

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

BEACON CHARTER HIGH SCHOOL FOR THE ARTS

v.

RHODE ISLAND DEPARTMENT OF EDUCATION

DECISION

Held: The Petitioner has not established that RIDE's identification of Beacon as a school in need of improvement under 20 USCA 6316 (b)(1) was in error for statistical or other substantive reasons. The record does indicate, however, that the school's failure to make adequate yearly progress by either attaining the statewide graduation rate target for the class of 2009 cohort or by attaining the graduation rate improvement target for that year was, in part, the result of (1) the small size of the class entering in the fall of 2005; (2) Beacon's ongoing focus on enrolling students who are educationally disadvantaged and "at risk"; and (3) its efforts to retain students until they meet Beacon's rigorous graduation standards in order to graduate.

DATE: August 11, 2011

Travel of the Case

Counsel for Beacon Charter High School for the Arts (hereinafter “Beacon”) filed an appeal with Commissioner Deborah A. Gist on June 7, 2010. In this request for hearing, Beacon challenges RIDE’s calculation of Beacon’s graduation rate and its determination that the school failed to make adequate yearly progress during the 2009-2010 school year. Beacon’s principal, Dr. Robert Pilkington, had previously raised certain issues with respect to the calculation of Beacon’s graduation rate with Mary Ann Snider, RIDE’s Chief of Educator Excellence & Instructional Effectiveness in an appeal he filed with Ms. Snider on May 4, 2010. Ms. Snider reviewed Dr. Pilkington’s concerns about RIDE’s method of calculating Beacon’s graduation rate and his complaint that during the summer of 2005 RIDE had acted in a manner that actively discouraged potential Beacon students from enrolling in the school, thereby severely limited Beacon’s ability to attract students for the class entering that fall. After Ms. Snider met with Dr. Pilkington and other members of the staff at Beacon, she determined in a letter to Dr. Pilkington dated May 20, 2010 that :

. . . federal guidelines under which we determine Adequate Yearly Progress (AYP) for schools and districts do not give the Commissioner of Education discretionary authority to waive or change the classification for your school. I am therefore unable to approve any modifications in the process which resulted in your school classification. Since you have not made AYP for two consecutive years, your school will be operating under NCLB sanctions or intervention of “choice” in the 2010-2011 school year.

On the basis of Ms. Snider’s determination, Beacon submitted this appeal to the Commissioner.

Issues

- Did RIDE correctly calculate Beacon’s graduation rate by using a four-year adjusted cohort graduation rate?
- Did RIDE correctly determine that Beacon failed to make adequate yearly progress because it did not meet the statewide graduation rate target or attain its graduation rate improvement target for the class of 2009?
- Does the fact that Beacon is a charter school that focuses on “at risk” students require that RIDE apply different rules for determining whether the school is making adequate yearly progress or in applying federal law with respect to consequences for “failure” to do so?

Findings of Relevant Facts:¹

- Beacon is a small charter high school in Woonsocket, Rhode Island. For the cohort of the class of 2009, Beacon had a graduation rate of 57.1%. It failed to meet both the statewide graduation rate target of 73.4% and its improvement target of 63%. If Beacon had met either of these targets, it would have made Adequate Yearly Progress for 2009-2010.
- The year 2009-2010 was the second consecutive year that Beacon failed to make Adequate Yearly Progress by attaining targets set under Rhode Island's No Child Left Behind (NCLB) Accountability plan.
- Of the incoming freshmen class in the fall of 2005, only fourteen of the twenty students were "first time" freshmen and eleven of those fourteen students graduated within four years. Almost one-half of the twenty-one students who transferred to Beacon from other schools after the fall of 2005 (who were attributed to the cohort of the class of 2009) arrived at Beacon a grade behind their cohort peers in terms of the number of credits they had earned toward graduation.

