

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....
Kimberly J. :
 :
 :
 v. :
 :
Coventry School Committee :
 :

DECISION

Held: The appellant’s children are not ineligible to participate in an approved home instruction program because they had been receiving special education services in the Coventry public schools, but their proposed home instruction program, assuming it is conformed to meet statutory requirements, must be closely monitored to ensure that it is thorough and efficient. The appellant’s home instruction program presently fails to meet statutory requirements in that it consists almost exclusively of computerized instruction, rather than instruction by a live person.

DATE: December 5, 2000

Travel of the Case

On May 11, 2000 Kimberly J. appealed to Commissioner Peter McWalters from the decision of the Coventry School Committee to deny approval for the home instruction of her two children, Matthew and Isaac. Mrs. J. had withdrawn her children from Coventry public schools in September of 1999 and had been home instructing them throughout school year 1999-2000. The Coventry School Committee considered her request to approve home instruction for both children on April 11, 2000 and denied her request unanimously at that time. The undersigned was designated to hear and decide this appeal on May 22, 2000. At the conclusion of the hearing on June 16, 2000 the matter was placed in abeyance at the request of the parties so that they could continue to attempt an informal resolution on their own. On July 25, 2000 the hearing officer was notified that the parties had been unable to resolve their dispute, and the transcript was ordered at that time. Upon receipt of the transcript on September 21, 2000 the record in this case closed.

Jurisdiction to hear this appeal arises under R.I.G.L. 16-39-2 and 16-19-2.

Issues

- ❖ Do the children's identified needs for special education render them ineligible to participate in a home instruction program?
- ❖ Does the program of home instruction proposed by Mrs. J. meet the requirements of R.I.G.L. 16-19-2 and other requirements imposed by Rhode Island law?
- ❖ Is the Coventry School Department obligated to comply with Mrs. J.'s request that an English tutor be provided to the children two to three times per week to supplement the home instruction program she provides ?

Findings of Relevant Facts

- Kimberly J. and her children Matthew, age 16 and Isaac, age 14 are residents of Coventry, Rhode Island. Tr. P.4.
- During the entire school year 1999-2000 both children were educated at home, in an unapproved program of home instruction. Tr. Pp.5 and 8.

- On April 11, 2000 Mrs. J.'s request to home instruct both children was presented to the Coventry School Committee, together with the recommendation of the Director of Special Services¹ that the request be denied. S.C. Ex.K.
- The Coventry School Committee voted unanimously to deny approval to the home schooling request. The reason was the significance of both children's learning difficulties and "the need for them to be in school to benefit from the intensity of special education direct instruction programs on a daily basis to address their very significant reading and written language deficits". S.C. Ex.K.
- According to the most recent formal testing of Matthew, which was administered in March of 2000 when he was sixteen years old, he was reading at the level of a student just beginning the fifth grade. His score in the Test of Written Language, also administered in March of 2000 was in the very poor range, with an overall writing score of 1 percentile. S.C. Ex. I.
- According to the most recent formal testing of Isaac, which was administered in March of 2000 when he was fourteen years old, he was reading at the level of a student just beginning the fourth grade. His score in the Test of Written Language, also administered in March of 2000 was in the very poor range, with an overall writing score of 1 percentile. S.C.Ex.J.
- Prior to the time they were withdrawn from the public school in Coventry² both children had individualized education plans which contained annual goals in the areas of reading and writing. Both IEP's called for substantial instruction in resource classrooms. S.C. Ex. A and B. The children had been enrolled in the Coventry school system and receiving special education services for the last five years. Tr. P.9-10.
- Mrs. J.'s home instruction program utilizes computerized instruction for all subjects except physical education. The computer generates lesson plans for the subjects of History, Science, Math and Language. Projects and testing are incorporated into the computer program, which has a special feature called "Focus Learning" which repeats the questions they get wrong until all answers are correct. Tr. P.35, 37-41. S. C. Ex. G.
- Although the computerized instructional program Mrs. J. is using does not require her to be present, she is present for the entire time the children are working at the computer. Tr. P.37 She reads the instructions to the children if they need to have the instructions read to them. Tr. P.39

¹ We assume this recommendation was adopted by Superintendent John Deasy.

² Matthew's most recent attendance was in an alternative school program because he had been expelled for the entire year. Tr. P.82. The record does not indicate whether the alternative program he received addressed the goals of his IEP or was designed to enable him to progress in the general curriculum.

- Mrs. J., who is a nurse, instructs the children in health and physical education; although she did not cover the subject of Rhode Island history during 1999-2000, she plans to incorporate this subject beginning in September of this school year. Tr. P.152-153.
- Both Matthew and Isaac have experienced significant growth in several academic areas during the period in which they have been instructed at home. A comparison of their standard scores indicates that the home program has enabled both children to make meaningful growth toward achieving at the level of their potential. Tr. P. 92-93, 113-114. Appellants Ex. 2.
- The Coventry school department treats students who are home schooled as if they were enrolled in private school for purposes of eligibility for special education services. It makes some services available to such children at the public school. Tr.p.61.

