

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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R.P.

V.

NARRAGANSETT SCHOOL COMMITTEE  
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**DECISION**

Held: Evidence does not establish that student  
is a person with a disability under  
Section 504 of the Rehabilitation Act.

Date: September 16, 2004

## **Introduction**

This matter concerns a complaint contesting the decision of the Narragansett School Department that a student does not have a disability as defined by Section 504 of the Rehabilitation Act.<sup>1</sup>

## **Background**

Student Doe attended the 7th grade during the 2003-2004 school year. As in the past, she experienced academic difficulties. Student Doe's parent, R.P., attributes those difficulties to Doe's emotional and social issues. In the past, discussions recorded as "504 meetings" took place that explored interventions and supports to assist Doe. Despite the meetings, there is no evidence that Doe was deemed to be eligible for Section 504 services or that a 504 plan was adopted. At a Section 504-eligibility meeting in June 2003, it was decided that Doe would be evaluated. In the meantime, Doe was allowed to make up her failed math course at summer school at no charge to R.P. due to Doe's suspected disability.

A clinical psychological evaluation and an educational evaluation were received in the fall of 2003. The psychological evaluation concluded by stating that

Overall, the current data describe a young woman who appears to have a mixture of a number of moderate difficulties, including issues of attention, learning, mild levels of anxiety, and oppositional tendencies. These are likely to be exacerbated by situations in which [she] feels unsure of herself or when she may compare herself negatively to others. Efforts to help her develop skills to deal with these areas and to see her numerous strengths more readily will be very important. [Petitioner's Exhibit 8].<sup>2</sup>

According to the educational evaluation, Doe

demonstrates average abilities in the areas of written language, word reading, reading comprehension and decoding skills. These skills fall at or above grade level

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<sup>1</sup> The Commissioner designated the undersigned-hearing officer to hear and decide the complaint. A hearing was held on June 1, 2004.

<sup>2</sup> The report's diagnosis of Doe included "adjustment disorder with mixed emotional features" and "learning disability not otherwise specified, by history." Ibid.

expectations on this assessment. [She] demonstrated weaknesses with her numerical operations and math reasoning skills.<sup>3</sup> [School Committee Exhibit 3].

A report also was submitted by the school psychologist. The report found Doe's cognitive testing to be "overall in the average range." It noted Doe's difficulties with "visual spatial organization and visual discrimination of symbolic information . . . [which] may affect her comprehension of math, the organization of her writing and the organization of her thoughts in general." [School Committee Exhibit 2].

All of the evaluations offered recommendations for Doe. Those recommendations and the evaluations' findings were discussed at a November 2003 meeting in which the school district indicated that Doe was not eligible for 504 services. Doe's Section 504 ineligibility was again discussed at a December 2003 meeting. In February 2004, it was determined that Doe did not qualify for special-education services under the Individuals with Disabilities Education Act. Doe's eligibility under Section 504 was reassessed at an April 20, 2004 meeting. On April 28, 2004, the district's Section 504 coordinator wrote to R.P. that "the team concluded that [Doe] was not eligible for support services under the guidelines of Section 504. Although [Doe's] past school record reflects inconsistent performance, there is no physical or mental impairment that substantially limits her learning." [School Committee Exhibit 1].

The letter further stated that "[b]ecause [Doe's] poor grades were reported to be the result of incomplete work and missing assignments, rather than difficulty comprehending the subject area content, several accommodations were discussed that would provide [Doe] with additional structure for completing her classroom assignments and her homework assignments." [Ibid.]. The accommodations included weekly progress reports being sent to Doe's home, continued participation in the school's homework club (with Doe's assignments being organized for her in terms of the priority of missing assignments and long-term projects),<sup>4</sup> use of a graphic organizer for journal writing, and use of a tape recorder for science assignments. An assistant principal at Doe's school

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<sup>3</sup> Doe's scores on the arithmetic composite, numerical operations and math reasoning tests were "below average," but still higher than the "borderline" and "extremely low" scoring ranges.

<sup>4</sup> Both the teacher and parent sign off on homework assignments in the homework club.

was charged with overseeing the implementation of the accommodations and working with Doe's teachers.

