

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

G. Doe

v.

North Kingstown School Department

Held: The October 18, 2011 Section 504 Plan prepared with the assistance of a special visitor does not incorporate two test taking accommodations proposed by Student Doe's psychologist and found to be necessary in order to "level the playing field" for Student Doe by the Commissioner in her October 4, 2011 decision. These two additional test taking accommodations must be incorporated into Student Doe's 504 Plan and the new Plan implemented as soon as possible.

DATE: December 15, 2011

Travel of the Case:

This matter involves an ongoing dispute between parents and school district as to what is required in order to provide Student Doe, a “handicapped person,” with a free appropriate public education. The October 4, 2011 decision of the Commissioner is attached hereto as Attachment “A”. It provides the factual background and context of the parties’ current dispute. Pursuant to the October 4, 2011 decision, a special visitor was appointed by the Commissioner to meet with the parents and representatives of the district to assist them in developing a revised 504 Plan for Student Doe. In the October 4, 2011 decision the Commissioner found that Student Doe’s existing Section 504 Plan was inadequate; she ordered that additional accommodations be incorporated into the Plan and that clarifications be made to certain provisions. She also encouraged the parties to consider providing Student Doe with instruction in study skills and strategies. See pages 8-10 of the October 4, 2011 decision. The Commissioner retained jurisdiction in this case because this was the second time within a single year that she had found that Student Doe’s Section 504 Plan was inadequate and had referred the case to the parties for necessary revisions.

The parties met with the special visitor on October 18, 2011 and produced a revised Section 504 Plan that was forwarded to the undersigned hearing officer and mailed to the Petitioner on October 24, 2011. The hearing officer requested that if the Petitioner had any objections to the revised Plan, to so indicate in writing by October 28, 2011 and, if not, to sign and return the Plan for mailing to the school district. When the Petitioner had not filed objections by the date of November 8, 2011, an Order implementing the revised 504 Plan was prepared and signed by the Commissioner on November 9, 2011. Immediately thereafter the Petitioner requested that the Commissioner vacate her Order to permit him the opportunity to file his objections and the Commissioner granted the Petitioner’s request on November 23, 2011.

On December 2, 2011, the hearing officer received a letter dated December 1, 2011 from the Petitioner. He suggested that there was lack of clarity in Accommodation #11 and requested that item #2 under Section III, entitled “Parent/Guardian Responsibilities,” be deleted. The Petitioner also expressed concern that the revised 504 Plan “may not meet the spirit of your decision because the revised plan may not address or allow for the use of memory supports during testing, as was recommended” by Student Doe’s psychologist.

The Petitioner also requested that the hearing be reconvened since the October 4, 2011 decision had indicated that if either or both of the parties had objection to the plan developed by the special visitor, the hearing would be reconvened. Hearing in this matter has not been reconvened.¹ The Petitioner's December 1, 2011 letter has been construed as constituting the "specific objections" that he was permitted to make pursuant to the Commissioner's decision to vacate her November 9, 2011 order in this case. This matter now warrants additional discussion and rulings from the Commissioner.

DECISION

In reliance upon the entire record in this matter and based upon the findings and conclusions contained in the October 4, 2011 decision, the following determinations are made with respect to the October 18, 2011 Section 504 Plan developed by the special visitor. Despite the Commissioner's ruling of October 4, 2011 that "additional accommodations suggested by Dr. Whipple should be incorporated into (Student Doe's) 504 Plan" (see page 9 of the decision for the discussion of additional testing accommodations), we find that the two additional accommodations referred to are not incorporated into the October 18, 2011 Section 504 Plan. Although Accommodation Number 11 of the revised Section 504 Plan requires that Student Doe "be provided with a list of relevant formulas to be used during midterm and final exams in math and science," the use of memory supports in just two subject areas and only at the time of midterm and final exams is not as broad as the memory supports and test-taking modifications referred to in the Commissioner's October 4, 2011 decision. These additional accommodations were specifically referenced in the testimony of Dr. Whipple and in Petitioner's Exhibit Number 3. They were referred to as Accommodation Number 12 and 13. The Commissioner found that the record in this matter supported Student Doe's receipt of both of these testing accommodations and modifications.

