STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

THE PARENTS OF JOHN A.O. DOE vs. SMITHFIELD SCHOOL COMMITTEE	DECISION

Held: Irregularities regarding student's placement and continued participation in math assistance program warrant removal of second quarter math grade from student's record; student's parents also entitled to review fourth quarter examination.

September 27, 1993

Introduction

This matter concerns an appeal by the parents of student Doe from the Smithfield School Committee's denial of their claim that the improper administration of a mathematics instructional support program adversely affected their son's performance in math class in the second quarter of the 1991-1992 school year, and the Committee's denial of their request that the student's second quarter math grade be changed and they be permitted to review a fourth quarter math test.[1]

For the reasons set forth below, the appeal is sustained in part and denied in part.

Background

Pursuant to a grant awarded by the Department of Education, the Smithfield School Department conducted a "limited pullout" math instructional support program during the 1991-1992 school year. The purpose of the program was to furnish small groups of at-risk students with supplementary instructional services provided by teacher aides. The section of the grant entitled "Selection of Most-In-Need Participants" states that

> certain grade 1-4 students from the four elementary schools will be selected based on the district test results of the MAT's and teacher recommendation. Students who score at or below the 49 percentile on the MAT shall be eligible for selection. (Appellants' Exhibit 2).[2]

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1 This appeal was assigned to the undersigned hearing officer and heard on September 25 and December 18, 1992. The record in this matter closed on January 11, 1993.

2 MAT stands for "Metropolitan Achievement Test."

The grant describes the "diagnostic procedures to be used" as

> teacher prepared test, teacher observation of written & oral responses in daily work, MAT for initial screening.

The grant further provides that students selected for the program were to receive supplementary services from teacher aides under the direction and supervision of professional staff. The aides involved in the program were not certified teaching personnel.

Student Doe, a fourth grade student, took the mathematics Achievement Test in September 1991. The test was administered by a teacher aide. In a letter dated October 3, 1991, program coordinator Maureen Riley advised student Doe's parents that

> the California Achievement Tests were recently administered to your child. On the basis of these tests, your child qualifies for additional Math assistence (sic). This assistence (sic) will be rendered beginning Tuesday October 8, 1991. Thank you for your attention in this matter.

Two other students in student Doe's class were selected for the math instructional support program. Two or three times a week,[3] the students left their regular mathematics class for approximately a half hour and received additional assistance in mathematics from the teacher aide in another part of the school building. The program commenced prior to the end of the first quarter.

Student Doe's regular classroom teacher testified that she received a notice from the principal of the school that "these 3 students would be going into a math program." (12/18/92

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3 The record does not clearly establish the exact number of pullout sessions per week.

transcript, p. 99). The teacher testified that "I would just forward the letter on to the child's home, and that is all I did. I was not the one who pulled the child out of the classroom." (Tr., p. 97). She stated that student Doe was assigned to the program "based on the results of that California Achievement Test." (Tr., p. 95).

The classroom teacher also testified that she introduced and taught new math concepts to the students. On those occasions when the pullout students were not in the classroom for the introduction and teaching of new concepts, the teacher would instruct the pullout students on the new concepts upon their return to the classroom and, if necessary, later in the day during time set aside for remedial work. The classroom teacher further testified that when the aide arrived for the pullout program students, she would explain to the aide what concept she was working on. The aide would review the students' homework lesson and drill and practice the particular concept. The aide never taught a concept. The regular teacher also testified that, upon the students' return to the classroom, she would review their homework and the work performed with the aide.

Student Doe received a B minus in mathematics for the first quarter. He received a series of failing grades on examinations in the second quarter. The failed tests were sent home to be signed by the student's parents.

On or about November 14, 1991, student Doe's mother attended parent-teacher conference night and asked the student's regular teacher to remove student Doe from the pullout program. The

teacher agreed to do so.

The second quarter ended in late January 1992. Student Doe received an F in mathematics for the second quarter.

In late February Appellants learned that their son was still participating in the pullout program. Student Doe's mother sent the teacher a note requesting that her son be removed from the program. Student Doe was taken out of the program the first week of March.

Student Doe received an A minus in mathematics for the third quarter. In May 1992 student Doe's mother met with the teacher and learned that her son had scored 50 on a fourth quarter examination. She asked to see the examination. The teacher referred her to the school principal, who refused to provide her with a copy of the examination because it was a standardized test. Student Doe received a B minus in mathematics for the fourth quarter.

Student Doe testified that the program aide "would teach me all sorts of different ways, and it didn't make sense to me, and . . . when I went back to [the teacher's] class . . . I would do it the wrong way . . ." (12/18/92 transcript, p. 60).

