

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

STUDENT M. DOE

v.

**CUMBERLAND
SCHOOL COMMITTEE**

**INTERIM ORDER
DECISION**

Held: The petitioning parent objects to her daughter's academic placement and disagrees with the school district's policy of tracking students. While the Board of Regents has indicated a preference against tracking, it has not yet forbidden tracking as an academic policy. The record in this case has indicated that the decision regarding this student's placement was in essence based upon professional judgment. We can find nothing in the record which would justify overturning the local decision that has been made in this matter, and so we must remit the petitioner to the other remedies which are available to her. The petition for an interim order is therefore denied and dismissed.

DATE: October 21, 2005

Travel of the Case

This is an interim order hearing. Jurisdiction is present under R.I.G.L. 16-39-3.2. We note however that no other hearing is pending elsewhere concerning this student. The petitioner suggests that she may file for a special education hearing but no such filing has yet been made.

Positions of the Parties

The Parent

The petitioning parent contends that Cumberland is acting impermissibly by tracking students into different academic classes based upon perceived academic readiness of the individual student being placed. She also contends that even if tracking is an allowable policy, her daughter should not have been placed in the fundamental group.

The School Committee

The school committee submits that while the Board of Regents has indicated a preference against tracking, it has not yet forbidden tracking as an academic policy. The school committee also submits that the student's placement in the fundamental group was based upon considered evaluations and professional judgment. Professional judgment should not be quickly overturned by the Commissioner.

Findings of Fact

1. The Board of Regents has strongly indicated in various documents its opinion that school districts would be well advised to move away from the practice of grouping students into "tracks." It is probable, as a reasonable approximation, that three quarters of Rhode Island school districts have moved away from tracking. Still, the Board of Regents has not yet prohibited tracking as a matter of educational policy, although it may do so in the future. (Testimony of Mr. Kenneth Fish)
2. Cumberland Middle School has three tracks: Honors, Average, and Fundamental.
3. The petitioner's child has been placed in the fundamental track. Both the parent and the student testified that this placement caused the student concerned a good measure of distress.

4. This placement is based primarily upon the professional judgment of a student's elementary school teacher. While this is so, this judgment is subject to further review at the middle school level, and some students are, in fact, moved in the course of a year from on track to another. (Testimony of Cumberland Middle School principal.)

Conclusions of Law

In essence the petitioner wishes us to find either that student tracking is contrary to Board of Regents policy or, in the alternative, that this student was incorrectly placed in the in the fundamental track. For the reasons that follow we find that we cannot accept either of these arguments.

In academic matters the Commissioner accords wide latitude to local decisions. In most cases review of a local academic policy is limited to determining whether the academic decision is arbitrary, incorrectly computed, made in bad faith or whether it is contrary to statewide academic policy.¹ However, it is equally clear that the Regents have consistently held that every public school student deserves and must have equal access to a district's general curriculum. In light of this, while the Board of Regents has indicated its preference that school districts move away from student tracking we cannot say that the Board of Regents has forbidden this practice. We do not believe that we, particularly in the context of an interim order decision, should preempt Board of Regents policy deliberations by finding today that tracking is not allowable in Rhode Island. We therefore cannot find that Cumberland has done anything yet impermissible by using a tracking system. However, there is insufficient evidence before this hearing in the context of an interim order request to conclude whether this student has been denied access to the district's general curriculum by the application of the Cumberland policy to her.

We recognize that the petitioner also contends that even if tracking is allowed, her daughter should not have been placed in the fundamental track. The problem here is that the testimony from the principal indicated that the placement decision, while informed by test results, was in essence based upon the professional judgment of the student's elementary school teacher. This judgment was subject to further review at the middle school level. The conclusion was that the student was appropriately placed in the fundamental track. We find nothing in the record that compels us to overturn this local academic decision.

¹ *Feit vs. Providence School Board*, Commissioner of Education, February 25, 1992. *Jane B.B. Doe v. Warwick School Committee*, Commissioner of Education, June 10, 1998.

Discussion

Since we can find nothing in the record which would justify overturning the local decision that has been made in this matter we must remit the petitioner to the other remedies which are available to her.

Conclusion

The petition for an interim order is denied and dismissed.

APPROVED:

Forrest L. Avila, Hearing Officer

Peter McWalters, Commissioner

October 21, 2005
Date