeal of a decision of Cranston school authorities to place a special education student on indefinite suspension for bringing a weapon to school. In this appeal the respondent school committee of Cranston also contends that this student is not a resident of Cranston for school purposes. However, under the circumstances of this matter, we have elected to decide the educational services issue in this case before we decide the residency issue.

We find the suspension in this case was incorrectly imposed. Furthermore the IAES offered to this student is not in compliance with state and federal law. Under these circumstances, this student is hereby reinstated to the placement he was in at the time of his purported suspension. This student is also found to be entitled to compensatory education for the period encompassed by his suspension. The state's Office of Special Needs Services will recommend a program of compensatory education if agreement on a program cannot be reached.

DATE: February 11, 2003

Travel of the Case

This is an appeal of a decision of Cranston school authorities to place a special education student on indefinite suspension for bringing a weapon to school. The weapon was in the form of a two-inch blade attached to a utility tool. The petitioners in this case are the parents of this student.

In this appeal the respondent school committee of Cranston also contends that this student is not a resident of Cranston for school purposes. Cranston bases this residency argument on a close examination of the exact boundary line between Cranston and Providence and the location of the dwelling of the petitioning parents.

When this case was heard we ruled that the residency issue in this case was to be severed and heard separately. This ruling was made because the student in this case would remain eligible to receive services from Cranston until he was enrolled in another school district. At this stage of this hearing we do not know if Providence will dispute residency or what appeals may be made concerning any residency decision we might make. Under these circumstances we have elected to decide the educational services issue in this case before we decide the residency issue.

Jurisdiction

Jurisdiction is present under R.I.G.L. 16-39-1, R.I.G.L. 16-39-2, 16-64-6 (**School Residency**) and R.I.G.L. 16-2-17 (**Right to a Safe School**)

Position of the Parents

The parents in this case concede that their son, who is a special education student, brought a utility tool to school that included a blade about 2 inches long. They, however, challenge the indefinite suspension that was imposed against him for possession of this blade. They make the following arguments:

1. Federal and state law and regulations require public schools to continue to provide a free appropriate public education (FAPE) to special education students who are subject to a suspension of more than ten school days. The parents submit that the 6 hours of home tutoring offered by the school district to their son as a mechanism to provide FAPE has, in fact, not been consistently provided. They also contend that this tutoring program was (1) not developed by a properly constituted Individualized Education Plan (IEP) Team, (2) not convened upon the type of notice

required by the Individuals with Disabilities Education Act (IDEA) and (3) in any case, that it was insufficient to provide the student with FAPE. [20 USC §1415]

2. They also argue that this special education student, in violation of the IDEA, was not granted the same procedural due process rights that would have been granted to a student in regular education who was facing a suspension of more than 10 days.
3. The parents also submit that, since a manifestation hearing resulted in a decision that the misconduct causing the suspension was the result of the student's handicapping condition, the suspension should have been cancelled. They also argue that provisions allowing a special student who brings a weapon to school to be transferred to a 45 day Interim Alternative Educational Setting (IAES) is not applicable to this case since the weapon involved was a two inch blade. Federal and state law, they argue, require that a blade be at least 2.5 inches long before a 45 Day IAES becomes an allowable sanction.
4. The parents recognize that a school could discipline or suspend a regular education student for more than 10 days for bringing a blade of less than 2.5 inches to school. Since this is true, they also concede that, under the IDEA, the school could use its regular school suspension procedure to suspend this special education student. They point out however that such a suspension would only be proper if a manifestation hearing concluded that (1) the misconduct at issue was not a product of the student's disability and (2) the student were to be placed in a "suspension" setting where he could continue to receive FAPE—two facts which the parents contend are not present in this case. The parents also point out that under the "stay put" requirement of IDEA the suspension now at issue would have had to be stayed until completion of all due process procedures, including judicial review.
5. The parents also contend that they never gave informed consent, as such consent is defined in the IDEA, to the placement of this student in a program of home tutoring.
6. Concerning the residency issue, the parents do not concede that their dwelling is located in Providence. They also argue that the retention of residency statute (R.I.G.L. 16-64-2) allows this student to receive special education from Cranston until such time as he is actually enrolled in the Providence public schools.

