

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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J. DOE

v.

NORTH KINGSTOWN SCHOOL DEPARTMENT  
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**Decision**

Held: School district violated Section 504 of the Rehabilitation Act of 1973 by failing to consistently follow portions of a student's accommodation plan. Student remains eligible for Section 504 coverage.

DATE: December 23, 2010

## Introduction

This matter concerns a complaint alleging that the North Kingstown School Department violated Section 504 of the Rehabilitation Act of 1973 and then erroneously determined that student Doe is no longer eligible for a Section 504 plan.<sup>1</sup>

## Background

Student Doe was an 8th-grade middle-school student during the 2008-09 school year. In March 2009, the school recommended 9th-grade “Success Academy” courses for Doe. His parents requested, and received, the assignment of college-preparatory courses.<sup>2</sup> In April, 2009, Doe’s parents obtained a neuropsychological evaluation of Doe. The report stated in part that

[Doe’s] overall level of cognitive functioning (Full Scale) is estimated to be in the average range with fairly evenly developed skills within and among factors.

In areas of verbal comprehension, [Doe] demonstrates average range long-established knowledge about objects, facts, and word meanings, age-appropriate social judgment, and high average capacity to think about an object or situation beyond its immediate physical manifestations or presence suggesting well-developed abstract (creative) reasoning when drawing on past knowledge and experience.

On measures of perceptual reasoning, [Doe’s] general sequential reasoning with visual material is in the average range. Similarly, his spatial orientation and fine motor skill are age-appropriate. [Doe’s] abstract (creative) reasoning with visually-based language concepts is average. On visuo-perceptual-graphomotor measures, [Doe] displays left-hand dominance and demonstrates a functional quadruped grasp with open web space with hard pencil pressure. His perception, analysis, and thinking with visually-based information (noting visual details, organizing or arranging details, sensing spatial orientation) are well-developed on isolated tasks but diminish considerably on visually complex tasks. Poor global

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<sup>1</sup> Under Rhode Island General Law 42-87-5(c), the Commissioner of Education is authorized to hear complaints relating to violations of Section 504. Hearings in this matter were held on May 27, July 16, August 17 and August 20, 2010. An interim order maintaining Doe’s Section 504 plan was issued on June 3, 2010. The record in this proceeding closed on September 21, 2010. Petitioner made an *ex parte* communication to the Commissioner of Education regarding the merits of this case on December 15, 2010.

<sup>2</sup> According to Petitioner, Doe would not be eligible for a 4-year college if he were to take “Success Academy” coursework at North Kingstown High School.

processing is reflected in an overfocus on details and problems organizing information into meaningful wholes.

On working memory measures, [Doe] shows well-below average ability to temporarily retain auditory information for the purpose of repeating the information without modification (registration) but average range capacity to simultaneously take in auditory information (registration) while performing a transformation of the information (mental manipulation). On account (i.e., particulars of an act or occurrence or course of events) and when attempting to learn unrelated auditory information (i.e., list-learning). [Doe's] capacity to encode and recall visually-based information shows good potential, but his ability to reliably and consistently demonstrate these skills is problematic. In general, [Doe] "fills in the gaps" when he forgets information. Indeed, he will add information that while it may be related phonetically or semantically to the information presented is inaccurate in terms of the actual information he encountered. Additionally, his ability to form new memories and retain information over time is problematic. A weakness in memory may make the processing of complex information more time consuming and tax the student's mental energies, perhaps contributing to more frequent errors on a variety of learning tasks.

[Doe's] ability to scan, sequence, or discriminate simple visual information quickly and accurately (processing speed) is in the average to low average range suggesting that he processes visual information at a rate similar to his age peers.

In areas of executive function, [Doe's] ability to sort information from his environment and to selectively react to this information (screen out irrelevant distraction) is below age expectations and although his visual search/scanning abilities are intact on sustained visual tasks he is prone to make errors.

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All reporters indicate that [Doe] has difficulty in reading and math. He also seems to have executive function weakness in memory, initiating tasks, planning, and organizing materials as well as working independently. [Doe's] father observes inattention.

*Diagnostic Impressions*

- **Executive Function Disorder SCA317.5** (memory, initiating tasks, planning, organizing materials)

In her recommendations to deal with Doe’s “executive function weakness,” the psychologist included a “Tests Preparation” section in her report. This section addressed study periods, study routines, reviews, organization of material and notes, note-taking, outlining, index cards and memory strategies. A section entitled “Analyzing the Format of Tests” included the suggestion “[a]sk the teacher for sample [test] questions and examples of high quality sample responses, and review them.” [School Department Exhibit 10]. Planning and organization techniques also were included.

