

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

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Student T.G. Doe
v.
Chariho Regional School Committee

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DECISION

Held: The parent of Student Doe is appealing the decision of this student’s 504 Plan Team to discontinue the student’s 504 plan. We find that adequate notice to the parent was not given in this case under 34 CFR 104.36 regarding the possibility of a finding of non-eligibility. Therefore the district’s decision to terminate this student’s 504 plan is reversed. The district is directed to schedule a new 504 team meeting at which eligibility can be determined in the light of any new testing the parent may wish to submit.

DATE: April 7, 2008

Jurisdiction and Travel of the Case

Jurisdiction is present under R.I.G.L.16-39-1, R.I.G.L.16-39-2, and R.I.G.L.42-87-5 (c). The petitioning student's 504 plan came up for annual review in November of 2007. The student's 504 plan team concluded that the student's disability, Tourett's syndrome, no longer substantially limited his academic progress. The team therefore decided to discontinue the student's 504 plan. The student's parent has appealed from this decision.

Position of the Parties

The School District

The school district contends that it properly noticed the annual review meeting of the 504 plan team and that the team properly concluded that this student's disability no longer substantially limits his academic performance.

The Parent

The parent contends that she was not given proper notice that the 504 plan team might decide to terminate the student's eligibility for a 504 plan. She seeks to keep the student's present 504 plan in effect.

Conclusions of Law

1. Section 504, and its implementing regulations, do not contain a "stay-put provision." Schools may therefore immediately implement a new placement even if the parent has not consented to the change in placement.
2. The notice provision of 504 states:

Sec. 104.36 Procedural safeguards: A recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement. [45 FR 30936, May 9, 1980, as amended at 65 FR 68054, Nov. 13, 2000]

Findings of Fact

1. The student in this case attends the 9th grade in a Rhode Island public school. He has Tourette's syndrome. He has had a 504 plan since he was in third grade. He is presently earning grades of A and B in honors courses¹. He has received positive reports from all his teachers.²
2. The parent was given notice that that his 504m plan was coming up for an annual review. This notice did not explicitly state that the 504 team might conclude that the student was no longer eligible for a 504 plan.
3. The 504 plan team concluded that the student was no longer eligible for a 504 plan.³
4. After the 504 plan team met, certain evaluations of the student were made at parental expense which the parent contends would show that this student is still eligible for a 504 plan.⁴ After the team met the parent submitted a letter from a treating physician which indicated that, in the opinion of the physician, the student still needed a 504 plan.⁵
5. Concerning annual reviews, the school district's 504 policy states: "The Student Service Plan is reviewed annually; a notice of the meeting is sent to parents. Notes of the meeting are kept; the parent may have a copy if requested. *A new Student Service Plan is developed.* A copy of the parent rights is given. To the parent." (Emphasis added)

Discussion

The notice of the annual review does not explicitly state the question of the student's eligibility for a 504 plan could be an issue at the 504 plan meeting. The school district suggests that an annual review implicitly contains the possibility of a finding of non-eligibility, and that no special notice of the possibility of a finding of non-eligibility needed to be given. The problem with this argument is that the school district's own 504 policy plainly states that the purpose of an annual review is to develop a "new Student Service Plan."⁶ Given this fact we must find that adequate notice was not given in this case under 34 CFR 104.36. The parent had no reason to believe that the district was going to do anything other than follow the district's own 504 policy.

¹ SC. B and C.

² Exhibit 7.

³ Exhibits 3 and 7.

⁴ Exhibit 4.

⁵ Letter dated November 27, 2007

⁶ SC. A

Conclusion

The district's decision to terminate this student's 504 plan is reversed. The district is directed to schedule a new 504 team meeting at which eligibility can be determined in the light of any new testing the parent may wish to submit.

APPROVED:

Forrest L. Avila, Hearing Officer

Peter McWalters, Commissioner

April 7, 2008
Date