Position of the Cranston School District

Cranston argues that dwelling house of the petitioners' is, in fact, located in Providence and that this student is therefore not eligible to receive special education services from Cranston. Cranston also contends that (1) the petitioners agreed to the suspension at issue, that (2) the deficiencies in the tutoring program provided to the student result from scheduling problems caused by the parents, and that (3) the parents have failed to obtain an evaluation from the Child Development Center which they agreed to obtain.

Findings of Fact

1. The special education student in this case brought a multi-purpose tool to school on October 4, 2002. [Tr. Page 12] This tool included a blade. The record shows that this blade was about 2 inches long. [Tr. Page 12] The student was warned not to bring this tool to school again but, on October 7th, 2002, he violated this admonition, and once again brought the tool to school. [Tr. Page 12] (In a regular discipline case the length of a blade would be of no material consequence. In a special education case, however, if the length of the blade exceeds 2.5 inches certain special education procedures, which can allow a special education student to be transferred to an Interim Alternative Educational Setting (IAES) for up to 45 calendar days can be used.¹) The student has a diagnosis of attention deficit hyperactivity disorder and oppositional defiance disorder. [Tr. Page 4]
2. When the tool was noticed for the second time the student was taken to the principal's office, searched, and placed on a ten-day suspension beginning on October 8th, 2002 and extending through October 22nd, 2002. [Tr. Page 4 and Tr. Page 14]
3. On October 18th, 2002 the school held a "manifestation meeting" to decide whether the student's conduct was a manifestation of his disability. The conclusion was that the conduct was a manifestation of the student's disability. [Tr. Page 4, 46] In spite of this finding the school elected to continue this student on an indefinite suspension. [Tr. Page 4]
4. Concerning the manifestation hearing, the school's Director of Special Education testified that:

¹ 34 CFR § 300.520(c)(2) which makes reference to 18 U.S.C. § 921 which, *inter alia*, defines a *dangerous weapon* to include a blade over 2.5 inches long. State law also makes reference to 18 U.S.C. § 921 in dealing with mandatory 1 year suspensions for bringing a weapon to school. See: R.I.G.L.16-21-18 and 19 ("Students with disabilities as defined by the [IDEA] shall be subject to the provisions of §16-21-18 to the extent permitted by the [IDEA].")

It was a manifestation of his disability. Since it was a weapon, and I understand that weapons and drugs are zero tolerance, we needed to bring it, in my opinion, and you may rule against me I understand that, that we needed to bring it forward to the superintendent of schools represented by [the] assistant superintendent in what we call an exclusion hearing. [Tr. Page 47]

5. The parents of this student were then given 24 hours notice that an "exclusion hearing" would be held concerning their son. [Tr. page 16]
6. This hearing was held on October 25, 2003. No stenographer was present. [Tr. Page 53] The purpose of this hearing was to determine whether this student's "action's warranted expulsion." [Tr. Page 39] At this hearing, according to the testimony of the student's mother, a school official, Mr. Caffone said that:

[A]fter the meeting is held, he and Mr. Blackburn [the Director of Pupil Personnel Services]...typically confer ...and then agree on a determination and share that. He said in the meeting that I'm going to come right out and do that. I'm not going to wait to speak to Mr. Blackburn. I'm going to say it's not grounds for expulsion. There was no act of violence or aggression. There was no intent to harm or harmful behavior. ...He doesn't deserve any further discipline. What we need to do is find out what his particular concerns are to determine appropriate placement. [Tr. Page 40]

7. The exclusion hearing resulted in the indefinite suspension of this student. [Attachment B to petition] [Tr. Page 54] The school committee never voted on this suspension [Tr. Page 55] Since the 10 day school suspension had expired on October 23rd before the "exclusion hearing" was held the school special education director felt that compensatory education was need. The Director testified:

Indeed, if I could find my notes, that exclusion hearing took place on the 25th. We were responsible for compensatory education on the 23rd. We were responsible for compensatory education on the 23rd. That was the day—that was the 11th day of suspension, the 23rd, so I was responsible for providing him with appropriate education beginning on that day. We actually held an exclusion hearing three days later on the 25th. That's why it was held so quickly. [Tr. Page 54]

At his "hearing" the parents agreed ("because we had no choice") that there son "would be tutored for six hours a week" at a public library. [Tr. page 16] The record shows that the tutoring in this case has never amounted to anything like six hours of tutoring a week. The reason for this deficiency seems, in our view, to result more from parental scheduling difficulties than from problems that can be attributed to the school. Still, the school bears a

significant measure of fault for the scarcity of tutoring hours that have, in fact, been provided. [Tr. Page 25, Testimony of Parent] [Tr. Page 58, Testimony of Special Education Director.]