Doe’s parents requested a Section 504 evaluation and in May 2009, a Section 504 plan was developed for Doe.<sup>3</sup> The 504 plan, effective May 27, 2009, was created for the 9th grade at North Kingstown High School. It listed “executive function disorder” as Doe’s disability, noted Doe’s continuing “struggle with math and math reasoning and concepts,” and stated that Doe “appears ‘substantially limited’ in ability to learn math processes and exhibit what he knows and can do. Memory issues are present.” The plan set forth a dozen regular-classroom accommodations for Doe, including

- Provide [Doe] with strategies to aid memory for use in test preparation as well as test taking
- Provide [Doe] with step by step instructions for tests or assignments (all subject areas)
  - a. Example – steps to solve a math problem
- [Doe] may utilize a calculator when necessary during class, while taking tests/quizzes and during any formal assessment
- Provide [Doe] with examples of former test questions as well as corresponding high quality responses
- [Doe] may support his learning by having his teachers and parents review and sign his planner at school and home [Petitioner’s Exhibit 4].

Doe finished the 8th grade with a 2.714 grade-point-average. He received a C- in Pre-Algebra.

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<sup>3</sup> In finding Doe eligible, the 504 team relied on the neuropsychological evaluation and Doe’s beginning-of-the-year 15 percentile score on the Northwest Evaluation Association assessment (NWEA).

Doe entered North Kingstown High School for the 9th grade. A meeting was held on September 30, 2009 to review Doe's 504 plan. No changes were made.<sup>4</sup> Later, a disagreement about Doe's use of a calculator in Algebra arose and in November it was discovered that incorrect first-quarter Algebra quiz and test scores for Doe were posted on Iparent. A calculation of the correct scores showed Doe with a D average. The parties agreed that Doe would retake the first-quarter Algebra quizzes and tests, this time using a calculator.<sup>5</sup>

Other 504-related issues emerged in November with regard to the accommodations set forth above. Confusion arose within the math department as to whether Doe's 504 plan remained in effect. A meeting was held on December 3, 2009 to review Doe's 504 eligibility and plan. The areas of concern at the meeting were identified as "math concepts and computation, organization, and length of time needed to complete homework assignments." Teachers described Doe as "a hard working student who completes all of his homework and stays after school regularly for help." Doe's parents reported their concern "about the time [Doe] puts into his schoolwork with results that are substantially lower than expected." [Petitioner's Exhibit 8]. The school confirmed Doe's 504 eligibility and proposed revised accommodations, but Doe's parents did not feel that the revisions eliminated the vagueness of the plan's provisions.

For the next four months, Doe continued his hard work at school and received assistance from his father at night and on weekends. Doe stayed after school for extra-help sessions with his Algebra teacher.<sup>6</sup> He was given access to on-line tutorials. Meanwhile, the issues related to the 504 plan compounded. The parties were at odds over the planner's documentation of homework assignments and test notices,<sup>7</sup> the

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<sup>4</sup> The notes from the meeting show that Doe's parents' requested that the number of problems on Doe's math tests be reduced, and the district's response was that students at the High School "are given extra time to complete work rather than reducing the number on exam." [Petitioner's Exhibit 6].

<sup>5</sup> Doe had previously been prohibited from using a calculator because of the math department's position that Algebraic calculations, not concepts, were being tested in the first quarter. Satisfied that Doe had demonstrated his ability to do the calculations, the math department allowed him to use a calculator on the retakes.

<sup>6</sup> The Algebra teacher would give Doe problems to do on the whiteboard.

<sup>7</sup> Petitioner presented evidence of inadequate notice of math tests in November 2009 and January and March 2010.

provision of test question examples and quality responses,<sup>8</sup> the availability of corrected quizzes prior to tests, and the similarity of the first-quarter Algebra retakes to the original quizzes and tests. During this time, the district enlisted the services of a mediator as the parties struggled to clarify the 504 plan.