The addition of Accommodation Number 12 of Dr. Whipple's recommendations (summarized in Petitioner's Ex. 3) should resolve any lack of clarity in what is listed as Accommodation Number 11 of the October 18, 2011 504 Plan. Accommodation Number 11 must be redrafted to encompass the broader use of memory supports during any formal assessment administered to Student Doe. These

¹ Inasmuch as the Petitioner was permitted to file written objection based only on the Commissioner's decision to vacate her November 9, 2011 Order, the Commissioner determined that the Petitioner would be limited to written objections since he had not proceeded to act within the time constraints previously imposed.

memory supports will include, but not be limited to, providing Student Doe with a list of relevant formulas to be used during midterm and final exams.

The October 18, 2011 Section 504 Plan submitted by the special visitor also should incorporate what was previously identified in the record as Accommodation Number 13 (in Petitioner's Ex.3 and testimony of Dr. Whipple). Without repeating Accommodation Number 13 verbatim, this test-taking accommodation creates a preference for administering matching or multiple-choice tests to Student Doe and when administering an essay-type test, providing him with a word bank relevant to the topic at hand.

Addition of the two test-taking accommodations referred to above will result in Student Doe's revised Section 504 Plan meeting not only the "spirit" of the Commissioner's October 4, 2011 decision, but the letter of that decision as well. We find it clear that the Commissioner intended in her October 4, 2011 decision that these two additional accommodations suggested by Dr. Whipple "should be incorporated into (Student Doe's) 504 Plan". The fact that the parties have not incorporated into Student Doe's Section 504 Plan other provisions, for instance, instruction in certain study skills and strategies, that they were merely encouraged to consider in both the October 4, 2011 decision and the Commissioner's December 23, 2010 decision² is not in issue.

The Petitioner has requested that the responsibility for parents to "assist in reminding (Student Doe) to initiate teacher conferences regarding after school help and check-ins for long-term projects" be eliminated from Section III of the October 18, 2011 Plan. We agree that the responsibility to provide such conferences is on the teachers, pursuant to Accommodation Number 4. The current wording of the parents' responsibility in Section III, item number 2, incorrectly states that it is Student Doe who will initiate conferences. This is inconsistent with item number 4 of Section I of the revised Plan that calls for Student Doe to be provided with the necessary check-ins or conferences with his teachers. This is also inconsistent with the finding of the October 4, 2011 decision that "(g)iven Student Doe's memory issues, it is important to eliminate the uncertainty of an accommodation that is triggered when the student is 'encouraged' to use a strategy or 'reminded' to initiate conferences with his teachers. To be effective, there must be more certainty that the accommodation will actually happen. Given Student Doe's memory issues, the 504 Plan should specify that the student is to be provided with strategies and actually have the necessary conferences with his teachers." (October 4,

² Both decisions encouraged consideration of study skills and strategies for inclusion in Student Doe's Section 504 Plan. The December 23, 2010 decision was recommended to the Commissioner by a different hearing officer.

2011 decision at page 10). Nonetheless, a perfectly appropriate responsibility to remind Student Doe to participate in scheduled conferences with his teachers should be placed on his parents. We would suggest a re-wording of this provision along these lines, rather than eliminating this provision from his 504 Plan entirely.

The objections of the Petitioner to the October 18, 2011 Section 504 Plan have been addressed. The North Kingstown School Department must revise the October 18, 2011 Section 504 Plan as indicated in this decision and then implement the revised Plan for Student Doe. We are hopeful that after this extended process, the parties can move forward to work together to make Student Doe's remaining years at North Kingstown High School happy, productive and successful.

This decision is entered as both a final decision and an Interim Order in the event either or both of the parties appeal this decision.

For the Commissioner,

Kathleen S. Murray

Deborah A. Gist, Commissioner

December 15, 2011
Date