

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

SARGENT REHABILITATION CENTER

VS.

WOOSOCKET PUBLIC SCHOOLS
RHODE ISLAND DEPARTMENT OF ELEMENTARY
AND SECONDARY EDUCATION

INTERIM ORDER DECISION

Held: The Petitioner has failed to establish that it is entitled to issuance of an interim protective order to ensure that two Woonsocket students who attend Sargent will continue to receive a free appropriate public education. Although Sargent seeks to avoid the consequences of a decision to terminate its educational and rehabilitative services to two Woonsocket students because of tuition arrearages, legal standing to request a “stay put” order, should such an order become necessary, is conferred upon the parents of these students, and not upon representatives of the Sargent Center. Sargent’s argument that the Rhode Island Department of Elementary and Secondary Education is responsible for \$71,343.96 owed for services provided to these two students from September of 2011 through February of 2012 is not supported by any provision of state or federal law or any contractual theory. Should payment of such sums become necessary in order to maintain the provision of FAPE to these Woonsocket students, RIDE will at such time determine the sources of funding and the manner by which payment will be made.

DATE: May 24, 2012

Travel of the Case:

A Petition for an Interim Protective Order was filed by the Sargent Rehabilitation Center (“Sargent”) with Commissioner Deborah A. Gist on April 26, 2012. In the Petition, Sargent sought an Order requiring the Rhode Island Department of Elementary and Secondary Education (“RIDE”) to immediately pay for the educational services that Sargent had provided from September through February of this school year to two Woonsocket students whose Individualized Education Programs (IEP’s) currently call for their placement at Sargent. Without such payment, Sargent’s Petition indicated Woonsocket’s students would be refused entry as of May 15, 2012.¹ At the time of hearing, the Petition was amended to broaden Sargent’s request to an Order that would require either immediate payment by RIDE or payment by the Woonsocket School Department through the withholding of sufficient sums from Woonsocket’s state education aid. Already in place as of April 4, 2012 was a Commissioner’s Order that required deduction from Woonsocket’s state education aid of sufficient sums to pay Sargent² for tuition owed for the months of April, May and June of 2012.

Jurisdiction to hear this matter arises under R.I.G.L. 16-39-3.2, entitled “Interim Protective Orders.” This statute requires that decisions on such requests be issued within five (5) working days of the completion of the hearing. The hearing was held on May 18, 2012, at which time evidence was taken and all of the parties submitted their legal arguments.

Findings of Relevant Facts:

- Student A and Student B are children with disabilities as defined by IDEA and are residents of Woonsocket, Rhode Island. Both of these students have IEP’s that call for

¹ When the matter was scheduled by agreement for hearing on May 18, 2012, counsel for Sargent indicated that the students would be permitted to attend Sargent through June 1, 2012 to permit time for processing of this Interim Order Decision.

² The April 4, 2012 Order required the General Treasurer to withhold approximately \$185,000.00 in state education aid from Woonsocket to pay Sargent and two other special education providers for tuition becoming due in the months of April, May and June of 2012.

their placement at Sargent where they receive intensive educational and rehabilitation services over the course of a 230-day school year. Pet. Ex. 1 and 2.

- Students A and B have received the services called for in their IEP's at Sargent throughout this school year. Tuition charges for Students A and B for the period September, 2011 through February, 2012 remain unpaid and currently total \$71,343.96. Pet. Ex. 2.
- In a letter dated February 29, 2012 Superintendent Giovanna M. Donoyan was notified that unless tuition arrearages were satisfied in full prior to March 31, 2012 and satisfactory payment arrangements for future services were made, Sargent would no longer be able to continue to provide educational services to Woonsocket students. Resp. Ex. A.
- The Woonsocket School Department is unable to bring its account with Sargent current at this time and does not have an alternative plan to provide or maintain special education services to Students A and B.³

Positions of the Parties:

Sargent

Sargent seeks an interim protective order because it intends to deny entry to school to Student A and Student B as of Monday, June 4, 2012 if overdue tuitions have not been paid. The effect of this will be that Student A and Student B at that point will no longer be provided with a free appropriate public education (FAPE). This situation arises because Woonsocket has not paid for educational services that Sargent has provided during the first six months of this school year. The Petitioner argues that two prior "show cause" proceedings have clearly established Woonsocket's inability to bring its account with Sargent current. The premise of this Petition is

³ This finding was part of the Findings of Fact forming the basis of the April 4, 2012 Order of Commissioner Gist directing the withholding of state education aid from Woonsocket as well as a subsequent order entered on May 16, 2012 involving four other special education providers. Statements of counsel for Woonsocket at the May 18, 2012 hearing in this matter confirmed that the financial situation of Woonsocket remained unchanged as of that date.

that RIDE is now the responsible agency for providing FAPE to Students A and B, and therefore owes Sargent for all services provided to them as part of their respective IEP's- past, present, and future. RIDE has a commensurate legal responsibility under IDEA and state law to ensure that these students receive FAPE and in order to fulfill this obligation, RIDE must pay overdue tuitions and continue to ensure payments are made to Sargent in the upcoming months assuming these students remain enrolled at Sargent.

