

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

B. Doe

v.

Cranston School Committee

DECISION

Held: School district's decision to retain Student Doe in Grade 7 for the upcoming school year was not arbitrary or capricious and was consistent with the School Committee's policy on retention. Parent's appeal of the decision to retain her son in Grade 7 is denied and dismissed. However, the recent determination that Student Doe does not have a disability is called into question by the documentation submitted into evidence. School officials must reconvene the evaluation team to reconsider this information and Student Doe's parent must cooperate with the evaluation process.

DATE: August 28, 2013

## **Travel of the Case:**

This matter was appealed to Commissioner Deborah A. Gist on August 6, 2013. It was referred to the undersigned for hearing and decision. As the matter was in the process of being scheduled for hearing, it became apparent that the Cranston School Committee would be able to review the decision of school officials at its meeting on August 14, 2013 and the hearing officer requested that they do so. The members of the Cranston School Committee voted to affirm Superintendent Judith A. Lundsten's decision that Student B. be retained in seventh grade on August 14, 2013. Although the written decision of the School Committee does not indicate the factual basis for its decision, we infer that its decision was based on the same reason as that of the Superintendent: that Student B's grades indicate that he is missing substantial academic content.

The hearing was convened on August 21, 2013. At that time Ms. B. appeared pro se and the School Committee was represented by its counsel. Testimony and documentary evidence were taken. Although the transcript of the hearing is not yet available, the evidence consists primarily of documentation and time is of the essence in making decisions with respect to Student Doe's programming for the 2013-2014 school year. This decision has also been expedited because the evidence indicates that truancy proceedings against the parent were transferred from Truancy Court to Family Court and that issues with respect to truancy are currently pending there for resolution.

## **ISSUE**

Was the decision of the Cranston School Committee to retain Student Doe in Grade 7 arbitrary, capricious, contrary to School Committee policy or state law?

Were Student Doe's failing grades in all of his academic subjects the result of bias against him and his parent and/or the failure to provide him with appropriate special education services?

## **Findings of Relevant Facts:**

- In school year 2012-2013 Student Doe was in seventh grade at a middle school in Cranston. He is currently thirteen (13) years old. S.C. Ex. 15.
- Student Doe’s end-of -year grades in English Language Arts, Social Studies, Mathematics, and Science were either F or F-. S.C. Ex. 9.
- The Cranston School Committee’s policy on retention, Policy 5123, provides that students will usually progress annually from grade to grade, spending one year in each grade. However, some students “will profit by staying another year in the same grade”. S.C. Ex. 1.
- At the conclusion of his years in fifth and sixth grades in elementary school in Cranston, it was recommended that Student Doe be retained, a recommendation that was “overruled” by his parent. In both of these school years, teachers reported that Student Doe “struggled through” the curriculum and that he had “received failing grades in all areas”. S.C. Ex. 12 and 13.
- In each school year from kindergarten through grade seven, Student Doe has been absent from school approximately forty (40) days per year. S.C. Ex. 9, 11, 12, 13 and 16. On November 27, 2012, the issue of Student Doe’s absences from school was referred to the Truancy Court and Student Doe’s parent was notified of this action by the school principal. S.C. Ex. 6 and 10.
- Each of his teachers since Grade 2 has submitted written comments with respect to Student Doe’s lack of organization, inattentiveness, constant talking in the classroom, lack of self-control and difficulty focusing. More recently, teacher notes have indicated that he exhibits “disruptive and inappropriate behavior” in class and that he puts little or no effort into his academics. S.C. Ex.5, 8 and 13.
- On March 27, 2013 the judge presiding in truancy proceedings involving Student Doe ordered his parent to request a special education evaluation and she did so, submitting her written request to school officials in Cranston on March 28, 2013. S.C. Ex. 5, 6 and 15.

- Minutes of the Evaluation Team reflect that the team, including Student Doe’s parent, met on May 31, 2013 and that after considering certain assessments and evaluations that had been administered to Student Doe, determined that he is “non-disabled” and that he “does not have a disability which adversely impacts school performance and requires special education services.” S.C. Ex. 15 “Evaluation Team Minutes” dated 5-31-13 and “Evaluation Team Summary” dated 5-31-13. The Evaluation Team Minutes note that his parent refused to provide a social history on her child and refused to complete the BASC-II Parent form. The BASC-II is a personality inventory measuring emotions and perceptions across clinical and adaptive scales which relate to specific areas of behavior. S.C. Ex. 15 “Confidential Psychological Report” dated 4-12-13. During a telephone conference on May 20, 2013 Student Doe’s parent indicated that she was” no longer interested in completing further documents for consideration of special education services since her son is in truancy court”. S.C. Ex. 15 “Educational Parent Conference Report” dated 5-20-13.
- On May 15, 2013 upon learning the results of Student Doe’s special education evaluation (from the Director of Special Education in Cranston) the truancy judge directed that Student Doe’s case be transferred to the Family Court.

