

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JANE A.E. DOE

V.

CUMBERLAND SCHOOL COMMITTEE

DECISION

Held: School district's failure to provide FAPE justifies remedial measure of allowing student to participate in junior high graduation exercises.

### Introduction

Jane Doe was a special education student in North Providence when she transferred to the Cumberland School district. That district did not realize that she was a special education student until November. It was not until January 1995 that she was given access to a resource class. Jane Doe has a failing grade in math but she will be promoted to the 9th grade if she completes a summer remedial program. However under school committee policy, she will not be allowed to participate in graduation exercises. Jane Doe argues that the school district failed to identify and remediate her disability and adjust her math program accordingly and that for these reasons she did not pass the required math course. The district does not dispute its late identification but it argues it did all it could do and that the student could have tried harder.

### Facts of the Case

The North Providence School Committee system first classified Jane Doe as a special education student when she was in third grade. Her special education placement called for access to a resource room. By the time Jane Doe reached the seventh grade her special education program was reduced in intensity to the point where it consisted of only "monitoring" her progress. At the time when Jane Doe was to enter the 8th grade her parents moved to Cumberland. Jane's mother testified that during a school tour conducted on June 15th she informed school officials that Jane was a special education student. On October 24th a school official informed Jane's mother that Jane was having trouble with reading and that perhaps Jane should attend resource classes. After discussing this with her husband Jane Doe's mother agreed with this placement. This placement however was not immediately made because the school system believed that Jane needed further testing before a placement could be made. It was not until November that the Cumberland school system seemed to become aware that Jane Doe had already

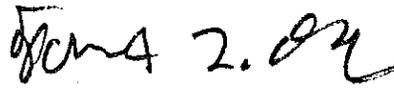
been classified as a special education student when she was in North Providence. An IEP was signed for Jane Doe on January 19, 1995, and it was at this point that she began to attend a resource class. Jane Doe continued to be tested after the completion of her IEP. Indeed her disability category was left open on the January 19th IEP. At this time Jane was failing English and math. Although she had an IEP Jane was still not classified as a special education student. On March 2nd her parents were asked to agree to a special education placement but they first wanted to see the results of medical testing of Jane Doe which was then being done. The results of these tests became available towards the end of March. In April discussion began on the question of Jane's IEP for the 9th grade. The special education director suggested that a passing score for Jane should be set at 60 in math to take into account the cognitive difficulties revealed by her medical tests and that she be given two classes of resource. At about this time a school official told Jane Doe's father that she would be able to graduate from the 8th grade. On May 12th another school official told Jane's father that she would be promoted but that she would not be allowed to participate in Graduation exercises. Jane's father suggested that since next year a passing grade for Jane would be 60 why not amend her IEP in a similar way for this year? The school official said he did not want to see such a precedent for the middle school.

#### Conclusion

While perhaps Jane Doe could have done more to help herself we are left with the conclusion that if the school district had known of Jane's disability from the outset it could have taken remedial steps to allow Jane to have a successful school year, including taking the steps it has taken in Jane's IEP for the 9th grade.

It should be noted that we are not invalidating the school committee's policy of denying participation in graduation ceremonies to those who have failed a course which must be made up. We are also not prohibiting the application of this

rule to special education students in general. All that we decide today is that the school district's failure to make a timely finding of Jane's need for services violated her rights under the IDEA and that this violation materially contributed to her inability to meet standards for participation in graduation exercises. The only appropriate remedy for this violation is to allow Jane Doe to participate in the graduation exercises.



Forrest L. Avila, Hearing Officer

Approved:



Peter McWalters, Commissioner

June 8, 1995

Date