Positions of the Parties:

Beacon Charter High School

Beacon's appeal focuses on the deficiencies of a "one size fits all" formula for determining whether schools in Rhode Island are making Adequate Yearly Progress (AYP) under the so-called "No Child Left Behind Act" 20 USCA 6301 et seq. Beacon has unique characteristics as a small charter school for the arts operating in an urban setting. Pursuant to its mission, it actively recruits students who have encountered difficulties in traditional high schools. Beacon experienced an extraordinary delay in recruiting students to its freshman class in the fall of 2005² when issues related to the school's management affected the status of its charter. It was only when the school's charter was ultimately reauthorized by the Board of Regents in late August that recruitment activities got underway. The entering class was unusually small and it was comprised of a number of students who were actually repeating ninth grade. The composition of this class was not unusual because Beacon has been unwavering in its commitment to seeking out students who have fallen behind, keeping them in school and ensuring that they ultimately meet Beacon's rigorous graduation standards. Based upon all of the foregoing factors, however, the graduation rate calculated for the

¹ These facts were not in dispute at the time of this hearing.

² Beacon argues that because of "operational difficulties" RIDE "informed" Beacon in early July of 2005 that it would no longer be operating. (Pet.Ex.4) There is also evidence in the record that the Board of Trustees of Beacon voted on February 9, 2005 to surrender its charter at the end of the school year if certain operating conditions were not met. (Resp.Ex.A). Whatever the cause of the recruitment delay, it is ultimately not found to be a fact relevant to this case.

school is not an accurate indicator of its performance and, accordingly, Beacon is undeserving of the label “in need of improvement.”

Beacon’s attorney argues that it is unfair of RIDE to conduct “rote” applications of the AYP formula. Equally unfair is the characterization of Beacon as a school “in need of improvement” when in fact it has fulfilled state law mandates, including: (1) that it reach out to the educationally disadvantaged and at-risk students; (2) that it has worked strategically and successfully with these students to keep them enrolled in school; and (3) that it has seen them through to graduation, however long that may take. It is irrational that in the accountability system being utilized, Beacon’s successes are counted as failures. The specifics of these arguments are outlined in the written memorandum submitted by Beacon’s counsel.

Beacon’s cohort of students in the class of 2009 numbered thirty-five. Of those thirty-five, twenty were regarded as having graduated within four years for a graduation rate of 57.14 per cent. The RIDE-established graduation rate “target” for this cohort was 73.4 percent. Under RIDE’s method of calculation, students who began their studies elsewhere in the fall of 2005 are attributed to Beacon, whether they were there for four years or four days. Several students who repeated elsewhere or who failed ninth grade elsewhere and transferred to Beacon-and who graduated in four years at Beacon- are counted against Beacon as “failures.” The school’s position is that when Beacon “stabilizes” students and works very hard to bring them to the point where they fulfill graduation requirements, this should be regarded as success, not failure.

In reaching out to students who have encountered difficulty in their sending districts, Beacon is fulfilling the statutory mandate applicable to charter schools in Rhode Island. Yet, RIDE’s calculation ignores this mandate and counts Beacon’s successes with this population as failures. There should be (and Beacon argues, there in fact could be under the NCLB) special rules applicable to determining the performance of charter schools that fulfill the state-law mandate of serving “at risk” students. RIDE has completely failed to take advantage of a provision of the NCLB that would permit a separate assessment mechanism to be used for schools like Beacon. This separate assessment method is permitted under 34 CFR §200.4, entitled the “State law exception.” RIDE officials testified at the hearing that they are unaware of the availability of this exception and its potential use for a different measurement of Beacon’s progress. Beacon submits that a different measurement would be a more accurate indicator of its performance.

There are other indications of the unfairness in applying a four-year adjusted cohort graduation rate to schools like Beacon. Correspondence of Commissioner Deborah A. Gist dated February 11, 2010³ and July 27, 2010⁴ to the Director of the Student Achievement and

³ Petitioner’s Ex. 1

⁴ Petitioner’s Ex. 2

School Accountability Programs of the U.S. Department of Education sets forth Commissioner Gist's position that:

Most students are ready for college after the traditional four years of high school. Some students, however, need more than four years of high school to be ready for success. Many of our schools have put in place rigorous intervention and retention programs to keep these students in school until they have demonstrated proficiency and are ready for entry into college or postsecondary education and training programs.

The Commissioner goes on to indicate, in her request for an extended-year graduation rate⁵ for Rhode Island's schools, that using the "5-year graduation rate would lead us to a more fair way to assess the progress of our high schools..." The Commissioner's (and RIDE's) position on this was confirmed by RIDE staff who testified at the hearing. Nonetheless, a different indicator was used in determining whether Beacon made AYP in 2009-2010. If the consensus is that use of a five-year graduation rate would be "more fair," Beacon submits, then RIDE's use of the four-year graduation rate for the class of 2009 to characterize the school as being "in need of improvement" is definitely unfair, by RIDE's own admission.

