

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

DEPARTMENT OF EDUCATION

IN THE MATTER OF:

WEST WARWICK SCHOOL DISTRICT  
VS.  
JANE DOE

LL 11-02

ADMINISTRATIVE DECISION

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Maureen A. Hobson, Esq.  
222 Jefferson Blvd.  
Warwick, RI 02888

Dated: March 29, 2011

Whether district's complaint to terminate special education services was justified under the circumstances that parents refused to allow district access to student's medical records.

HELD: Where parents refused to meet with IEP team or to allow access to medical records and child was removed from school, district may terminate special education services.

## LEXICON

District: West Warwick  
Student:  
Parents:  
Attorney for District: Jon M. Anderson, Esq.  
Hearing Officer: Maureen A. Hobson, Esq.  
Witness: Paul Vigeant, Director of Special Education for the district

## TRAVEL OF THE CASE

The school district filed a complaint for due process with the RI Department of Education (hereinafter RIDE) on January 11, 2011 to terminate special education services for Jane Doe, an 8-year-old student living in the district.

This Hearing Officer was appointed on January 14, 2011. By letter dated January 20, 2011, this Hearing Officer notified the parties of a pre-hearing conference date of February 14, 2011. Due to a scheduling conflict, the pre-hearing date was moved to February 15, 2011 and all parties were notified.

On February 2, 2011, the parents forwarded to the Hearing Officer a letter challenging the sufficiency of the district's complaint to RIDE and proposing as a resolution that the district provide a "compliant IEP" for their child. (Exh # 3)

At the pre-hearing conference on February 15, 2011, the parents failed to appear. Due to state and federal time constraints, the matter was then scheduled for formal hearing to February 25, 2011. All parties received written notification of the date and time of hearing by letter dated February 16, 2011. (Exh. # 4)

On February 22, 2011, the parents wrote to the Hearing Officer challenging the due process compliance with IDEA. (Exh. # 5)

On February 25, 2011, the parents failed to appear, and at the behest of the district's attorney, in conformance with the Hearing Officer's letter of February 16, 2011, the case proceeded to formal hearing on that day. At hearing, the district presented the Director of Special Education as its lone witness.

## HISTORY AND DISCUSSION OF THE CASE

The parents were notified of a complaint being filed by the district by letter dated January 14, 2011. They forwarded a letter to the Hearing Officer dated February 2, 2011 purportedly challenging the sufficiency of the complaint. Representations made by counsel at the hearing support a conclusion that a copy of that letter was not sent to the district or its attorney as required by section 300.508 (d) of the Regulations. (Tr. Pp7-8) Furthermore, though the letter purported to challenge the sufficiency of the complaint, the relief requested by the parents via the letter was for the district to provide a “compliant IEP”.

Subsequent to their letter of February 2, 2011, the parents were notified in writing that the case was proceeding to formal hearing on February 25, 2011. Nowhere in the Regulations does it provide that a party challenging the sufficiency of a complaint is free to ignore a notice of hearing forwarded by the Hearing Officer. The subject of their child’s entitlement to a “compliant IEP” was to have been addressed at hearing.

At the hearing, the Special Education Director testified as to the prior history of the district with this child as well as ongoing efforts to establish the child’s educational future. The district had been financing the child’s out of district education at the Cornerstone School and providing LEA services since her enrollment there at age 3 years. The child is presently 8 years old. The child suffers from multiple congenital physical afflictions. She is mentally retarded, hearing, speech and language impaired and has a seizure disorder.

Throughout the district’s involvement with this child, the Special Education Director testified that there has been a lack of cooperation on the part of the parents in their dealings with the district. Most recently, in the spring of 2010, the district scheduled an IEP meeting for June 17, 2010 at the Wakefield Hills Elementary School. The full IEP team assembled there on that date. The parents and staff of the Cornerstone School participated via telephone from the Cornerstone School. The district was tentatively proposing that the child be brought back into the district for educational placement in the least restrictive environment. The meeting lasted approximately 1 ½ hours.

During the course of the meeting, the mother objected to any change in placement and stated that her daughter’s health circumstances had changed, that she was gravely ill, and that the district was not in possession of up to date medical records for the child. The IEP team asked the parents to sign releases so the district could obtain the latest medical records. The parents were reluctant at first. However, the district was told to fax the releases to Cornerstone and the parents would sign and return them to the district the

following day. The district did fax the releases, and the parents did fax some partial medical records that they had with them at the IEP meeting. However, the mother stated that the faxed records were not up to date, nor were they complete.

In the meantime, based upon the mother's representations of deterioration in her daughter's health, the district agreed to refrain from discussing any change in placement pending the receipt of additional records. The team felt that if the child's health had worsened, their IEP goals might well be too stringent. Therefore, the child was to stay at Cornerstone for the time being, until her records had been received and were thoroughly reviewed.

The parents were to deliver the executed releases to the district on June 18, 2010. The parents did not deliver the releases as promised. The district nevertheless continued the child's placement at Cornerstone.

On November 17, 2010, the district sent a letter to the parents, together with new releases to be signed and returned to the district. There was no response.

On December 7, 2010, the district forwarded a third set of releases and another request for a response. The parents did not contact the district.

On December 15, 2010, the Special Education Director received a letter from the child's medical doctor seeking home tutoring for the child as she was physically unable to attend school. The Special Education Director said he was quite pleased with the request as it evidenced a desire to get the child some educational services. He waited a bit longer for the signed releases that would enable the IEP team to gather the information necessary to determine whether and what type of home instruction would be appropriate for the child. Again, no releases were forthcoming.

The district checked with the Cornerstone School and learned that the child had not been at school since the last day of September 2010. On January 8, 2011, the district made a fourth request for the releases and forwarded a letter to the parents setting up an IEP meeting for January 26<sup>th</sup> in order to discuss the child's home tutoring. The district also sent a letter to Cornerstone advising that payment of tuition would be terminated as the child had not been attending school there since September. Though the child had ceased her attendance, Cornerstone had continued to bill the district for her tuition as if she were present in school. The district also initiated a due process complaint to formally terminate services.

On January 25, 2011, the school secretary called the parents to confirm the January 26<sup>th</sup> IEP meeting. The parents indicated that they would not be attending the meeting based upon the fact that the district had filed a due process complaint with RIDE.

At this time, the child is not receiving any educational services from the district. That fact, it would appear, is directly attributable to the lack of cooperation on the part of the parents and/or the declining health of the child such as would prevent her from attending school or receiving home instruction. The district is not presently in a position to know the child's situation due to the lack of salient information.

Based upon the foregoing, this Hearing Officer is constrained to find that the school district may properly terminate special education services to the subject student. This ruling is without prejudice to the parents' right to request that the district provide special education services to their child in the future.

ENTERED THIS 29<sup>TH</sup> DAY OF MARCH 2011.

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Maureen A. Hobson, Esq.

#### CERTIFICATION

I certify that a copy of the within was mailed postage prepaid to the parents and to Jon M. Anderson, Esq. on the 29<sup>th</sup> day of March 2011.

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