At the hearing, Doe's father identified the test question examples/quality responses item as "the most difficult accommodation," and that it continued to be the "real root of our situation . . ." [5/27/10 transcript, p. 107]. An e-mail from Doe's father asked that

At all times for any math class and for any other class that [Doe's] current iParent grade average is less than 70% - Provide [Doe] with sample quizzes/tests in same format and order that the actual quiz/test will be presented. The sample quiz/tests should look like the actual quiz/test. Attempts should be made to provide these early enough so that [Doe] can attempt the sample quiz/test and meet with the teacher in an extra help session to review in advance of the actual/quiz test (sic).

For any classes where [Doe's] current iParent grade point average is 70% or higher – Provide [Doe] with a quiz/test format sheet (ie: Ques 1-5 vocab words will be listed, you need to write out the definition, Ques 6-10 sentences will be provided, you need to properly punctuate these sentences, etc.). [Petitioner's Exhibit 9].<sup>9</sup>

On the other hand, an e-mail from the Algebra teacher stated that

I do not supply [Doe] with former tests and quizzes for 2 reasons. One reason being that, as a new teacher, I do not have old tests or quizzes. Beyond that, as the purpose of a test or quiz is to assess the student's grasp on the material they have been working on, the quizzes only contain the material that I have covered through in-class examples and homework/classwork. As for the format of my quizzes and tests, they have been and will remain consistent. So in that way [Doe] is being supplied with former quizzes and tests. [Petitioner's Exhibit 42].

A meeting was scheduled for April 1, 2010 to work on clarifying the accommodation language in Doe's 504 plan. The day before the scheduled meeting, the School

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<sup>8</sup> This issue included an occurrence in March 2010 when the Algebra teacher collected study guides from students several days before a test, thereby rendering the guides unavailable just prior to the test.

<sup>9</sup> In a related item, Doe's father interpreted the test-taking strategy accommodation as permitting Doe to assist his memory during tests by allowing him to bring an oversized index card with prompts written on it.

Department notified Doe's family that the meeting was cancelled because Doe's eligibility for a 504 plan was under review. Doe's family waived its right to formal notice of the meeting and the parties met on April 1st on the issue of eligibility. The district's 504 coordinator, a team of regular and special-education educators, the mediator, and Doe's father reviewed Doe's academic assessments, test scores,<sup>10</sup> classroom observations,<sup>11</sup> and the April 2009 neuropsychological evaluation. District staff was of the view that Doe did not have a disability under Section 504. Instead, they stated that Doe is not fully engaged in class and relies on his father's help at home to learn the material. The district proposed that a student support plan be developed for Doe. Support plan items mentioned at the meeting included task prompts and aids, examples of projects and rubrics, teacher conferences, class-notes reviews, extra time to complete tests and quizzes, use of a calculator, and review of Doe's planner by teachers.

Doe's father disagreed. He stated that Doe has a memory weakness which makes it difficult for him to understand, organize and prepare his work for assignments and tests. He maintained that Doe is at a 5th-grade level in math and very disorganized in his work. He stated that Doe's behavior during the December classroom observations was attributable to the upcoming Christmas vacation. Doe needs his father to be a full-time teacher at home. Doe wants to be challenged, however, and plans to attend college. Doe's father did not see any basis to alter the May 2009 disability classification.

Petitioner filed this Section 504 complaint on April 7, 2010. Subsequently, Doe's Algebra teacher administered a retake of a 10-question first-quarter test that instead consisted of 4 questions. Doe's one incorrect answer therefore had a greater effect on his score. The Algebra teacher also administered the same retake test twice, thereby creating a scheduling problem in finishing the retakes. The Algebra teacher assigned Doe and three other students to detention for being disruptive in class, but only Doe served the detention, which interfered with his retake schedule. At the conclusion of the school year, Petitioner requested a copy of the 10th-grade Geometry textbook and the course syllabus in order to prepare for the upcoming year. Petitioner was not allowed to obtain a

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<sup>10</sup> In a KeyMath 3 assessment taken on January 4, 2010, Doe scored in the average range on all subtests. On the fall 2009 NWEA his score had risen to the 39th percentile.

<sup>11</sup> In multiple instructional settings, Doe was observed socializing, singing, being chatty, off-task and needing to be redirected.

copy of the Geometry textbook until Doe's "home" copy of the Algebra I textbook was returned, and the district refused to provide a copy of the syllabus because it was in the process of being revised and therefore not going to be used in the 2010-11 school year.

Doe's final grades for 2009-10 were 74 in English, 92 in Reading, 74 in Algebra 1, 79 in Algebra Lab, 66 in Earth Science, 79 in Western History, 83 in Tech Readiness, and 92 in Physical Education/Health. Doe's Grade 8 NECAP results were substantially below proficient in Reading, and partially proficient in Mathematics and Writing.