8. At the "exclusion hearing" the parents said they would have the student evaluated at the Child Development Center and that they "basically understood at the time that he was not allowed back into school unless we did that." [Tr. Page 17] The student was not evaluated at the Child Development Center. [Tr. Page 18] The parent testified that this evaluation did not take place because:

Elizabeth Fairchild, who takes care of that at CDC she said upon reviewing all the paperwork that we didn't need a CDC reevaluation. We had already current and accurate information regarding what they could help us with. [Tr. Page 38]

The parent testified that she informed school authorities that no further evaluations were needed. [Tr. Page 37,38] The record however shows that the school stood firm in its position that this student would not be readmitted until the CDC evaluation was completed. The Special Education Director testified that his subordinates did not inform him that the parents had reported that a further CDC evaluation was not needed.

9. There is no evidence in the record to support the conclusion that the tutoring provided to this student amounted to FAPE or that the tutoring program was develop by an IEP team. Moreover there is no evidence to show that this tutoring meet the additional regulatory standards required for a valid Interim Alternative Educational Setting (IAES). The applicable federal regulations state:

§300.522 Determination of setting.

(a) General. The interim alternative educational setting referred to in §300.520(a)(2) must be determined by the IEP team.

(b) Additional requirements. Any interim alternative educational setting in which a child is placed under §§300.520(a)(2) or 300.521 must—

(1) Be selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and

(2) Include services and modifications to address the behavior described in §§300.520(a)(2) or 300.521 that are designed to prevent the behavior from recurring.

(Authority: 20 U.S.C. 1415(k)(3))

10. There is no evidence tending to show that this student is a danger to himself or others.

Conclusions of Law—Special Education Discipline

Background: In the past school discipline policies often worked in ways that caused children with disabilities to be excluded from school. In the early 1970's several class action lawsuits were filed challenging these exclusionary policies. One of these cases was *Mills v. Board of Education*.² In this 1972 case children with disabilities living in the District of Columbia alleged that they were being "labeled as behavioral problems, mentally retarded, emotionally disturbed or hyperactive, and denied admission to the public schools or excluded therefrom after admission, with no provision for alternative educational placement or periodic review." This case resulted in a court order mandating:

That no child eligible for a publicly supported education in the District of Columbia schools shall be excluded from a regular public school assignment by a Rule, policy, or practice of the Board of Education...unless such child is provided (a) adequate alternative educational services suited to the child's needs, which may include special education or tuition grants, consistent with their needs, and (b) *a constitutionally adequate prior hearing* and periodic review of the child's status, progress, and the adequacy of any educational alternative. (Emphasis added)

This case, along with others³, spurred the 1975 enactment of the federal Education for All Handicapped Children Act [EAHCA], the predecessor of the present Individuals with Disabilities Education Act⁴ [IDEA]). The IDEA, and its predecessor, codified the principle first enunciated in *Mills* that a special education student's placement may not be changed unless (1) the child's parents agree to the change, or (2) a complete due process hearing, including appeals, directs a change in the student's placement.⁵ This principle has been called "The Stay Put Rule".

As a result of the enactment of the IDEA school districts lost their unilateral authority to change a special education student's placement. For a time, a major question in special education law was whether or not the "Stay Put Rule" applied to disciplinary exclusions from school. From the prospective of a school district the problem with applying the "Stay Put Rule"

² *Mills v. Board of Education*, 348 F.Supp. 866 (D.D.C.1972)

³ e.g. *Pennsylvania Ass'n for Retarded Children (PARK) v. Commonwealth of Pennsylvania*

⁴ 20 U.S.C. § 1400

⁵ 20 U.S.C. § 1415 (j) See: 34 CFR 300. 514

to disciplinary proceedings was the fact that the extended due process procedures used in special education cases could easily delay imposition of a school exclusion for months or even years. From a parent's perspective, giving a school district the unilateral authority to impose a disciplinary suspension would amount to a return to the old practice of using school discipline as a *sub rosa* mechanism to deny children with disabilities a free appropriate public education.

