



*This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.*

PENNSYLVANIA

## SPECIAL EDUCATION HEARING OFFICER

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### **INTERIM ORDER IN THE MATTER OF R. C. vs SCHOOL DISTRICT OF PHILADELPHIA ODR #1900/10-11-KE**

#### ISSUE

Is Student a student with a disability and if Student is a student with a disability is the School District of Philadelphia discriminating against Student by denying Student permission to participate in the graduation ceremony at High School to be held on June 15, 2011?

#### PROCEDURAL HISTORY

The Parent through counsel filed a hearing request on June 6, 2011. The parties through counsel agreed to certain conditions in order that a hearing could be held quickly and a decision rendered in a timely manner. The parties agreed to waive the 5-day disclosure, to limit their case presentations to 120 minutes each, and to allow the complaint to be bifurcated so that the graduation issue would be the only issue addressed at the first session.

The hearing was held in the afternoon and evening of June 9, 2011. Testimony was offered by Student's therapist, a District psychologist, a District administrator, the High School principal, and the school nurse coordinator. The parties introduced documents into evidence.

At the conclusion of the hearing I explained that the decision would be written without benefit of the transcript but using the documents and my written notes, and would be issued by midnight on Sunday June 12<sup>th</sup>.



## FACTUAL FINDINGS

1. Student is enrolled in and formerly attended High School.
2. Student has been on homebound instruction since the fall/winter of 11<sup>th</sup> grade, the 2009-2010 school year.
3. The District approved all the Physician's Requests for Homebound Instruction even though the nursing services coordinator found the documentation incomplete.
4. In March or April 2011 the District made an administrative decision to allow Student to finish out the year on homebound instruction rather than attempt to transition Student back to school for the last two months of senior year.
5. Student has been diagnosed with Major Depressive Disorder, Generalized Anxiety Disorder, and Post-Traumatic Stress Disorder. Student's current diagnoses are Adjustment Disorder with depressed mood and Panic Disorder. All diagnoses have been conferred by a psychiatrist.
6. A recent evaluation by the District pursuant to the current dispute found that on the BASC-II, a structured and normed behavioral inventory, Student self-reported "marked feelings of Anxiety, Somatization, and feelings of Depression".
7. The District psychologist concluded that Student's BASC-II results were consistent with Student's current mental health diagnoses.
8. The District psychologist concluded that Student does not have a disability in the context of IDEIA eligibility for special education.
9. The District psychologist did not consider whether Student was a student with a disability [a protected handicapped student] and in need of a 504 Service Plan.
10. Student has been and continues to be in weekly mental health treatment at a licensed mental health outpatient facility.
11. Student's therapist is qualified by education and experience to provide mental health treatment to adolescents.
12. The facility bills Community Behavioral Health [CBH] for Student's treatment.



13. CBH requires provider agencies to submit to annual audits of patient records including diagnosis, treatment plan and progress notes.
14. Student's chart could be selected for CBH audit at any time.
15. CBH has never denied payment for Student's outpatient treatment.
16. Student is prescribed psychotropic medications.
17. Student has fulfilled all requirements for graduation and has achieved commendable grades.
18. Student's picture is in the High School's 2011 yearbook.
19. Student's diploma will be issued from High School.
20. District staff made the determination that since Student was too ill to attend school Student is too ill to participate in the graduation ceremony at High School.
21. There is no written policy within the District that students who are on homebound instruction at the time of graduation cannot participate in the ceremony at their schools.
22. High School's graduation ceremony is held on a football field and there are typically several thousand people present.
23. District staff is concerned that Student's anxiety when in public places and Student's tendency to panic and agitation when anxious preclude Student from being able to safely participate in the graduation ceremony.
24. Student's therapist has been working with Student on preparing for participation in the graduation ceremony.
25. Student's therapist's professional opinion is that Student can safely participate in the graduation ceremony.
26. If Student is allowed to participate in the graduation ceremony the District will arrange accommodations to assist Student to safely take part in the ceremony.
27. Student's mother has been a disruptive influence at High School in the past.
28. Student was pleasant, cooperative and hard-working during Student's time at High School.
29. Student's mother reported that Student alleged that Student was stalked by an assistant principal at High School.



30. The allegations were investigated and were unfounded.
31. District staff made the decision that should Student return to school from homebound Student would be assigned to Student's neighborhood high school, rather than returning to High School because of the allegations against the assistant principal.
32. At no time did staff at High School recommend that Student be evaluated for eligibility for special education as a student with an emotional disturbance or other health impairment.
33. At no time did staff at High School recommend that Student be evaluated to determine whether Student has a disability and would be eligible for a Section 504 Accommodation Plan.