Additional psychological testing in July 2010 "supported [Doe's] executive functioning deficits."<sup>12</sup> At the suggestion of the psychologist, Doe underwent an audiological and central auditory processing evaluation in late July. He was found not to have an auditory processing disorder. In August 2010, the psychologist who performed Doe's April 2009 evaluation reviewed the results of that evaluation and commented:

My data and parent/teacher report all suggest frontal lobe problems. These are located in the dorsolateral part of the brain important for task initiation, planning, organization, sustaining attention, memory, and being able to complete tasks. Unfortunately, a diagnosis of Attention-Deficit Disorder requires inattention to be present before age 7 years, for it to be problematic in 2 or more settings, and to be significantly problematic. The diagnosis doesn't focus as much on the other executive functions noted. [Doe] is clearly having executive function problems nevertheless (sic). The symptoms may not have been obvious because of the extraordinary support he is given at home. [Petitioner's Exhibit 52].

At the hearing, the district's assistant director of pupil personnel services, who holds a doctorate in educational psychology with a special-education focus, testified that "executive functioning" is a "construct" involving a number of neurocognitive processes, including planning, time management, initiation, organization and mental flexibility. [8/17/10 transcript, p. 152]. She stated that these functions are still developing in an adolescent, and deficiencies may exist at any given time. According to the assistant director, "[i]f we are going to call it a disorder, it really is going to be very pervasive . . ." [Ibid., p. 156]. Reviewing Doe's April 2009 psychological evaluation, the assistant director deemed Doe's scores to be in the average range. Consequently, she did not agree

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<sup>12</sup> The testing was conducted by an associate of the psychologist who evaluated Doe in April 2009.

with the diagnosis of executive function disorder nor was she of the opinion that Doe has a disability requiring a 504 plan.<sup>13</sup>

### **Positions of the Parties**

Petitioner contends that the school district violated Doe's Section 504 plan during the 2009-10 school year by failing to provide the regular-classroom accommodations listed on page 3 of this decision. Doe therefore did not receive the memory support, problem-solving aids, former test question/responses, calculator access and adequate advance notice that would make his test and quiz performances reflect the tremendous amount of preparation he had undertaken. Instead, Doe's passing grades were the result of the full-time tutoring provided by his family.

Petitioner argues that the district further violated Section 504 by retaliating against Doe after the complaint in this matter was filed. That retaliation consisted of the 4-question and duplicative first-quarter Algebra retake tests, the ill-timed and selectively-enforced detention session, the delayed-delivery of the Geometry textbook and the refusal to provide the syllabus.

Petitioner asserts that the April 1, 2010 Section 504 re-evaluation was unwarranted in light of Doe's psychological and academic assessments. Contrary to the May 2009 evaluation, the April 2010 re-evaluation team did not have knowledge of Doe and therefore was unqualified to determine 504 eligibility. The testimony of the assistant director of pupil personnel services was not credible, the improved score on the January 2010 KeyMath assessment was due to a modification to allow verbal responses, and the class observations conducted just before Christmas vacation were not reliable. Furthermore, the ameliorating effects of mitigating measures, i.e., Doe's family's tutoring and support, are not to be considered in determining Section 504 eligibility.

Petitioner asks that Doe's 504 coverage be kept in effect and that the district be prohibited from re-evaluating Doe prior to his graduation from the High School. Petitioner's 12-part remedy also includes requests that the 504 plan be revised with

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<sup>13</sup> The assistant director of pupil personnel services did not participate in the May 2009 decision that Doe has a disability substantially limiting his ability to learn.

regard to advanced written notice of quizzes and tests,<sup>14</sup> the prompt return of graded quizzes and tests, the provision of similarly-formatted examples in advance of mid-terms and final exams,<sup>15</sup> the opportunity to self-correct quizzes and tests with a grade below 70 in writing or orally, and assistance with formal assessments.<sup>16</sup>

The School Department objects to those arguments of Petitioner which were based on non-record and/or hearsay evidence. It contends that Petitioner did not meet his burden of proof with regard to the allegations of Section 504 violations, discrimination and Doe's continued 504 eligibility. With regard to the calculator, the district's position distinguishing math concepts from math calculations was reasonable. Moreover, the issue was resolved when Doe was allowed to use the calculator during the first-quarter retakes. The Algebra teacher provided Doe with examples of test questions during Doe's lab class and after-school sessions. The on-line tutorials also contained sample questions. If the questions were not in the format desired by Petitioner, i.e., mirroring the test, this did not violate the accommodation provision as written in the 504 plan. In fact, Petitioner's request for exact replicas of quizzes and tests prior to the quiz or test date was not educationally sound because in taking the actual quiz or test Doe would rely on his memory of the replica rather than learn the process of identifying types of problems and determining from the directions the approach to solving the problem.

