

18-089P

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

**L DOE, S DOE and A DOE,
on behalf of their children X DOE, Y DOE AND Z DOE,
and on behalf of a class of similarly situated children
in the Providence School District**

v.

PROVIDENCE SCHOOL DISTRICT

Ruling on Motions for Summary Judgment

Held: Providence's Collaboration/Consultation Model for ELL services does not violate the Rhode Island Regulations Governing the Education of English Language Learners. However, Providence is in violation of the Regulations by failing to provide reports of student progress in the ELL program.

Date: March 8, 2019

Introduction

This matter concerns a complaint in which Petitioners, on behalf of their own children and a class of similarly situated children residing in Providence, allege that the Providence school district is not providing English Language Learners with the services to which they are entitled under state law, state regulations and federal laws.

Background

Following the filing of this complaint, the parties entered into a joint stipulation of facts and filed cross-motions for summary judgment. Because the motions contained factual allegations beyond the scope of the previously-entered stipulation of facts, the parties submitted a second joint stipulation of facts. The parties subsequently filed new cross-motions for summary judgment.¹

As stipulated by the parties, Petitioners' children are or have been recently enrolled in the Providence school district ("Providence"). Identified as children with disabilities under the federal Individuals with Disabilities Education Act, Petitioners' children have individualized education programs ("IEPs") and receive special education services. They also qualify as English Language Learners ("ELLs").

Providence uses a "Collaboration/Consultation Model" to deliver services to ELLs. The parties stipulated that:

- The Collaboration/Consultation Model requires that the ELL-endorsed or certified teacher, known as the "Collaborative Teacher," "Provide direct instruction, 30-60 minutes daily, of English Language Development (ELD) to all WIDA Literacy Proficiency levels 1.0 – 2.9 students who are in regular education."²
- If an ELL student is in levels 2.9 and above, the Collaboration/Consultation Model does not require any direct instruction time to the student by the Collaborative Teacher . . .
- The Collaboration/Consultation Model further requires that the Collaborative Teacher consult and collaborate with non-ELL teachers (i.e., general and/or special education teachers) of ELLs . . .
- Collaborative Teachers are required to fill out a Consultation Log every time they consult with the teacher of a student they are servicing. "[C]onsultations must take place at a minimum of every 8 weeks." No

¹ During the course of this proceeding, some claims in the complaint were resolved by consent judgments, withdrawn by Petitioners or reserved pending decision on the motions. In particular, the parties agreed to defer the issue of whether the Commissioner of Education has jurisdiction to entertain a request for class-wide relief.

² "WIDA" is the acronym for "World-Class Instructional Design and Assessment."

minimum time per student for the consultation is specified.

Providence’s “English Language Learner Handbook: A Resource for Providence Educators” includes the following:

In the Consultative model, the ELL certified case manager meets with the general or special educator(s) working with the student to determine what the student’s areas of strength and areas of needs are as it relates to academic language development. In addition, a schedule for ongoing consultation is proposed. This initial meeting is memorialized on an *ELL Collaboration/ Consultation Log* and is submitted to the Director of ELL or his/her designee for approval. Once the plan is approved, consultation services begin as scheduled in the proposal. From there the ELL certified case manager meets, as agreed upon, with the general and/or regular educator(s) (*sic*) and provides written recommendations to his/her colleagues regarding the specific language development accommodations and modifications that should be provided in order to ensure that the student has meaningful access to the instruction. The ELL certified case manager will provide job-embedded coaching support, as needed, to the general or special educator(s) involved in order to ensure that they understand how and when the accommodations/modifications should be provided. Each consultation between the ELL certified case manager and the general and/or special educator is documented on an *ELL Collaboration/Consultation Log*. Once the log is completed and signed, a copy is placed in the student’s record while the original is submitted to the Office of ELLs. During each consultation, the student’s data (formative, diagnostic and/or summative) will be reviewed and changes to the modifications/accommodations will be made to best meet the language development needs of the students.

An August 12, 2016 Consent Judgment in this matter states, in part, that Providence “will begin using notices in the native language of parents to comply with all notification requirements pursuant to state regulations (including placement and programming, progress monitoring, appeal rights, waivers and other rights relating to ELL education, consistent with . . . L-4-13) . . .”

Positions of the Parties

In seeking summary judgment, Petitioners contend that Providence’s Collaboration/ Consultation Model for ELL services violates Rhode Island Regulations Governing the Education of English Language Learners because (1) it fails to provide ELL instruction by a certified or endorsed ELL teacher as defined in §L-4-2(11) and required in §L-4-5(10) of the Regulations; (2) it does not comply with minimum hours of direct ELL instruction by such a teacher as required by §L-4-7; and (3) it does not comply with the models of instruction required and/or permitted by

§L-4-2(16) – (22).

