

Shipman & Goodwin Review

I understand that this appeal involves the application of II. Student Eligibility, Section B, in particular the following provision:

Hardship waiver requests will be considered for unforeseen, unavoidable or unusual circumstances that were beyond the control of the student and resulted in the student being unable to complete their academic requirements in four (4) years or eight (8) consecutive semesters. All such requests must be well documented.

As I understand the Eligibility Committee's ruling, there is no question that the unfortunate circumstances this student faced after suffering a heart attack at age 14 were "unforeseen, unavoidable or unusual circumstances that were beyond the control of the student." The question, therefore is how should the Committee apply the further condition, that the circumstances "resulted in the student being unable to complete their academic requirements in four (4) years or eight (8) consecutive semesters.

I understand that the Eligibility Committee based its decision on its view that, since the student is in good standing as a rising senior, he should be able to complete academic requirements and graduate this year. That view seems presumptuous and beyond the proper scope of the Eligibility Committee's consideration. Rather, those academic judgments should be made by school officials with due consideration for the student's physical and mental health. The eligibility rules clearly provide that a student who graduates from high school is no longer eligible. However, here the high school principal is requesting that the student be granted the hardship waiver, and unless and until the student graduates from high school (thereby ending his eligibility), I am not aware of an appropriate basis for the Eligibility Committee to deny the hardship waiver.

I use the word "presumptuous" advisedly, not to criticize the good faith of the members of the Eligibility Committee, but rather to underscore that the Committee's prediction that the student will be able to graduate at the end of this year appears to be based simply on the academic standing of the student. I am concerned there is no indication that the Committee considered the devastating psychological impact that a near-death experience can have on a 14-year-old boy, an impact that officials at South Windsor High School must consider. How best to respond to this student's trauma is best determined by the appropriate school officials responsible for the boy's education, and these officials support the hardship waiver request. They may permit the student to complete academic requirements over the next two years to aid in his psychological recovery from the profound challenges the student has faced. If they do, there is no logical basis for denying this hardship request. If they do not, the student will graduate and he will not be eligible in the following year in any event.

Given that there is no indication that the Committee considered the student's mental health and psychological recovery in denying this request (which decision was apparently made on the basis of a transcript review), I am concerned that this decision

exposes the CIAC to litigation and possibly even injunctive relief. The framework for a hardship waiver request is already in place, and granting the waiver to the student would not fundamentally change the nature of the CIAC eligibility rules. Consequently, I am concerned that the parents could successfully bring an ADA claim against the CIAC for failing to accommodate the student's need for an extended high school career for psychological reasons, if such extension is granted by the school officials who requested the hardship waiver on behalf of the student.

Given these concerns, I hope that there is a way for CIAC to revisit this decision before making the final decision on this request.

My colleagues and I will review the eligibility rules in this light more generally, and we may be suggesting changes. However, in the interest of time, I provide this response now. I hope that this information is helpful to you and the CIAC more generally. Please let me know if you would like to discuss this particular situation further.