Fundamental fairness requires that circumstances experienced by Beacon in the Spring and Summer of 2005 be taken into account in determining whether Beacon is properly characterized as a school in need of improvement based on the graduation rate for the class of 2009. Beacon had a diminished recruitment period for the class entering in the fall of 2005, a circumstance in which RIDE was directly involved. For a period of time in 2005, Beacon was under a RIDE directive to cease all operations and plan for the orderly transition of its students. Beacon's charter was eventually reauthorized in late August and recruitment efforts were then undertaken; however, the short recruitment period for this entering class produced an unusually small class size of about twenty students. Additionally, of these twenty students, only fourteen were first-time freshmen. RIDE officials refuse to acknowledge the long-term effect this limited recruitment period had on the size and composition of the class of 2009 and, predictably, its adverse effect on the school's graduation rate.

In his memorandum counsel for Beacon summarizes the detailed testimony of the principal regarding Beacon's efforts to "stabilize" students who are not counted as "successes" only because they do not graduate within four years of their initial high school

⁵ With the regulatory amendments made in 2008, in addition to calculating a four-year adjusted cohort graduation rate, a State may propose to the Secretary for approval an "extended-year adjusted cohort graduation rate". On September 3, 2010 RIDE received approval from the Secretary to combine a four and five-year adjusted cohort graduation rate for AYP determinations based on 2010 assessment results, weighting the four-year rate at 60 percent and the five-year rate at 40 percent. Resp. Ex. C.

attendance. Numerous examples are provided of students who were accepted at Beacon after experiencing academic failure in other school settings. The principal testified that older “under-credited” students were accepted at Beacon and were included in the cohort of non-graduates of the Class of 2009. Other schools would have counseled them away from secondary school attendance because they would “count” against the school in the calculation of its graduation rate, but Beacon did not. Because of the composition of the cohort of the class of 2009, it was actually mathematically impossible for Beacon to meet the “target” four-year graduation rate that was set in 2008. Only fourteen of the twenty freshmen were first-time ninth graders. Other students who later transferred into this cohort lacked sufficient credits at the time of their transfer for graduation in 2009. All of these circumstances combine to make it abundantly clear that Beacon’s four-year adjusted cohort graduation rate is not an accurate indicator of its performance. The school’s classification under the NCLB is thus inappropriate and unfair.

As a remedy, Beacon requests that its true graduation rate be calculated at seventy-eight percent. Of the twenty freshmen who joined the Class of 2009 in the fall of 2005 the number of true freshmen was 14 and of those 14, eleven graduated within four years, i.e. 78%. In addition, Beacon requests that RIDE be directed to take advantage of the so-called state law exception so that an alternate method of assessing success at charter schools can be established. In light of RIDE’s recognition that a five-year rate is fairer and a more accurate method for assessing success, Beacon requests that RIDE apply a five-year rate to those schools in Rhode Island that are subject to the statutory mandate to reach out to educationally disadvantaged and at-risk students.

Rhode Island Department of Education

In its reply memorandum, RIDE essentially argues that it has followed federal law and regulations to the letter in implementing Rhode Island’s accountability system under NCLB and in identifying Beacon for school improvement as required under 20 USC §6316 (b) (1). Counsel for RIDE quotes extensively from applicable language of the No Child Left Behind Act and implementing regulations. The Act requires that each state’s plan demonstrate what constitutes “adequate yearly progress” of the state, and of all public elementary schools, secondary schools, and local educational agencies in the state. Adequate yearly progress must be defined by the state in a manner that includes graduation rates for public secondary school students. 34 CFR § 200.19 further requires calculation of a graduation rate for all public high schools in the state, and specifically requires the calculation of a “four-year adjusted cohort graduation rate.” The term “adjusted cohort” is defined⁶ as “the students who enter grade 9 (or the earliest high school grade) and any students who transfer into the cohort in grades 9 through 12 minus any students removed from the cohort.” Section 200.19(b)(3)(i) further requires that states set:

⁶ 34 CFR 200.19 (b)(1)(ii)

- (A) A single graduation rate goal that represents the rate the State expects all high schools in the State to meet; and
- (B) Annual graduation rate targets that reflect continuous and substantial improvement from the prior year toward meeting or exceeding the graduation rate goal.