Sargent's decision to exit Students A and B if payment is not made is due to business necessity and follows an extended period during which Sargent permitted these Woonsocket students to remain enrolled and be provided with all of their IEP services despite substantial amounts for tuition not being paid and no plan for payment being presented by the School Department.

Without an interim order requiring RIDE to pay Sargent (or in the alternative requiring RIDE to withhold additional amounts of state education aid payable to Woonsocket) FAPE will be discontinued. At the very least, the provision of FAPE to both of these students will be disrupted. Their intensive educational and rehabilitation needs are currently provided by Sargent on a full-year, 230-day basis. There is no evidence that their programmatic needs can be met at any other facility. An interim order is necessary in order to avoid the harm that will inevitably result when they are refused entry on June 4, 2012. Since RIDE is receiving advance notice of what Sargent's action will be, it should not wait until this disruption occurs to fulfill its responsibilities as the state education agency (SEA) under IDEA. Furthermore, it would be inappropriate for RIDE to burden the parents of these students with the need to file a petition for an interim protective order after harm to their children has already been incurred.

RIDE:

At the outset, RIDE argues that the Commissioner lacks jurisdiction over this dispute. Counsel characterizes this proceeding as a private contractual matter in which Sargent is actually seeking

to recover a debt owed to it by the Woonsocket School Department. Under the Commissioner's decision in Northern Rhode Island Collaborative v. East Providence School Committee⁴ the Commissioner lacks jurisdiction over the issue of collection of tuition owed to a private facility.

Counsel for RIDE also takes the position that there is no provision of law or regulation that places the responsibility for payment of past-due tuition that is owed by the Woonsocket School Department on RIDE. To date, RIDE has taken the steps that are required of an SEA under IDEA-to ensure that FAPE is provided to disabled students. Through "show cause" proceedings in early April and again in May, RIDE has intervened to ensure that Woonsocket students continue to receive IEP services from special education providers when their continued operations have been jeopardized by the ongoing non-payment of tuition. RIDE has effectuated the necessary deductions from Woonsocket's state education aid and is facilitating direct payments to private providers, including Sargent, for tuition owed for the months of April, May and June. RIDE's counsel challenges the notion that the State Education Agency's (SEA's) obligation to ensure that all eligible students within the SEA's jurisdiction receive FAPE is coextensive with a legal obligation to pay the debts of a financially-strapped local education agency, such as Woonsocket. There has been no legal or contractual basis established for imposing such financial obligation on RIDE.

Counsel points out that, based on this record, Student A and Student B are in fact currently receiving all of the services called for in their IEP's; therefore, issuance of an interim protective order would be premature. If services at Sargent are discontinued and RIDE must take additional steps to fulfill its statutory obligation to ensure that the provision of FAPE to these students is maintained, parents and other members of the IEP team working together with RIDE will then determine how best to provide special education and related services. If the parents disagree with any proposal for a different placement and wish their children to remain at Sargent, then RIDE would ensure that the status quo - a "stay put" placement at Sargent - is maintained pending a due process hearing. Counsel submits that legal standing to request an

⁴ Decision of the Commissioner dated April 24, 2009

interim order to maintain Student A and Student B at Sargent is conferred only upon the families of these students.

Woonsocket School Department

The Woonsocket School Department (“Woonsocket”) objected to amendment of the Petition to permit Sargent to request that RIDE be required to withhold additional sums from Woonsocket’s state education aid, if RIDE itself is not ordered to pay the sums necessary to maintain these students at Sargent. Counsel for Woonsocket submits that withholding any additional state aid will impair the ability of the district to complete the school year and continue to provide an education to all Woonsocket students, including special education students whose needs are met within the school district. Although the district does not deny the substantial amounts owed to Sargent and many other vendors who have patiently awaited a resolution to the city’s fiscal crisis, Woonsocket simply will not be able to finish out the school year if monies for school operations are further reduced.

Counsel for Woonsocket submits that this case is really about Sargent’s attempt to recoup overdue tuitions. The district does not deny that the tuition is a legitimate expense that is overdue. Woonsocket views the petition as an attempt to require the state to pay for arrearages in tuition that Woonsocket clearly cannot pay at this time. The district takes the position that there is no evidence in the record that if payment of tuition owed from September through February is not made immediately, Sargent will not continue to provide services. Although this averment is contained in the Petition, it remains unsubstantiated. Furthermore, Woonsocket has not received a formal notice that services to these two students will be discontinued on a date certain if payment is not received. Thus, there is no factual or legal basis for the Commissioner to provide the relief requested in the Petition.

