BEFORE THE
EDUCATION AUDIT APPEALS PANEL
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against: ALLENSWORTH ELEMENTARY SCHOOL DISTRICT, Re: Appeal of Audit Finding #03-08/10000 Attendance – Kindergarten Continuation, Appellant.	EAAP Case No. 04-07 OAH No. N2004080047

DECISION

On November 16, 2004, the Office of Administrative Hearings (OAH) issued a Proposed Decision in this matter. On November 29, 2004, the Education Audit Appeals Panel (EAAP) issued a Notice of Nonadoption of Proposed Decision in order to decide the case itself under the provisions of Government Code Section 11517(c)(2)(E). EAAP invited additional briefing by January 14, 2005, particularly with regard to application of the law to the facts. No additional briefs were received.

FACTUAL FINDINGS

1. On November 21, 2003, M. Green and Company LLP, Certified Public Accountants, completed an independent auditor's report (audit report) regarding the financial statements of the Allensworth Elementary School District (Appellant) for the year ending June 30, 2003. On March 1, 2004, the State Controller's Office (SCO), Division of Audits, completed its review and certified that the audit report conformed to the reporting standards contained in the State Controller's Audit Guide. On July 19, 2004, Appellant filed a formal appeal of Audit Finding 03-08/10000 Attendance – Kindergarten Continuation (Audit Finding 03-08).

On October 12, 2004, SCO filed a letter with the Office of Administrative Hearings that was treated as a Statement of Issues in this matter (Statement of Issues). Pertinent sections of the audit report were attached to the Statement of Issues and were referenced therein.

2. Audit Finding 03-08 sets forth in sum that Appellant retained two students for a second year of kindergarten; that the retention-in-kindergarten form used by Appellant was not approved by the California Department of Education (CDE); and that Appellant's inclusion of the students' attendance in its ADA computation was accordingly impermissible under the terms of Education Code Section 46300, subdivision (g). The audit determined that Appellant's attendance reports overstated the second period attendance by 1.80 ADA and the annual attendance report by 1.81, resulting in a loss of attendance funding of approximately $8,800 and a loss in lottery funding of approximately $160.

3. CDE has promulgated an approved Parental Agreement Form – Agreement for Pupil to Continue in Kindergarten (Parental Agreement Form)[1] that satisfies the requirements of Education Code Section 46300. The Parental Agreement Form includes space for the pupil's name and kindergarten attendance anniversary date, and the name of the school official approving continuance in kindergarten for the school district. The Parental Agreement Form further states as follows:

> Information for parent or guardian
>
> California law provides that after a child has been lawfully admitted to a kindergarten and has attended for a year, the child shall be promoted to the first grade unless the school district and the child's parent/guardian agree to having the child continue to attend kindergarten for not longer than one additional year. This rule applies whether a child begins kindergarten at the beginning of a school year or at some later date, so that a child who begins kindergarten in January, for example, shall be promoted the following January unless there is a formal agreement to have him or her continue in kindergarten. Because kindergarten-age children often do not develop at steady or predictable rates, the California Department of Education recommends that approval for a child to continue not be given until near the anniversary of a child's admittance to kindergarten.
>
> I agree to having my child (named above) continue in kindergarten until _____ (may not be more than one year beyond anniversary)
> (date)

There are lines at the bottom of the form for parent signature and date, parent address, and telephone number.

4. Appellant's "Retention in Kindergarten" form contained space for the name of the student ("Retention of _____"), and the date of the parent/teacher conference at which it was presented for signature. The form stated as follows:

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[1] The Parental Agreement Form is available on CDE's website.

> On [date] Mrs. Parr and I met with the parent(s) of [student name] to discuss his/her retention in kindergarten. [Parent name] parent(s) have agreed_____/have not agreed_____ to retention.
>
> Academic performance in class is the basis of retention for this student.

Following this statement, Appellant's form listed math scores, reading level, letters/sounds, and absences for each quarter of the academic year. The bottom of the form included a statement of agreement to retention, as follows: "I, (Parent Signature), have agreed to the retention of my child in kindergarten."

5. In its response to the audit finding, Appellant stated in part that Appellant had itself generated its retention form; that the form was not approved by "the State"; and that Appellant was not aware that its retention form did not contain all the elements required for approval by CDE.

ARGUMENTS PRESENTED

1. Both SCO and the Department of Finance contend, in part, that, in addition to not having been approved by CDE, Appellant's retention form was not sufficient to enable informed consent by parents, in that it does not specifically inform parents that they have the right to have their child promoted to first grade unless the parent elects to continue the child in kindergarten.

2. Appellant contends, in part, that the parents understood it was ultimately their choice whether their child would be retained, as reflected in the fact that Appellant's form includes a section indicating whether the parent or parents have or have not agreed to retention, and a parent signature line at the bottom of the form.

LEGAL CONCLUSIONS

1. Education Code sections 41344, subdivision (d), and 41344.1, subdivision (c), provide the authority for the appeal hearing herein. Pursuant to Education Code Section 41344.1, subdivision (c), the state is obligated to make apportionments only when there has been compliance with all legal requirements. Education Code section 41344.1, subdivision (c), further states that, "[A] condition may be deemed satisfied if the panel finds there has been compliance or substantial compliance with all legal requirements." Substantial compliance is defined as "nearly complete satisfaction of all material requirements of a funding program that provide an educational benefit substantially consistent with the program's purpose." Further, if "the local education agency can demonstrate it acted in good faith to comply with the conditions established in law or regulation necessary for apportionment of funding," a "minor or inadvertent" noncompliance may be found to be in substantial compliance.

2. Appellant did not fully comply with the requirements of Education Code Section 46300, subdivision (g), in that it did not obtain CDE approval for the form and content of its kindergarten retention form. In its substantial divergence from the CDE-approved form, Appellant's form also failed to meet the "nearly complete satisfaction" standard.

3. Appellant did not demonstrate, through either first-person testimony or documentary evidence, that it acted specifically to comply with the conditions established in Section 46300 of the Education Code necessary for apportionment of funding in this instance. Appellant's retention form, given its divergence from the CDE-approved form, does not support an inference of action intended to comply with those conditions.

4. In view of the foregoing conclusions, no relief is warranted.

ORDER

The appeal of Appellant Allensworth Elementary School District from Audit Finding Audit Finding 03-08/10000 Attendance – Kindergarten Continuation is DENIED pursuant to Legal Conclusions 2 and 3.

Date: 24 Jan 2005

Thomas E. Dithridge, Chairperson
for Education Audit Appeals Panel