Petitioners argue that the ELL Regulations require that the actual provider of ELL instruction to ELL students must be an ELL teacher. To be an ELL teacher in Rhode Island, an individual must have an endorsement as an ELL, Bilingual or Content Area Teacher of ELLs, or an ESL (English as a Second Language) certificate. Under the Collaboration/Consultation Model, only those ELL students in general education who have literacy proficiency WIDA scores of 2.9 or below receive direct instruction from an ELL teacher. Students not in general education or exceeding the 2.9 literacy score need not be provided with any direct instruction by an ELL teacher under the Providence model. The ELL Regulations also specify the amount of ELL instructional time each student enrolled in an approved service model must receive. The Collaboration/Consultation Model does not provide ELL instruction by an ELL teacher in the amounts specified by the Regulations. The six approved service models listed in the Regulations include one described as “Collaborative ESL Instruction,” but that model does not resemble the Collaboration/Consultation Model at issue herein. The Providence model does not correspond to any of the approved service models in the Regulations nor does it consist of components from these models. Finally, with regard to the progress monitoring notice element of the August 12, 2016 Consent Judgment, Petitioners contend that such notices must be provided to parents in their native language and focus on students’ language acquisition skills and progress in ELL programming. Annual test reports and quarterly grades in general content classes do not comply with the regulatory progress monitoring notice requirements for middle and high school ELLs who do not receive their ELL programming in English Language Development classes.

Providence asserts in its motion that Petitioners carry the burden of proof in challenging Providence’s interpretation of the ELL Regulations. Petitioners misconstrue the Regulations in arguing that Providence must select one of the approved service models and employ it in its entirety. The Regulations expressly allow a school district to construct a model that utilizes one or more components of the listed models. That is what Providence has done with its Consultation Model which

[r]equires a certified ESL or Bilingual teacher to consult with the classroom teacher responsible for delivering instruction in order to provide the teacher with the accommodations and strategies necessary to support the student in making content comprehensible and increasing their academic English proficiency . . . , encourages ELL certified teachers to collaborate and consult with general and special educators to promote collaboration, mutual

understanding, and use of language development standards among all educators who work with ELLs . . . [and] allows for the educators working with ELLs to implement language development strategies discussed during the consultation throughout the entire school day rather than during a finite amount of time during the school day . . .

While §L-4-2(11) defines an ELL teacher, §L-4-5(10) does not incorporate that defined term when it states that specialized language instruction for ELLs is to be provided by “appropriately certified and endorsed teachers,” which all Providence teachers are. Nothing in the Regulations requires school districts to provide all ELLs in all programs with instruction from a certified ELL teacher all the time. In fact, the Introduction to the Regulations disclaims any significant economic impact or additional costs for school districts. If Petitioners’ interpretation of the Regulations were accepted, the economic impact would be catastrophic as Providence would have to hire potentially hundreds of ELL teachers to interrupt students’ daily curriculum to provide English language instruction. The ELL instruction discussed in §L-4-7 is not tied to a certified ELL teacher, and Providence’s model provides for a greater immersion of English language strategies into students’ curriculum than the isolated instruction urged by Petitioners. The model also includes components from the enumerated service models, most notably “close collaboration,” and “scaffolded and differentiated instruction in English.” As for the progress monitoring notice issue, Providence contends that it satisfies §L-4-13 by incorporating ELL progress monitoring into the standard quarterly progress reports it issues for students in all academic areas. A teacher can indicate, in any area, if a student’s language acquisition is inhibiting progress, or if any domain is adversely affected. The plain language of the ELL Regulations does not require the creation of a separate progress report for language acquisition. Providence uses the exact same process for ELL progress monitoring as that used in the general education program and thereby squarely complies with §L-4-13.

Discussion

Rhode Island General Law 16-54-2 states as follows:

In any city or town where there is a child who is eligible to attend elementary or secondary schools, and whose English proficiency is limited to such a degree that it impedes his or her academic progress, the school committee of the city or town shall provide those special services and programs which satisfy the needs of the child with limited English proficiency, in any programs and services as approved by the department of elementary and secondary education in accordance with rules and

regulations promulgated by the board of regents for elementary and secondary education.

One of purposes of the Rhode Island Regulations Governing the Education of English Language Learners is to:

Ensure that English Language Learners have access to a free, appropriate, public education equal to the education provided to all other students. This goal is to be reached by ensuring that programs for English Language Learners are (1) based on sound educational theory; (2) appropriately supported, with adequate and effective staff and resources, so that the program may reasonably be expected to be successful; and (3) periodically evaluated and, if necessary, revised. [§L-4-1].

