

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

S. DOE

v.

JOHNSTON SCHOOL DEPARTMENT

Decision

Held: Despite notation on student's schedule that his Section 504 plan was no longer in effect, School Department continued to implement the plan. Student's failing grades and resulting ineligibility to play basketball were not due to his disability.

Date: May 6, 2016

Introduction

This matter concerns a complaint that the Johnston School Department violated Section 504 of the Rehabilitation Act of 1973.¹

Background

Student Doe, a senior at Johnston High School, failed three classes for the second quarter of the 2015-16 school year. As a result, he became ineligible to play on the High School basketball team just prior to Senior Night and the basketball playoffs.² Having turned 18, Doe filed this complaint on his own behalf.

Because he has a medical condition which causes him to sleep late, Doe is often tardy and misses classes at the start of the school day.³ Since his sophomore year, Doe has had a Section 504 plan. The “Accommodations/Services” section of his plan dated February 5, 2015 states as follows: “Excused tardiness as needed due to medical condition. Extended time on all make up work (HW, Test, Quizzes).” [Complainant Exhibit 2].

A passing grade at Johnston High School is 65. In the first quarter of his Law and Society class, Doe received a 95 and 91 on tests and a zero on a chapter 2 essay he did not submit. The teacher, who testified that he does not like to fail students in the first quarter, gave Doe a grade of 65.⁴ In Women in Literature, Doe missed a test (and did not appear for three scheduled make-ups) and did poorly on other tests. His first-quarter grade was 33. Doe received a grade of 65 in Chemistry. He was tardy 34 times, with one absence, in the quarter.

Johnston High School reviews 504 plans on an annual basis. Near the end of the first quarter, Doe’s guidance counselor asked Doe’s mother for updated medical documentation and scheduled 504 plan review meetings. Doe’s mother, who was extremely busy with school and family matters, was unable to obtain the documentation. The meetings were postponed. Doe’s mother testified that she was told Doe’s 504 plan was expiring. The guidance counselor testified that Doe’s mother told him that Doe no longer needed a 504 plan. Doe’s plan was not reviewed and the guidance office wrote on Doe’s schedule that “Effective 11/2/15 this student’s 504 Plan

¹ R.I.G.L. 42-87-5(c) authorizes the Commissioner of Education to hear Section 504 complaints relating to elementary and secondary education. A hearing was held on March 4, 2016. An interim order in this matter was issued on March 8, 2016. The parties filed memoranda on March 15, 2016. Complainant’s initial filing included constitutional due process claims which, according to his post-hearing memorandum, have been withdrawn.

² Doe played basketball all four years at Johnston High School and was a starter on this year’s team.

³ Johnston High School has a rotating class schedule.

⁴ All grades were counted equally.

is no longer in effect.” [School Department Exhibit 9]. The record does not reveal what, if anything, was done with the notated schedule.

At the end of October 2015, the Law and Society teacher assigned another chapter 2 essay and gave a test on chapter 2. Because first-quarter grades needed to be submitted, the teacher informed the class that the essay and test would count for the second quarter. Doe, who did not submit the essay or take the test, thought they counted for the first quarter.⁵ Doe had additional missing work in the second quarter. His second-quarter progress report showed a grade of 10 in Law and Society, with the comments “More study needed, currently failing, major project missing.” [School Department Exhibit 5].⁶

Doe testified that “in early December, I approached my [Law and Society] teacher, asking him what I have to do to like pass for the semester . . . He told me that if I wanted to play basketball that I would have to make up two essays and make up a test. Within a week I handed him in the two essays he asked for, and I made up the test he asked for.” [Tr., p. 42]. The teacher recalled Doe asking if he could make up the most recent essays. The teacher said “fine.” [Tr., pp. 141-142]. Even though Doe did not follow the required protocol for the essays, the teacher gave him 60s “so it wouldn’t bury him for the year.” [Tr., p. 141]. Doe did not ask to make up the chapter 2 essay and test. The teacher testified that “On numerous occasions I told [Doe] his performance wasn’t good. He wasn’t handing materials in, papers. He wasn’t taking tests. I spoke to his guidance counselor numerous times to that effect.” [Tr., p. 131].⁷

Doe’s guidance counselor testified:

Several teachers that [Doe] had this year, including Chemistry, Law and Society and Women in Literature, all came down at various times at the beginning of the year about [Doe’s] performance and effort, missed classes, and what can be done, and wanted me to speak to him and did several times . . . I told [Doe] that he had to change, you know, obviously turn that around . . . He assured me whenever we talked that things were going to be okay . . . he understood what I was saying. He understood what he had to do . . . we’ve gone over weekly progress reports, that process. He started those. He did not complete those . . . We talked about using the agenda, writing down the assignments . . . see if he can stay after

⁵ Doe testified that he completed the chapter 2 essay on February 10, 2016 and left it on the teacher’s desk. The teacher was not present at the time and Doe did not mention the essay to him later. Other teachers use the same desk. The Law and Society teacher testified that he did not receive the chapter 2 essay.

