

EXCISION NO. 521

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

Grievant
and [Agency]

Record
of
Proceeding
s

NO. [
]

Date:
June
25,
1980

For the Foreign Service Grievance Board:

Presiding Member: Board Members:

Special Assistant
to the Board:

Representative for the Grievant:

Representative for the Agency:

In order to prevent an unwarranted invasion of privacy names of individuals and other identifying information have been deleted from this material in accordance with Section 552(b) (6) of the Freedom of Information Act- These names and other identifying information are also withholdable under the Privacy Act.

I. GRIEVANCE

[Grievant], a Foreign Service Officer with the [agency], grieved on July 3, 19—. He alleges that the [post] American School, operated by the [another U.S. Gov't agency], provides a sub-standard secondary education and that [its] inadequacy prompted him to send two sons to a private high school in [post] at his own expense. He asks that the [agency] grant him an education allowance which would reimburse him for some of the expense of educating his children outside for the school years [dates], [dates], and [dates]. His grievance not only seeks relief for himself but apparently is also submitted on behalf of other Foreign Service Officers whose children have been enrolled in the high school.

The Foreign Service Grievance Board (FSGB) remanded the grievance to the [agency] for agency review in accord with 3 FAM 664.4. The [agency] denied [grievant]'s request for an education allowance on September 25, 19—. Its position was that the [regulations] obligate civilian employees such as Foreign Service Officers to use the school system which is accredited and tax supported. It stressed that the [other agency] had been responsive to a critical report on [the post American School] by the [agency's office of overseas schools] and was in the process of upgrading both the faculty and facilities of [the post American School].

Under authority of Section 906 of its regulations, the Board met on March 28, 19— to consider this case.

II. BACKGROUND

The [post American School] is the sole educational institution in the [city overseas] authorized for dependents of U.S. Government employees. It serves the children of [several groups of government employees]. It is operated by the [other agency school system]. It has an elementary level (kindergarten through grade 8) and a secondary level (grades 9 through 12). A very small percentage of the student body is from families of [post] personnel.

[The agency's office of overseas schools'] report on [the post American School] was issued in November 19—. It was prepared by education specialists who have no connection with the [other agency school system]. Its contents are important to a full understanding of the dispute, for the grievant relies heavily on its observations with respect to shortcomings in the [post American School] high school.

The report describes those shortcomings in some detail. First, it notes there have been delays in getting books and school materials to [the post American School]. The precise dimensions of this problem were not spelled out. Second, it emphasizes that [the post American School's] physical facility has been poorly maintained. It suggests that those assigned to this maintenance work, [U.S. Gov't] personnel, have not been as responsive as they should be. Third, it insists that the volunteer assistance program, involving mainly parents of

[The post American School] students, has not been properly administered. It recognizes, however, that this volunteer program has been successful. Fourth, it observes that some teacher-school administration problems have weakened morale. But it concedes that the teachers, as a group, are considered to be cooperative- Fifth, it stresses the limited curriculum for students who are above and below grade level (i.e., the over- and under-achievers). It asserts that there were limited offerings in the high school that no vocational education was available, that courses such as music, art and drama either were not available or were treated as an after-school activity.

The report contains numerous recommendations. It proposes that a need exists in [the post American School] for more teachers, more subject matter specialists, more variety in the curriculum, more supplies for advanced programs and athletics, and so on. In its opinion, such improvements were necessary to "enable it to provide an educational program, especially at the high school level, which would be comparable to an educational program in the greater Washington area..."

The authors of the report commented also on conversations they had had with parents who rejected [the post American School] and chose to send their children elsewhere. Those parents alleged, like [grievant] , that [the post American School] did not provide an "adequate education." But it is

interesting to note that they did not refer to shortcomings cited in the report. Rather, they mentioned the need for special education not available at [the post American School] , the high value placed on a bi-cultural international education, and the potential for social discrimination at [the post American School], even physical or psychological abuse.

Whether these perceptions are correct or not, the fact is that a large number of [agency] and other [U.S. Gov't] personnel send their children to other schools. These parents pay up to \$5,500 a year in tuition out of their own pockets. One of their alternatives is a private, American-style school in [post] which has developed a reputation as being much better than [the post American School] . The [agency] seems to be sympathetic to the parents' problem. For it recommended, at one point, that [the other agency] consider phasing out the high school and that the [agency] itself study revisions in the educational allowance regulations to allow children at some posts the option of going to a school other than the one provided by [the other agency].