Relying on the assistant director of pupil personnel's testimony and Doe's recent math testing, the school district argues that Doe does not have a disability under Section

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<sup>14</sup> The notice is to include "A: the date of quiz or test. B: the number of questions or problems. C: the sections of the textbook being assessed . . . D: if the assessment will include materials which were taught utilizing resources not included in the text sections referenced, indicate what else needs to be reviewed for [Doe] to be ready for the assessment. For example, remember to refer to the handouts from the Algebra II textbook we used in class. They are titled, Reteaching 8.4 – Laws of Exponents and Lessons . . . and Lesson 3-1, titled Using Graphs to Solve Linear Systems . . . E: if a study tool was provided which mirrors the actual assessment, it would be appropriate to simply indicate, the quiz on 8.5 will look exactly like the homework sheet from March 23, titled 8.5 review. If this is the situation, [Doe] should be provided with the answer key, which demonstrates the correct answers and the steps taken to arrive at the correct answers so he can practice and obtain the correct answers on the types of problems being assessed. This type of sample, from experience, occurs the night before an assessment. So, [Doe] should be given an answer key to bring home along with the homework assignment. The answer key could be in a sealed envelope, which could not be opened until he completed his homework." [8/20/10 transcript, pp. 39-40].

<sup>15</sup> "Samples should mirror the actual midterm or final. For example, if there are 75 multiple choice and 20 short answer problems, the samples must have examples of all types of problems which will appear." [*Ibid.*, p. 42].

<sup>16</sup> Petitioner asks that "the School Department be ordered to employ whatever steps are necessary to determine why [Doe] cannot score well on formal assessments like NECAP and NWEA and implement a plan of remediation to allow him to demonstrate proficiency on those assessments." [*Ibid.*, p. 44].

504. Furthermore, there is no substantial impact on Doe's learning because he has maintained average grades throughout middle school and the 9th grade. The district suggests that the amount of academic assistance Doe is receiving at home results from the fact that he is taking higher-level math than was recommended by his middle-school team.

The district asserts that there is no evidence of intentional discrimination against Doe related to disability. The Algebra teacher simply made a mistake in administering the same test twice. Nor was she bound to give a retake test that was exactly like the original test. Finally, the district cannot be faulted for refusing to provide an out-of-date, incorrect Geometry syllabus to a parent who was requesting it for advance-preparation purposes.

## **Discussion**

Our analysis of this complaint begins with the Section 504 plan that was developed for Doe in May 2009. While the parties quickly adopted different interpretations of several of the plan's provisions, the fact remains that the school district granted Doe Section 504 status and furnished him with a set of academic accommodations for the 9th grade at North Kingstown High School. Section 504 of the Rehabilitation Act of 1973 is a federal civil rights law that prohibits discrimination against individuals with disabilities.<sup>17</sup> In the school setting, the goal of Section 504 is to level the playing field and grant equal access to an education. Instruction and aids and services are set forth in the student's 504 plan so that a free appropriate public education is provided. A teacher must implement a 504 plan to the extent the plan's provisions apply to a student for whom the teacher is responsible.

Turning to Doe's Algebra class, the evidence in this case shows that Doe's 504 plan was not effectively implemented with regard to memory strategies, step-by-step instructions, and examples of former test questions and high-quality responses. While there is evidence that these items were addressed in varying degrees in Doe's lab class and after-school sessions, the record does not show the type of structured approach to these matters that a Section 504 plan requires. Under the Basic Education Program, a

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<sup>17</sup> 29 U.S.C. 794.

school district must provide instruction that meets the different learning styles of students. Organized instructional strategies must “focus on the needs of all students using strategies for differentiated instruction based on principles of learning, human growth and development; and . . . shall include specific interventions for students who are not meeting proficiency standards or are at risk for non-promotion or dropping out of school.” [§G-13-2.1]. All students are entitled to individualized, additional assistance and support in lab class and after-school sessions, as well as in their classrooms. Assistance of this type is an important tool in improving learning and increasing achievement. A 504 plan calls for the formalization of specific teaching practices and instruction that are tailored to meet identified needs of a particular student. To provide equal educational opportunity, a 504 plan must trigger a more focused and definite response to a need. We find that this did not occur in Doe’s Algebra class with regard to the memory strategies, step-by-step instructions, and former test questions provisions in Doe’s 504 plan.