The Regulations' program standards [§L-4-5] include requirements that ELL programs

(2) Ensure that all English Language Learners attain proficiency in speaking, listening to, reading, and writing English at a level sufficient to enable them to succeed in the school's general academic program.

* * * * *

(6) Provide opportunities for achievement in all content-area classes or courses through specialized language instruction for English Language Learners until the student has reached a level of English-language proficiency permitting him or her to succeed in the school district's general academic program . . .

* * * * *

(10) Ensure that specialized language instruction for English Language Learners is provided by appropriately certified and endorsed teachers who are highly qualified and who are provided with regular, sustained, high-quality, job-embedded professional development.

The "Program Models and Components" section [§L-4-10] of the Regulations states that

Districts may choose one or more of the following models, or components from these models, as defined in these regulations in section L-4-2, to provide the most appropriate program for each English Language Learner:

1. English as a Second Language
2. Sheltered Content Instruction
3. Collaborative ESL & General Education
4. Bilingual Education
5. Two-Way/Dual Language
6. Newcomer Program

Section L-4-2 of the Regulations is the "Definitions" section. It states that teachers in the English as a Second Language model "must meet Rhode Island certification and/or endorsement requirements for ESL instruction;" that in the Collaborative ESL Instruction model "ESL

instruction [is] taught by a certified and/or endorsed ESL teacher and content instruction [is] provided through the school’s general-education program;” that Bilingual Education teachers “must meet state certification requirements . . .;” that Two-Way/Dual Language teachers “must meet appropriate state certification requirements . . .;”³ and that Newcomer Program teachers “must meet state certification requirements in ESL and/or content-area instruction for English Language Learners . . .” Teachers in the Sheltered Content Instruction model “must (1) meet appropriate state-certification requirements, (2) be highly qualified in their content area as defined by RIDE, and (3) participate in specialized training in ESL methods and techniques.”⁴

The term “ELL Teacher” is defined in the “Definitions” section of the Regulations as:

an elementary or secondary teacher who holds (1) a Rhode Island certificate for the level and subject in which he or she teaches, and a Rhode Island endorsement as an ESL teacher or Bilingual teacher or Content Area teacher of ELLs or (2) the Rhode Island ESL certificate. [§L-4-2(11)].

The term “ELL Teacher” appears four additional times in the Regulations: three times in the definition of “ELL Teacher Assistant” and once in the “Personnel” section (§L-4-11(b)), which states that “[s]chool districts shall employ a sufficient number of ELL teachers to ensure that ELL students receive the instruction and the support required by these regulations.”

Section L-4-7 of the Regulations is entitled “Time requirements.” It states that

ENTERING AND BEGINNING-LEVEL ENGLISH LANGUAGE LEARNERS must receive a minimum of 3 periods (or the equivalent) of ESL instruction a day. DEVELOPING ENGLISH LANGUAGE LEARNERS must receive a minimum of 2 periods (or the equivalent) of ESL instruction a day. EXPANDING AND BRIDGING ENGLISH LANGUAGE LEARNERS must receive a minimum of 1 period (or the equivalent) of ESL instruction a day. This ELL instruction must (1) develop the English Language Learner’s ability to understand, speak, read, and write academic English, (3) (*sic*) be aligned with WIDA standards, and (3) incorporate content knowledge and concepts aligned to Rhode Island’s GLEs and GSEs. The ELL instructional period shall have the same length as the school’s general content-area periods.

³ The Department of Education issues a Bilingual and Dual Language certificate.

⁴ Sheltered Content Instruction is defined as

a method of instruction that provides a comprehensive set of grade-level core academic courses aligned with the WIDA ELP standards and Rhode Island’s GLEs and GSEs. These classes make their content comprehensible to English Language Learners through scaffolded and differentiated instruction in English and they help English Language Learners to become competent in the use of academic English in all language domains . . . [§L-4-2(21)].

Section L-4-13 of the Regulations addresses student progress reports:

The same policy for reporting a student's progress in the general-education program shall be used in reporting a student's progress in the ELL program. Progress reports shall be in English and in the home/native language of the student and shall include an explanation of the school's grading system in the home/native language of the parents unless it can be demonstrated to RIDE that this requirement would place an unreasonable burden on the school district.