In *Honig v. Doe* the Supreme ruled that "The Stay Put Rule" applied to extended school disciplinary exclusions.⁶ In the Courts view, a disciplinary exclusion from school for more than 10 school days amounted to a change in the student's educational placement. Under "The Stay Put Rule" such a change in placement can only take place with (1) parental consent or (2) after a due process hearing, including appeals, results in an order directing a change in the student's placement. The Court, however, was not unmindful of the need of schools to be able to administer speedy discipline. The Court wrote:

Our conclusion that ("the Stay-Put Rule") means what it says does not leave educators hamstrung. The Department of Education has observed that, "[w]hile the [child's] placement may not be changed [during any complaint proceedings], this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others." ...Such procedures may include the use of study carrels, timeouts, detention, or the restriction of privileges. More drastically, where a student poses an immediate threat to the safety of others, officials may temporarily suspended him or her for up to 10 school days. This authority, which respondent in no way disputes, not only ensures that school administrators can protect the safety of others by promptly removing the most dangerous of students. It also provides a "cooling down" period during which officials can initiate IEP review and seek to persuade the child's parents to agree to an interim placement. And in those cases in which the parents of a truly dangerous child adamantly refuses to permit any change in placement, the 10-day respite gives school officials an opportunity to invoke the aid the aid of the courts under § 1415(e)(2), which empowers courts to grant any appropriate relief... As the EHA's legislative history makes clear, one of the evils Congress sought to remedy was the unilateral was the unilateral exclusion of disabled children by *schools*, not courts, and one of the purposes of ("the Stay-Put Rule") therefore, was "to prevent *school* officials from removing a child from the regular public school classroom over the parent's objection pending completion of review proceedings." ...The stay-put provision in no way purports to limit or pre-empt the authority

⁶ *Honig v. Doe*, 484 U.S. 305 (1988)

conferred on courts by § 1415(e)(2),...indeed, it says nothing whatever about judicial power.

Thus, under *Honig*, if a parent refused to consent to an immediate change in a disruptive student's placement, a school had to go to court to get a judge's order to change the student's placement. Of course, in the alternative, the school could use regular special education due process procedures to try to change the student's placement, but these procedures can take months or even years to complete.⁷ Congress found this procedural situation to be unsatisfactory. In its reauthorization of the IDEA in 1999 Congress amended the law in an effort to facilitate school discipline, while at the same time enhancing the rights of students with disabilities. The end result is a law of some complexity.

Short term Suspensions and the IDEA: Short-term suspensions are suspensions that last for fewer than ten school days.⁸ As we have seen, the Supreme Court has ruled that such short-term suspensions do not amount to a change in placement for a special education student and so, for the most part educational services do not have to be provided during a short-term suspension.⁹ The federal regulations to the IDEA have codified this ruling:

§300.519 Change of placement for disciplinary removals. For purposes of removals of a child with a disability from the child's current educational placement under §§ 300.520—300.529, a change of placement occurs if—

- (a) The removal is for more than 10 consecutive school days; or
- (b) The child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.¹⁰

Rhode Island schools may therefore, for the most part, suspend special education students for ten days or less in the course of a single school year by simply using the same procedures they use to suspend a regular education

⁸ *Honig v. Doe*, 484 U.S. 305 (1988) The 10 day rule comes from *Goss v. Lopez*, 419 U.S. 565 (1975), where the court found that a 10 day suspension required only minimum due process.

⁹ *Honig v. Doe*, 484 U.S. 305 (1988) See: 34 CFR 300.121(d) *FAPE for children suspended or expelled from school*.

¹⁰ This is because paragraph (b) of §300.519 of the federal IDEA regulations, which allows for a scattering of short-term suspensions that might exceed the sum of ten days in the course of the school year, is not operative in Rhode Island. Rhode Island special education regulations treat any days of suspension beyond ten days in the course of a school year as a change in placement See: R.I.300.520 (B) **Removals for more than ten (10) days cumulative**.

student. This is so as long as the suspensions imposed do not "cumulate" to more than 10 school days in the course of the school year.¹¹ The "basic procedural due process rights" that must be afforded to children in both regular and special education when a suspension of ten days or less is at issue were defined by the Supreme Court in *Goss v. Lopez*.¹² The Court wrote:

Students facing temporary suspension have interests qualifying for protection of the Due Process Clause and due process requires, in connection with a suspension of ten days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story. The Clause requires at least these rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary exclusion from school.¹³

In the present case we find that the 10-day suspension imposed against this student was proper. There is nothing in the record to indicate that proper short-term suspension procedures were not followed in this case. Moreover no one disputes that this student brought a 2-inch blade to school in violation of school regulations. We now must consider whether the indefinite suspension of this student, and his placement in a program of home tutoring, met IDEA requirements.