DECISION

A review of the arguments and the citations provided by counsel for Sargent does not establish that under either IDEA or state law, or their respective implementing regulations, RIDE is responsible for the payment of \$71,343.96 in overdue tuitions owed to Sargent Rehabilitation Center. There is no provision of law or regulation that establishes that RIDE “automatically assumes” the responsibility for payment of the full cost of services provided to these two Woonsocket students. Although it is clear that RIDE, as an SEA, may need to take additional steps to ensure that these two students continue to receive FAPE, the assertion that RIDE has become “the responsible agency” (Paragraph 24 of Sargent’s Petition) and is therefore obligated to pay all outstanding costs for which Woonsocket has contracted has not been substantiated. The legal proposition advanced by Sargent is creative, but it requires that a series of unnecessary inferences be made from the legal responsibility RIDE has as an SEA to “ensure” that FAPE for these students is maintained. Based on the regulatory provisions to which we have been directed, we do not conclude that Woonsocket’s debt has become a financial obligation of RIDE.

The provisions of 34 CFR §300.227 entitled “Direct services by the SEA”⁵ provide a road map for the responsibilities and intervention of the SEA when an LEA demonstrates that it is unable to establish and maintain programs of FAPE that meet the requirements of IDEA. The fiscal crisis experienced by Woonsocket has undisputedly compromised its ability to maintain special education services to students placed at private facilities. Section 300.227 describes the obligation of the SEA to use payments that would otherwise have been available to an LEA to provide special education and related services directly to children with disabilities residing in the area served by the LEA. This Section goes on to describe the flexibility the SEA has in meeting its responsibility to provide special education and related services. It may do so “directly, by contract, or through other arrangements”. Furthermore, the SEA may provide the

⁵ The Board of Regents’ Regulations have a corresponding section

services “in the manner and at the locations (including regional or State centers) as the SEA considers appropriate.”

The provisions of the above-cited regulation are inconsistent with the notion that the SEA must step into the shoes of the LEA and “automatically” continue to provide special education and related services in the same manner and under the same financial terms as did the LEA. The argument that RIDE has become the “responsible agency” and thereby assumes the contractual obligations, including outstanding indebtedness, to private providers of IEP services such as Sargent is simply not supported by the language of this regulation, or any of the others cited by the Petitioners.

The Commissioner does have jurisdiction over Sargent’s claim because it is not contractual in nature but rather is based on the legal responsibilities that Sargent asserts are placed on RIDE under state and federal special education law. After review, however, we find that neither the law nor the regulations establish that RIDE “must fund” the placement of these two students at Sargent and certainly does not require that RIDE assume the indebtedness of Woonsocket pursuant to its contract with Sargent.

We find that the law requires RIDE to ensure that Students A and B continue to receive a free appropriate public education. The prospect of an interruption in what has been a long-term placement for Student A is of concern⁶. His mother described in her testimony that her son has been placed at Sargent for the past seven years and that with the intensive educational and rehabilitation services he has received there, he has made great progress. Sargent does not have legal standing to raise any entitlement that Student A may have to an ongoing placement there. Any individualized harm from disenrollment would be experienced by Student A and his family, and not by Sargent. It is true that there has been no actual deprivation of IEP services yet and no determination has been made that Student A must remain at Sargent in order to continue to receive FAPE. It is impossible to predict the future, but taking Sargent at its word, it would be

⁶ Student B is twenty-one (21) years old and will be leaving Sargent at the end of the school year.

unfortunate for Student A to experience a disruption in educational and rehabilitation services if all parties to this proceeding (and his parents) agree that he must remain there in order to receive FAPE. On the other hand, it would be inappropriate to restrict RIDE, if it must step in as the SEA to provide direct services, from exercising the flexibility the law permits it to exercise in providing Student A with FAPE.

In light of this unique situation, a special visitor is hereby appointed to monitor Student A's status and advise RIDE on any steps necessary to ensure that he continues to receive FAPE. The special visitor will be identified by J. David Sienko, Director, Office of Student, Community and Academic Supports of RIDE and his/her appointment will be confirmed in writing with the parties and Student A's parents.

For the foregoing reasons, Sargent's request for an interim order requiring that RIDE immediately pay for the educational services that Sargent has provided to Students A and B is hereby denied.

For the Commissioner

Kathleen S. Murray
Hearing Officer

Deborah A. Gist
Commissioner

Date: May 24, 2012