

STATE OF RHODE ISLAND and PROVIDENCE PLANTATIONS

DEPARTMENT OF EDUCATION

SPECIAL EDUCATION DUE PROCESS HEARING

STUDENT: JOHN DOE

SCHOOL DISTRICT: CHARIHO

**HEARING OFFICER: ARTHUR G. CAPALDI, ESQ.
1035 MAIN STREET
COVENTRY, R.I. 02816**

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SCHOOL DISTRICT: CHARIHO

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LEXICON

For the purposes of the decision in the within hearing and to ensure confidentiality of the student, the following Lexicon shall be used in this decision:

STUDENT:

PARENT:

SCHOOL DISTRICT: CHARIHO

HEARING OFFICER: ARTHUR G. CAPALDI, ESQ.

ATTORNEY FOR SCHOOL DEPT.: JON M. ANDERSON, ESQ.

ATTORNEY FOR STUDENT: DILLOUN RADMARCHER, ESQ.

POSITION OF PARTIES

PARENT: The Student's placement should be at Bradley School in order to give the Student a free, appropriate, public education for the school year 2010-2011.

SCHOOL DISTRICT: The School District has a program within the District at the RYSE School which is an appropriate placement and will provide a free, appropriate, public education for the Student for the school year 2010-2011.

ISSUES and SUMMARY OF DECISION:

DECISION: The placement for the Student shall be at RYSE School within the School District.

ISSUE: Should the Student's placement be at Bradley School in order to provide the Student with a free, appropriate, public education as required under the regulations?

TRAVEL OF THE CASE: On or about September 17, 2010, this Hearing Officer was appointed to conduct a due process hearing in the above-entitled matter as a result of a request for hearing by the Parent. On September 23, 2010, notice of the appointment was sent to the School District and Parent by the Hearing Officer.

On October 14, 2010, a Pre-hearing Conference was held at the School District. The Parent was not represented at the Pre-hearing Conference but stated that he was trying to get a lawyer from the Disability Law Center. The next hearing date of October 27, 2010 was established earlier through Mr. Anderson's Officer. The Parent did state his position and the

School District presented its position. When we discussed the October 27, 2010 hearing date, the Parent denied agreeing to that date. The Hearing Officer advised the Parent that the Hearing Date of October 27, 2010 was going to remain but when he obtained the services of a lawyer to have the lawyer contact the Hearing Officer about that date.

The Parent became agitated and left the meeting.

On October 18, 2010, the Hearing Officer received an affidavit from Karen Beaton, secretary of the law firm of Edwards Angell Palmer & Dodge, LLP in which she confirmed that the Parent agreed to the hearing date of October 27, 2010. (Copy attached to this decision).

A hearing was conducted on October 27, 2010.

The Parent was represented by Attorney Dilloun Radmacher who called this Hearing Officer on or about October 25, 2010 requesting a continuance because he just took on the case. He was advised to contact the School District Attorney to discuss a continuance and to get back to this Hearing Office with the results of his call to the other attorney. This Hearing Officer tried to reach telephonically both attorneys on October 26, 2010 but was unable to do so. This Hearing Officer left messages that the parties were to be present on October 27, 2010.

The Parties appeared for Hearing on October 27, 2010. This Hearing Officer asked Attorney Radmacher if he was prepared to go forward. (Trans. Oct. 27, 2010 P.3,L15) Mr. Radmacher agreed to go forward. (Trans. Oct. 27, 2010 P.3, L18) The Parent had two witnesses present at the hearing, Dr. Gragg and Mrs. Drinkwater, from Bradley School to testify but the School District objected to their testimony and exhibits because they did not receive a five-day disclosure of evidence under section 300.512 of the regulations. The Parent's attorney asked for a continuance to be able to present the five-day disclosure. This Hearing Officer inquired if Mr. Radmacher was going to examine the Parent who present (Trans. Oct. 27, 2010 P4 L13) and he

stated he was ready to examine the Parent, which was allowed. As to the five-day notice for the expert witnesses, the Parent had eight days before the next hearing on November 4, 2010, which was sufficient time to send out a disclosure notice.