FAPE and Long Term [more than 10 days] Disciplinary "Suspensions": In the context federal special education law it is no longer appropriate to think of the terms *suspension* and *expulsion* as implying the exclusion of a special education student from access to the school curriculum. This is because federal regulations require that:

Each State must have on file with the Secretary information that shows that, subject to § 300.122 [i.e. age ranges], the State has in effect a policy that ensures that all children with disabilities aged 3 through 21 residing in the state have the right to FAPE [i.e. A free appropriate public education], *including children with disabilities who have been suspended or expelled from school.* (Emphasis added)¹⁴

Under this regulation (except in cases involving suspensions of less than ten days¹⁵) children with disabilities who have been suspended or expelled from school are entitled to continue to receive a free appropriate public education.

¹¹ RI 300.520(a)

¹² *Goss v. Lopez*, 419 U.S. 565 (1975)

¹³ The Rhode Island Board of Regents has promulgated short-term school suspension regulations which track the requirement of *Goss v. Lopez*.

¹⁴ 34 CFR § 300.121 *Free appropriate public education (FAPE)*.

¹⁵ 34 CFR § 300.121(d) *FAPE for children suspended or expelled from school*.

In effect, for special education students, the terms *suspension or expulsion* have been "redefined" through regulation to mean a disciplinary transfer of special students to what is called an Interim Alternative Educational Setting (IAES). The applicable federal regulation, in describing how an IAES is to be determined, also defines what an IAES is:

§300.522 Determination of setting.

(a) General. The interim alternative educational setting referred to in §300.520(a)(2) must be determined by the IEP team.

(b) Additional requirements. Any interim alternative educational setting in which a child is placed under §§300.520(a)(2) or 300.521 must—

(1) Be selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and

(2) Include services and modifications to address the behavior described in §§300.520(a)(2) or 300.521 that are designed to prevent the behavior from recurring.

(Authority: 20 U.S.C. 1415(k)(3))

Special Education "Suspensions" and Interim Alternative Educational Setting: We must now examine the question of whether or not this student was properly ousted from his current educational placement and transferred in an appropriate IAES. Under the IDEA there are 5 ways a student's misconduct can result in a transfer to an IAES:

- I. The student's PARENTS CONSENT to the change in placement.
- II. Normal IDEA DUE PROCESS PROCEDURES (including appeals) end in an order that changes the student's placement.
- III. A COURT orders a change in a student's placement because the student, in his or her current placement, is a danger to him or herself or to others.¹⁶
- IV. A HEARING OFFICER, acting in an expedited hearing, orders a change in a student's placement to an IAES because the student, in his or her current placement, is a danger to him or herself or to others.¹⁷

¹⁶ See: *Gadsden City Board of Education v. B.P.*, 3 F.Supp.2d 1299 (N.D.Ala. 1998) In *Gadsden* exhaustion of IDEA remedies as a precondition to seeking a court ordered change in placement.

¹⁷ *Honig v. Doe*, 484 U.S. 305 (1988)

V. A SCHOOL OFFICIAL directs the *immediate* transfer of the student to an Interim Alternative Education Setting (IAES) for a period of not more than 45-calendar days because the student brought a WEAPON (as defined by federal law) or an ILLEGAL DRUG (as defined by federal law) to school.¹⁸ At the same time school officials must implement all other IDEA procedures required for a disciplinary change in placement.¹⁹ School officials also have to implement the regular state due process procedures that are used to impose suspensions against regular education students. (Still, in the case at hand, the fact that a long-term suspension hearing of the type used to suspend a regular education student was not convened does not appear to be of great moment. This is because no one disputes that the misconduct took place.²⁰ Still the long-term suspension regulations do require school committee approval of any long-term suspension. The school committee never approved the suspension imposed in this case.²¹)

