

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

SARAH G.

vs.

BARRINGTON SCHOOL COMMITTEE

INTERIM ORDER

Held: Student with disability entitled to interim order maintaining her eligibility to play on high school tennis team.

Date: September 22, 2000

Introduction

Petitioners request an interim order granting their daughter a waiver from a district policy that prohibits students who have failed more than one course in a marking period from participating in interscholastic athletics during the subsequent marking period.¹

Background

Sarah is a 10th-grade student at Barrington High School. She was a member of the school tennis team last year. She received failing grades in two courses – Algebra I and Spanish I – in the fourth quarter of the 9th grade. A longstanding high school policy states the following:

In order to participate in interscholastic athletics or represent Barrington High School as a member of a club, activity or elected office students must (a) take a minimum of five courses (2½ credits per semester) which meet daily and (b) not have failed more than one course at the end of the previous marking period. Students who failed two courses at the end of the previous marking period will be academically eligible if they are not failing more than one course at the mid-term reporting date of the current marking period. [Respondent's Exhibit 4].²

By letter dated July 20, 2000, Petitioners were notified of Sarah's ineligibility under the policy. As a result, Sarah cannot play on the interscholastic tennis team until, at the earliest, October 6, 2000, the mid-term reporting date for the first quarter.³

Sarah is a special-needs student. Her first individualized education program (IEP), dated March 22, 1999, noted her tendency to "rush through some assignments and make careless mistakes," her difficulty organizing long-range projects, and her weakness

¹ The Commissioner of Education designated the undersigned hearing officer to hear and decide the request. A hearing was conducted on September 15, 2000. Petitioners subsequently submitted a memorandum of law and a motion to reopen the record to admit additional evidence. Because we do not find the offered evidence relevant to our decision herein, we need not rule on the motion. Petitioners' due process hearing request is currently pending.

² Barrington's grades policy is more demanding than that of the Rhode Island Interscholastic League, under which Sarah would have been eligible to play tennis this quarter.

³ The prohibition includes a ban on practicing with the team.

in math skills. [Petitioner's Exhibit 6]. The IEP provided for monitoring of her completion of assignments in all subjects and resource help for her math skills.⁴

Sarah's grades for the first two quarters of the 9th grade were a little above average. On her first semester exams, however, she received a C-, a D+, a D (in Algebra), a D- and an F. Sarah was experiencing particular difficulty in Spanish, and a decision was made at the end of the second quarter to move her to another Spanish class. Scheduling considerations necessitated a change in Sarah's Algebra class as well.

Sarah's performance in Spanish continued to decline, and she eventually failed the course for the year. The change in Algebra teachers marked a decline in that course as well. Although she passed Algebra for the year with a D, she failed the fourth quarter. Sarah received a C, a D+, two D-s (including Algebra) and two Fs on her second semester exams.

A new IEP for Sarah was signed on June 8, 2000. With regard to Sarah's needs, the IEP called for more attention to detail when completing assignments, the practicing of organizational skills, and the adherence to timelines and due dates for assignments. It also stated that Sarah was "still experiencing difficulty with her basic math skills." [Petitioners' Exhibit 7]. Sarah was offered extended time and an alternative location (the resource center) for taking tests. Resource help was provided "to remediate and support math and also assist with core academics." Ibid. No regular education teacher attended the IEP meeting.

Sarah testified that she had trouble adapting to the teaching style and homework and testing practices of her second Algebra teacher. She tried to get help with her lessons and obtain extra work to help her Algebra grade, but to no avail. She described the effort she put into her schoolwork, only to be easily distracted, unable to comprehend what she was reading, and have her mind go blank during tests. With regard to tennis, Sarah said that being on the team is important to her because it motivates her academically and boosts her self-esteem. She is also very embarrassed not to be on the team this year.

Sarah's mother also testified that Sarah's poor grades were not for a lack of effort. Sarah was very restless while studying at home and during exams she could not

⁴ Sarah was an 8th-grade middle-school student at the time the IEP was signed.

remember the material she had studied. Sarah does not have a disciplinary record and all of her absences from school last year were excused.

Petitioners had Sarah evaluated by a neuropsychologist and a psychiatrist during August 2000. The report of the neuropsychologist, which was provided to the school department at the end of August, contained a diagnosis of mathematics disorder, reading comprehension disorder, and attention deficit hyperactivity disorder (predominantly inattentive type). The report recommended that Sarah receive individual tutoring (to develop appropriate study skills), math tutoring, and classroom and testing accommodations. The psychiatrist also diagnosed Sarah with attention deficit hyperactivity disorder which, “in its undetected/untreated state, almost certainly contributed to her academic struggle in the academic year 1999-2000.” [Petitioners’ Exhibit 8]. The diagnosis was supported in part by teacher comments found in Sarah’s IEPs and report cards from recent years. The psychiatrist prescribed medication for Sarah’s disorder, and he recommended that Sarah be allowed to play on the tennis team this fall in order to assist in the “development of focus, attention, self-esteem, and the discharge of positive energy which contribute to a successful coping style in ADHD youngsters and adults” and to avoid the “risk of falling back into a despondency which is very likely to have an adverse effect on her ability to cope with the demands of her academic schedule and render her unable to take advantage of the academic supports provided to her.” Ibid.

