

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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F DOE

V.

TIVERTON SCHOOL COMMITTEE  
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**Decision**

Held: Decision to retain student in first  
grade was reasonable.

Date: December 15, 2008

## **Introduction**

This is an appeal of the decision of the Tiverton School Department to retain student Doe in first grade.<sup>1</sup>

## **Background**

Student Doe was born in December 2000. He attended a half-day kindergarten program in the Tiverton school system during the 2006-07 school year. Despite the school's recommendation that Doe repeat kindergarten, Doe moved to the first grade for the 2007-08 school year.

Early in the school year, Doe's first-grade teacher had concerns about Doe's reading, writing and math skills. An intervention plan was developed as part of Doe's personal literacy plan. In March 2008, Doe received neurodevelopmental testing from his doctor. The testing revealed evidence of visual perceptual motor processing weaknesses and delayed reading skills. An occupational-therapy evaluation was requested. In May 2008, Doe was referred for a special-education evaluation.<sup>2</sup>

In a letter dated May 5, 2008, the school principal informed Doe's parents that, based on their son's academic performance, the instructional team felt that Doe did not meet the minimum requirements for promotion and therefore would not be promoted to the second grade.<sup>3</sup> In a conference the following day, Doe's parents agreed with the principal's decision.

In a May 29, 2008 letter, Doe's developmental pediatrician noted that Doe's teacher had found Doe's reading and language arts skills to be delayed by approximately one year, that Doe was receiving remedial reading assistance twice a week, and that special-education testing was pending. Upon reevaluation of Doe, the doctor found that

[Doe] continued to demonstrate delayed reading skills, manifesting problems with both decoding and sight vocabulary. [Doe] is subsequently felt to meet criteria for the diagnosis of a learning disability.

It is my impression that [Doe] will require fairly intensive special educational assistance in the areas of reading and language arts. There

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<sup>1</sup> The Commissioner of Education designated the undersigned hearing officer to hear and decide the appeal. The appeal is dated September 26, 2008. Hearings were held on October 22 and November 24, 2008.

<sup>2</sup> The occupational-therapy evaluation apparently was not arranged until it was included in the array of testing for the special-education evaluation.

<sup>3</sup> The district's elementary school retention policy requires the school principal to make a retention decision by May 15th. The policy outlines a process to be followed and factors to be considered in this decision (including "age & physical size"), but states that "the overarching concern shall be the building principal's assessment of whether the student will be able to meet the performance requirements and academic standards of the next grade." [School Committee Exhibit 11].

has been some discussion that [Doe] might repeat the first grade. The value of having a child with a learning disability repeat a grade is unclear, and given the difference in his age, could result in adverse psychological and social consequences. It is my recommendation that [Doe] move on to the second grade with intensive academic support. [Petitioner's Exhibit 4].

Doe's end-of-the-year testing showed that his reading ability had advanced only one level from the beginning level with which he started the year.<sup>4</sup> Doe's math grades were substantially below standard.

Doe was found to be eligible for special-education services. The individualized education program (IEP) developed for him included daily supplemental reading instruction and conferences in the regular classroom as well as supplemental writing instruction in the regular classroom three days a week.

Doe's parents met with the superintendent at the opening of the school year to discuss Doe's grade placement. The superintendent stated that Doe needed to remain in the first grade for the first 10 weeks of the 2008-09 school year, at which time his progress would be reviewed to determine if a second-grade placement was warranted. In a September 10, 2008 letter to the superintendent, Doe's parents again asked that Doe be placed in the second grade. The letter stated that "[i]t is critical that [Doe] wants to be at school and enjoy learning. This is not happening while he is with others who are 2 years younger than him and reviewing kindergarten level work." [School Committee Exhibit 13]. On November 11, 2008, the superintendent notified Doe's parents that Doe had not made significant progress to warrant his advancement to second grade. The superintendent noted that Doe is reading at a 1.4 level at the end of the first quarter,<sup>5</sup> that Doe's achieving the standard in his first-grade classes does not indicate that he has mastered grade 2 curriculum, and that his regular and special-education teachers agree that the first-grade work Doe is receiving is appropriate for his ability.<sup>6</sup>

Doe's parents testified that they are tutoring Doe and that a private reading specialist is working with him. They testified that, for the first time, their son does not want to go to school. They believe that Doe is just going through the motions in class and they see signs of developing

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<sup>4</sup> Doe's classmates were 7 to 12 reading levels beyond Doe.

<sup>5</sup> I.e., grade one plus 4 months.

<sup>6</sup> The superintendent provided the first-quarter reading levels for all first and second grade students (all but Doe's names redacted). More than half of the first-grade students were in the 1.2 to 1.4 range. Of the 25 second-grade students, 5 had reading levels below 2.0, one of which was 1.2. According to the testimony at the hearing, this second-grade student has had an IEP for an extended period, is comfortable with his or her support services and strategies, and for these reasons is expected to make gains in reading. This student also does not have as many overall academic weaknesses as Doe.

behavioral problems. Due to their son's age and size, they are concerned about the social consequences of Doe's retention.

School staff testified that the appropriate intervention for Doe's low performance in reading, writing and math was retention because his familiarity with first-grade material will boost his confidence, help him adjust to team teaching and small-group classwork, and improve his ability to master the first-grade skills that he did not learn last year. Doe experienced an adjustment period this year, but it has passed and he is fitting in socially without any psychological concerns. He is responding to first-grade learning strategies and a move to second grade at this time would be harmful from a continuity-of-curriculum perspective.

### **Positions of the Parties**

Petitioner contends that Doe must be viewed as a whole person. While academics are important, his social needs cannot be overlooked. He currently is placed with children who are two years younger than he, and he is being exposed to behaviors that are not appropriate for his age. Doe needs to be given the opportunity to pass second grade with the extra help that he requires, even if it means that he will struggle academically.

The School Committee contends that the testing and professional judgments in this case demonstrate that Doe needs to repeat the first grade, and that a move to the second grade mid-year will set Doe back academically.

### **Discussion**

A student's advancement from one grade to another is based primarily on academic performance. Because an academic judgment is involved, it is within the sound discretion of educators to determine whether a child will be promoted to the next grade or retained at the current grade. This discretion cannot be exercised in an arbitrary, capricious or unreasonable manner. Decisions to deny grade promotion must be academically based.

We find that the decision to retain student Doe in the first grade is sound. It is based on academic considerations which show Doe to have serious weaknesses in reading, writing and mathematics. We find the evidence concerning Doe's reading skills to be particularly compelling given the fundamental importance of reading in a child's education. The determination to retain Doe in the first grade while introducing the IEP teaching strategies is not unreasonable in light of Doe's academic record.

We do not find, based on the evidence in the record, that Doe is unable to cope psychologically or socially with his retention. His teachers testified that, after an adjustment period, he has settled in to his current setting. We are confident that Doe's teachers are aware of the emotional difficulties that invariably accompany grade retention and are being vigilant to respond appropriately to any issues that Doe may experience.

This is not to say, however, that the concerns of Doe's parents are unfounded or trivial. Doe is about to reach his 8th birthday. He is significantly older than his classmates. For this reason we urge school officials to work with Doe's parents to identify and capitalize on any opportunity to accelerate and expand Doe's academic progress, including summer school, so that he may possibly reunite with last year's classmates.

**Conclusion**

The decision to retain student Doe in first grade is reasonable. The appeal is denied.

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Paul E. Pontarelli  
Hearing Officer

Approved:

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Peter McWalters  
Commissioner of Education

Date: December 15, 2008