

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

**Student B. Doe**

**v.**

**East Providence School Committee**

**DECISION**

Held: The decision of the East Providence School Committee to eliminate its Talent Development Program at Martin Middle School does not violate state law or regulations if appropriate instructional services will nonetheless be provided to “gifted and talented” students. The matter is remanded to the school committee for its consideration of how required services to gifted and talented students will be provided in school year 2004-2005. Consistent with the request of the commissioner for a written report on the effects of program curtailments in other areas, the school committee must report to the commissioner by July 1, 2004 on how it will ensure continued compliance with Regents regulations on instruction of gifted and talented students.

DATE: May 7, 2004

## **Travel of the Case**

On February 10, 2004 Commissioner Peter McWalters received an appeal filed on behalf of Student B. Doe. The appeal, filed by this student's mother, raised the issue of the legality of the decision of the East Providence School Committee's decision to cut the Talent Development Program operating in the elementary and middle schools in the district effective in the 2004-2005 school year. The matter was assigned to a hearing officer on February 24, 2004 and was heard on March 25, 2004. The record in the case closed on April 14, 2004 upon receipt of the transcript. The decision has been expedited because of the need to resolve this issue prior to the transfer of teachers who presently staff the program to other positions during the job "pool" traditionally held in May of each year. Jurisdiction to hear the matter lies under R.I.G.L. 16-39-1 and 16-39-2.

### **Issue:**

Does the decision of the East Providence School Committee to eliminate the Talent Development Program as part of its budget reduction measures for fiscal year 2004 and 2005 violate state law or regulations?

### **Findings of Relevant Facts:**

- On or about January 27, 2004 the East Providence School Committee, by unanimous vote, voted to reaffirm its prior decision to eliminate the Talent Development Program at its elementary and middle schools. S.C.Ex.A.
- The Committee's decision was based on its efforts to cut costs of operation for fiscal years 2004 and 2005 in light of actual and anticipated budget deficits. S.C.Ex.A.
- Upon the addition of specific monies to the school budget by vote of the City Council on February 17, 2004, the Talent Development Program was reinstated until the end of this school year. S.C.Ex.A.<sup>1</sup>
- The Talent Development Program has operated on a school-wide enrichment model in East Providence in all of its elementary and two middle schools over the last several years. It is designed not only to meet the needs of gifted students, but also to provide enrichment opportunities to all students in a given school. Tr.pp.32-35; S.C.Ex.A.
- The seven teachers who work in the Talent Development Program have undergone intensive training at the University of Connecticut so that East Providence's program will be successful, flexible and benefit the entire student population. Tr. pp. 33-34.

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<sup>1</sup> the record does not indicate that the East Providence School Committee specifically voted on the restoration of the program until the end of the 2003-2004 school year.

- The district decided to expand its existing “gifted and talented” program several years ago, after studying the data on its effect on attendance, discipline and performance of students. Tr. pp. 31-32.
- The appellant is a seventh grader at Martin Middle School, and a participant in the Talent Development Program there. Letter of appeal dated February 7, 2004. Her mother testified that her daughter’s educational needs as an academically gifted student are currently met by through the Talent Development Program and will not be met in a regular classroom. The only advanced class that will be available to her at Martin next year will be in mathematics. Tr.p.11, 15,19-22.
- Martin Middle School is a Title I school, with a culturally diverse student population. The school has also been identified as “in need of improvement” because of its results on statewide assessments. Tr. pp.34-36.
- According to the latest testing results, Martin Middle School has met its “targets”. The Superintendent testified that in his opinion these performance results are directly attributable to those aspects of the Talent Development Program, e.g. the radio station, school newspaper and other activities, which make a “major difference” in the engagement of students at the school. The program has helped to overcome some challenges posed by the condition of the school building. Tr.pp.35-36.
- Superintendent Herbowy testified that the Talent Development Program at Martin Middle School has eliminated the need for homogeneity in program placements and enhanced the ability of the teachers to provide differentiated instruction. Tr. p.34.
- Although cutting the Talent Development Program would effectuate a savings of over \$400,000.00, the Superintendent did not recommend its elimination to the School Committee because he found it to be a core program that had proven to be extraordinarily valuable. It was presented to the School Committee as a potential budget item to be cut because there was a request to identify programs which were thought not to be required by state or federal law or regulations. Tr.pp.37-45.
- On or about December 8, 2003 Commissioner McWalters responded in writing to a “Request of the East Providence School Committee for Regulatory Waivers”, which apparently included a request to eliminate the Talent Development Program. S.C.Ex.A.<sup>2</sup> The response indicated that while no law or regulation required school committees to operate special programs for gifted and talented students, “regulations of the Board of Regents do require that regular classroom instruction be tailored to meet the individual needs of each student in the classroom”. S.C.Ex.A.<sup>3</sup> The letter went on to caution the School Committee to ensure that children who would no longer be served by a specific program for gifted children “are assigned class work to meet their particular needs”. S.C.Ex.A.

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<sup>2</sup> The exhibit does not include the letter of Chairman Barilla, but only Commissioner McWalter’s response.

<sup>3</sup> the discussion on this subject referenced a letter of the Commissioner as an attachment, but inadvertently such letter was not made part of the Commissioner’s response.