## DISCUSSION

A "Handicapped person" under Section 504 of the Rehabilitation Act is defined as any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. 34 C.F.R. §104.3(j).

In the instant matter Student has a mental impairment in the form of recognized psychiatric diagnoses according to the Diagnostic and Statistical Manual of the American Psychiatric Association – Fourth Edition [DSM-IV]. Although the District through some of its witnesses seemed to question the validity of Student's diagnoses, these diagnoses were conferred by psychiatrists working under the auspices of a licensed outpatient mental health center subject to clinical audit by Student's behavioral health insurer. Student's therapist who is a seasoned mental health professional confirmed that Student was/is so diagnosed and that Student is receiving both psychotherapy and pharmacotherapy to address Student's mental disorder[s]. Student's mental impairment substantially limits Student's engaging in attending school, a major life activity relative to Student's peer group. Student has a record of such impairment going back to January 2010. Student is regarded as having such an impairment not only by Student's prescribing psychiatrist[s] but also by Student's treating mental health clinician and furthermore, by repeatedly approving the Physician's Request for Homebound Instruction, the District has at least for practical purposes regarded Student as having such an impairment.

To establish a violation of §504 of the Rehabilitation Act of 1973, 29 U.S.C. §793 *et seq.* the Parent must demonstrate that (1) Student is disabled as defined by the Act; (2) Student is "otherwise qualified" to participate in school activities; (3) the school or the Board receives federal financial assistance; and (4) Student was excluded from participation in, denied the benefits of, or subject to discrimination at, the school. *Ridgewood Board of Education v. N.E.*



*172 F.3d 238, 253 (3d Cir. 1999); J.F. v. School District of Philadelphia, 2000 U.S. Dist. LEXIS 4434, No. 98-1793, (E.D.Pa. 2000); Nathanson v. Medical College of Pennsylvania, 926 F/2d 1368, 1380 (3d Cir. 1991; C.F.R. §104.4(a).*

I find that Student is disabled as defined by the Act, that Student is otherwise qualified to participate in school activities, that the District receives federal financial assistance and that Student is being excluded from participation in and denied the benefits of Student's graduation ceremony.

Although at the hearing the District based its current denial of Student's participation in graduation on the grounds that Student could not safely attend the ceremony because of Student's anxiety, panic and possible agitation in public places, I conclude that the District's original reason for withholding graduation was two-fold: 1) If Student is too ill to come to school then Student is too ill to come to graduation; and 2) Concern that the Parent's presence at the ceremony would be disruptive, given that she had been banned from the High School property.

The first line of reasoning is flawed, even to the point of being punitive, because it fails to take into account that supportive accommodations could be designed for the relatively brief span of time Student would be at the ceremony. There is no written policy within the District that students who are on homebound instruction at the time of graduation cannot participate in the ceremony at their schools. The nursing coordinator, asked about whether students who were on long-term homebound instruction would ever be allowed to participate in graduation, noted that this could be arranged for students who lacked the vitality or stamina to attend school, but that she was referring to those with "physical disabilities". It seems that, at least in the rather surprising opinion of the nursing services coordinator, mental illness is treated differently from physical illness. The District must keep in mind that Section 504 requires a recipient of federal funds to make "reasonable accommodation to the known physical *or mental* limitations of an otherwise qualified handicapped" person. [emphasis added] 34 C.F.R. §104.12 (a).

Given the testimony about the Parent's previous disruptive behavior at High School, I can be sympathetic to the District's fears that may have contributed to its position. Nevertheless, however unmodulated the Parent's behavior may have been, it would be patently unjust to deny Student, who has earned good grades in spite of Student's mental impairment, the opportunity to enjoy the public recognition of Student's accomplishments. Parent has shown the ability to be concerned for her child's welfare, for example ensuring that Student receives weekly mental health treatment, and engaging the services of counsel to protect Student's interests. I must therefore trust that Parent's presence at the ceremony will only add to her child's joy, and will not in any way detract from the child's experience and the experience of everyone present.

I conclude that the parent has met her burden of proof in this matter and thus prevails.



I find that Student is a student with a disability and is therefore a protected handicapped student, and that the District discriminated against Student by refusing to allow Student to attend and participate in Student's graduation ceremony.

### ORDER

It is therefore hereby ORDERED that Student shall be allowed to participate in Student's graduation ceremony at High School on June 15, 2011. The District shall devise a plan to accommodate Student's disability so that Student can comfortably participate in the ceremony.

*Linda M. Valentini, Psy.D., CHO*

Linda M. Valentini, Psy.D. CHO  
Pennsylvania Special Education Hearing Officer  
NAHO Certified Hearing Official

Cc: ODR

June 9, 2011