

**STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS**

**COMMISSIONER OF
EDUCATION**

.....

Student S. Doe

v.

Warwick School Department

.....

Held: We find that there was nothing arbitrary or capricious about the district's academic decision that this student had accumulated sufficient credits to graduate. The petition is therefore denied and dismissed.

DATE: March 13, 2009

Jurisdiction and Travel of the Case

Subject matter jurisdiction in this case is present under R.I.G.L.16-39-1 and R.I.G.L.16-39-2. The student in this case graduated with a regular high school diploma in June of 2004. On July 8, 2004 the parent filed a complaint with the Office for Civil Rights (OCR) in Boston:

The complaint alleged that the District discriminated against her son...on the basis of disability. The Complaint informed OCR that, at the time the complaint was filed (July 8, 2004), the Student was attending a [private special education school] in Massachusetts pursuant to an agreement with the District. The Complaint alleged that during the 2003-2004 school year, the Student was treated differently on the basis of his disability (spina bifida and non-verbal learning disabilities) than non-disabled students with respect to graduation requirements. Specifically, the Complaint alleged that the District allowed the Student to graduate with less than the required 22 credits for non-disabled students and arbitrarily assigned credits to the Student to allow him to graduate.¹

On January 4, 2005, six months after the petitioner's complaint was filed, the Federal Office for Civil Rights, without conducting an administrative hearing, dismissed the petitioner's complaint and found that the matter was governed by a settlement agreement entered into on December 2, 2003. In September of 2006 the petitioner filed a complaint letter with the Rhode Island Department of Education's Office of Civil Rights.² On February 25, 2008 the petitioner requested an administrative hearing from the Commissioner of Education. This hearing was held March 12, 2008. The transcript of this hearing was submitted on March 28, 2008. Final briefs were filed by May 28, 2008. The extensiveness of the record in this matter and the need to review, consider, and integrate numerous records extending back to the 2000-1 school year caused the consideration of this matter to exceed the Department of Education's 45 days standard for the rendering of an administrative decision.

Background

This matter has its origin in an out-of-district placement. This placement, at the private special education school, which is affiliated with an international recognized hospital, began as a unilateral parental placement. The parents then took the District to a special education hearing in an effort to get District funding for this placement. In the course of this hearing the parties reached a written settlement agreement by which the District agreed to fund the placement for one year as a means to facilitate this student's graduation from high school. All parties, including the student who had attained the age of majority, signed this agreement, after being fully advised by the respective legal counsels of the import of this settlement agreement.

After the student, based upon credit earned in the District high school and at the private school, graduated from the District high school with a regular education diploma

¹ Exhibit G.

² Exhibit 18.

the parent filed the complaint quoted just above. The Office for Civil Rights dismissed the complaint finding that that issues presented were governed by the settlement agreement the parent and the District had entered into in which the District agreed to fund the student's placement at a private special education school in Massachusetts.³

Position of the Parent

The parent contends that:

The school district, "in violation of Section 504 of the Rehabilitation Act of 1973...employed an unwritten, discriminatory policy of accreditation of school activity, grades and credits towards graduation that had the effect of lowering the standard for receiving a regular education diploma for Student Doe. The policies applied to [the student] were not also applied to non-disabled students, who were bound by policies delineated in the [District's] "course of Studies" booklet.

The different standard administratively applied to [the student] was based solely on his status as a person with a disability and outside of the IEP process so that he would lose his eligibility via a diploma no matter what his actual achievement was.

Fundamentally the parent's contentions are based on the argument that the District gave the student more academic credit in mathematics than it should have in order to help him graduate from high school with a regular education diploma.

The District's position

The district submits that this matter is barred by laches, the statute of limitations, mootness, estoppel, and *res judicata*. The District also contends:

As the settlement agreement indicates, [the District and the parents] all agreed that [the student] would graduate in June 2004. Settlement Agreement at Section 2. As his transcript indicates, [the student] did not graduate with fewer credits than non-disabled students. Moreover, the assignments of credits was not arbitrary; it was the direct result of a meeting on December 5, 2003, between the administration of [the private school and a representative of [the District] as required by the Settlement Agreement.⁴

The District further submits that the Settlement Agreement itself specifies that: "A representative from [the District] will meet and confer with a representative of [the private school] by December 31, 2003 to ensure that [the student] has sufficient credits to graduate with a diploma issued by [the District] in June 2004. The District therefore contends that the petition is without merit.

Findings of Fact

³ Exhibit G.

⁴ Exhibit F.