During cross-examination the Parent informed all parties at the Hearing that he was too sick to continue. The Hearing Officer stopped the Hearing and continued it to November 4, 2010.

A hearing was held on November 4, 2010 and both parties rested concluding the due process hearing.

The parties agreed to have an IEP in ten days from November 4, 2010. On November 5, 2010 the Parent cancelled the request for an IEP meeting.

FACTS: The Student is almost nine year old (DOB 12-17-01) and attended Ashaway Elementary School in the School District. Currently the Student attends Bradley School-South County. The School District sent the Student to Bradley School in July of 2009. (Trans. Nov. 4, 2010 P64 L20) The Student was sent to Bradley School because there were changes in the Student's functioning and the Student was having more difficulty in the classroom. (Trans. Nov. 4, 2010 P62 L11-16)

Dr. Gragg from Bradley said that he believed the Student was sent to Bradley because "the Student was being very aggressive in the public setting..." (Trans Nov. 4, 2010 P28 L5)

The Student requires a highly structured program. In describing the Bradley program. Dr. Gragg said.

"Our classroom is a self contained classroom with no more than ten students in the class. The Student has intensive behavior program with lots of incentives for the Student to be

able to earn for appropriate behavior and participation in academics. He often escalates unsafe very quickly so requires one on one staff to be like within close proximity to him at all times because he will run away, he will become aggressive to staff and to peers, he will become destructive, tipping desks, things like that. (Trans. Nov. 4, 2010 P29 L2)

Bradley used physical interventions and actual mechanical restraints. (Trans. Nov. 4, 2010 P29 L20) The Student engages in serious head banging at times. (Trans. Nov. 4, 2010 P29 L16)

The Student needs a one on one assistance at all times.

Dr. Gragg did not have any information concerning what the RYSE program provides. (Trans. Nov. 4, 2010 P31 L11) He did not know if the RYSE program could meet the Student's needs because he was not aware of the RYSE Program. (Trans. Nov. 4, 2010 P32 L2)

The School District wanted to observe the Student at Bradley during the summer of 2010. (Trans. Nov. 4, 2010 P36 L24) The Parent did not want the School District personnel to observe the Student. (Trans. Nov. 4, 2010 P37) Later the Parent with his attorney, Mr. Melish agreed. Two observation dates were scheduled but the Student failed to attend school on those dates. (Trans. Nov. 4, 2010 P53 L1-15)

An IEP was developed on February 1, 2010 and the Parent was present. (Sch. Dist. Exch.#2)

The Parent would have no objection to the February 1, 2010 IEP if it was implemented at Bradley. (Trans. Nov. 4, 2010 P22 L3-5)

Kathleen Perry testified for the School District. She is the director of special education. She has been the director for nine years. (Trans. Nov.4, 2010 P41 L12) She is certified to teach special education nursery school through grade 9; certified to teach elementary school grades K

through 6; certified to be an administrator of special education; certified to be an elementary and middle school principal; certified as a school psychologist pre – K to 12. (Trans. Nov. 4, 2010 P42 L 7-13)

RYSE means Reaching Youth Through Support in Education.

The RYSE program for this Student is one that requires small clinical structured setting to meet their educational and clinical needs. The program provides twenty four hour a day, seven day a week, three hundred and sixty five days a year full mental health wrap around services to kids and their families. (Trans. Nov. 4, 2010 P46 L10)

Ms. Perry further explained what “clinical day program” entails.