Petitioners’ requests for a waiver from the eligibility policy have been denied by the superintendent and the School Committee. By letter dated August 30, 2000, Petitioners requested an IEP meeting to discuss the findings and recommendations of Sarah’s neuropsychiatrist and psychiatrist. As of the hearing date, no IEP meeting had been scheduled.

Positions of the Parties

Petitioners do not challenge Barrington’s general policy regarding sports eligibility. Instead, they contend that, based on the specific, unique circumstances of Sarah’s case, and the requirements of special education and disability rights laws, Sarah should be granted a waiver from the policy.

Petitioners argue that despite repeated signs of ADHD over the years, the school district failed to identify Sarah's possible disorder and refer her for an evaluation. Consequently, the district has not met its "child find" obligations under state and federal special education law. Furthermore, the absence of appropriate supports and the assignment of a math teacher whose teaching style and techniques were inappropriate for an ADHD student were clearly the major contributing factors in Sarah's failure of two subjects in the fourth quarter. Sarah should be granted a waiver as an accommodation for her ADHD and her related emotional/psychological needs. To deny Sarah a waiver is to penalize her on the basis of her disability.

The School Committee contends that the eligibility policy is a neutral rule that has been applied equally to all students. Petitioners have not shown that Sarah has been denied a free appropriate education nor have they shown that Sarah cannot receive such an education without participating in athletics. Petitioners have agreed with Sarah's IEPs and, viewing Sarah's academic record in its entirety, she has done well in school over the years.

Discussion

We find two aspects of this case to be particularly noteworthy.

First, the district's eligibility policy is very stringent. Its application is immediate and its consequences are severe. There is no probationary period before the prohibition takes effect, and the prohibition results in a complete separation from the team. Second, one of Sarah's fourth-quarter failures is in the very content area in which she has been identified as having a disability. Her failure in Algebra occurred despite the existence of an IEP that addressed her weakness in mathematics.

Barrington clearly has the discretion to adopt this type of eligibility policy. There are many arguments to be made regarding the virtues of such a rule. Because of the swift and punitive features of the policy, however, the district cannot lose sight of its overall responsibilities to a special-needs student when he or she comes within the purview of the policy. We believe that this occurred in the particular circumstances of this case. We say this because the record shows that while the disciplinary arm of the district has moved forward with deliberate speed, the remedial arm has failed to engage at all.

Sarah arrived at Barrington High School as a special-needs student. Her specific disability related to mathematics. An agreed-upon IEP identified her needs and contained a strategy to successfully address them. We need not look further into the specifics of Sarah's IEP in deciding this case. What is important is that Sarah was making the transition to high school with a special need identified in mathematics.

It is undisputed that as the school year progressed, Sarah's grades in Algebra declined to the point where she failed the fourth quarter. We decline to review the school year quarter-by-quarter with the benefit of hindsight. Instead, we focus on the point in time in which Sarah's fourth quarter grades were submitted and her athletic eligibility became threatened by the policy at issue.

Given that one of Sarah's two failures was in a content area for which she has an IEP, we find that a review of the adequacy of her IEP needed to be initiated simultaneously with the institution of the process by which she would be declared ineligible for athletics. Only if school officials are satisfied that the failing math grade was due to causes that were not disability related could Sarah be declared ineligible for the upcoming tennis season.⁵ This procedural step is needed to ensure that the district fulfills its duty not to discriminate against a student by reason of a disability.⁶

The record herein does not demonstrate any such review of Sarah's situation. There is no evidence that the district has reviewed the nature and extent of Sarah's disability, the adequacy of the support services in her IEP, or the effort put forth by Sarah in her Algebra I class during the 1999-2000 school year. Petitioners have not received any response to the evaluations they have submitted to the district. They have not received an answer to their request for an IEP meeting. Yet a decision has been made that Sarah will lose her athletic eligibility, and Petitioners' appeal from that decision has been considered and denied by the superintendent and the School Committee.

⁵ Obviously, but for Sarah's fourth quarter Algebra grade, she would not be subject to the eligibility policy.

⁶ It is troubling and disappointing when a student fails a subject that is specifically addressed in an IEP. The IEP represents the best effort of a team approach to an academic difficulty. When, despite the existence of such an IEP, the student fails the subject, the team needs to reconvene and determine the reasons why the student failed the subject.

In the particular circumstances of this case, we do not feel that this is a fair or equitable response to Sarah's failing math grade. There is no balance to an approach that swiftly delivers punishment to a student but fails to take the first steps to seek to determine the reasons why a joint venture between the family and the school district failed to achieve the intended result. With a recognized disability so prominent in the picture, there must be some effort to assure that Sarah is not being punished for something that is out of her control. That effort has not been made here.

We therefore grant Petitioners' request for an interim order. We retain jurisdiction in this matter for possible further proceedings consistent with our decision in the event that Sarah is not in compliance with the policy on October 6th.

Conclusion

It is hereby ordered, on an interim basis, that Sarah's eligibility for the interscholastic tennis team be reinstated consistent with the terms of this decision.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date: September 22, 2000