

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

IN THE MATTER OF CHRISTOPHER L.

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DECISION

Held: School district violated Section 504 of the Rehabilitation Act of 1973 by failing to provide parent with prior written notice of meeting to review student's 504 plan, and by permitting the teachers' union representative to attend the meeting.

DATE: February 8, 1999

Background

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Petitioner's child is an elementary-school student with a Section 504 plan. By letter to the director of pupil personnel services, Petitioner requested that the plan be reviewed at a meeting to be scheduled at a mutually agreeable time. According to School Department procedures, the multi-disciplinary team which evaluates a student suspected of having a disability under the Individuals with Disabilities Education Act (IDEA) serves as the team responsible for developing and reviewing Section 504 plans. It is the responsibility of building principals or assistant principals to oversee the review of 504 plans, and parents are to receive prior written notice of review meetings. [School Committee policy "Educational Services in Accordance with Section 504 of the Rehabilitation Act of 1973," adopted March 14, 1994; School Department memorandum "Process for 504 Plans," September 18, 1997].

In this case, the School Department did not schedule the review meeting at a mutually agreeable time nor did it provide Petitioner with prior written notice of the meeting. Upon learning of the scheduled meeting from her child, Petitioner made arrangements to attend, only to find upon arriving that the teachers' union representative

1 Section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794] prohibits entities receiving federal financial assistance from discriminating on the basis of disability. Regulations under the Act require public schools to "provide a free appropriate public education to each qualified handicapped person . . . regardless of the nature or severity of the person's handicap." [34 CFR 104.33(a)]. An appropriate education consists of programs, aids and services that meet the individual educational needs of the student. [34 CFR 104.33(b)]. Discrimination prohibited by Section 504 also is proscribed by R.I.G.L. 42-87-1 *et seq.*, which provides for hearings under R.I.G.L. 16-39 in matters related to elementary and secondary education.

was in attendance. Petitioner questioned the union representative's presence, but agreed to proceed with the meeting because she believed her concerns about the 504 plan needed immediate attention. The union representative is a high-school teacher who has no contact with Petitioner's child.

Petitioner subsequently filed a complaint with the Commissioner of Education, alleging inadequate notice of the 504 meeting and improper attendance of the teachers' union representative.

Discussion

Under Section 504, a public school must establish and implement a system of procedural safeguards that includes notice to parents of actions regarding the educational placement of children covered by the Act. In addition, placement decisions are to be made "by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options" [34 C.F.R. 104.35(c)]. Disclosure of information from a student's records also is subject to the Family Educational and Privacy Rights Act [20 U.S.C.1232(g)].

Appendix C to 34 C.F.R. 300, entitled "Notice of Interpretation," provides guidance concerning the requirements of Part B of IDEA. Appendix C specifically addresses the purpose and requirements of the "individualized education program"(IEP), the document that records the special education and related services that are appropriate to a child's special learning needs. Item 20 of Appendix C reads as follows:

When may representatives of teacher organizations attend IEP meetings?

Under the Family Educational Rights and Privacy

Act (“FERPA”; 20 U.S.C. 1232g) and implementing Regulations (34 CFR part 99) and the confidentiality requirements of Part B, officials of teacher organizations may not attend IEP meetings if personally identifiable information from the student’s education records is discussed – except with the prior written consent of the parties. (See 34 CFR 99.30(a) and 300.571(a)(1)).

In addition, Part B does not provide for the participation of representatives of teacher organizations at IEP meetings. The legislative history of the Act makes it clear that attendance at IEP meetings should be limited to those who have an intense interest in the child (121 Cong. Rec. S10974 (June 18, 1975) (remarks of Sen. Randolph.) Since a representative of a teacher organization would be concerned with the interests of the teacher rather than the interests of the child, it would be inappropriate for such an official to attend an IEP meeting.

We find in this matter that the School Department’s failure to provide Petitioner with prior written notice of the 504 meeting violated its own policy and did not comply with the statute. We further find that the attendance of the teachers’ union representative at the meeting without Petitioner’s consent is contrary to the procedures mandated by Section 504. We find Appendix C to 34 CFR 300 of Part B of IDEA to be controlling on this issue because IEP and Section 504 meetings share a similar purpose, and because the School Department has adopted Section 504 procedures that are consistent with those required by Part B of IDEA.

We therefore find merit in both allegations of the complaint. We hereby order the School Department to provide parents with timely written notice of Section 504 meetings and to refrain from permitting teachers’ union representatives to attend Section 504 meetings unless the representatives have a corresponding interest in the

child's education or the parents have furnished prior written consent.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date: February 8, 1999

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- 2 We take note of the fact that legal counsel for the School Department, in response to an inquiry from the director of pupil personnel services, has provided the district with appropriate guidance concerning staff participation in Section 504 meetings.