

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JOHN B.K. DOE

V.

BRISTOL/WARREN REGIONAL
SCHOOL COMMITTEE

DECISION ON REQUEST
FOR INTERIM ORDER

Held: The petitioner failed to establish entitlement to participate in graduation ceremonies as a required accommodation under 29 USC § 794 or R.I.G.L. 42-87-1 et seq.

Date: June 8, 1995

Travel of the Case

An application for an Interim Protective Order was filed on the petitioner's behalf on June 2, 1995, following a hearing before local school officials. At the local level, the petitioner's request that he be allowed to participate in graduation ceremonies, despite his failure to complete required coursework, was denied. The undersigned was designated to hear this appeal by Commissioner Peter McWalters, and a hearing was held on the afternoon of June 7, 1995.

Jurisdiction to hear this appeal lies under R.I.G.L. 16-39-1 as incorporated in our state statute entitled Civil Rights of Individuals with Handicaps, specifically Section 5 of Title 42 Chapter 87. Such a hearing also complies with applicable federal regulations which require that local educational agencies establish a system of procedural safeguards, including a review procedure, for matters relating to compliance with Section 504 of the Rehabilitation act of 1973. See 34 CFR § 104.36.

Issue

Is the petitioner entitled to an Interim Protective Order to permit his attendance at graduation ceremonies to be held on June 9, 1995 despite his failure to complete his required coursework.

Findings of Relevant Facts¹

- Student Doe is an eighteen year old senior at Mount Hope High School.
- Student Doe has completed all course requirements for receipt of his highschool diploma, except for his World Literature course, a required course in English, which he failed both semesters of this school year.

¹ Because of time constraints, the transcript in this matter was not available, and the hearing officer has relied on notes taken at the hearing. Thus, no page citations are included in the Findings of Facts.

- Sometime in March-April 1995 Student Doe's English teacher notified his mother that he would not be able to pass English for the year, as he had received grades of C, F and F for the first three quarters.
- Student Doe and his parents were notified on June 5, 1995 by his school principal that he failed to meet minimum requirements for graduation, and would not be allowed to attend graduation ceremonies. (Pet. Ex I.)
- Student Doe will be allowed to receive his diploma upon his successful completion of a summer course in English at the high school.
- On April 10, 1995 Student Doe was evaluated by the school psychologist, Dan Wright, who testified that based on his evaluation, he concluded Student Doe did not suffer from ADHD, but did have a history of procrastination and academic inhibition.
- On May 24, 1995 Student Doe was evaluated by a social worker/family counselor who made a provisional diagnosis of mild/moderate Attention Deficit Hyperactivity Disorder. Pet. Ex. 3.
- Upon its receipt of the family counselor's report, and at Student Doe's parents request, school officials referred Student Doe for further evaluation and testing (S.C. Ex. A) and convened a 504 team (Pet. Ex. 2).
- At the time of hearing (June 7, 1995) the report of the external psychologist had been received, but not yet submitted to the school team convened under Section 504.

Decision

It is undisputed that the petitioner lacks the necessary coursework for his high school diploma. Yet, his counsel argues that he should be permitted to attend this Friday's graduation ceremony because he has a disability which under Section 504 of the Rehabilitation Act of 1973 entitled him to such accommodations as are necessary to give him full and fair access to and participation in the educational program at Mt. Hope High School. Counsel for the school committee takes the position that the petitioner has no qualifying disability under Section 504. Even if

he did, the committee argues, he has received the type of assistance² throughout the school year that he would have received if he had been diagnosed with ADHD. In any event, the school committee argues that permitting him to attend graduation ceremonies is not an accommodation to which he is entitled, given that he has not yet earned his high school diploma.

The record in this case is not definitive on whether Student Doe suffers from a learning disability such that he would be entitled to special education services, program modifications and the like. Both the school district, as well as Student Doe's parents are in the process of obtaining the necessary evaluations and reports. Student Doe's family counselor indicated that her diagnosis of ADHD was limited to her one observation of Student Doe, and she stressed that she had not yet done the customary follow-up in terms of gathering information on school history, teacher observation, etc. The school district's psychologist was adamant that Student Doe exhibited no signs of ADHD in school and that his marginal achievement in academics (with the exception of music) resulted from misplaced priorities and a pattern of avoiding responsibility.

Given the state of the record, it has not been shown by a preponderance of evidence that Student Doe is a handicapped person as defined by Section 504 of the Rehabilitation Act of 1973.

Assuming, arguendo that Student Doe had established his status as a handicapped person in the hearing before us, we remain unpersuaded that permitting him to attend graduation ceremonies would constitute a reasonable and appropriate "accommodation" as required under the Act. First, no precedent has been cited by counsel for such an "accommodation". As argued by the petitioner's counsel, the reason for such accommodation would be the alleged past neglect and failure to diagnosis in a timely way this student's handicapping condition. It would

² Informal counseling and attempts at behavior modification by the school psychologist.

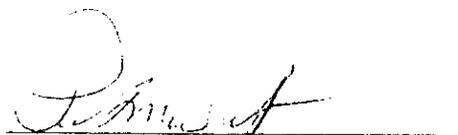
be regrettable³ if the school district ultimately finds⁴ that Student Doe suffers from a learning disability that this disability was not discovered earlier. It could have been addressed by a host of program/curriculum/testing modifications which might have been found to be appropriate and reasonable by the school district's team, properly convened under §104.35 of the 504 Regulations. In its present posture, the petitioner's request is more in the nature of a remedy for alleged past, previously unestablished violations of the Act, rather than a measure to afford him full and fair access to participate in, and benefit from, the educational program at Mount Hope High School.

We do not agree that on this record, the petitioner has established an entitlement to attend graduation ceremonies without his completion of required coursework, even if he had established a handicapping condition which may have resulted in earlier modifications to his school program.

The request for an interim protective order is denied.


Kathleen S. Murray, Hearing Officer

Approved:


Peter McWalters, Commissioner


Date

³ And we express no opinion on whether delayed discovery of a handicapping condition would, under circumstance presented here be actionable or violative of Section 504.

⁴ Or such finding is made after conducting the impartial hearing provided for in 34 CFR § 104.36.