



The problem in this case results from the fact that the Davies Career and Technical School felt itself forced by budget cuts and perceived overcrowding to reduce the number of students attending the school. It was also believed that reducing the number of students might make it easier for Davies to attract more high achieving students from the area which the school serves.

Essentially Davies moved from an open enrollment school to a school with a waiting list. Since fewer students are now accepted at Davies, Pawtucket has had to provide education to students who in past years would have become the responsibility of the Davies School. This is particularly distressing to Pawtucket since the state funds the cost of educating students at Davies. In essence Pawtucket is arguing in this case that Davies is a "Local Education Agency" (LEA) like any other school district and that Davies should, like any other school district, be required to accept all students living in its area of jurisdiction who wish to enroll. The other petitioner in this case is a representative special needs student who had been placed on a waiting for admission to the Davies School. She contends that no waiting list should be allowed at Davies and that even if a waiting list might be permissible, the way the list in question was compiled discriminated against special needs students.

It should be noted that the student who initiated this case is now attending the regular Davies School day program under the terms of an interim order issued by the Commissioner of education. Prior to the issuing of the order she was attending an afternoon program at Davies which had been created at the urging of the Department of Education, as a means of eliminating the waiting list.

I. Is Davies required to accept all students in its jurisdiction who apply for admission?

In answering this question we note at the outset that Rhode Island law guarantees that all students who wish to receive a vocational education are entitled to receive such an education (G.L. 15-45-1.1 (G) (1)). We also note that the regulations of the Board of Regents governing vocational education (authorized by G.L. 16-45-1) provide at section IV (G) "Admission into Vocational Technical Education" that: Every student who chooses vocational technical education and who is qualified for admission shall have access to such programs and shall be provided free attendance by the local school committee..." In this context "qualified" means that the student must have "either successfully completed the

grade prior to admission or (be) age appropriate". (Regs. IV(G)) Davies has not been exempted from the force of these regulations. (V. Management and Operation of State Operated Vocational-Technical School). These regulations, however, do not seem to mean that every student has the right to enroll in any program at Davies (See: H, "Area Center Vocational Program Assessment and Placement") but rather that any student within the area served by Davies would seem to have the right to enroll in some program at Davies. Davies is by statute, after all, a Local Education Agency.

In sum we would feel constrained to rule that Davies School is obligated to accept for admission all students from the area which it serves. The one reason we don't rule this way is the fact that the General Assembly has not appropriated sufficient funds to operate Davies at a level of capacity sufficient to admit every student who might wish to attend the school. The General Assembly is the school committee of the entire state (Rhode Island Constitution, Article XII) and its budget is in statutory form. (In re the Incurring of State Debts, 19 R.I. 610). We conclude that the only way to reconcile the statutory mandate to provide career and technical education to all students with the statutory mandate of less than full operational funding for Davies is to hold that to the extent that Davies is not adequately funded the school committees of the Davies' "catchment area" remain responsible for the students who, by legislative action, cannot be admitted to Davies. In reaching this conclusion we rely on the fact that the General Assembly has provided all other LEA's with access to a tax base (Exeter - West Greenwich Reg. School District v. Exeter - W. Greenwich Teacher Association 489 A.2d 1010) while it has not provided such access to the Davies School. Thus we hold that to the extent that the reduction in the number of students at Davies was the result of budget cuts and limited facilities this reduction was permissible.

#### The "Stratified Lottery"

The brief of the Davies School describes the genesis of the "Stratified Lottery" as follows:

Given the unavailability of space to place all applicants in its 9th grade Pre-Vocational Program, the Davies School attempted to achieve equitable participation in the program by proposing a stratified lottery admissions process for the 1992-1993 school year. The Stratified Lottery admitted regular education, special education, and limited english proficient students to the 9th grade at the Davies School in the same proportion that those categories of students bore to the overall school population of the sending district.

Davies attempts to defend this quota system by arguing that it was required to insure that special need students were equitably represented at Davies and to ensure that number of special education students would not increase to a level which might inhibit the attendance of regular education students.

We do not accept this argument. While we think that it was permissible for Davies to use a lottery to select students for admissions to its 9th grade class we do not believe that quotas for any particular category of special needs students can form part of such a lottery. It is entirely possible to believe that special needs students might well see the wisdom in acquiring a marketable skill and that they might reach this conclusion in greater numbers than regular education students. In any event we do not believe that a quota system, based upon disabilities, is a permissible method of insuring equity. Moreover the regulations of The Board of Regents do not allow for the use of such quotas. The only lottery allowed for in the regulations relates to the assignment of students to the various programs at Davies and has nothing to do with admission to the school itself.

It should also be noted that a special education student who participates with all other students in a single lottery would not be denied a free public education even if he or she does not win a slot at Davies. All that would happen would be that the students home school district would be obligated to design, in cooperation with the State Department of Education, a vocational program for the special education student concerned. The special education student would, in this respect, not be treated any differently than a regular education student who was not accepted at Davies. Both would still be assured of their state law right to receive vocational education by their home school district. Perhaps in some cases the home school district could provide tuition money to Davies to make-up for the lack of full funding by the Rhode Island General Assembly.

#### The Disenrollment of Students at Davies

The record in this case showed that Davies undertook a program to lower its student population by requiring students who were not making good use of their opportunity to attend the school to leave it. While this policy may not reflect much devotion to the concept that "All Children Can and Must Learn" we can find no law or regulation which would prevent Davies from "exiting " students who were not meeting academic standards at a time when the school had insufficient space for all students. The method chosen to determine which student should be "exited" involved the evaluation of students in five categories -- attendance, discipline, failure in academics, failure in shop theory and failure in the shop program. This method does not seem to be arbitrary or unreasonable. We therefore must sustain it at least in so far as it relates to regular education students.

With regard to special education students, however, we reach a different result. The "exiting " of a special education student is obviously a "change in placement" which could not be made except by following the applicable rules governing a special education "change in placement". Under these circumstances we must find that Davies erred to the extent that it did not follow special education regulations in making such a change in placement concerning special education students.

#### Conclusion

We find that the Legislative failure to appropriate sufficient funds to fully operate the Davies School forced the school to limit enrollment and employ a waiting list. We recognize the hardship this has caused to students and local school districts. We reluctantly sustain the use of a waiting list but we find that the way the waiting list was composed created an impermissible "quota system". We also find that Davies did not follow applicable special education regulations when it "exited" students who were not successful at Davies.

We order the following remedies:

1. If Davies continues to use an admission lottery it shall be uniform in application and not stratified. Davies shall contact the special needs students who were not admitted under the stratified program and allow them to enroll at Davies for the next academic year.
2. Davies shall follow special education procedures when "exiting" a special needs student. It shall contact any special needs student excluded from Davies who was not treated in accordance with applicable regulations and allow them to return to Davies. We do not prohibit Davies from removing these students from the school provided that such a removal is made in accordance with regulations and law.

  
Forrest L. Avila  
Hearing Officer

Approved:

  
Peter McWalters, Commissioner

April 8, 1993  
Date