Notwithstanding [the post American School's] deficiencies, the [name of association], the accrediting agency for [U.S. Gov't-run American] schools abroad, has given [the post American School] full accreditation. Moreover, [agency's office of overseas schools] stated in a memorandum to the [agency's grievance office] in June 19- that the [the post

American School] high school was unquestionably "adequate" for the [dates] school year. Attached to that memorandum was a report from the [other agency office of schools], enumerating the commitments which had been made to improve [the post school's] performance. [The other agency] promised to provide [the post American School] with a high level administrator, a new school principal, and an opportunity for parents in consultation with teachers and administrators to develop new curriculum offerings. It promised too that priority attention would be given to supply and maintenance problems. It noted that the [name of association] would make another site visit during the [dates] school year in order to cancel or renew [the post American School's] accreditation.

The [agency] informed interested parties in August 19-- that its representations to [the other agency] had had some impact. It decided not to alter the educational allowance regulations but made clear that it reserves the right to take appropriate action if major progress does not occur at [the post American School].

III. DISCUSSION AND FINDINGS

The issue before the Board, simply stated, is whether the [agency's] denial of an educational allowance to the grievant violated law, regulation or published policy.

The regulations for Government Civilians in Foreign Areas contain the relevant rules. [Regulation] defines an

"education allowance" as "an allowance to assist an employee in meeting...expenses, not otherwise compensated for, incurred by reason of...service in a foreign area in providing adequate...secondary education for his/her children." However, [regulation] says that where a U.S. Government-operated school is available at a given post, "normally no education allowance can be granted for a child who does not use the school." Exceptions to this principle, according to [regulation], "may be made...for such reasons as (1) the school's inability to accomodate the child, (2) excessive commuting time, (3) hazardous traffic for young students who have to travel by foot, (4) health conditions certified by medical authority, and (5) attendance of the child in a school in the United States__" It is obvious from the language of this rule ("...such reasons as...") that other exceptions may be made where appropriate. The Board believes that an exception would be justified where the government-operated school had clearly failed to provide an adequate education.

Hence, the real question to be decided in this case is whether the [the post American School] high school provided an adequate education in the [dates] school year and the recent past. [Regulation] defines an "adequate school" as a "secondary school...not requiring mandatory denominational religious instruction and providing an educational curriculum and services reasonably comparable to those normally provided

without charge in public schools in the United States." It states too that "the major criterion of 'adequacy' is whether a child of normal ability, upon completion of a grade, or its equivalent, can enter the next higher grade in a public school in the United States."

Of course, [regulation] was not written for the purpose of defining the "adequacy" of a [/], a government-operated school. Its definitions were obviously intended as an aid in determining whether some alternate school being used by the employee-parent was "adequate." For the education allowance could not be paid unless, at the very least, there was a showing of such "adequacy." But even though the regulations had a different purpose in mind, the Board finds 271-b useful in evaluating the "adequacy" of the [post American School] high school. Surely, what constitutes "adequate" education in some private school may also be a measure of "adequacy" for a [government-run overseas] school.

There is, however, no nationally accepted yardstick for appraising a school. The determination of "adequacy" here must take into consideration not only the government regulations but also the [agency's office of overseas schools'] report on the [the post American School] high school, the Board's view of that report, the [name of association's] accreditation, and other information the Board has obtained with respect to the performance of [the post American School]

pupils on certain standardized tests in contrast to the performance of public school pupils in the United States. The conclusion we have reached is the result of our review of all of this evidence.

As for the [agency's office of overseas school] report, much of its criticism was directed at matters which are not likely to affect the quality of the education being offered by the [the post American School] high school. Delays in the delivery of books and supplies, inadequate maintenance of the physical facility, administrative flaws in the volunteer assistance program, and differences between teachers and school administrators may pose serious problems which demand remedial action. But these problems concern the mechanical functioning of the school, the efficiency of the overall operation. They have little to do with education itself. For the quality of the education depends upon what happens in the classroom, what happens between student and teacher, what happens between students themselves. The ability and dedication of the teachers and the receptivity of the students have far more to do with educational performance than the upkeep of the school building or the administration of the system.

