

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

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**Student Doe**

v.

**Davies Career & Technical  
High School**

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**DECISION**

Held: Student’s failing grade in Cosmetology was, in part, due to the misunderstanding of her teacher that the provision in her IEP for extended time on tests was not applicable to tests which were in preparation for the state licensing exam. It is likely that this student would have passed cosmetology had extended time been provided. Therefore, her grade should be raised from a 67 to a passing grade of 70 and she should begin her senior year at Davies.

DATE: August 25, 2006

## **Travel of the Case**

On July 6, 2006 Student Doe's mother filed an appeal on her daughter's behalf with Commissioner Peter McWalters. She requested a hearing on the issue of her daughter's final grade in Cosmetology, her chosen technical field at the Davies Career and Technical High School in Lincoln, Rhode Island. Her final grade in Cosmetology, a 67, was not a passing grade. At Davies, once students have chosen<sup>1</sup> one of the eleven career and technical training programs, they must pass their technical program in order to advance to the next grade of high school. Thus, Student Doe's failure in Cosmetology would require her to repeat her entire junior year.

On July 26, 2006 the undersigned was designated to hear and decide this appeal. Although the matter had not yet been heard by the Davies Board of Trustees, it was agreed by counsel for the parties that expedited hearing at the Commissioner's level was needed at this time because of the August 28, 2006 start date for students at Davies, and the fact that the Davies Board would not meet prior to that time. The matter was heard on an expedited basis on August 2, 2006 and August 15, 2006. The transcript of the first day of hearing was received on August 18, 2006. The transcript of the second day of hearing was not available for review, but the hearing officer's notes were detailed and most of the relevant facts were adduced at the first hearing. The record was closed on August 18, 2006 with respect to the merits of the appeal but not as to the Motion for Attorney's Fees made by the student's attorney. Any additional evidence and legal arguments with respect to this motion were deferred by agreement of the parties because of time constraints.

## **Issue**

Was Student Doe's grade of 67 in Cosmetology valid and if not, should she be permitted to start her senior year at Davies ?<sup>2</sup>

## **Findings of Relevant Facts**

- Student Doe was enrolled at the Davies Career and Technical High School in school year 2005-2006. She was a junior and her chosen technical area was Cosmetology. Doe Ex.2.
- Student Doe is a student with a disability, whose Individualized Education Program for the period August 30, 2005 - June 20, 2006 calls for certain modifications and accommodations, including extended time on tests (on an as needed basis). Doe Ex.6.

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<sup>1</sup> After a freshman year exploration of all eleven shop programs

<sup>2</sup> Initially other issues, such as the validity of the policy that required the repetition of a student's entire year of coursework in the event of a failure in their technical area were raised. As the case quickly progressed, the focus was the validity of the cosmetology grade.

- Student Doe’s need for accommodations and modifications to her school program is a fact of which all of her teachers were notified. Her ability to have extended time on tests is not restricted to her academic classes, but is available in all of her coursework, including Cosmetology. Tr. pp. 124-126.
- Extended time on cosmetology tests, especially those in the practicum or “hands on” component of the program, would be provided by her cosmetology teacher and in the cosmetology area of the school, rather than with her resource teacher. Tr. pp. 128-130.
- Throughout the entire 2005-2006 school year, Student Doe’s cosmetology teacher did not permit extended time on many of the tests in the practicum component of the course, e.g. setting hair with rollers, blow-dry and comb-out, permanents, haircutting, etc. Joint Ex.1; Tr. pp. 154- 156; hearing officer notes 8-15-06. Although the cosmetology teacher was aware that Student Doe was entitled to extended time on all tests, if she needed it, she imposed strict time limitations on these practicum tests because time limits are imposed when these tasks are performed as part of the cosmetology licensing exam. Her understanding is that she could not<sup>3</sup> provide Student Doe with extended time on any tested activity if it was also a component of the state licensing exam that Student Doe would eventually take to become a licensed cosmetologist. Tr. pp. 154- 156.
- Student Doe performed well in all of her other coursework in her junior year. Doe Ex.2.<sup>4</sup>
- Some of the failing grades Student Doe received in cosmetology were not the result of her inability to have extended time, but were the result of her inability to perform the task in question or to perform it properly. Many of her failing grades, however, were due to her failure to complete a cosmetology test or for poorly performing the task due to lack of time.<sup>5</sup> Stipulation of counsel for Student Doe (hearing officer notes 8-15-06); Joint Ex.1.
- According to the testimony of her cosmetology teacher, Student Doe probably would have been able to pass many of the tests she failed if she had been provided extended time. The only reason the teacher did not provide additional time was because she didn’t think it was allowed. Tr. pp. 154-156.
- During her junior year Student Doe became extremely stressed by her performance in Cosmetology. When tested in late March by the school psychologist she was found to have testing anxiety which increased during the stress of timed activities. Tr. pp. 86-87; Doe Ex.4. As a result of the school psychologist’s findings, Student Doe’s

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<sup>3</sup> Or should not, because if she gave Student Doe extended time in graded tests in school she would not be well prepared for the licensing exam in cosmetology. It is the teacher’s understanding that the state licensing exam will not be administered with any accommodations such as extended time.

<sup>4</sup> The record does not reflect how often she utilized extended time for tests in her other subjects.

<sup>5</sup> The record does not indicate whether Student Doe requested, and was denied, extended time on these practical tests. Whether she did or not is irrelevant in this case because it is clear from the record that her teacher’s position was that it was not available for these tests.

IEP was amended in early May to provide her with weekly counseling and to clarify the process for her obtaining extended time in Cosmetology.<sup>6</sup> Tr. p.87;Doe Ex.6.

