

BEFORE THE
EDUCATION AUDIT APPEALS PANEL
STATE OF CALIFORNIA

In the Matter of the Statement of
Issues Against:

CORCORAN JOINT UNIFIED SCHOOL
DISTRICT,

Re: Appeal of Audit Finding 2005-04
Attendance (Kindergarten Continuance),

Appellant.

EAAP Case No. 06-12

OAH No. N2006090603

DECISION

On May 31, 2007, the Office of Administrative Hearings (OAH) issued a Proposed Decision in this matter. On June 18, 2007, the Education Audit Appeals Panel (EAAP) issued a Notice of Rejection 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 July 13, 2007, particularly with regard to the issue of effective notice to the parents. Additional briefs were filed by Appellant Corcoran and Respondent Department of Finance.

FACTUAL FINDINGS

1. Borchardt, Corona & Faeth, Accountancy Corporation, completed and submitted an Audit Report of the general purpose and financial statements of the District as of and for the year ended June 30, 2005.¹
2. The Audit Report set forth Audit Finding 2005-4, relating to Attendance, which noted, "the District did not use the pre-approved agreement-to-retain form provided by the California Department of Education." The deficiency affected 11 kindergarten students in a District school and resulted in a concomitant decrease of 9.24 ADA² for the P-2 Report of Attendance, with a corresponding fiscal impact of \$45,724.98 owed by the District to the State of California.
3. The District filed a timely appeal to Audit Finding 2005-4.

¹ Education Code § 41020.

² ADA denotes Average Daily Attendance.

4. In conducting the audit and review of the District, the auditor applied, inter alia, Generally Accepted Accounting Standards (GAAS), Generally Accepted Accounting Principles (GAAP),³ or Generally Accepted Government Auditing Standards (GAGAS).⁴ In addition, the auditor utilized the audit guide required by the provisions of Education Code sections 14503(a) and 41020(g)(1)(A).⁵ The purpose of this audit or review is to ascertain a District's compliance with legal requirements.⁶
5. The form the District did use was not approved in form and content by the State Department of Education.⁷
6. The District's form was printed on both sides of a single sheet.⁸ The side denominated "front page" in District testimony,⁹ which had a centered, large-type heading reading "Bret Harte School" and "Recommendation for Retention/Placement," provided blank lines for student identification information and sections for student performance information and for teacher recommendation, then concluded with "Parent Signature" and "Translator Signature" lines below a statement reading "The parent(s) understand that their child will be retained or placed due to not meeting the grade level standards."
7. The content on the reverse, unheaded side of the form corresponded to a portion of the State Department of Education's pre-approved form, consisting of an informational paragraph on parental rights with regard to a child's continuing in kindergarten, with the same wording as the pre-approved form except for certain variations consistent with the wording of Education Code Section 46300, subdivision (g), as it read prior to amendment in 1991, followed by a paragraph reading "I agree to the retention/placement of my child (named above) until _____ (date) (may not be more than one year beyond anniversary)[,]" and signature/date lines for "Parent/Guardian" and "Teacher."¹⁰
8. The District had no forms in its records for three of the 11 affected pupils.¹¹ On the forms for the remaining eight pupils, seven had no retention ending date entered on the reverse of the form.¹²

³ "The GAAP are an amalgam of statements issued by the American Institute of Certified Public Accountants (AICPA) through the successive groups it has established to promulgate accounting principles: the Committee on Accounting Procedure, the Accounting Principles Board, and the Financial Accounting Standards Board. Like GAAS, GAAP include broad statements of accounting principles amounting to aspirational norms as well as more specific guidelines and illustrations." *Bily v. Arthur Young & Co.* (1992) 3 Cal. 4th 370, 382.

⁴ OMB Circular A-133; see also Education Code § 14503, subdivision (a).

⁵ Standards and Procedures for Audits of California K-12 Local Education Agencies. See also Education Code § 14502.1.

⁶ Education Code § 14503, subdivision (a).

⁷ Reporter's Transcript of Proceedings on March 22, 2007 ("RT") 33:13-19.

⁸ (Appellant's) Exhibit B.

⁹ RT 18:13-14.

¹⁰ (Appellant's) Exhibit B.

¹¹ RT 34:12-20.

¹² (Appellant's) Exhibit H.

LEGAL CONCLUSIONS

1. The district did not comply with the condition set forth in Education Code Section 46300, subdivision (g):

In computing the average daily attendance of a school district, there shall be included the attendance of pupils in kindergarten after they have completed one school year in kindergarten *only if* the school district has on file for each of those pupils an agreement made pursuant to Section 48011, approved in form and content by the State Department of Education and signed by the pupil's parent or guardian, that the pupil may continue in kindergarten for not more than an additional school year. (Emphasis added.)

2. Education Code Section 41344.1, subdivision (c), provides in pertinent part that “[a] condition may be deemed satisfied if there has been compliance or substantial compliance....”
3. “‘Substantial compliance’ means nearly complete satisfaction of all material requirements of a funding program that provide an educational benefit substantially consistent with the program’s purpose. A minor or inadvertent noncompliance may be grounds for a finding of substantial compliance provided that the local educational agency can demonstrate it acted in good faith to comply with the conditions established in law or regulation necessary for apportionment of funding.” If there has been substantial compliance, the reimbursement or penalty amount may be waived or reduced.¹³
4. The plain purpose of the agreement requirement in Education Code Section 46300, subdivision (g), is to ensure that parents are given effective notice of their right, also set forth in the earlier enacted Education Code Section 48011, not to have their children held back in kindergarten without their consent.
5. The statement, followed by parent signature, at the bottom of the front side of the District’s form that “The parent understand(s) that their child *will be retained*” (emphasis added) vitiates any ‘notice’ value of the information and signature on the reverse of the form, precluding any finding of substantial compliance in that regard.
6. In view of the foregoing conclusion, we need not reach the issue of substantial compliance with regard to the variant wording or blank date spaces on the reverse of the forms.

¹³ Education Code § 41344.1, subdivision (c).

7. No relief is warranted for the District pursuant to the provisions of Education Code sections 41344.1, subdivision (c); 46300, subdivision (g); and 48011; Factual Findings 1 through 8; and Legal Conclusions 1 through 6.

ORDER

The appeal of respondent Corcoran Joint Unified School District from Finding 2005-4 is DENIED, effective July 30, 2007.

Date: July 30, 2007

(Original Signed)

Thomas E. Dithridge, Chairperson
for Education Audit Appeals Panel