**Positions of the Parties:**

**The Appellant:**

Student Doe’s parent argues that all of the teachers on his team failed him because the leader of the team disliked her and her son. She submits that her son was bullied in class (by his teacher) and that when she met with the school principal about this, he was rude and “threw her out” of his office. Ms. Doe argues that her son suffers from severe anxiety and Attention Deficit Hyperactivity Disorder, but yet he has not received an “IEP” or any extra help whatsoever with his academics.

**Cranston School Committee:**

Counsel for the School Committee submits that Student Doe is failing because he is chronically absent and has missed significant instructional time. The district has referred his case to the school attendance officer and Truancy Court so that appropriate steps can be taken to address attendance issues. Student Doe's failing grades and attendance issues extend back as far as kindergarten. The cumulative effect of his chronic absenteeism is that there are gaps in his academic skills and content knowledge that require him to be retained in seventh grade.

The parent's allegation of bias and "bullying" were fully investigated by the principal and were not supported by the facts. What did happen is that when the principal met with Ms. Doe, the lead teacher and another member of the teaching team on or about May 15, 2013 to discuss these issues, Ms. Doe kept interrupting with negative remarks. The principal ended the meeting "after not feeling that the home and school could work together successfully in this matter". S.C. Ex.7.

In response to the parent's claim that her son has severe anxiety and ADHD, counsel for the School Committee points out that no documentation of such diagnoses or treatment has been provided to staff at his school, including the school nurse. When the Truancy Court ordered Student Doe's parent to request an evaluation to determine whether or not he had a disability, an evaluation team promptly conducted the required testing and made a determination that he was not disabled. The district notes that his parent did not follow up in completing two of the necessary forms for an evaluation of his special education eligibility.

During the past school year, a special "targeted" reading class was added to his schedule and extra time was allocated to help Student Doe make up the work that he missed during his many absences. Student Doe's absences, lack of effort, and misbehavior have contributed to his lack of academic success. He has not always availed himself of the extra help that school staff have offered. In the upcoming school year when he will repeat the 7<sup>th</sup> grade, the district plans to place him in a smaller regular education "inclusion" class in which a special educator will be co-teaching. It is hoped that this setting, and improved school attendance, will result in Student Doe's improved academic success. The district has also offered to transfer him to another middle school for a "fresh start" or to enroll him at UCAP<sup>1</sup>, a collaborative program in which there is the possibility that he could catch up with his peers in the eighth grade. He would then transfer back to Cranston for high school attendance. His parent has declined the latter two options.

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<sup>1</sup> We understand UCAP to be the Urban Collaborative Accelerated Program.

## DECISION

The Cranston School Committee has proven by overwhelming evidence that Student Doe lacks the academic skills and content knowledge to proceed to eighth grade. His mother's appeal of the Committee's decision to retain him in Grade 7 is denied and dismissed.

There was no evidence submitted in this record to substantiate the parent's allegation that the failing grades from all of the teachers on his team during the 2012-2013 school year were due to a bias against him or the negative influence of a single teacher who disliked Student Doe and his mother. The progress reports of just about every one of his teachers indicated that from the first quarter forward he was "in danger of failing". Progress reports, and ultimately his 2012-2013 report card, document academic failure, lack of effort and poor attendance. Student Doe's lack of academic success extends back to his early years in school, when a pattern of excessive absences was established. His principal and his science teacher testified as to the significant gaps in his academic skills and his knowledge of academic content. His retention in Grade 7 during school year 2013-2014 is consistent with the Cranston School Committee's policy of retaining students who will benefit from staying another year in the same grade.

However, based on the record in this matter, it is evident that the special education staff needs to reconsider their evaluation and the issue of whether or not Student Doe has a disability that interferes with his school attendance and academic success. The district's willingness to do so, and to seek out more evaluative information on Student Doe, will ensure that if he is eligible for special education, he will receive the programming he needs during school year 2013-2014 and going forward. Student Doe's mother has not proved to be a resource for information on her son. Although she did mention issues of anxiety and ADHD at the outset of the special education evaluation process (S.C. Ex.15, Evaluation Team Minutes of 4-5-13), she did not share information from his doctors that she indicates documents these medical conditions. She refused to complete the social history and BASC-II Parent form and indicated that she was not interested in completing further documents for his consideration for special education services. At the hearing, Ms. Doe indicated her willingness to cooperate with the evaluation process in the future, and it is important that she do so in order for a complete picture of her son's educational needs to be secured without delay.

Because there is evidence of a breakdown in the relationship between parent and school, to ensure that the special education evaluation process is a cooperative one and that it moves forward without undue delay, RIDE will appoint a special visitor to oversee the re-determination of Student Doe's eligibility for special education services by August 28, 2013. The parties are requested to cooperate with the special visitor who will provide a report to the Commissioner at the conclusion of the evaluation process. A copy of this decision will also be provided to the Family Court for its use in consideration of the issues pending before the Court.

For the Commissioner,

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Kathleen S, Murray, Hearing Officer

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Deborah A. Gist, Commissioner

DATE: August 28, 2013