

424 Mass. 471
Supreme Judicial Court of Massachusetts,
Bristol.
The JUDGE ROTENBERG EDUCATIONAL
CENTER, INC.¹

v.
COMMISSIONER OF THE DEPARTMENT OF
MENTAL RETARDATION (No. 2).

Argued Nov. 5, 1996. | Decided March 13, 1997.

Educational center and class of all patients, their parents, and guardians, brought contempt action against commissioner of Department of Mental Retardation. While action was pending, the Probate and Family Court, Bristol County, Elizabeth O'Neill LaStaiti, J., granted preliminary injunction enjoining Department from decertifying educational center. Department's application for direct appellate review was granted. The Supreme Judicial Court, Lynch, J., held that appeal was mooted when final judgment and order of relief was entered in underlying contempt action.

Appeal dismissed.

Attorneys and Law Firms

****154 *471** Judith S. Yogman, Assistant Attorney General (Lucy F. Wall, Assistant Attorney General, with her) for the Commissioner of Department of Mental Retardation.

Roderick MacLeish, Jr., Boston (Peter F. Carr, II, with him) for Judge Rotenberg Educational Center, Inc.

Eugene R. Curry, Barnstable, for class of students, parents and guardians.

Cathy E. Costanzo, Northampton, for the guardianship counsel, amicus curiae, submitted a brief.

Before ABRAMS, LYNCH, GREANEY, FRIED and MARSHALL, JJ.

Opinion

***472** LYNCH, Justice.

This is an appeal from a preliminary injunction entered in *Judge Rotenberg Educ. Ctr, Inc. v. Commissioner of the Dep't of Mental Retardation (No. 1)*, 424 Mass. 430, 677 N.E.2d 127 (1997).

The Judge Rotenberg Educational Center, Inc. (JRC), and the class of all patients, their parents, and guardians, brought a contempt action in the Bristol County Probate and Family Court against the Commissioner of the Department of Mental Retardation (department). While the action was pending, the judge issued a preliminary injunction enjoining the department from decertifying JRC. The department appealed to a full panel of the Appeals Court pursuant to G.L. c. 231, § 118, second par.² We granted the department's application for direct appellate review.³

^[1] ^[2] A preliminary injunction lapses when a final decree is entered. *Carlson v. Lawrence H. Oppenheim Co.*, 334 Mass. 462, 465, 136 N.E.2d 205 (1956) (preliminary injunction does not survive entry of final decree); *Lowell Bar Ass'n v. Loeb*, 315 Mass. 176, 189, 52 N.E.2d 27 (1943) (preliminary injunction served purpose when final decree entered). The preliminary injunction at issue in this appeal was vacated when the judge entered the final judgment and order of relief in the contempt action. Therefore, this appeal is dismissed as moot and we need not consider whether the preliminary injunction was properly granted.⁴ See *Mahony v. Assessors of Watertown*, 362 Mass. 210, 216 n. 3, 285 N.E.2d 403 (1972); *Lowell Bar Ass'n v. Loeb*, *supra* at 190–191, 52 N.E.2d 27.

So ordered.

Footnotes

¹ Matthew L. Israel, executive director of The Judge Rotenberg Educational Center, Inc. (JRC); Leo Soucy, individually, and as parent and next friend of Brendon Soucy; and Peter Biscardi, individually, and as parent and next friend of P.J. Biscardi, both as representatives of the class of all patients at the Behavior Research Institute, Inc., their parents, and guardians.

² General Laws c. 231, § 118, second par., provides, in pertinent part, as follows: "A party aggrieved by an interlocutory order of a trial court justice ... granting, continuing, modifying, refusing or dissolving a preliminary injunction ... may appeal therefrom to the appeals court ... which shall affirm, modify, vacate, set aside, reverse the order or remand the cause and direct the entry of such appropriate order as may be just under the circumstances."

- 3 In addition, the department petitioned a single justice of the Appeals Court for interlocutory relief pending this appeal. See *Judge Rotenberg Educ. Ctr. Inc. v. Commissioner of the Dep't of Mental Retardation (No. 3)*, 424 Mass. 473, 677 N.E.2d 155 (1997).
- 4 The commissioner contends that the judge erred because JRC was unlikely to succeed on the merits, there was no threat of irreparable harm, and the remedy was excessive. For the reasons stated in *Judge Rotenberg Educ. Ctr. Inc. v. Commissioner of the Dep't of Mental Retardation (No. 1)*, 424 Mass. 430, 677 N.E.2d 127 (1997), we disagree.