Positions of the Parties:

Kimberly J.:

Mrs. J. testified that she is home schooling her two children because during their five years in the Coventry public schools the boys were not making any progress at all, despite their receipt of special education services. She stated that her perception was that the school department had not identified teaching strategies which would enable them to have academic success.

She testified that the computerized instructional format she is using at home is an appropriate and efficient learning method for both boys. They are excited by computerized learning and they have made gains that they never made during their enrollment in the Coventry system. She points to the improved test scores of both children in several academic areas, and argues that this progress in reaching their learning potential did not occur in the public school. With regard to their needs for special education, she notes that she has requested that the district provide an English tutor to assist both boys with their writing skills. Since the district has not complied with this request, she plans to participate in a parent training at the Landmark School, in which the focus of the program is how to teach writing to learning disabled children who are being home educated. She

argues that writing is an ongoing area of weakness for both children and it is not being adequately addressed by their computer instruction.

It is Mrs. J.'s position that the home instruction program substantially complies with all statutory requirements and should have been approved by the Coventry School Committee. Although she did not cover the subject of Rhode Island history last year, it is her intent to cover this required subject during school year 2000-2001. She will also submit attendance registers for the entire period, as she has maintained registers but not yet provided them to the school department.

Coventry School Committee

The School Committee, through its counsel, argues that this is a case of first impression in Rhode Island in that two children with significant special education needs have been withdrawn from the school system and essentially deprived of the special education services to which they are entitled. Given that both boys have individualized education programs which call for ongoing specialized instruction in their identified areas of weakness, it is impossible for any home instruction program to be "thorough and efficient" as required by R.I.G.L. 16-19-2.

The recommendation of the director of special services to deny approval of the parent's request to home instruct these children was based on her analysis that both boys require direct instruction on an intensive, daily basis. Counsel notes her testimony that a computerized instructional program is not an adequate replacement for a special education teacher. She described the need for both boys to be in an educational setting where they can have the benefit of the engagement of teacher-directed lessons and teaching strategies which enhance comprehension skills, the application of knowledge, and analytical thinking. Educational tests administered to both children as recently as March of 2000 confirm their continued need for special education services, it is argued. Therefore, based on the educational needs of these children, their continued attendance in school should be required, the School Committee argues.

As for Mrs. J.'s request that her home program be supplemented by instruction from an English tutor provided by the Coventry School Department, the School Committee takes the position that it is under no obligation to provide such services. Although both children are eligible for special education services, there is no requirement under federal law that such services be provided in the home, unless children are homebound because of illness. Had the boys remained in the public school in Coventry during the 1999-2000 school year, they would have received the services outlined in their respective IEP's. Mrs. J.'s decision to instruct them at home relieved the district of any responsibility to provide them with special education and related services, it is argued. Since her request to home instruct her children also included her request that they receive the services of an English tutor at home, the School Committee acted in conformity with the law when it rejected this request as part of their overall rejection of her home instruction program.

Finally, counsel argues that the program utilized by Mrs. J. fails to incorporate any instruction whatsoever in geography and Rhode Island history, both required subjects under our home instruction statute, R.I.G.L. 16-19-2. It thus also fails to meet the minimum requirements set forth in the statute.

DECISION

In Rhode Island state education laws do not restrict parents from home schooling their children simply because they are eligible for or receiving special education services under the Individuals with Disabilities Education Act, 20 USC 1400 et seq. Home instruction is a permissible way to fulfill compulsory education requirements set forth in R.I.G.L. 16-19-1 and is available to parents of all students, including those with varying levels of ability, and including students with identified disabilities. It must be recognized, however, that a situation could be presented in which withdrawal of a child from the school setting results in the termination of a free appropriate public education under circumstances which could constitute abuse and neglect. See In the Interest of B.B., A Child, Appeal of State of Iowa, 440 N.W. 2d 304 (1989). See also Rhode Island's definition of an "abused and neglected" child, R.I.G.L. 40-11-2. In these situations, termination of special education and/or related services creates a substantial risk of

physical or mental injury to a child.³ The termination or reduction of special education services by withdrawal of a child from the school setting for home instruction does not, in and of itself, constitute grounds for the disapproval of the home instruction program.

Our state law does require that instruction provided to all home-schooled students be “thorough and efficient”. R.I.G.L. 16-19-2. Local school committees, which have the responsibility to approve and monitor home instruction programs, must ensure in so far as possible, that the home-instructed student is receiving instruction that is thorough and efficient. In most cases the standard is met by measuring the home-schooled student’s progress in relation to his or her peers in the public school. For the student who is already several grades behind the performance levels of his or her grade-level peers when the home instruction begins⁴, one would have to use a different measure of whether the home instruction was thorough and efficient. Although the record in this case is not fully developed on the issue of what an alternative standard of measurement might be in such situation, based on the testimony received in this case, one measurement might be comparing the rate of progress made in the school setting with that made in the home instruction program.