RIDE notes that public high schools can make AYP by meeting either the graduation rate goal set by the State or by demonstrating continuous and substantial improvement from the prior year. The “improvement” route to making AYP does take into account Beacon’s progress in closing the gap between its graduation rate the previous year and meeting the ultimate goal of 90% in 2014. Attainment of this goal was mathematically possible for Beacon for the class of 2009. Setting different graduation rate targets for certain schools in a state is not allowed under NCLB because the target must be a “statewide” target. Sections 200.13 through 200.22 contain numerous references to the application of the same academic standards and assessment system to all public school students. Different standards, assessments or measures of performance are not permitted for individual schools or types of schools.

RIDE denies that it has failed to take advantage of a provision of the NCLB that would permit charter schools to have separate AYP assessments because they fulfill a Rhode Island statutory mandate to serve educationally disadvantaged, “at risk” students. The regulation providing for a “state law exception” (§ 200.4) is simply not applicable, RIDE submits. This “exception” pertains to situations where the State educational agency lacks “sufficient authority under State law to adopt academic content standards, student academic achievement standards, and academic assessments applicable to all students enrolled in the State’s public schools...” Rhode Island law authorizes the State’s Board of Regents to establish standards and require assessments of all public school students under R.I.G.L. 16-60-4 and 16-7.1-2. Furthermore, R.I.G.L. 16-77-3.1(c) plainly states that charter schools are to be held “accountable for meeting publicly promulgated, measurable, state and charter-based pupil academic results...” Since the State educational agency in this case is not without authority in establishing academic standards and assessments that apply to all public school students, §200.4 does not apply to Rhode Island and is not relevant to the issues in this case.

Other arguments advanced by Beacon equally lack merit. Although it may have been mathematically impossible for Beacon to reach the 73.4% graduation rate target for the class of 2009 cohort, it was mathematically possible for Beacon to attain AYP by demonstrating continuous and substantial improvement from the prior year. Utilizing this measure, Beacon could have met its graduation rate improvement target (“safe harbor”) by raising its graduation rate from 60% to 63% for the class of 2009. RIDE simply cannot alter or waive elements of its accountability system based on Beacon’s status as a charter school and its dedication to serving at-risk students. Although there are certain difficulties presented by educationally-disadvantaged students and at-risk students, these difficulties are shared by

many of Rhode Island's public high schools that, like Beacon, have substantial populations of at-risk students. However, these other schools lack the flexibility available to a small charter school in moving forward to address these academic challenges.

In conclusion, RIDE argues that the record in this case does not establish a federally-recognized basis, legal or factual, to change Beacon's AYP designation for the class of 2009 cohort.

DECISION

This challenge to RIDE's identification of Beacon for school improvement under NCLB highlights the flaws inherent in an accountability system that utilizes an adjusted-cohort graduation rate when many members of a small class transfer in from other schools where they have already been "left behind." As Beacon's case illustrates, utilization of a four-year adjusted cohort graduation rate under such circumstances can become more of an indicator of other schools' performance than a measure of how successful Beacon may be in "stabilizing" these students and moving them forward to graduation. Nonetheless, federal law requires that RIDE utilize the graduation rate as an indicator of Beacon's progress toward the statewide graduation rate goal of 90% by 2014. Based on the record in this case, RIDE correctly calculated Beacon's "four-year adjusted cohort graduation rate" as it was required to do pursuant to NCLB regulations to determine if Beacon had made Adequate Yearly Progress by attaining either the statewide graduation rate target of 73.4% for the class of 2009 or its improvement goal of 63% (known as "safe harbor"). What RIDE determined was that Beacon had not made AYP. In that this was the second consecutive year that Beacon had failed to make AYP,⁷ 20 USC 6316 (b)(1) now requires that Beacon be identified for school improvement and that it provide all students enrolled in the school with "Public school choice," that is, the option to transfer to another public school that has not been identified for school improvement.