Viewed in their entirety, the ELL Regulations do not support Petitioners' claim that all ELL instruction must be delivered by an "ELL teacher" as that term is defined in §L-4-2(11). First, there is no such express categorical requirement in the Regulations. Second, while §L-4-11(b) requires school districts to employ a sufficient number of ELL teachers, it does not designate those teachers as the exclusive providers of ELL instruction. Third, the "Sheltered Content Instruction" model, one of the six approved program models for ELLs listed in §L-4-2(17-22), provides for "instruction in English" in "core academic courses" by teachers who "meet appropriate state-certification requirements," are "highly qualified in their content area . . ." and "participate in specialized training in ESL methods and techniques." The needs of the ELLs for whom this model is appropriate do not require the services of a teacher holding the type of certification referenced in §L-4-2(11). Instructors working in this model do need specialized ESL training and, like all public school teachers, must possess appropriate grade-level, content-area certification.⁵ These educators complement "ELL Teachers" in the implementation of ELL programs and, collectively, constitute the "appropriately certified and endorsed teachers" who deliver "specialized language instruction for ELLs" in accordance with the standard set forth in L-4-5(10).

The Regulations' inclusion of Sheltered Content Instruction teachers with ELL Teachers is consistent with the manner in which the teacher requirements are described in the program standard. If all ELL instruction had to be provided by teachers holding ESL or Bilingual certification, the program standard in §L-4-5(10) simply would require that specialized language instruction for ELLs be provided by "ELL Teachers," a term defined in §L-4-2(11). Section L-4-5(10) does not do so. Instead, it uses broader language to address teacher certification requirements, language which integrates teachers working in the Sheltered Content Instruction model. Teachers in that model make "content comprehensible to English Language Learners

⁵ The requirement that teachers in the Sheltered Content Instruction model receive specialized ESL training is a direct acknowledgement that they are not considered to be "ELL Teachers."

through scaffolded and differentiated instruction in English . . .” The Regulations do not require those teachers to hold ESL, Bilingual or Dual Language certification.

Petitioners claim that the Collaboration/Consultation Model does not provide direct ELL Teacher instruction consistent with the minimum amounts of time required by §L-4-7 of the Regulations. Section L-4-7, however, speaks to periods of “ESL instruction.” As discussed above, the Regulations do not require that all ELL instruction be delivered by an “ELL teacher” as that term is defined in §L-4-2(11). Under the Providence model, Collaborative Teachers who are ELL-endorsed or certified act as case managers who “consult and collaborate with non-ELL teachers (i.e., general and/or special education teachers) of ELLs” to determine language development strategies for students. The resulting language accommodations and instructional approaches are used by the general and special education non-ELL teachers throughout the school day to ensure that each student has meaningful access to the curriculum. The language development recommendations of the Collaborative Teacher are applied schedule-wide, not just during the specially-assigned one, two or three ELL instructional periods set forth in §L-4-7. We therefore find that Petitioners have failed to establish that the Collaboration/Consultation Model does not comply with the minimum hours of ELL instruction required by §L-4-7.

We also find sufficient evidence to show that the Providence model contains components from the approved models listed in §L-4-10. The model is built upon a framework of close collaboration between ELL and non-ELL teachers who provide scaffolded and differentiated instruction in English throughout a comprehensive system of core academic coursework. The elements of this framework can be found in the models described in §L-4-10.

With regard to the progress report issue, §L-4-13 of the Regulations states that “[t]he same policy for reporting a student’s progress in the general-education program shall be used in reporting a student’s progress in the ELL program.” All students receive quarterly “progress reports,” i.e., report cards, which assess academic performance. In doing so, report cards focus on content area instruction. ELL program standards have an additional focus: the level of English proficiency in the domains of speaking, listening, reading, and writing. The standard report card does not expressly assess English proficiency in this way. It does, as Providence argues, provide the opportunity to indicate that a student’s language acquisition is inhibiting academic progress or that there are problems in any of the domains. But the opportunity to document difficulties in English language acquisition is not the equivalent of a statement of progress in attaining English

proficiency in speaking, listening, reading and writing. The regulation requires the same “policy” for reporting student progress in the ELL program, not the same mechanism. Standing on its own, the comment section in a student’s report card does not invite a teacher to report the student’s ELL progress. Nor is there any evidence of a policy or practice that teachers do so. Under §L-4-13 students’ performance in the ELL program must be evaluated and their progress assessed. This is not being accomplished on student report cards or by any other means.

Conclusion

The parties’ motions for summary judgment are granted in part and denied in part. Providence’s Collaboration/Consultation Model for ELL services does not violate the Rhode Island Regulations Governing the Education of English Language Learners as alleged. Providence is, however, in violation of §L-4-13 of the Regulations by failing to provide reports of student progress in the ELL program in English and in the home/native language of the student. Providence shall develop an ELL student progress report form and implement it immediately.

Paul E. Pontarelli
Hearing Officer

Approved:

Ken Wagner, Ph.D.
Commissioner

Date: March 8, 2019