The question of the thoroughness and efficiency of a home instruction program when the home-instructed student previously received special education and related services is an especially critical one, in that it is likely that the home-instructing parent does not have the highly specialized training that those certified in special education have. Therefore, there is a need to closely monitor the progress of the program provided to the home schooled student who previously received the full array of services described in an IEP. While it may be that even without the benefit of a free appropriate public education,⁵ the student makes adequate progress, there is more reason to scrutinize the adequacy of the home instruction program to determine if it is enabling the special education student to maintain adequate progress. As with the program of the general education student, the home program must be “thorough and efficient.”

³ A matter which would be reported to, and is under the jurisdiction of, the Department of Children, Youth and Families.

⁴ As were the appellant’s two children

⁵ the entitlement to which is compromised by the child’s removal from school, a subject to be discussed later in this decision.

Applying these general principles to the facts of this case, it is our opinion that the Coventry School Committee's reason for denying approval to Mrs. J.'s home instruction program for Matthew and Isaac was in error. The sole basis for the School Committee's rejection of the home instruction program was the children's significant learning difficulties.⁶ The director of special services rendered her professional opinion that given their learning needs, they need to be in school to benefit from the intensity of special education direct instruction programs to make progress. See School Committee Ex. K. This professional opinion may prove to be correct. However, other than in extreme cases where withdrawal from the public school constitutes neglect and abuse, the parent of a child with special education needs may opt to home-school his or her child. As long as the program of home instruction maintains the child's in-school rate of progress⁷ and covers the subjects required under the home instruction statute, the parent is in compliance with our compulsory education law, R.I.G.L. 16-19-1.

Although the reason for the Coventry School Committee's disapproval of the appellant's home instruction was not valid, we find that other deficiencies in the program cause us to deny approval to the program at this time. In home instruction cases appealed under 16-19-2, as in other matters appealed to the Commissioner under 16-39-1 and 16-39-2, we hear these matters de novo and make a decision based on the record created at this level. See Slattery v. Cranston School Committee, 116 R.I. 252, 263; Concerned Parents and Teachers v. Exeter-West Greenwich Regional School District, decision of the Board of Regents, August 24, 1989. In exercising de novo authority, we are constrained to find that the program of home instruction, as proposed and as executed by Mrs. J. during school year 1999-2000 fails to meet certain requirements of our home instruction statute.

Two explicit requirements are that the program contain instruction in geography and Rhode Island history "to the same extent as these subjects are required to be taught in the public schools". R.I.G.L. 16-19-2. Review of the regulations entitled "Basic Education Program for Rhode Island Public Schools" promulgated by the Board of

⁶ Both boys have significant reading and written language weaknesses.

⁷ We do not reach the issue in this case, but the thoroughness and efficiency of the home-instruction program of a student whose previous in-school program had resulted in the identification of individualized educational goals perhaps should take into account progress in the attainment of those individual goals.

Regents in March of 1989 would indicate that both Rhode Island history and geography are part of the K-12 Social Studies Curriculum (Topic 20). We infer from this fact that these subjects will be included in the curriculum to some extent in each of the K-12 grades. Mrs. J.'s school year 1999-2000 program did not cover these two required subject areas, although she has indicated her intent to include Rhode Island history in the home program starting in September of this school year.

Of even greater concern from the standpoint of compliance with our statute is that the home instruction program consists almost exclusively of computerized instruction⁸. There is no teaching of academic subjects by the parent or any other person. We are aware, and have noted in our findings of fact, that Mrs. J. is present throughout the time the boys work on the computer, and does read directions to them when necessary. She does not, however, instruct her children in any of the core subjects, and, as of the time of hearing in this matter, there was no instruction provided to the children by an English tutor either in the J. home or at school. We find the presence of a live instructor, with whom a student can have traditional pedagogical interaction, to be a required element of the home instruction program. Although this requirement is not explicit in R.I.G.L. 16-19-2, it is implicit in the statute. Given that this law predates the existence of computers, and the existence of the type of instructional programs being utilized by the J. children, the need for the presence of a teacher is not an issue one would expect to be addressed explicitly in our home instruction law.

Although the language of R.I.G.L. 16-19-2 does not use the word "person", it does require that the required subjects "be taught in the English language substantially to the same extent as these subjects are required to be taught in the public schools..." Computerized instruction is a tool utilized by many public school teachers. However, integration of computer-assisted learning in Rhode Island classrooms has not resulted in the computer's displacement of the certified teacher. We have consistently ruled that our home instruction statute is satisfied when instruction is provided by concerned and dedicated parents⁹. We have rejected the notion that the statute requires the parents be

⁸ Only physical education and health are taught by Mrs. J..