A complete review of the testimony in this case, the exhibits and the arguments of the parties indicates that RIDE's imposition of a "four-year adjusted cohort graduation rate" to Beacon was valid and that its calculation of the school's graduation rate was without error. RIDE's adoption of a "four-year adjusted cohort graduation rate" is consistent with the National Governors' Association (NGA) -proposed method and with the method ultimately imposed on states by the 2008 amendments to §200.19. The thirty-five members of the Class of 2009 cohort included twenty who graduated within four years.⁸ Documentation of the transfer of an additional student out of the cohort, which would have reduced the cohort to

⁷ The record does not indicate the reason or reasons why Beacon had failed to make AYP in the prior year, but Beacon staff testified at length as to recent strategies they had used in making significant improvements on students' scores in the various subjects tested in the NECAP assessment program.

⁸ We believe that Dr. Van Yidana's testimony at pages 16-17 of the transcript of the September 9, 2010 hearing was incorrect (that thirty students from this cohort graduated) and that he later corrected his testimony on this point at page 23 to indicate that twenty students of the cohort of the class of 2009 graduated.

34, was not presented to RIDE within the timeframe established by the NCLB. When Beacon staff reviewed the school's AYP status with Ms. Snider and RIDE statisticians in May of 2010 they were required to inform her of any adjustments to school-level data at that time per 20 USC § 6316 (b) (2).⁹ When Beacon's graduation rate was verified and it was evident that Beacon had not attained AYP for two consecutive years, its "identification" by RIDE was required under NCLB 20 USC §6316 (b) (1).

Beacon's argument is that RIDE has been remiss in not applying for a special exception to make Rhode Island charter schools subject to accountability rules different from those applicable to other public elementary and secondary schools in our state. The "state law exception," Beacon argues, enables RIDE's accountability system to take into account the fact that state law obligates charter schools to "expand learning experiences for pupils who are identified as educationally disadvantaged and at risk..." R.I.G.L.16-77-3.1(c) (2). There is no indication that state education policy to date has supported a two-tiered accountability system- one for charter schools and one for all other public schools. Furthermore, as RIDE counsel points out in his memorandum, the charter school law expressly provides that charter schools must be held accountable for meeting "publicly promulgated, measurable, state and charter-based pupil academic results..."¹⁰

In any event, even if state law and Board of Regents' policy supported different accountability rules for charter schools, §200.4 of the NCLB regulations is not a provision that enables states to establish different rules for certain types of public schools within a statewide accountability system. Section 200.4¹¹ simply enables states to comply with NCLB even if the state education agency or other state entity lacks authority to establish statewide academic standards and assessments. In such cases, states are permitted to adopt a state plan under NCLB that ensures that challenging academic standards and assessments aligned to those standards will be applied to all students served by Title I funds. Even if this "exception" could accomplish what Beacon argues it should, the "state law exception" would not apply to Rhode Island because our Board of Regents has ample statutory authority to adopt academic standards and assessments for all students enrolled in public schools and actually proceeded to do so years several years prior to the enactment of the NCLB.

The validity and reliability of the four-year adjusted cohort graduation rate and its effect on the identification of Beacon as a school in need of improvement are both governed by the applicable provisions of the No Child Left Behind Act.¹² RIDE has correctly followed its state accountability plan and federal law to "identify" Beacon as is required under the NCLB. Calculation of the school's graduation rate for the cohort class of 2009 is only one

⁹ Even with 34 in the denominator, Beacon's graduation rate would be 58.8%, still well below the statewide target of 73.4%.

¹⁰ R.I.G.L. 16-77-3.1 (c) (6)

¹¹ §200.4 is based on 20 USC 6311 (b) (5) more aptly entitled "State authority".

¹² The facts surrounding the school's limited recruitment period just prior to the start of the 2005-2006 school year are not relevant to these calculations.

measure of the school’s performance but it is a required indicator under NCLB. On this record, the Beacon School has proven that there are other indicators of its success and the success of its students that should not be overlooked or overshadowed by this statistic and by its “identification” for school improvement purposes under federal law. However, any changes to the NCLB that would provide the relief requested by Beacon in this appeal are not available in this forum.

For the foregoing reasons, Beacon’s appeal is denied and dismissed.

For the Commissioner,

Kathleen S. Murray

August , 2011

Date

Deborah A. Gist