We also find that the teacher review and signature of Doe’s planner was not implemented on a consistent basis in his Algebra class. Informed and timely notice of tests was not always provided. We find that the district’s position with regard to Doe’s use of a calculator was reasonable. This issue resolved itself with the agreement to re-administer Doe’s first-quarter Algebra quizzes and tests.

As for Petitioner’s retaliatory-discrimination claims, there is no evidence to contradict Doe’s credible testimony that he alone served the detention that was also assigned to three other students. In light of the statement at the September 30, 2009 meeting that students are given extra testing time, not reduced numbers of questions on tests, we find merit in Petitioner’s argument that the 4-question retake of the 10-question first-quarter test was contrary to district policy.<sup>18</sup> Given the fact that Doe’s parents wanted the Geometry syllabus in the summer to help prepare Doe for that upcoming course, we find it was reasonable for the district to withhold the syllabus because it was under revision and no longer operative for the Geometry course.

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<sup>18</sup> The end result of the retake process was that Doe took a 4-question version of the 10-question test his classmates took.

Our findings that Doe’s May 2009 Section 504 plan was violated are not based on the revised and additional accommodations that Petitioner argues must be inferred from the wording of the existing 504 plan. We find that Petitioner’s interpretation and requested revisions to the test-question provision of the plan are not supported by the evidence in this matter.

Under Section 504, disabled students are entitled to a free appropriate public education. An “appropriate education” is defined as “the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§104.34, 104.35, and 104.36.”<sup>19</sup> The educational measures designed to meet the disabled student’s needs are commonly referred to as “accommodations,” although the “reasonable accommodation” provision of Section 504 technically applies only to employment practices.<sup>20</sup> Proposed education and related aids and services must appropriately accommodate a 504 student’s needs.

The April 2009 neuropsychological evaluation of Doe includes 3½ pages of recommendations regarding test preparation and test-taking. Aside from the suggestion that Doe “[a]sk the teacher for sample questions and examples of high quality responses, and review them,” the recommendations do not provide for prior access to test materials. Instead, they focus on study methods and strategies. The school district’s concerns with Petitioner’s proposals are credible. We therefore find that the record does not establish the appropriateness of the test-preparation measures advanced by Petitioner.<sup>21</sup>

As for Doe’s continued Section 504 eligibility, we find that little has changed in his academic situation since he was deemed to qualify for a 504 plan in May 2009. Doe is still struggling to learn math processes and to demonstrate his abilities and knowledge in math. Implementation of the 504 plan has been inconsistent. Much time and energy

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<sup>19</sup> 34 CFR §104.33(b)(1). The sections cited in subsection (ii) address the student’s educational setting, evaluation and placement, and procedural safeguards, respectively.

<sup>20</sup> 34 CFR 104.12.

<sup>21</sup> We note that Petitioner did not request an adjustment of Doe’s Algebra grade to remedy the Section 504 violations. We also note that it is a school’s duty to work with all students who score poorly on formal assessments and develop plans to improve those scores.

have been spent debating test-taking accommodations that were not mentioned in the evaluating professional's report. The stress in Doe's educational environment continues to increase.

We find that the evidence in this matter shows that Doe remains eligible for a Section 504 plan for the reasons stated in his May 27, 2009 plan.<sup>22</sup> We urge the parties to revisit the schoolwork and study strategies contained in the April 2009 neuropsychological evaluation.

### **Conclusion**

The North Kingstown School Department violated Section 504 by failing to consistently follow portions of Doe's May 2009 Section 504 plan. Doe remains eligible for Section 504 protections for the reasons stated in his May 2009 plan.

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Paul E. Pontarelli  
Hearing Officer

Approved:

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Deborah A. Gist  
Commissioner of Education

Date: December 23, 2010

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<sup>22</sup> Pursuant to §34 CFR 104.35(d), school districts must have a procedure for the "periodic reevaluation" of students receiving services under Section 504.