

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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BENJAMIN K.

V.

NARRAGANSETT SCHOOL COMMITTEE  
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DECISION

This matter concerns two requests for interim protective orders under R.I.G.L. 16-39-3.2. The first request, filed on January 29, 2003, seeks an order declaring that Benjamin K.'s parents have exhausted special-education administrative remedies because a timely due process hearing was not conducted, and that the School Committee violated R.I.G.L. 16-71-3 by failing to allow the parents to view Benjamin's education records within 10 days of their request to do so. The second request for interim relief, dated February 3, 2003, asks the Commissioner to review a special-education hearing officer's January 30, 2003 "Decision Concerning Student's Status During Hearing" and order the School Committee to pay for the cost of Benjamin's tuition and transportation to the Wolf School.<sup>1</sup>

Benjamin is 11 years old. He and his family previously resided in the Orford, New Hampshire school district. On June 5, 2000, Benjamin's parents and the Orford school district entered into a settlement agreement with respect to Benjamin's education.

The settlement agreement provides for the payment of certain monies to Benjamin's parents to fund Benjamin's attendance at the Wolf School in Providence,

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<sup>1</sup> The Commissioner of Education designated the undersigned hearing officer to hear and decide the requests. A hearing was held on February 11, 2003. This decision has been delayed due to illness.

Rhode Island for the 2000-2001 and 2001-2002 school years. Paragraphs 6 and 7 of the agreement are as follows:

6. The Parents agree that they will make no further requests of the School District with regard to Ben K. or his education or special education or special education services during the term of this Agreement unless Ben K. suffers an unforeseen injury or illness which substantially changes his educational disability. The parties agree that the School District is not placing Ben K. at the Private School and in making these payments is not agreeing that the Private School program and placement chosen by the Parents is appropriate for Ben K. The Private School chosen by the Parents shall not be considered the status quo or “stay-put” placement for Ben K. unless it is determined to be so by a hearing officer in accordance with the procedures described in paragraph 7.
7. If the parties do not have agreement on either an IEP or placement for Ben K. for either the 2001-2002 school year or the 2002-2003 school year, then the parties will proceed to a due process hearing prior to the start of the school year and the decision of the hearing officer shall become the status quo or “stay-put” placement for Ben K. through any subsequent appeals. [Hearing Officer’s Exhibit 1].

The parties did not prepare an individualized education program (IEP) for Benjamin following the settlement agreement.

Benjamin attended the Wolf School for the 2000-2001 and 2001-2002 school years. Benjamin’s family subsequently moved to Narragansett and enrolled him in that school system in the summer of 2002. In a letter to Benjamin’s parents dated August 7, 2002, the administrator for special services in Narragansett stated that “the Narragansett School System will provide transportation and the tuition cost for Benjamin to attend the Wolf School in Providence for the first academic semester of the 2002-2003 SY. During the fall of 2002, we will schedule an IEP meeting and further address our respective due diligence.” [Petitioner’s Exhibit 5].

IEP meetings were held in October and December 2002. Benjamin’s parents disagreed with the IEP proposed by the school district at the December 19, 2002 IEP meeting. They made the following notations on the IEP document: “I request full disclosure of all documents (educational records) kept by Narragansett schools on my son

Benjamin,” “I request a due process hearing,” and “I request continued placement at the Wolf School which he currently attends.” [Petitioner’s Exhibit 3].

The school district did not process the parents’ request for hearing. Instead, it filed its own request for a due process hearing on December 30, 2002. Benjamin’s parents filed a formal request for hearing on January 2, 2003. A pre-hearing conference was conducted on January 29, 2003 in the proceeding initiated by the school district. The following day, the hearing officer issued a “Decision Concerning Student’s Status During Hearing.” The hearing officer found the Wolf School to be an appropriate placement and Benjamin’s “current placement.” The hearing officer did not require Narragansett to pay tuition during the hearing process, however. He reserved ruling on that issue until the conclusion of the proceeding and a review of all the facts.

By letter dated January 29, 2003, the school district asked the special-education hearing officer for an extension of the 45-day period for final decision. Hearing dates have been scheduled. On January 31, 2003, the school district hand-delivered copies of Benjamin’s education records to the family’s attorney.

The Wolf School has not presented Benjamin’s parents with a tuition bill.

We find that we do not have jurisdiction to review the special-education hearing officer’s “Decision Concerning Student’s Status During Hearing.” Under the Board of Regents’ Regulations Governing the Education of Children with Disabilities, parties aggrieved by the findings and decisions of due process hearing officers are entitled to judicial review. On the other hand, Petitioner is entitled to invoke R.I.G.L. 16-39-3.2. for the purpose of requesting a stay-put order pending the resolution of the due process hearing. Our initial reaction to such a request is to find it premature in that the Wolf School is not seeking payment from Petitioner and the due-process hearing officer will be ruling on the tuition issue. On the merits, we find Petitioner’s stay-put claim to be defeated by the absence of any IEP that places Benjamin at the Wolf School, and by the explicit language in paragraph 6 of the settlement agreement concerning Benjamin’s placement and stay-put status. Moreover, the parties to the settlement agreement made specific provision for the resolution of a disagreement concerning Benjamin’s placement: a due process hearing. Had Petitioner remained in the New Hampshire school district

and a disagreement about Benjamin's 2002-2003 placement arose, Petitioner would be in the same forum that it presently finds itself. This, we find, is the true status quo.

As for Petitioner's claim that it has effectively exhausted its administrative remedies under the Individuals with Disabilities Education Act, §300.511(b) of the Board of Regents' Regulations states that a special-education hearing officer may extend the 45-day final-decision requirement at the request of either party. The School Committee filed a timely request for extension and the hearing officer has scheduled hearings to address Benjamin's educational placement. We find these circumstances to be within the bounds of §300.511 and, thus, acceptable. The due process hearing should move forward.

Finally, Petitioner was not provided with timely access to Benjamin's education records. The school district's failure to arrange for the parents' inspection of Benjamin's records within 10 days of Petitioner's request is in violation of R.I.G.L. 16-71-3(a)(1) and §300.562(a) of the Board of Regents' Regulations Governing the Education of Children with Disabilities.

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Paul E. Pontarelli  
Hearing Officer

Approved:

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Peter McWalters  
Commissioner of Education

Date: March 4, 2003