In the present case, items I, II III, and IV are of no relevance. In the case of Item I (Parental Consent) this is so because valid consent under the IDEA requires certain written documentation—documentation that is not present in this case. Item II (use of Normal IDEA DUE PROCESS PROCEDURES) is not relevant because the school never convened the normal due process hearing that would be necessary in order to act under Item II. Moreover there was a finding made that this student's misconduct was a product of his disability. This fact alone would have sufficed to stop action under Item II

Items III (Court Order) and IV (Hearing Officer Ruling) are not relevant because no one alleges that this child is a danger to himself or to others. In fact even Item V (Immediate Administrative Transfer to an IAES for bringing drugs or weapons to school) is not relevant to this hearing. This is because federal regulations require a blade of least 2.5 inches in length—rather than the 2-inch blade we have in this case—to trigger the application of item V. Still, we will discuss Item V in greater detail in order to demonstrate how far Cranston departed from the required IDEA procedures in this case.

¹⁸ 34 CFR 300.526

¹⁹ 34 CFR 300.520

²⁰ Given our disposition of this matter we find no need to inquire as to whether the school district properly notified the parents of their right under the Regent's regulation to a due process hearing on the misconduct. See: Regents Regulations: F-6.3 (Disciplinary Exclusions)

²¹Tr. Page 55 "[E]ach student discipline code ...shall identify which administrative positions are authorized to suspend a student for ten (10) days or less, provided that all suspensions of more than ten (10) days shall occur only after formal action by the school committee...." F-6.3 (Disciplinary Exclusions)

Interim Alternative Educational Settings—Weapons: In order to transfer this student into an IAES for bringing a weapon to school, Cranston would have had to:

- ⇒ Made this transfer by using the same due process procedures that it uses to suspend a regular education student from school.
- ⇒ Followed additional procedures required by the IDEA. These procedures would have included:
 - Informing the parents of the transfer decision and providing them with a copy of the procedural safeguards notice.²²
 - Convening—within 10 school days—an IEP meeting to select an interim alternative education setting for the child.²³ Any Alternative Educational Setting would have had to be, “selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child’s current IEP, that will enable the child to meet the goals set out in that IEP.”
 - Conducting a functional behavioral assessment (FBA) of the conduct at issue and implementing a behavioral intervention plan (BIP) to address this conduct. If a BIP were already in place it would have had to be reviewed.²⁴
 - Reviewing the relationship between the child’s disability and the misconduct in the IEP meeting.²⁵
 - Developing an IAES that would not only guarantee this student access to FAPE but would also address the behavior of the student.

Discussion

Based upon the record before us it is evident that Cranston did not follow correct IDEA procedures when it suspended this student. Moreover the "IAES" Cranston offered this student was (1) not designed by an IEP team, (2), not consistently provided, and 3) not in compliance with the requirement that it address remediation the student's behavior.

²² Described in IDEA 300.504. See: 16.03

²³ Presumably, a school district could use a 10-day school suspension, which is not deemed to constitute a change in placement, to give the IEP team time to complete its work.

²⁴ 34 CFR 300.520 (2)

²⁵ 34 CFR 300.523

It is also noteworthy that the "manifestation determination" that was made in this case reached the conclusion that the misconduct at issue was a product of this student's handicapping condition. Of course, both a special education student and a regular education student could potentially be suspended from school for bringing a 2-inch blade to school. However in the case of a special education student such a suspension could only take place if (1) the misconduct was not a manifestation of the student's disability, and (2) all due process procedures, including appeals, had been completed. Neither of these two facts is present in this case.

In saying this we recognize that under federal regulations a student who brings a blade that is more than 2.5 inches in length to school can immediately be placed in an IAES for up to 45 calendar days. This is true even if the possession of a blade over 2.5 inches was a manifestation of the student's handicapping condition. The problem in this case, however, is that the blade at issue is "only" 2 inches long. It is therefore not of sufficient length to trigger the exception to the Stay Put Rule which allows immediate transfer to an IAES when a blade longer than 2.5 inches is involved. While the distinctions we make here may seem precisian to some, we must take the applicable federal law as we find it.

Conclusion

The suspension in this case was incorrectly imposed. Further more the IAES offered to this student is not in compliance with state and federal law. Under these circumstances, this student is hereby reinstated to the placement he was in at the time of his purported suspension. This student is also found to be entitled to compensatory education for the period encompassed by his suspension. The state's Office of Special Needs Services will recommend a program of compensatory education if agreement on a program cannot be reached.

Forrest L. Avila, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

February 11, 2003
Date