- Student Doe received a final grade of 67 in Cosmetology. She received a 67 in the practicum component of the course and a 69 in Cosmetology Theory. The grade in a student's technical area is calculated by weighting theory for 1/3 and practical for 2/3). Doe Ex.2 and 3.

## **Positions of the Parties**

### Student Doe

Counsel for Student Doe argues that according to her Individualized Education Program she is to receive extended time as needed. This accommodation applies to her technical program as well as her academic courses. Although there were some instances in which Student Doe's grade in Cosmetology was failing due to her lack of skill or inadequate performance, there clearly were many tests on which she received low grades, even zeroes, because she ran out of time. Counsel points out that according to the testimony of the Cosmetology teacher, if Student Doe had received extended time, she would have been able to successfully complete many of the tests measuring her performance in practical skills. There is no policy at Davies which limits accommodations to students in their technical programs, whether on the basis of rules that may exist on licensing exams or otherwise. Therefore, Student Doe's grade should be raised from a 67 to at least the passing grade she needs to move on to her senior year at Davies. If there are deficiencies in her cosmetology skills that place her passing of the licensing exam in jeopardy, there is an entire year in which she and her teachers can work on these skills.

### Davies Career and Technical High School

The argument presented by counsel for Davies is that the cosmetology teacher made an honest mistake in applying strict time limits and restricting the extended time provision in Student Doe's IEP. The teacher, in good faith and based on her experience, considered extended time unavailable for certain tested activities in the practical component of the course. Although there is some documentation in the record which would indicate that extended time is available as a reasonable accommodation for individuals with disabilities who take the state licensing exam, this is contradicted by the language of a test administration manual which the teacher has been using for several years when she administers the state licensing exam.

In any event, the assessment of this student's performance in cosmetology skills is not rendered inaccurate by the fact that she did not receive extended time. Any violation

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<sup>6</sup> Apparently the team members and special education staff were unaware that extended time was not being made available for cosmetology tests when the activity was one that the students would need for the licensing exam.

of her IEP which may have occurred is not remedied by passing her to her senior year. She still has not demonstrated the skills that she will need to be a licensed cosmetologist. A list of these skills has been submitted into evidence as Davies Ex.C. The school's policy that a student must demonstrate proficiency in his/her technical program in order to proceed to the next grade is a sound policy and would require that the tests that Student Doe failed be re-administered, with extended time and, perhaps, with a different teacher. A decision that she is eligible to enter her senior year (without the necessary skills) will have a negative impact on her ability to graduate and to be successful in the cosmetology licensing exam. For these reasons, counsel for Davies argues that the remedy requested by Student Doe be denied.

### **DECISION**

As the facts of this case unfolded on the record, the inability of Student Doe to access the accommodation of extended time for her practical tests in Cosmetology and its effect on her grades throughout the year became evident. Student Doe struggled with this situation, and, according to the record made under these expedited circumstances, did not bring this fact to the attention of those on the school staff who could have intervened to make sure that extended time was available on the tasks she was unable to complete within the allotted time. Given the fact that her IEP was amended on May 5, 2006 to make it even easier for her to access this accommodation, we infer that the special education staff was unaware of the cosmetology teacher's misinformation as to school policy on extended time. This unfortunate situation came to light in the course of hearing this case. It is clear that the responsibility of Davies was to honor the IEP's provision on extended time, as this was required for the provision of a free appropriate public education to Student Doe as a student with a disability<sup>7</sup>.

We do not agree that raising this student's grade by three points is an inappropriate remedy for the failure to provide her with extended time. While it is clear that some of her failures (even grades of 0) were not due to the unavailability of extended time, many of her failures could have been avoided if she had more time. This was the testimony of her teacher. Also there is evidence of stress and resulting anxiety Student Doe experienced because of her concern with the prospect of failing Cosmetology. With the implications of a failing grade in her technical program, i.e. repeating her entire junior year or leaving Davies, the stress described in her evaluation in late March of the school year was understandable. It undoubtedly exacerbated an already difficult situation with respect to her borderline grades in her chosen program.

Given the record in this case, raising Student Doe's grade to a passing grade of 70 is appropriate.<sup>8</sup>

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<sup>7</sup> Our state regulations define FAPE in Section 300.13 as special education and related services that "... are provided in conformity with an individualized education program (IEP) that meets the requirements of 300.340-300.350 relating to I.E.P.s".

<sup>8</sup> Student Doe's performance in all of her other subjects in 2005-2006 was satisfactory.

There are certainly issues to be addressed with respect to the implementation of the extended time provision in her IEP. In addition, the parties must address her mastery of certain practical skills which Student Doe will have to demonstrate to graduate and to become a licensed cosmetologist in our state. The field of cosmetology may require that Student Doe perform certain tasks within a limited period of time, even extended time<sup>9</sup>. This will undoubtedly continue to create stress with which Student Doe must learn to cope. We are confident that the concern, responsiveness and expertise the school's staff has shown in the past in trying to modify Student Doe's IEP will be effective in determining how best to adjust her school program this year. We decline to order any specific measures as it was clear at this hearing that school staff are committed to helping Student Doe realize her goal of graduating from Davies and becoming a licensed cosmetologist.

The matter of Student Doe's request for attorney's fees, which was deferred because of time constraints, will be addressed upon notification of the parties that they are unable to resolve this issue on their own.

Student Doe's appeal is hereby upheld.

For the Commissioner,

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Kathleen S. Murray, Hearing Officer

APPROVED:

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Peter McWalters, Commissioner

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August 25, 2006  
Date

<sup>9</sup> The availability of extra time, and exactly how much time, on the state licensing exam will be important information for the parties to utilize. Some conflicting information on this subject was submitted and has become part of the record in this case. The entitlement to extended time in this appeal, however, is in an educational context, not state licensing.