⁶ The School Department also maintains an electronic student information system with a student portal that allows students and families to view assignments and grades at any time.

⁷ Based on Doe’s first two test scores, the teacher testified that “I thought he was going to do very well in the class. He’s a bright boy. Just has to use what he has.” [Tr., p. 143].

[school] at a particular time. Figure out what work is being missed, what he is missing, all that conversation happened . . .” [Tr., pp 182-183].

Doe’s second-quarter average in Law and Society was 39,⁸ but the teacher gave him a 55 “because 55 is considered a grade within which a student, if he buckles down, can pass for the year.” [Tr., p. 145]. Doe’s semester grade in Law and Society was 64.4.

At the hearing, Doe was asked “Did [the teacher] ever give you the opportunity to make up any other tests, assignments, essays?” He answered: “When I went to him.” And then, “Do you recall on how many occasions he allowed you to make up missed work?” Doe: “It was just that once.” [Tr., p. 59]. The Law and Society teacher was asked “To your knowledge, was [Doe’s] 504 plan ever terminated?” He replied, “I’m not sure. I wasn’t made aware of the fact if it was terminated or not.” He was then asked, “At any point in time did you disregard the accommodations set forth in [Doe’s] plan?” Teacher: “No, not at all.” [Tr., p. 130].

With two weeks left in the second quarter, Doe had a 12 average in Women in Literature. He testified that “It wasn’t missed work that I needed to complete. It was just me getting poor quiz grades.” [Tr., p. 53]. The teacher testified that Doe developed the habit of leaving class for extended periods of time to go to the bathroom. It was agreed that Doe would report to the library during the Women in Literature class so that he could complete other make-up work. He was exempted from the final exam, but given the late date, he was not allowed to drop the class. His final grade was 23. Doe’s second-quarter grades in Chemistry also declined and he finished the semester with a grade of 54. He was tardy 23 times, with one absence, in the second quarter.

The “Academic Eligibility” section of the Rhode Island Interscholastic League’s Rules and Regulations requires

a passing grade of 60% in the students program (credits) (sic). This is a minimum standard for academic eligibility. Schools may choose to initiate a higher standard for academic eligibility. In this instance, the higher standard (school policy) will be supported by the RIIL. [Article 3, Section 4].

On February 2, 2016, Doe and his parents were notified that he failed three classes in the second quarter. Doe lost his eligibility to finish the High School’s basketball season. Doe, who is passionate about basketball, was very upset. Meetings with School Department administrators did not resolve the situation. At the request of Doe’s counsel, the School Department provided a

⁸ In addition to the zeros for the chapter 2 essay and test, Doe received test grades of 35 and 80 and two essay grades of 60 for the second quarter.

copy of its current Section 504 notice of procedural safeguards. The notice does not identify the district's Section 504 coordinator by name and it refers persons with concerns about the district's compliance with Section 504 to the "Office of the Community Relations Liaison Officer" in Cranston, Rhode Island. [Complainant Exhibit 3].

Positions of the Parties

Complainant contends that the School Department violated Section 504 by terminating Doe's 504 plan as of November 2, 2015 and by failing to timely provide a valid notice of procedural safeguards. It also alleges that the School Department's failure to provide Doe with reasonable accommodations from November 2, 2015 to February 2, 2016 deprived him of a passing grade in Law and Society and ended his eligibility to play basketball and attend the senior dinner. For relief, Complainant requests a change in Doe's semester grade in Law and Society to 65, damages for emotional distress, a team dinner for Doe and the basketball team to replace the lost dinner, payment to participate in a men's basketball league for six months, a letter of apology, and attorney's fees and costs.

The School Department contends that Doe's grades were the result of his unwillingness to complete missed work, not the consequence of any alleged or perceived deficiency in the implementation of this 504 plan. In fact, Doe's teachers gave him grades he did not earn in an effort to prevent him from becoming discouraged and failing to complete graduation requirements. Doe was given notice of his poor grades, particularly by way of the second-quarter progress report. Doe's 504 plan was never actually terminated. His teachers complied with the plan. Accordingly, there was no need to provide the notice of procedural safeguards which, in any event, was provided in February 2015 and would have been provided again if Doe's mother had attended one of the scheduled review meetings.

Discussion

Section 504 prohibits discrimination based on disability in Rhode Island schools.⁹ It states that no otherwise qualified individual with a disability shall, solely by reason of her or his disability, be subjected to discrimination.¹⁰ Section 504 requires "evenhanded treatment" of

⁹ R.I.G.L. 42-87-2.

¹⁰ 29 U.S.C. 794(a).

qualified persons with disabilities¹¹ and it provides equal access to a free appropriate public education. Once a group of knowledgeable persons makes a determination as to the particular educational services that the student with a disability needs, the school district must ensure that the services are provided. The issue in this case is whether the Johnston School Department implemented Doe's Section 504 plan in accordance with required procedures.