Positions of the Parties

Appellants allege that the pullout program was improperly administered and had a negative effect on student Doe's second quarter grade. Appellants contend that: (1) the teacher aide was not certified or qualified to administer the California Achievement Test; (2) they were not notified that their son was being removed from the regular classroom for the program; (3) the

school did not obtain their consent prior to removing the student from the classroom; (4) the aide engaged in instructional activity without possessing a teaching certificate; (5) the aide was not supervised by the classroom teacher; and (6) the school failed to comply with the grant in the areas of supervision, coordination, parental involvement, additional services, student-aide ratios, and proper facilities. Appellants assert that these improprieties adversely affected student Doe's performance and therefore require that his second quarter math grade be invalidated. Appellants further stress the fact that the student remained in the program until March 1992 in disregard of the November 1991 request that he be removed. Appellants also maintain that the School Committee has not provided a satisfactory reason for refusing to permit the parents to review a fourth-quarter examination taken by their child.

The School Committee contends that, applying prior decisions of the Commissioner, no basis exists to change student Doe's second-quarter math grade. It asserts that the California Achievement Test is a valid diagnostic tool for determining whether students need assistance in a subject area. It contends that the test was properly administered. The School Committee argues that the regular teacher exercised supervision over the aide and that the pullout program is a proper method to reinforce classroom instruction.

Counsel for the classroom teacher contends that the evidence fails to establish that the pullout program was the basis for the student's second-quarter failing grade. While counsel believes

that this proceeding raises questions regarding the proper responsibilities and supervision of teacher aides in general, he argues that the evidence in this record shows that the classroom teacher understood the aide to be performing noninstructional tasks. Counsel for the teacher also argues that the refusal to show a parent a standardized examination used on an annual basis is not arbitrary.

Discussion

We find that the record establishes certain irregularities in the math assistance program during the 1991-1992 school year which warrant the removal of student Doe's second quarter math grade from his record for that year.

First, the manner in which student Doe was selected for the program was not consistent with the provisions of the grant. The record shows that the student was placed in the program based on his score on the California Achievement Test. However, the grant requires that the teacher's observation of the student's daily work and the teacher's recommendation be included in the selection process. It is clear from the testimony of the classroom teacher that her input and recommendation were not solicited prior to student Doe being placed in the program.

Second, the school department failed to inform Appellants that the math assistance program was being conducted outside the classroom. Although the school district is not required to obtain Appellants' consent before placing their son in a pullout program, we find that Appellants were entitled to notice from school officials that the program involved the removal of their

son from the classroom. The need for such notice was heightened in this matter given the classroom teacher's lack of involvement in the selection process and the student's subsequent academic difficulties in math class.

Third, student Doe was not removed from the pullout program in November 1991 as requested by his mother. As a consequence, student Doe remained in the program for the entire second quarter. As previously noted, student Doe testified that he was confused by the aide's activities in the math program. It was the second quarter in which student Doe received the failing grade in mathematics.

There is no indication in the record that these irregularities were willful or the result of bad faith. To the contrary, we find that the math assistance program services were rendered in substantial compliance with the grant. We further find that the use of teacher aides in the assistance program was in conformity with the Department of Education's policies and guidelines regarding auxiliary school personnel.[4] While we feel that it is prudent for the California Achievement Test to be administered by certified personnel, it is not legally required. Instead, this is a matter within the school district's discretion. In the absence of any showing that

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4 The guidelines state that "the functions assigned to non-certified personnel such as aides and assistants must be performed under the supervision of, but not necessarily in the physical presence of, certified personnel," and that "instruction is the sole reponsibility of appropriately certified personnel." Permissible assignments for auxiliary personnel include "reinforcement of learning activities," which encompasses "taking charge of small groups for drilling purposes," "helping pupil to improve a skill by practice," and "helping to check homework."

the teacher aide acted improperly in administering the test, we do not find that the school department abused its discretion.

Even though the record fails to suggest any bad faith on the part of the school department, we find that the previously-enumerated irregularities in the math assistance program resulted in an unfair and somewhat irrational predicament for student Doe. Regardless of who was responsible for creating and/or failing to rectify this situation, we have no reason to discount student Doe's testimony that he was confused by the activities occurring in the math program. Furthermore, we cannot rule out that confusion as a contributing factor in student Doe's poor second quarter performance in math. We therefore find that the shortcomings regarding student Doe's placement and continued participation in the math assistance program warrant the removal of his second quarter math grade from his 1991-1992 academic record.[5]

We also find that student Doe's parents are entitled to review the fourth quarter exam in which he received a score of 50. This test score was used in the computation of student Doe's fourth quarter grade. Student Doe's parents therefore have a legitimate interest in reviewing their son's performance on the test. If the exam in question is a standardized test which is used on a recurring basis, the school district may take appropriate measures to ensure that the parents' review does not compromise the integrity of the exam.

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5 We also have serious doubts whether the math assistance program was supplementary in nature given the fact that it was conducted during the time that student Doe would otherwise have received mathematics instruction in the regular classroom. This issue was not raised at the hearing, and we therefore do not reach it.

Conclusion

We find merit in the appeal in that the existence of certain irregularities in the math instructional support services program regarding student Doe's placement and continued participation during the 1991-1992 school year warrant the removal of his second quarter math grade from his record. We also hold that student Doe's parents are entitled to review a fourth quarter math examination provided that the examination's confidentiality is maintained.

The appeal is denied in all other respects.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date: September 27, 1993