

**STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS**

COMMISSIONER OF EDUCATION

.....

R. Doe

v.

Chariho School Department

.....

DECISION

Because the petitioning parent has invoked his right to “stay-put” under applicable state and Federal law we must grant him an interim protective order to maintain his son at a private special education school operated by Bradley Hospital.

DATE: September 03, 2010

Jurisdiction and Travel of the Case

The petitioning parent objects to the decision of the Chariho Regional School District to remove his child from a private special education school -- where the child had been placed by the District to receive FAPE -- and move this child back to the District to receive education in an approved special education program operated by the District. The petitioner is requesting the issuance of an interim protective order to keep his child at the private special education school while this matter is being considered by a special education due process hearing officer. 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.

Positions of the Parties

The Parent

The parent contends that Chariho should not be allowed to change his child's placement until applicable due process procedures are completed.

The Chariho Regional School District

The District contends that the parent is not entitled to a stay put order because the parent consented to the change in placement. The district also contends that only non-employees of the Rhode Island Department of Education can hear cases dealing with special education under the IDEA.

Findings of Fact

1. The student in this case is a third grader who academically performs at a high kindergarten level. This student has a history of violent behavior. He has injured teachers, and other students. At times he needs to be significantly restrained. This, at times, means placement in a padded restraint room under close supervision. There are times when this child's behavior may cause self-injury.
2. The student is presently enrolled in private special education school operated by Bradley Hospital.
3. The Chariho Regional School District operates a special education school. The School District wishes to transfer this student to this school.
4. On a prior occasion, some months back, the petitioning parent signed minutes from an IEP meeting which could be construed to indicate that he consented to the placement of his child in a special education school operated by the Chariho Regional School District.

5. The Hearing Officer in this case is an employee of the Rhode Island Department of Education

Conclusions of Law

300.518 Child's status during proceedings.

(a) Except as provided in § 300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under § 300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

The Commissioner of Education has authority to issue *Interim Protective Orders* “pending a hearing to ensure that a child receives education in accordance with applicable state and federal laws and regulations “during the pendency of the matter.”¹ The purpose of this law is to allow the Commissioner to protect a student’s right to a free public education while a due process hearing is underway, or when such a hearing is about to be requested.²

In special education matters the Commissioner’s authority to issue interim protective orders dovetails with the *stay-put* requirement of federal special education law. The federal *stay-put* legislation states:

During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings have been completed.³

The United States Supreme Court has discussed the *stay-put* provision:

As an initial matter, we note that the section calls for agreement by either the state or the local educational agency. The [state’s] decision in favor of the [parents] and the...placement [the parents had made] would seem to constitute agreement by the State to the change of placement.⁴

Thus, the Commissioner’s decision to grant a parent’s request for an interim order constitutes an *agreement* with the state that a placement should be changed.⁵ There is no reason why such an “agreement” may not be made through individuals who are employed by a state agency.⁶

¹ R.I.G.L. 16-39-3.2

² R.I.G.L.16-39-3.2

³ 20 U.S.C. 1415 (e) (3)

⁴ *Burlington School Committee v. Department of Education* 105 S.Ct. 1996, 85 L. Ed. 2d 233, 23 Ed. Law Rep. 23 (1985)

⁵ See: IDEA 300.514(c) See: *In the Matter of Student A.P. Doe*, Commissioner of Education, April 112, 2003.

⁶ *Burlington School Committee v. Department of Education* 105 S.Ct. 1996, 85 L. Ed. 2d 233, 23 Ed. Law Rep. 23 (1985)

Concerning “consent” to a change in placement, the applicable Rhode Island Special Education regulation states:

300.9 Consent.

Consent means that —

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime; (Emphasis added)

(2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

(3) If the parent revokes consent in writing for their child’s receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child’s education records to remove any references to the child’s receipt of special education and related services because of the revocation of consent.

Discussion

We find that by filing a request for an interim protective order, and by indicating on the record his intent to pursue a due process hearing, the petitioning parent has indicated that he has withdrawn any consent that he may have given to the proposed change in placement now at issue. (Rhode Island Special Education Regulations, **300.9 Consent**) We further find, based upon the case law cited above that this case may be decided by employees of the Rhode Island Department of Education.

Conclusion

Since the petitioning parent has invoked his right to “stay-put” under applicable state and Federal Law we must grant him an interim protective order to maintain his son at a private special education school operated by Bradley Hospital.

Forrest L. Avila, Hearing Officer

APPROVED:

Deborah A. Gist, Commissioner

September 3, 2010
Date