As developed by Doe's parents and High School staff, Doe's 504 plan consists of two accommodations: (1) that his disability-related tardiness be excused and (2) that he be given extended time on all make-up work, including tests and homework. Doe's final arguments in this matter allege that he failed his Law and Society class in the second quarter because the School Department improperly terminated his 504 plan on November 2, 2015, denying him his extended-time accommodation and procedural safeguards.

On March 8, 2016, we issued an interim order in this case directing the School Department to immediately conduct a meeting to review Doe's Section 504 status and, if necessary, develop an appropriate Section 504 plan for him. We issued this order in light of Doe's first-quarter grades and attendance record. It also was the end of the first quarter when Doe's guidance counselor sought to arrange the annual review of Doe's 504 plan. That review should have taken place even if Doe's parents were unable to participate in the process. School districts, not families, are ultimately responsible for periodic reevaluations of students with 504 plans.¹² The School Department shifted the burden to Doe's mother, with the end result being the notation on Doe's schedule that "Effective 11/2/15 this student's 504 Plan is no longer in effect."

The record, however, does not show that Doe's 504 plan was no longer in effect. Doe's Law and Society teacher had no knowledge of the 504 plan being terminated. He continued to make the accommodations available. In fact, the evidence shows that in December 2015 Doe asked and the teacher allowed him to make up work. Although Doe's make-up grades were low, they were not reduced because the work was late. To the contrary, the teacher inflated Doe's Law and Society grades so as to not discourage him and to make it possible for him to pass if he applied himself. It is clear that Doe's teacher was not satisfied with Doe's work. It would have been a tall order for Doe to have obtained scores on the chapter two essay and test that would

¹¹ *Southeastern Community College v. Davis*, 442 U. S. 397, 410 (1979).

¹² 34 CFR 104.35(d).

have offset the points that the teacher added to his second-quarter grade.

Extended time to complete assignments does not mean unlimited time. While Doe's 504 plan is silent as to the duration of the extended time, Section 504 mandates "reasonable" accommodations. Feasibility is therefore implicit. Students, to the extent they are able, share in the responsibility to implement Section 504 accommodations. Communication and attentiveness are vital in this regard. Doe had constant access to his grades and assignments in Law and Society. He was reminded that he had work to make up. Doe's 504 plan does not mention any problems he may have in monitoring his tests and assignments and completing his make-up work other than needing extended time. We find that Doe did not prove that the School Department failed to implement his 504 plan or that he was discriminated against by reason of his disability. The extended-time accommodation set forth in Doe's 504 plan was made available to Doe in his Law and Society class.¹³

Section 504 requires school districts to maintain and give notice of a system of procedural safeguards "with respect to actions regarding the identification, evaluation or educational placement" of students.¹⁴ The procedural safeguards must include 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.

We find that the notation on Doe's schedule that his 504 plan was no longer effective as of November 2, 2015 constituted an "action" requiring the School Department to provide the notice of procedural safeguards. While the School Department rectified its "action" and made the procedural safeguards irrelevant by continuing to implement Doe's 504 plan, we have reviewed the notice it provided to Doe's counsel. Although the School Department may have identified its Section 504 coordinator in the non-discrimination notice required by 34 CFR 104.8, it should provide the district's Section 504 coordinator's name and contact information in its notice of procedural safeguards. The reference to the Office of the Community Relations Liaison Officer in Cranston, which appears to be connected with the Rhode Island Department of

¹³ Nor does the evidence show that Doe's Women in Literature teacher denied him his accommodations. Doe's initial filing in this matter included his failing grade in the Women in Literature class. Evidence about the class was presented at the hearing. To the extent Doe argues in his post-hearing memorandum that the School Department's refusal to let him drop the Women in Literature class in January 2016 was discriminatory, we disagree. As previously noted, the add-drop deadline had long passed.

¹⁴ 34 CFR 104.36.

Human Services, is misleading for elementary and secondary educational matters and should be deleted.¹⁵

Conclusion

Complainant did not prove that the School Department failed to implement Doe's Section 504 plan during the second quarter of the 2015-16 school year. Doe's failing grade in his Law and Society class and resulting ineligibility to play basketball was not due to his disability.

Paul E. Pontarelli
Hearing Officer

Approved:

Ken Wagner, Ph.D.
Commissioner of Education

Date: May 6, 2016

¹⁵The interim order we issued on March 8, 2016 was in response to the apparent confusion about Doe's Section 504 status for the rest of the school year. Doe is a senior and subject to graduation requirements. Irrespective of our conclusion that Doe's second-quarter grade in Law and Society was not the result of disability discrimination, Doe's three failing grades still must be addressed. Time is running short and Doe needs to move forward academically with the benefit of a review of his medical condition under Section 504.