1. The parents unilaterally placed this student in a private special education school in Massachusetts. This private school basically has a pass/fail system of grading that does not employ numerical grading.⁵ In the course of a special education hearing all parties agreed to a settlement which required the District to fund the private school placement for one year. The District itself employs a numerical grading system.
2. As noted, this placement at a private special education school affiliated with an international recognized hospital began as a unilateral parental placement. The parents then took the District to a special education hearing in an effort to get District funding for this placement. In the course of this hearing the parties reached a written settlement agreement by which the District agreed to fund the placement for one year as a means to facilitate this student's graduation from high school. All parties, including the student who had attained the age of majority, signed this agreement, after being fully advised by their respective legal counsels of the import of this settlement agreement.
3. The settlement agreement provided that the parents and the student, "agree that the services described in Section 1 herein [placement at the school] shall be in full satisfaction of [the school district's] obligation to [the student] now and forever. The [parents and the student] also agree that subject only to [the school district's] provision of services through August 2004 as described in Section 1 herein, [the student] shall graduate from [the school district] in June 2004, and [the school district] shall have no continuing obligation to provide any services to [the student] under the Individuals with Disabilities Education Act or any other federal or state statute after June 2004.
4. The Settlement Agreement specified that: "A representative from [the District] will meet and confer with a representative of [the private school] by December 31, 2003 to ensure that [the student] has sufficient credits to graduate with a diploma issued by [the District] in June 2004.
5. On December 5, 2003 a meeting between the private school and the head of the District's special education program took place to ensure that the student would have sufficient credits to graduate with a diploma to be issued by the District in June of 2004. Additional math tutoring was arranged for the student.⁶ On December 8, a letter to this effect was sent to the student and his parents.⁷
6. At the end of the 2003-2004 school year the District evaluated the student's academic work both in the District high school and at the private special education school where the student, by agreement, had been placed. The District,

⁵ Exhibit 12. Transcript, page 63.

⁶ Exhibit 20.

⁷ Exhibit 12.

through this evaluation, concluded that the student had accrued sufficient credits to graduate from high school.

7. We find there was nothing arbitrary or capricious about the District's academic decision that this student had accumulated sufficient credits to graduate. The District school administrator who evaluated this student's record at the private school was able to give a perfectly intelligible description of how he equated the pass/fail work the student completed at the private school with the academic work at the District's own high school. The same administrator testified that course work this student completed through individual tutoring supplied by a certified mathematics teacher in the 2000-2001 school year was equivalent to a course in basic mathematics.⁸ We credit this testimony.

Conclusions of Law

1. **§ 16-2-16 Rules and regulations – Curriculum.** – The school committee shall make and cause to be put up in each schoolhouse rules and regulations for the attendance and classification of the pupils, for the introduction and use of textbooks and works of reference, and for the instruction, government, and discipline of the public schools, and shall prescribe the studies to be pursued in the schools, under the direction of the department of elementary and secondary education.
2. While the commissioner has more authority than a court does to review an academic decision, in most cases review of a local grading decision is limited to determining whether the academic decision was arbitrary, contrary to state-wide academic policy, incorrectly computed, or made in bad faith.⁹

Discussion

The written expressed purpose of the settlement agreement and the resulting out-of-district placement was to enable this student to complete high school. The parents now contend that the placement they advocated for, and which they agreed to receive as a full settlement of their IDEA complaint, and which they advanced as necessary to enable their student to graduate from high school, included course work which did not correspond to the graduation course work provided to other district students in regular education programs in the school district.

The gravamen of the petitioners' complaint is that the District improperly deemed the student's course work the at the private out-of-district placement and at the District's own high school to be sufficient to support the award of a high school diploma to this

⁸ Transcript, page 66.

⁹ *Feit vs. Providence School Board*, Commissioner of Education, February 25, 1992. *Jane B.B. Doe v. Warwick School Committee*, Commissioner of Education, June 10, 1998.

student. In fact, however the school district decision to award this student a diploma should not have come as a complete surprise to the petitioner since placement at the out-of-district school was explicitly made for the purpose of facilitating this student's high school graduation.

We must, given the literal terms of the settlement agreement, reject the parent's contention that: "The reason this student attended [the out-of-district placement] was to receive an education that provided FAPE, not credits." Instead we conclude that the placement at the private school was explicitly intended to provide the student with both FAPE and with the credits needed to graduate from high school.

We credit the testimony of the District school official that the individual tutoring this student received from a certified District mathematics teacher in the 2000-2001 school year equated to a course in basic mathematics. We can find no evidence to indicate that the academic decision was arbitrary, contrary to state-wide academic policy, incorrectly computed, or made in bad faith.¹⁰ We therefore sustain this local academic decision.¹¹

Conclusion

The petition is denied and dismissed.

Forrest L. Avila, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

March 13, 2009

Date

¹⁰ *Feit vs. Providence School Board*, Commissioner of Education, February 25, 1992. *Jane B.B. Doe v. Warwick School Committee*, Commissioner of Education, June 10, 1998.

¹¹ We note that our evaluation is based upon the graduation standards prevailing at the time and not upon our present graduation by proficiency standards.