“It is an educational program that offers clinical support for students who have special, emotional and behavioral (needs) so they can benefit from their educational setting. “ (Trans. Nov. 4, 2010 P47 L16)

The RYSE program is the only clinical day program operated by a public school system that is approved by the Department of Education in the State of Rhode Island (Trans. Nov.4, 2010 P48 L2)

Ms. Perry has known the Student since he was in preschool. (Trans. Nov. 4, 2010 P48 L12)

Ms. Perry testified that in her opinion the IEP of February 1, 2010 affords the Student of a free, appropriate public education (Trans. Nov.4, 2010 P55 L1) and further that the IEP could be fully implemented within the RYSE Program.

The RYSE program was in operation for several years and it was reopened in February, 2010. (Trans. Nov. 4, 2010 P64 L6) The School District reopened an elementary classroom in

February, 2010. (Trans. Nov. 4, 2010 P64 L 20) At the time of the February 1, 2010 IEP, the placement was to continue at Bradley for the remainder of the 2009-2010 school year.

DECISION: The Parent agrees with the February 1, 2010 IEP. The Parent stated that he approved the content of the IEP. (Trans. Nov. 4, 2010 P21 L18) The Parent would have no objection to the IEP so long as it was implemented at the Bradley School. (Trans. Nov 4, 2010 P22 L5)

The Parent argued that they needed another IEP meeting and that they requested an IEP meeting but was not given one by the School District. The School District denied that they knew of such a request. The Parent tried to get into evidence a letter from the Department of Education concerning this issue but because the School District objected to such evidence under section 300.512 a)(3) the Hearing Officer could not allow the admittance of such evidence.

In as much as both parties agree to the contents of the February 1, 2010 IEP, another IEP would not be necessary in order to determine placement. It is clear from the evidence that the team meeting stated that the Student is going to return to the School District. The second page of the IEP of February 1, 2010 states:

“The Team recommends ESY services for (The Student) due to significant regression after School breaks. The LEA indicated that in the fall the District is looking to return the Student to the District to enroll in its elementary clinical classroom”
(Sch. Dist. Exh. 2 P2)

Further, on the last page the Team recommendations were:

1. The Team recommends that (the Student) attend ESY due to significant regression upon school breaks.
2. Implement the IEP as written.

3. (The Student) will transition back to the district and enroll in the elementary clinical program. (Sch. Dist. Exh. 2 P3)

I find that the Parent did receive a copy of the Team Meeting.

It should be noted that the next evaluation of the Student was set in the February 1, 2010 IEP for March 17, 2011 and the IEP was effective to January 31, 2011.

The Parent presently accepts the content of the February 1, 2010 IEP except for the placement. Another IEP does not appear to be necessary and all that is left to decide is whether the Parent has proven that the School District cannot implement the February 1, 2010 IEP.

The RYSE program has ten Students in the classroom and there are three classrooms. RYSE has the only clinical day program in the State of Rhode Island. The program provides twenty four hour, seven day a week, three hundred sixty five days a year full mental health wrap around service to Students and their families. (Trans. Nov. 4, 2010 P46 L10) The RYSE program offers more services during the school day than Bradley School. The clinical staff at RYSE are available in the building at all times and it is the same clinical staff that works with families in the afternoon and evening. RYSE has more clinical staff available during the school day than Bradley. (Trans Nov. 4, 2010 P47 L16)

Kathleen Perry's testimony was uncontradicted and her opinion was that the IEP of February 1, 2010 affords the Student a free, appropriate public education. (Trans. Nov. 9, 2010 P55 L1).

Further, her opinion was that "Chariho can fully implement the IEP" (Trans. Nov. 4, 2010 P55 L20)

The RYSE Program has the interventions that Dr. Gragg from Bradley said that the Student would require such as a highly structured program, a self contained class of not more than 10 students and one to one assistance.

I find that the placement for the Student shall be at the School District in the RYSE Program for the 2010-2011 school year and further, the IEP of February 1, 2010 shall be in effect to January 31, 2011. There shall be an IEP meeting prior to January 31, 2011.

I find that the IEP of February 1, 2010 does afford the Student a free, appropriate public education.

I find that the Parent failed to provide any evidence that the School District could not implement the February 1, 2010 IEP.

DATE: _____

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