At the hearing, the parties disputed the extent to which modifications to Doe's education program were implemented, the degree of success of the modifications, and the effectiveness of the communication between school and parent.

### **Positions of the Parties**

R.P. contends that Doe has a history of social and emotional issues that are affecting her academic performance. R.P. points to the adjustment disorder portion of the clinical psychologist's diagnosis, and argues that Doe's testing scores demonstrate a learning disability. This, according to R.P., explains Doe's frustration with assignments and her resulting inability to complete schoolwork.

The School Committee contends that Doe does not have a disability for purposes of Section 504.<sup>5</sup> If Doe does have a disability, it does not have a substantial impact on learning. According to the School Committee, Doe has the ability to achieve high grades but she does not put forth the consistent effort needed to complete homework and assignments.

### **Discussion**

Under Section 504, a person who has a physical or mental impairment which substantially limits one or more life activities is a person with a disability. Section 504 includes "learning" as a major life activity. Section 504 does not define the term "substantially limits," however. The term has been interpreted by the Office of Civil Rights of the U.S. Department of Education as requiring "an important and material limitation."<sup>6</sup> Under the Americans with Disabilities Act (ADA), an impairment is "substantially limiting" if it renders an individual unable to perform a major life activity that the average person in the general population can perform, or if it "significantly

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<sup>5</sup> The School Committee argues that the clinical psychologist's evaluation does not provide any empirical evidence of an adjustment disorder.

<sup>6</sup> Pinellas County School District, 20 IDELR 561 (1993).

restricts” the condition, manner, or duration under which an individual can perform such an activity compared to the general population.<sup>7</sup>

The evidence in this case fails to establish a physical or mental impairment that substantially limits Doe in the life activity of learning. To be sure, Doe experiences difficulties in learning, but her impairments do not appear to be more than moderately limiting when she is compared to the general population. We note that the clinical psychological evaluation found Doe to have some “moderate” difficulties, that Doe scored “below average” but not “borderline” or “extremely low” on certain math assessments, and that overall Doe’s cognitive testing was in the “average range.” The evidence also shows that Doe has advanced to the next grade each year and that her teachers and evaluators believe that she can keep up with her classmates so long as she takes advantage of the additional help she has been offered.

As part of their mission, schools must meet the needs of all students. Teachers need to be continuously ready to make modifications for students who are experiencing difficulties in any aspect of their educational program. Initial intervention strategies, whether applied informally by the classroom teacher or devised on a more formal basis by a school support team, do not necessitate the development of a Section 504 plan. Section 504 eligibility may need to be considered, however, if the classroom support strategies prove to be unsuccessful.

There is evidence in this case that Doe has benefited from certain modifications to her school program. There also is evidence that calls into question the extent to which the suggested modifications for Doe have been implemented and the consistency of the communication between the school and the family with regard to the attempts to support Doe in the classroom. Because the initial-intervention/support effort is an essential step in the process of addressing a student’s learning difficulties,<sup>8</sup> we want to ensure that the parties undertake this effort in a complete and informed way. Although we do not find sufficient evidence of Section 504 eligibility on this record, we shall order the School Department to meet with R.P. so that the parties may review, discuss and mutually adopt the modifications that will provide Doe with her best opportunity to succeed in school.

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<sup>7</sup> 29 C.F.R. §1630.2(j)(1)(i)-(ii). The ADA’s definition of disability also includes “a physical or mental impairment that substantially limits one or more major life activities.” 42 U.S.C. §12102(2).

<sup>8</sup> A process that may include a referral and evaluation for Section 504 eligibility at a later time.

## **Conclusion**

The complaint is dismissed because the evidence in this case does not establish that student Doe is a person with a disability under Section 504. We order the School Department to meet forthwith with R.P. to review, discuss and develop modifications to Doe's education program that will, in light of the evaluations previously conducted, provide her with the supports she needs in school.

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Paul E. Pontarelli  
Hearing Officer

Approved:

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Peter McWalters  
Commissioner of Education

Date: September 16, 2004