⁹ See Brennan v. Little Compton School Committee, decision of the Commissioner dated July 15, 1985 and Beaman v. Middletown School Committee, decision of the Commissioner dated September 10, 1987;

certified teachers. While there is no requirement that a certified teacher provide home instruction, we are not prepared to rule that there need be no teacher at all.¹⁰

This discussion identifies specific remediable deficiencies in the home instruction program currently provided to the J. children. In detailing the reasons underlying our decision that the home program does not presently meet the requirements of our home instruction statute, we anticipate that Mrs. J. will submit a revised plan which will address these inadequacies. She is entitled to a reasonable period of time in which to prepare and submit a revised plan to Coventry school officials. The children have made measurable academic progress in their first year of home instruction,¹¹ despite the deficiencies in the program we have identified and the fact that they have identified special needs. The effort to conform the home program to meet legal requirements would therefore appear to be a worthwhile one¹². It should also be noted that the home instruction approval process is no longer a requirement for Matthew, since during the year in which this dispute has been ongoing, he has attained age sixteen and is no longer of compulsory school age.

In addressing the major deficiency we have identified, i.e. the absence of a teacher, we would strongly suggest that Mrs. J. work closely with school officials. Agreement on the issue of providing the services of an English tutor to work with both children on their written language skills would obviously provide the pedagogical interaction the program currently lacks. We do not mean to imply that the district is obligated to provide these services in the J. home.

According to the testimony received at the hearing, the district services the special education needs of home schooled students in the same manner it does those of private school children. There is under federal law an obligation that these students participate in

¹⁰ See State v. Riddle, 285 S.E.2d 359, 168 W.Va. 429, 1 Ed. Law Rep. 1008 (W.Va. 1981) in which participation in a correspondence school was ruled insufficient to meet the requirements of the home instruction statute because no "person" qualified to give instruction was present.

¹¹ There was a difference of opinion between Mrs. J. and the Director of Special Services as to whether the children had made measurable progress during their five years of enrollment in the Coventry public schools. There is insufficient evidence in the record for us to determine the extent or rate of progress during their enrollment in Coventry schools. We do have, however, the testimony of the appellant's expert who analyzed test results which indicated that both children had experienced academic progress during the time they had been in a program of home instruction.

¹² Unless more recent tests administered to the children demonstrate that their initial progress has not been sustained.

the program carried out under Part B of the Individuals with Disabilities Education Act, consistent with the number and location of disabled students enrolled by their parents in private schools in Coventry, and consistent with the requirement that Coventry spend a proportionate share of its federal funds on disabled private school students.¹³ A broader entitlement to services exists under state law in that R.I.G.L. 16-24-1 requires districts to service all children with disabilities who reside within the city or town and by regulation requires that districts provide such students with special education and related services designed to meet their needs. See Section One, V., 6.6 of the Board of Regents Regulations Governing the Special Education of Students With Disabilities (August, 1992).

Given these entitlements, especially as they exist under state law, it is incumbent that an immediate plan be made for integrating appropriate special education services with the home program of both children. Tutoring services would address the legal requirement for an actual instructor to participate in the program and would provide intensive instruction in written language to both children, which even Mrs. J. describes as an unmet need of the home program. There is clearly no requirement that these services be provided on site, i.e. at Mrs. J.'s home, although there is just as clearly no impediment to on-site delivery of services if the district finds it expedient to do so. Of concern also is a need for transition planning and services for both students and a need to integrate these services into their home program to the fullest extent consistent with law. We urge Mrs. J. to access all special education services made available by the district to supplement her home instruction program so that she will bring Isaac's home instruction program into conformity with the law¹⁴ and enable both boys to participate in Coventry's special education program. In making the anticipated revisions to Isaac's program, both parties should also agree on the schedule and methods for evaluating the effectiveness of the program to ensure that it is "thorough and efficient" and enables Isaac to make sufficient academic progress. Although not required, an agreement to evaluate the effectiveness of Matthew's home program would provide Mrs. J. with helpful information.

¹³ See Hooks v. Clark County School District, 2000 WL 1357476 (C.A. 9 (Nev.) 2000 regarding the discretion of states to determine whether home education qualifies as a "private school for purposes of IDEA requirements.

Mrs. J.'s appeal is denied. This matter is remanded to the Coventry School Department. Mrs. J. should submit a revised home instruction program to the School Committee no later than January 2, 2001.

Kathleen S. Murray
Hearing Officer

APPROVED:

Peter McWalters
Commissioner of Education

December 5, 2000

Date

¹⁴ As we have said, this is not an issue for Matthew's home program since he is above compulsory school age.