The [agency's office of overseas schools'] report criticized [the post American School] from the standpoint of its teachers as well. It asserted that the school needed more teachers, more subject matter specialists, more variety in the curriculum, and so on. Some of these criticisms, however, are

not at all persuasive. Consider, for instance, the recommendation for more teachers. The report contains no convincing support for this recommendation, no evidence of the number of teachers or the student:teacher ratio in the high school. That information, however, is available elsewhere. The [post] report on [the post American School] for the previous school year, [dates], indicated that the student:teacher ratio was 18:1 and that the class size varied from 12 to 30 students. These figures compare favorably to conditions in the average public high school in the United States. Thus, [the post American School] does not appear to have been understaffed.

There may well be a need for more subject matter specialists in the high school. But the fact is that there were only [number of] students in grades 9 through 12 in the [dates] school year. The limited size of the high school plainly makes specialization difficult. Perhaps the curriculum can be broadened. But the [agency's office of overseas schools] report did not fault the curriculum on such basic subject matter as English, science and mathematics. Its criticism dealt with a failure to offer electives (music, art and drama) and a failure to provide special offerings to students who were above and below grade level. Some of these deficiencies are presumably being remedied at the present time. Some of the electives mentioned above may have been available as an after-school activity. in any event, the absence of such

electives or special training for gifted or limited students is simply not a sufficient basis for finding that [the post American School] is providing an inadequate education.

It is significant that the [agency's office of overseas schools] report nowhere addressed itself to the question of whether the education provided by the [the post American School] high school was "adequate" within the meaning of applicable government regulations. The [agency's grievance office] sought an answer to that question. [The agency's office of overseas schools] replied in June 19--that [the post American School] "is and will be 'adequate' for [dates] school year." It cited the definition of an "adequate school" in [the regulations]. It added that the "test of adequacy" had been met notwithstanding "certain deficiencies" in the school program. These observations help to place the original [agency's office of overseas schools] report in a clearer perspective.

Another significant factor is the action of the [name of association] in giving its accreditation to [the post American School]. This accreditation, according to [association] literature, signifies that "objective conditions for quality and progress exist" in a school. Apparently less than half of the applicant schools in the U.S. satisfy [the association's] standards. To win and retain accreditation, a school is subject to on-site evaluation and is required to submit an annual

report on the extent to which it is meeting NCA standards. That report is reviewed by groups of educators who determine, on the basis of all relevant information, whether the accreditation should be granted or denied. The accreditation is effective for one year at a time. Under these circumstances, we find that the [association] accreditation of [the post American School] undermines the grievant¹'s claim that [the post American School] is inadequate.

The Board nevertheless sought some objective criterion by which to compare student performance in [the post American School] with student performance in U.S. public schools. We decided to use the Scholastic Aptitude Tests (SATs) despite recent criticism of this type of standardized testing. We assembled SAT scores, verbal and mathematical, for the past four years for public school students in the District of Columbia and the five counties which together comprise the greater Washington metropolitan area. We secured the very same data for the [the post American School's] students. That comparison is revealing. It shows [the post American School] students outperforming their U.S. counterparts. In verbal aptitude, [the post American School] averages were higher than all six Washington districts for the past three years. In mathematical aptitude, [these] averages were higher than all six Washington districts for at least three of the four years. [The post American School] students have exceeded the national

averages in all four years by substantial margins. And, by and large, [their] scores have been rising from year to year while the Washington districts have been either stable or on a slight downtrend. All of this demonstrates that [these] students have not been adversely affected by their education. Their educational performance does not appear to have been hindered by the deficiencies stated in the [agency's office of overseas schools] report.

For these reasons, we find that the grievant has failed to prove that the education provided by the [the post American School] high school is not "adequate." Hence, the grievant's request for educational allowances for his children must be denied.

The [agency, the other U.S. Government agency and the post American School] parents all seem to agree that the high school can and should be improved. Positive steps have been taken to make the necessary improvements. But the recognition of deficiencies does not, by itself, serve to establish that [the post American School] is inadequate. Whether a school is "adequate" or not within the meaning of the pertinent regulations is a question which turns on the kinds of considerations examined in this decision.

IV. BOARD DETERMINATION

We find that the [the post American School] high school has not been proven inadequate under existing law and regulation. We therefore have no choice but to deny the grievance.