Before the
Education Audit Appeals Panel
State of California

In the Matter of the Statement of Issues Against: LAYTONVILLE UNIFIED SCHOOL DISTRICT, Appellant.	EAAP Case No. 00-07 OAH No. N2000050275

DECISION

On April 27, 2005, the Office of Administrative Hearings issued a Proposed Decision in this audit appeal. On June 24, 2005, the Education Audit Appeals Panel issued a Notice of Rejection in order to decide the case itself under the provisions of Government Code Section 11517(c)(2)(E). The Panel invited submission, by July 15, 2005, of additional written argument. Appellant submitted an additional brief on July 12, 2005.

Factual Findings

1. On September 13, 1999, John S. Robertson & Associates, CPA, completed an independent auditor's report (audit report) regarding Laytonville Unified School District (Appellant) for the year ending June 30, 1999. On February 29, 2000, 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 May 1, 2000, Appellant filed a timely formal appeal of Finding 99-5 – Independent Study (Finding 99-5).

On June 6, 2000, SCO filed a letter and the audit report with OAH, which served as the Statement of Issues.

2. Finding 99-5 states that Appellant's independent study written agreements ("contracts") were deficient in that all of them lacked the date on which they were signed (by statutorily required parties) (see Educ. Code § 51747[1] [(c)(8)]; Cal.CodeRegs., Title 5, § 11702(a)), the high school agreements did not include a statement that independent study is an optional educational alternative in which no pupil may be required to participate (see

[1] All citations are to the Education Code unless otherwise indicated.

§ 51747 [(c)(7)]), four of seven agreements (in a sample) did not specify time and place for meetings between the pupil and supervising teacher (see § 51747 [(c)(1)]), on four agreements "credit [was] awarded but documentation was not clear enough to trace the teacher's evaluation of the work" (see § 51747.5(b); Cal.CodeRegs., Title 5, § 11703(a) and (b)(3)), two agreements did not have a parent signature (see § 51747 [(c)(8)]), and one agreement lacked the enrollment date (see § 51747 [(c)(5)]).

3. In addition to the deficiencies that the auditor reported, the independent study agreements in the record were deficient in that all of them lack a statement of Appellant's policy as to maximum assignment period length (§ 51747 [(c)(4)]), the short-term high school agreements lack a statement of Appellant's policy on the number of missed assignments that would result in an evaluation to determine whether the pupil should continue in independent study (*ibid.*)[2], the high school short-term agreements do not have teacher signatures (the form lacks a designated teacher signature line) (§ 51747 [(c)(8)]; Cal.CodeRegs., Title 5, § 11702(a)), and the high school long-term agreements do not have ending dates (the form lacks a designated ending-date space) (§ 51747 [(c)(5)]).

Arguments Presented

1. Appellant argued that its written agreements were in "substantial compliance" with independent study requirements because: the agreements were signed on the enrollment date; the lack of the statutorily specified notice of the voluntary nature of independent study was insubstantial because short-term independent study agreements always arose from a parent's request, students and parents heard a presentation at a meeting to the effect that the program was voluntary, and the word "options" in the title of the long-term ("full-time") high school independent study agreement was substantially equivalent to the required notice; failures to specify a time and place for the teacher and pupil to meet was a "minor or inadvertent noncompliance" because they actually met; and the identification of a semester was substantial compliance for missing enrollment/starting dates – and that, in sum, its independent study program showed "nearly complete satisfaction of all material requirements" within the meaning of Section 41344.1(c).

2. Appellant further argued that the reported lack of clear documentation to permit tracing of the teacher's evaluation of pupil work was factually erroneous, and that the two missing parent signatures were not required because the pupils were 18 years old.

3. Appellant also argued that only deficiencies set forth in the audit report may properly be considered with regard to the issue of substantial compliance, and that "forfeiture" by Appellant of its independent study apportionments is prohibited because the

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[2] "[The court finds] an unequivocal legislative intent to require districts to include the specific elements enumerated in section 51747, subdivision (c) in *each and every* written agreement *** whether short term or long term...." (*Modesto City Schools v. Education Audits Appeal Panel* (2004) 123 Cal.App.4th 1365, 1377 [20 Cal.Rptr.3d 831, 838].) (Emphasis in original.)

audit report neither stated that Appellant's apportionment was incorrectly stated nor did it recommend forfeiture.

4. SCO and the Department of Finance argued that the multiplicity of the omissions from Appellant's written agreements precludes a finding of substantial compliance. The Department of Finance additionally argued that each of Appellant's omissions has the effect of rendering an independent study agreement legally defective and individually precludes a finding of substantial compliance.

Legal Conclusions

1. Sections 41344, subdivision (d), and 41344.1, subdivision (b), provide the authority for the appeal hearing herein, and the latter subdivision expressly authorizes the Panel to make findings of fact and interpretations of law.

2. Section 41344.1, subdivision (c), provides that the state is obligated to make apportionments only when there has been compliance with all legal requirements. 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.

3. Appellant's independent study written agreements failed to include several of the specifically required elements set forth in Section 51747, which are each expressly conditions of the apportionment of state funding for independent study and individually subject to the "nearly complete satisfaction" standard.

4. Appellant failed to demonstrate, through either first-person testimony or documentary evidence, that it acted specifically to comply with the requirements of Section 51747 in promulgating its written agreement forms; and the forms themselves, with their several omissions, do not support an inference of action intended to comply with those requirements.

5. The record does not provide clear factual support for the validity of the citation in Finding 99-5 of insufficiently clear documentation to trace teacher evaluation of pupil work; and the two missing parent signatures cited in Finding 99-5 as instances of non-compliance, given the showing that the pupils involved were 18 years of age, were not required as a matter of law.

6. A determination as to whether there was the "substantial compliance" claimed by Appellant as one of its grounds for appeal requires determining whether there was "nearly complete satisfaction of *all material requirements of [the] funding program*" – thus unavoidably compelling scrutiny of all material in the record that is relevant to such a determination (§ 41344.1(c)). (Emphasis added.)

7. Forfeiture is not an issue in this matter. Moreover, no law makes contingent upon the statement or recommendation of an independent auditor the state's obligation to recapture funds apportioned to a school district that was "not...eligible to receive" them (§ 51747). The Education Audit Appeals Panel's role in this matter hence does not involve any ordering of payment – only possible waiver or reduction, in the Panel's discretion, of the reimbursement obligation already incurred by Appellant as a result of its noncompliance.

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

ORDER

The appeal of Appellant Laytonville Unified School District from Audit Finding 99-5 – Independent Study is DENIED pursuant to Legal Conclusions 3 through 7.

Dated: 15 Aug 2005

by Thomas E. Dithridge, Chairperson
for Education Audit Appeals Panel