## **Positions of the Parties**

### **The Appellant**

The appellant argues that the Talent Development Program at Martin Middle School currently meets the needs of students identified as “gifted and talented”, including her daughter. The program has also been extremely successful in providing a comprehensive program of enrichment activities to the entire school population at Martin. She notes that the program was found to be so successful and effective that its mid-year elimination this year was cancelled and sufficient funds to restore the program through the end of this year were provided by a special vote of the East Providence City Council. With the prospect of its elimination for the 2004-2005 school year, the district, and Martin Middle School in particular, will lose what is recognized as a very successful instructional program. The appellant argues that her daughter’s educational needs, and those of other gifted students, will go unmet if this program is eliminated. Finally, even if an eleventh-hour decision to reinstate the program is made, since many of the teachers staffing the program will have already “bid into” open positions in the district, the expertise of these teachers, and the district’s investment in training these teachers will be lost.

### **East Providence School Committee**

The position of counsel for the School Committee is that the elimination of the Talent Development Program is an action within the discretion of the Committee. Faced with serious budget constraints, and a cumulative deficit in school spending, their intent is to cut all non-mandated programs from the East Providence School budget for school year 2004-2005. Given the December 8, 2003 response of the Commissioner to the “Request for Regulatory Waivers”, the Talent Development Program is not understood to be a required program. The Committee is aware of certain requirements set forth by Board of Regents Basic Education Program regulations with respect to instructional services for students who are gifted and talented, but these are thought to be “rather generic” in nature. Superintendent Herbowy testified as to various elements of the regular school program which he believes could be drawn upon to satisfy these requirements.

Superintendent Herbowy testified as to his recommendation that the Talent Development Program not be eliminated, especially given its success and its role at Martin, in the school’s attainment of its performance targets. Given the substantial investment the School Committee has made to date in the program, and in particular the intensive training provided to its staff, he testified it was regrettable that such a valuable core program was eliminated. He noted, however, that its elimination was consistent with the School Committee’s intent to cut out all programs not required by law, regulation, or otherwise, and that the cost savings of approximately \$492,000. significantly addressed the budgetary situation faced by the School Committee.

## DECISION

Student B. Doe's mother has not demonstrated that the elimination of the Talent Development Program at Martin Middle School will necessarily trigger the violation of state or federal education laws. There is currently no specific requirement for a "gifted and talented program" in any of our districts. Furthermore, although the testimony indicated that Martin Middle School has been identified as a "school in need of improvement" and is a Title I school, there is no indication on this record that as a result of this status, or any resulting intervention by state education officials, the talent development program has been identified as a required program. Even though the Superintendent testified as to his perception of its effectiveness as a strategy enabling the school to meet its performance targets, there is no evidence in this record that this perception is shared by those at the state level who are participating in "Progressive Support and Intervention"<sup>4</sup> at Martin Middle School. There is no evidence that plans submitted in the course of this process by East Providence have somehow bound them to this instructional program.

There is a recognition by the parties, however, that although no formal program is required, the Basic Education Program, regulations of the Board of Regents last amended in 1991 (the "BEP"), requires that instruction that meets the needs of gifted and talented students<sup>5</sup> be provided in Rhode Island public schools. This requirement is found in each of the required subjects of the BEP. The Regents' authority to establish a "basis education program" is set forth in R.I.G.L. 16-7-24.

In his response to program curtailments outlined this year by the East Providence School Committee, the Commissioner requested that the Committee submit a written report detailing how the district would continue to meet its obligations to LEP students, students seeking vocational education and special education students. Budget reductions had been detailed in each of these areas, as well as others. See Commissioner McWalter's letter of December 8, 2003 (S.C.Ex.A). Yet, no information on how the district plans to meet the instructional needs of gifted and talented and students was requested at that time. Unlike other categories of recognized "special populations" in East Providence, gifted and talented students are confronting the total elimination of the formal program which presently provides them with required instructional services. Information contained in the record before us in this matter indicates that:

- there is no specific plan on how the needs of gifted and talented students will be met in the 2004-2005 school year.
- Also, the School Committee did not have information on how much it will cost to meet the instructional needs of these students when it voted to eliminate its formal Talent Development Program.

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<sup>4</sup> a protocol developed under the No Child Left Behind Act, and R.I.G.L. 16-7.1-5 "Intervention and Support for Failing Schools".

<sup>5</sup> as well as limited English proficient, special education, and compensatory education students.

A fact of particular concern in this record, Student B. Doe's mother has no information on how the classes at Martin Middle School will be modified to meet her daughter's needs, or if her needs will be met by a supplemental, if less structured, school program. It is recognized that the School Committee has discretion as to how it will meet the needs of Student B. Doe, and others like her, but there is no information in this record that the Committee has determined how it will do so. Until the alternative to a formal program is examined, the cost of providing these services is unknown. It may be less costly to provide the required services without a formal program like the Talent Development Program, but it is evident on this record that the School Committee made its decision without the benefit of this information.

For these reasons, the matter is remanded to the East Providence School Committee for its determination of how it will meet the needs of gifted and talented students in the East Providence school district. Consistent with the approach taken in the Commissioner's December 8, 2003 letter to Chairman Peter G. Barilla, a report setting forth the details as to how these services will be provided must be filed with Commissioner Peter McWalters on or before July 1, 2004. A copy should be provided to parents of students currently served by the Talent Development Program, including the Appellant.

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Kathleen S. Murray  
Hearing Officer

APPROVED:

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Peter McWalters, Commissioner

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May 7, 2004  
Date