UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

PROVIDENCE SCHOOL DEPARTMENT

v. C.A. No. 96-127-T

ANA C., a minor

MEMORANDUM AND ORDER

ERNEST C. TORRES, United States District Judge.

This is an appeal by the Providence School Department ("the Department"), from a review officer's decision under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq. The decision requires the Department to provide educational services to Ana C. ("Ana") as compensation for services to which she was entitled but was not provided.

The issue presented is whether the Department can be required to provide such services even though Ana no longer resides in Providence; and, if so, where the services must be provided. Because I find that the services must be provided at Ana's current place of residence, the review officer's decision is affirmed.

Background

Ana is a minor and, due to a mental handicap, she is eligible for special education services under the IDEA. See 20 U.S.C. § 1400(c), 1412(1). Ana lived in Providence, Rhode Island from August of 1989 to November of 1992. In November of 1992 she moved to Pennsylvania, where she currently resides.

During the summers of 1990, 1991 and 1992, the Providence

School Department failed to provide her with a total of 150 days of special education to which she was entitled. The Department concedes that Ana should have received the special education services, but it maintains that she is no longer eligible because she no longer resides in the Providence school district.

Ana seeks to require the Department to provide her with equivalent services at her new residence in Pennsylvania. Accordingly, she filed a complaint and request for a due process hearing pursuant to 20 U.S.C. § 1415(b) in order to recover the services.

A hearing officer designated by the Rhode Island Department of Education decided that, because Ana no longer resides in Providence, the Department is not obliged to provide services to her. On appeal, that decision was reversed by a review officer who ordered the Department to provide Ana with 150 days of special education services at her new residence. The Department brought this action, pursuant to 20 U.S.C. § 1415(e), challenging the review officer's decision.

Standard of Review

In considering appeals from administrative decisions under the IDEA, courts employ an "intermediate" standard of review that "requires a more critical appraisal of the agency determination than clear-error review entails, but which, nonetheless, falls well short of complete de novo review." Lenn v. Portland Sch. Comm., 998 F.2d 1083, 1086 (1st Cir. 1993). However, where, as here, the facts are undisputed and the issue before the Court is one of law,

the review is de novo. Mary P. v. Illinois State Bd. of Educ., 919 F. Supp. 1173, 1177 (N.D. Ill. 1996); Raymond S. v. Ramirez, 918 F. Supp. 1280, 1289 (N.D. Iowa 1996).

Discussion

The IDEA requires states that receive federal funding for special education services to provide a free appropriate public education for all handicapped children within the state. 20 U.S.C. § 1412(a)(1)(A). Under Rhode Island law, the responsibility for providing appropriate special education services for "mentally retarded" children of elementary or secondary school age is imposed on the school committee of the city or town where the child resides. See R.I. Gen. Laws § 16-24-1. Thus, a school committee's obligation to provide such services extends only to children who reside within its school district. See Smith v. Cumberland Sch. Comm., 415 A.2d 168, 171-72 (R.I. 1980) (school committee must provide special education that best satisfies needs of a resident handicapped child).

However, when a school department denies special educational services that are required by the IDEA, the remedy may include a requirement that compensatory services be provided. Pihl v. Massachusetts Dep't of Educ., 9 F.3d 184, 188 (1st Cir. 1993). The rationale for that remedy is that it "'merely requires [the school district] to belatedly pay expenses that [it] should have paid all along.'" Id. (quoting Miener v. State of Missouri, 800 F.2d 749, 753 (8th Cir. 1986) (internal citations omitted)).

Requiring compensatory services is appropriate even where the

student has passed the age of eligibility under the IDEA. Id. at 189-90. Otherwise, there would be no effective remedy for the improper denial. As the Pihl court explained:

> In order to give meaning to a disabled student's right to an education between the ages of three and twenty-one, compensatory education must be available beyond a student's twenty-first birthday. Otherwise, school districts simply could stop providing required services to older teenagers, relying on the Act's time-consuming review process to protect them from further obligations. . . . [A]bsent a compensatory education award, courts would be powerless to aid intended beneficiaries who were over twenty-one but who had not sought out an alternative educational program (citations omitted). We cannot believe that Congress, in establishing a disabled student's right to public education, would allow a school district to suspend the educational rights of such disabled eighteen- or nineteen-year-olds without a remedy.

Id. at 189-90.

That rationale is equally applicable in this case. The fact that Ana's present ineligibility stems from her place of residence rather than her age is a distinction without a difference. Thus, at least one court has held that a school department may be required to provide compensatory education services even though the child no longer resides in the district. Neshaminy Sch. Dist. v. Karla B., 1997 WL 137197, *6 (E.D. Pa. March 20, 1997) ("If the rule were to the contrary, then a school district could simply stop providing required services to a student with the underlying motive of inducing this student to move from the district, thus removing any future obligation under IDEA which the district may owe the student. Such a result would frustrate the purposes of IDEA in that a student would be denied his right to a [free appropriate

public education].").

The Department argues that it will provide the services if and when Ana returns to Providence. That argument overlooks the fact that a school district is obliged not only to provide services to an eligible student; but, also, to compensate a student who wrongfully is deprived of those services. Ana's right to compensation for the past denial would be a hollow one if it could be conditioned upon satisfying requirements governing present eligibility.

Conclusion

For all of the foregoing reasons, the Review Officer's Decision of January 23, 1996 is affirmed and the Department is directed to provide Ana with 150 days of special education services, in addition to what she is receiving from her school district in Pennsylvania, at her place of residence.

IT IS SO ORDERED,

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Ernest C. Torres
United States District Judge

Date: , 1998

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