

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WAYNE and KARYN RAYMOND,	§	
as parents of WAYNE, II, a minor,	§	No. 346, 1999
	§	
Defendants Below,	§	
Appellants,	§	
	§	
v.	§	Court Below: Family Court
	§	of the State of Delaware
RED CLAY CONSOLIDATED SCHOOL	§	in and for New Castle County
DISTRICT and STATE OF DELAWARE	§	CN98-07504
DEPARTMENT OF EDUCATION,	§	
	§	
Plaintiffs Below,	§	
Appellees.	§	

Submitted: November 21, 2000

Decided: December 15, 2000

Before **VEASEY**, Chief Justice, **WALSH, HOLLAND, BERGER** and **STEELE**,  
Justices, constituting the Court *en Banc*.

O R D E R

This 15<sup>th</sup> day of December, 2000, upon consideration of the briefs and arguments of the parties, it appears to the Court that:

1) Wayne and Karen Raymond appeal from a decision of the Family Court denying them reimbursement for their son's private school tuition under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C.A. §1400, *et seq.*

(1997). The Family Court reversed the decision of a Due Process Hearing Panel, which found that the Raymonds' son, Tony, had not been offered a free and appropriate public education for the 1997-98 school year.

2) Tony is disabled within the meaning of the IDEA, and has been receiving special education services since 1995. In November 1996, the Raymonds met with a team of therapists, counselors and educators to revise Tony's Individualized Education Program ("IEP"). At that time, Tony was enrolled in a half-day special education kindergarten program at Richardson Park Learning Center and a half-day private school kindergarten program at Wilmington Junior Academy.

3) At the Raymonds' request, Tony was re-tested in January and February 1997 and the Raymonds met with the multi-disciplinary team at Richardson Park to discuss Tony's educational needs. The team concluded that Tony remained eligible for special services due to his disability. In March 1997, the Raymonds requested a district level meeting of the Identification, Placement, Review and Dismissal Committee (IPRD) to determine Tony's placement for the 1997-98 school year.

4) At the IPRD meeting, held on April 10, 1997, the committee heard reports about Tony's progress at Richardson Park, his recent test results, and his behavioral and learning difficulties. The representatives from Richardson Park recommended that Tony be placed in a self-contained program at Forest Oak Elementary School.

Tony's private psychologist recommended that he be placed at the Centreville School. The IPRD committee decided to place Tony at Forest Oak for the coming school year.

5) On May 13, 1997, the Raymonds received the IPRD committee decision. They immediately requested another meeting with the committee, but Red Clay advised them that the IPRD committee had "fulfilled its responsibilities," and that the Raymonds should pursue their legal rights if they disagreed with the committee's decision.

6) On June 9, 1997, the Raymonds requested a Due Process Hearing. That hearing did not begin until after the start of the 1997-98 school year and the Panel did not issue its decision until February 24, 1998. In August 1997, while the hearing was being scheduled, the Raymonds unilaterally enrolled Tony at the Centreville School. The Raymonds advised Red Clay of the placement and the fact that they were seeking reimbursement for tuition.

7) The Due Process Hearing Panel concluded that Tony had been denied a free and appropriate education for the 1997-98 school year because the IPRD committee relied on a "stale" IEP to decide on Tony's school placement. The Family Court reversed on appeal, holding that: (i) Red Clay's failure to create a new IEP for Tony was a minor procedural defect that caused no harm; and (ii)

Tony's progress during the 1996-97 school year proves that he would have received an educational benefit during the 1997-98 school year at Forest Oak or Richardson Park.

8) The Raymonds argue on appeal that tuition reimbursement is justified because appellees violated several procedural requirements of the IDEA. Specifically, they say that Red Clay should have prepared a new IEP for Tony in the spring of 1997, before considering his placement for the 1997-98 school year. Failing that, Red Clay should have prepared a new IEP in November 1997, one year after the last one was developed. The Raymonds also complain that they did not receive a timely due process hearing. Federal regulation requires that a due process hearing be held and a decision be rendered within 45 days after the parents' request for a hearing.<sup>1</sup> In this case, the decision was issued 257 days after the hearing request.

9) In deciding whether a student was denied a free and appropriate public education, courts must address two questions: (i) did the State (or school district) comply with the procedural requirements of the IDEA; and (ii) was the operative IEP "reasonably calculated to enable the child to receive educational benefits?"<sup>2</sup> On

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<sup>1</sup> 34 C.F.R. § 300.511(a).

<sup>2</sup>*Board of Education v. Rowley*, 458 U.S. 176, 207 (1982).

the first question, procedural deficiencies are not always actionable violations of the IDEA. To justify relief, there must be “some rational basis to believe that procedural inadequacies compromised the pupil’s right to an appropriate education, seriously hampered the parents’ opportunity to participate in the formulation process, or caused a deprivation of educational benefits.”<sup>3</sup>

10) From our review of the record, we are satisfied that the procedural errors do not meet this standard. Although Red Clay should have prepared a new IEP after Tony was tested in February 1997, the IPRD Committee received and evaluated his most recent test results when it considered Tony’s placement for the coming year. Thus, there is no reason to believe that the failure to create a new IEP deprived Tony of educational benefits. The failure to prepare a new IEP in November 1997, likewise, had no adverse impact since Tony was at the Centreville School by that time and was working with a new IEP developed there.

11) Finally, the delay in the due process panel’s decision was caused by many factors, including scheduling difficulties, the length of the hearing, and the voluminous record. The Raymonds played some part in causing those delays, but even if they had not, they would not be entitled to relief as the delay did not deprive

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<sup>3</sup>*Roland M. v. Concord School Committee*, 910 F.2d 983, 994 (1<sup>st</sup> Cir. 1990).

Tony of any educational benefits. The Raymonds objected to the proposed placement at Forest Oak, but they could have continued Tony at Richardson Park, where he had been successful, for the 1997-98 school year. Thus, the Raymonds did not have to enroll Tony at the Centreville School in order to secure the educational benefits guaranteed by the IDEA.<sup>4</sup>

12) The second question has been answered indirectly in our analysis of the procedural issues. The record establishes that Tony was benefitting from the IEP that he was using during the 1996-97 school year, and many of the goals from his 1996 IEP were included in his 1997 Centreville IEP. Thus, we conclude that Tony's 1996 IEP (which would have been modified at the beginning of the 1997-98 school year if Tony had stayed in the public school system) was reasonably calculated to provide educational benefits.

13) In sum, we find that the procedural deficiencies did not violate the IDEA and Tony was not denied a free and appropriate education. As a result, the Raymonds are not entitled to reimbursement for private school tuition during the 1997-98 school year.

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<sup>4</sup>Although we agree with the trial court's finding as to the delay in this case, the State and School District should be mindful of the 45-day time limit and should be making a good faith effort to comply with that standard.

NOW, THEREFORE, IT IS ORDERED that the decision of the Family Court  
be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice