0023-02

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JANE DOE

V.

PORTSMOUTH SCHOOL COMMITTEE

Decision

Held: Student with disability who was not afforded her rights under School Committee policies cannot be prohibited from participating in graduation ceremony without receiving a diploma.

Date: June 7, 2002

Introduction

This is an appeal from the Portsmouth School Committee's refusal to permit Appellant's daughter to participate in the June 7, 2002 Portsmouth High School graduation ceremony without receiving a diploma.[1]

For the reasons stated below, we sustain the appeal.

Background

Jane Doe is a senior at Portsmouth High School. She has attended the High School since her freshman year. She has had academic difficulties and attendance problems throughout the four years.

Jane failed two courses in her sophomore year. She completed the courses in summer school. She was referred for a special education evaluation that year. The evaluation did not indicate the need for special education services.

Jane failed two courses, including English, in her junior year. She did not attend summer school. She was promoted to the 12th grade. To graduate, Jane needs four credits: two in English, .5 credit in physical education/ health, and 1.5 in electives.

Jane again experienced academic difficulties and attendance problems during the first quarter of her senior year. She received an F in her senior English class, a D in junior English, and an F in Algebra II. The notation "absence hinders progress" appears in three courses on her report card. [School Committee Exhibit 2b].

On November 29, 2001, Jane was in a serious automobile accident. A doctor's note dated December 7, 2001 stated that she was to remain out of school. Jane was unable to do any schoolwork until January 3, 2002. Appellant requested home tutoring for Jane. A tutor was assigned for Jane's two English courses. Jane was tutored on 12 occasions prior to her return to school on a part-time basis on February 11, 2002.[2] It was agreed that Jane would attend her two English classes, her drawing class and her economics class

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[1] The Commissioner of Education designated the undersigned hearing officer to hear and decide the appeal. A hearing was held on June 3, 2002.

[2] Jane's doctor permitted her to return to school for 3 hours per day. The school modified its attendance policy accordingly. A memo from the school nurse informed Jane's teachers of her return. The memo stated that Jane "will continue to have the support of a tutor." It further stated that Jane "continues to have back pain, headaches, dizziness and has lost consciousness on occasion. She is under the care of a neurologist and is receiving physical therapy." [Appellant's Exhibit 17].

during her 3-hour school day.[3] Exceptions were made to the school's add-drop policy and minimum credit requirements, allowing Jane to drop her Algebra class.[4] Jane also was removed from her vocal ensemble class.

Jane was tutored three or four more times at home in February. In early March 2002, Jane's medical condition worsened. She saw doctors and underwent testing for a possible seizure disorder on at least six days in March.[5]

In a form letter dated March 7, 2002, Jane's guidance counselor asked Jane's senior English teacher for a work assignment. The form states that the student "will be absent for an extended period of time." [School Committee Exhibit 11]. The teacher listed work assignments on the form, one of which was a journal that "will be due just prior to April vacation." On March 8th, interim grade reports for the third quarter were issued. Jane received a "possible failure" in senior English, with the notation "Unable to grade at this time. Home tutored in subject." The report stated that Jane was "passing at this time" in junior English and drawing. For economics, the report stated "possible failure . . . did not take test/quiz." [School Committee Exhibit 2e].

In a memo to Jane's teachers dated March 13th, the school nurse stated that Jane "has been diagnosed with a seizure disorder. She is in the process of evaluations and medication adjustments and has been missing school due to side-effects of the medications. . . Please continue to support [Jane] as much as possible." [Appellant's Exhibit 17].

At some point in March, school guidance personnel became aware that Jane was not attending her English and economics classes. Apparently, when she came to school, she was attending only her drawing class. Appellant was notified of this development and asked to meet with school personnel.

A meeting was held on April 5, 2002. Appellant met with the school nurse, director of guidance, an administrator, and Jane's guidance counselor, senior English teacher and tutor. An account of the meeting in a School Department memo includes the following:

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[3] Jane passed her .5 credit Art class in the first semester.

[4] Jane had accumulated the three mathematics credits needed to graduate.

[5] A memo from Jane's tutor states that tutoring was discontinued after February 26th "because I understood that Jane was going to return to school. Then her mother also told me that Jane was diagnosed with seizures and that she would not have tutoring services." [School Committee Exhibit 5].

> . . . met on April 5th to discuss [Jane's] lack of progress with her abbreviated schedule (poor attendance and lack of work turned in.) [Appellant] spoke of [Jane's] medical problems and her desire to return to school despite feeling overwhelmed and anxious about facing her teachers. We agreed that with all factors concerning [Jane's] emotional and physical health it was best to plan on delaying graduation to give [Jane] "the gift of time" and take the pressure off academically. ([Appellant] was informed that participation in graduation ceremonies was not allowed for students who do not meet diploma requirements by May 31st.) [Appellant] indicated she would present the plan to [Jane] and encourage her to come to school to meet with [the guidance counselor] and/or [the director of guidance] the following week to receive further explanation and support. [Appellant's Exhibit 9].

School personnel also agreed to look into the possibility of Jane working on her .5-credit drawing course and .5-credit health requirement at home.

Third quarter report cards were issued on April 12, 2002. Jane received an incomplete in senior English, with the notation "Unable to grade at this time." She received an F in junior English and economics. [School Committee Exhibit 2f].

On April 30, 2002, Jane's parents received a letter from the director of guidance stating that Jane "is currently failing or in serious danger of failing, one or more courses needed for graduation." [Appellant's Exhibit 8]. The letter concluded with an invitation "to come in for a conference to review your child's status and to discuss options for earning a diploma after June of 2002 should you need to do that."

A meeting was held on May 13, 2002 to discuss Jane's diploma options. Appellant and an advocate met with the school nurse, the director of guidance and Jane's guidance counselor. Appellant inquired about Jane's eligibility for a Section 504 plan.[6] She agreed to discuss the diploma options with her daughter. A meeting for May 15th was scheduled. On that date, specific accommodations for Jane were discussed. Another meeting took place on May 16th, at which time Appellant asked for a Section 504 plan.

A 504 plan was drafted at the meeting. The plan's handicapping condition is listed as "seizures, depression, back pain." The basis of this determination is noted as Jane's

[6] Appellant's inquiry appears to be the first mention of Section 504 of the Rehabilitation Act, 29 U.S.C. §794.

doctor's notes "12/7/01 through 4/30/02." The purpose of the plan is to "provide an extended school year plan to allow Jane to complete diploma requirements beyond June '02 -- see attached." Attached were the accommodations discussed at the previous day's meeting: (1) extension of senior deadlines to allow completion of course requirements for diploma this summer and fall 2002, if necessary; (2) provision of a tutor this summer to complete the two English courses; (3) development of a contract for a community service program for .5 credit; (4) reduction of the yearly minimum credit requirements; (5) development of a contract for completion of the health and drawing courses; and (6) waiver of the school attendance policy for the 2001-2002 school year. [Appellant's Exhibit 10].

A week later, Appellant received a copy of the School Department's Section 504 policy. After reviewing the policy, she asked the School Committee to permit her daughter to walk with her peers at graduation and receive a blank diploma. The request was based on the claim that, had the district followed its policy and developed a 504 plan in December 2001, "[Jane] would be graduating with her peers, with a diploma in hand." [Appellant's Exhibit 13]. The School Committee's 3-3 vote on the matter resulted in a denial of Appellant's request.

The school district has a Section 504 policy. It includes the following:

> If a district has reason to believe that, because of a handicap as defined under Section 504, a student needs either special accommodations or related services in the regular setting in order to participate in the school program, <u>the district must evaluate the student</u>; if the student is determined to be handicapped under Section 504, <u>the district must develop and implement a plan for the delivery of all needed services</u>. (emphasis in original).
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> The evaluation must be sufficient to accurately and completely assess the nature and extent of the handicap.
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> The determination of what services are needed must be made by a group of persons knowledgeable about the student. The group should review the nature of the handicap, how it affects the student's education, whether specialized services

> are needed, and if so, what those services are. The decisions about Section 504 eligibility and services must be documented in the student's file and and reviewed periodically.
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> It should also be noted that, under Section 504, the parent or guardian must be provided with notice of actions affecting the identification, evaluation, or placement of the student . . . [Appellant's Exhibit 3].

In addition, the Portsmouth High School handbook contains the following provision:

> Extended Illness -- If a student is absent for an extended period of time or if the doctor treating the student can project long term absence, the main office, counselor and school nurse should be notified, in writing, so that a proper referral can be made for tutorial services and arrangements for an adaptive school environment can be initiated. [Appellant's Exhibit 2].

Positions of the Parties

Citing Jane's physical, emotional and neurological issues, Appellant contends that the School Department had a duty under Section 504 to identify her as an eligible student and develop a written plan to accommodate her needs. A 504 plan for Jane should have been in place long before May 2002. To be effective, the plan needed to provide for cooperation, monitoring and accountability. In addition to these failures, the School Department did not advise Appellant of Jane's Section 504 rights. Appellant argues that the particular circumstances of this case require an exception to the district's policy prohibiting students not receiving diplomas from participating in graduation ceremonies.

The School Committee contends that it did not violate Section 504's anti-discrimination mandate. School personnel recognized and responded to Jane's injuries. A *de facto* 504 plan was created in January 2002 and appropriate accommodations were made to her educational program after the automobile accident. The Committee asserts that a consensus existed in March 2002 regarding Jane's education. Jane did not meet graduation requirements because of her lack of effort and failure to attend school. Her pre-accident academic performance demonstrates the same behavior. Because the district's

graduation policy is a valid exercise of the Committee's discretion and has been uniformly applied in the past, it should control this case as well.[7]

Discussion

Under the School Department's Section 504 policy or its extended illness policy, Jane was entitled to a plan for educational services. The facts of this case clearly establish the need for a referral and evaluation of needs. As specifically noted in the district's 504 policy, the plan must be documented and reviewed periodically. When a plan is documented and reviewed, all persons involved in the student's education share an understanding of what services are required, how they are to be delivered and who bears what responsibility in the implementation of the plan. This mutual understanding enables the parties to coordinate their efforts in achieving the goals of the plan, and it brings accountability to the overall effort. If the plan is not being followed or is not producing the intended results, notice and the opportunity to remedy the situation can occur. Furthermore, parents and students need notice of their rights if they are to be effective participants in this effort.

We provided extensive details of the facts and circumstances relating to Jane's education this year. We did so to make the record clear as to what occurred when the district did not follow its own policies. Instead of the type of plan described above, Jane's senior year was governed by confusion, misunderstanding, lack of coordination and ignorance. The end result of these circumstances was the denial of whatever opportunity Jane may have had to complete the requirements for graduation.

The record in this case is replete with instances when school personnel were unaware or misinformed as to the "plan" for Jane's education. It is still unclear why tutoring was discontinued and what school attendance was expected of Jane. By the time some semblance of coordination was established, it was too late for Jane to qualify for a diploma. To speculate about what Jane would or would not have done had a timely written

[7] This year a student with an individualized education program (IEP) will participate in the graduation ceremony without receiving a diploma. The student has accumulated sufficient credits to graduate, but some transition services (required by the Individuals with Disabilities Act) contained in the student's IEP remain to be provided. The School Committee distinguishes this student from Jane on the grounds that the former student has completed all diploma requirements and is entitled to receive additional services under IDEA, a

plan been developed is irrelevant and baseless. It is clear that during the time that an opportunity existed for Jane, she was not given a meaningful chance to succeed. Because the school district did not comply with its own policies, it must bear the primary responsibility for this failure.

Jane cannot be penalized for her disability. In the circumstances of this case, the execution of a 504 plan on May 16, 2002, was too little, too late. When a school district does not follow its own policies in providing educational services to students with disabilities, it must accept consequences such as these.

Conclusion

As a student with a disability who was denied her educational rights under School Committee policy, Jane Doe cannot be prohibited from participating in her class's graduation ceremony. We order that Jane be allowed to participate in the ceremony despite not receiving a diploma.

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Paul E. Pontarelli
Hearing Officer

Approved:

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Peter McWalters
Commissioner of Education

Date: June 7, 2002

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different statute than Section 504. Appellant contends that the cases are similar in that both students have disability-related plans to achieve graduation.