



Ken Wagner, Ph.D.,
Commissioner

State of Rhode Island and Providence Plantations

DEPARTMENT OF EDUCATION

Shepard Building
255 Westminster Street
Providence, Rhode Island 02903-3400

July 27, 2018

By electronic and first class mail

Philip.thornton@warwickschools.org

Philip Thornton, Ed.D., Superintendent,
Warwick Public Schools
Bethany Furtado, Chair,
Warwick School Committee
69 Draper Avenue
Warwick, Rhode Island 02889

Re: July 17, 2018 Waiver Requests

Dear Superintendent Thornton and Chairperson Furtado:

Please be advised that after careful consideration and review by RIDE's legal office I am hereby denying each of the requests for "alternatives and/or variances" made in your joint letter of July 17, 2018.

Under Rhode Island law, I lack the legal authority to vary or waive requirements that are mandated by: (1) federal or state statutes; (2) federal regulations; or (3) regulations that are the "embodiment of statutory requirements." See *School Committee of Town of Johnston v. Santilli*, 2005 WL 1023070 (Superior Court, April 27, 2005), appeal dismissed as moot, 912 A.2d 941 (R.I. 2007). Thus, as Superior Court Judge Rubine noted in *Santilli, supra*, the universe of possible waivers that I may properly consider under the Caruolo Act is "relatively narrow." *Id.*

Thus:

- (a) the request to charge \$1.00 a day per student for transportation is precluded by, *inter alia*, RIGL §§ 16-21-1(a), 16-21.1-2(b), 16-21.1-4 and 16-38-6;
- (b) with respect to charging for middle and high school sports, the Commissioner's August 5, 2009 Advisory Opinion to Thomas Mezzanotte, Executive Director of the Rhode Island Interscholastic League, and November 13, 2015 Advisory Opinion to Stephen Adams, Esq. and Alexander Chiulli, Esq. make clear that although a school-based program of extra-curricular activities is required under the BEP, the General Assembly has not granted school committees the authority to charge fees for school services "except in a few very special cases." See 2015 Advisory at 2. In addition, the Commissioner observed that:

Telephone (401)222-4600 Fax (401)222-6178 TTY (800)745-5555 Voice (800)745-6575 Website: www.ride.ri.gov

Public education in Rhode Island is not a means-tested welfare program. The upshot is that students and their families who have limited means do not have to request a charitable waiver to earn the right to participate in school-sponsored athletic programs in this state.

2009 Advisory at 4;

- (c) eliminating all payments to out-of-district providers of student pathway programs without violating existing law is not possible since such programs are individualized and may, in any given case, include programs for which responsibility cannot be waived. For example, eliminating responsibility for participation in CTE programs is precluded by, *inter alia*, the clear legislative intent expressed in RIGL §§ 16-45-1.1(1)(i), 16-45-6.1(c), and the embodiment of that intent in § 5.1 of the *Regulations Governing Career and Technical Education in Rhode Island* and my recent decisions in *Student H. Doe v. Chariho regional School Committee*, RIDE No. 016-16 (June 1, 2016); and *Metropolitan Regional Career and Technical Center v. Chariho Regional School District* (“*Met. Center*”), RIDE No. 010-16 (April 12, 2016);
- (d) eliminating all payments to charter schools is precluded by, *inter alia*, RIGL § 16-7.2-5(b), which makes clear that the funding of charter schools is a matter covered by state statute and not by regulation. *See also* RIGL §§ 16-77.1-1, *et seq.* (charter public schools); 16-77.2-5 (district charter schools) 16-77.3-5 (independent charter schools) and 16-77.4-5 (Mayoral academies),
- (e) eliminating all payments for providing out-of-district transportation to students under the care of DCYF is precluded by RIGL § 16-21.1-1(7), which makes clear that it is the duty of the school committees to “provide for the transportation of public school students who attend schools located outside of the city or town in which they reside,” *id.*, as well as by my recent decisions construing ESSA in *DCYF v. Providence Public School Department*, RIDE No. 18-019 A (April 26, 2018) at 9, citing RIGL § 16-21.1-1(7) and the consolidated decision in *DCYF v. North Smithfield School Department*, RIDE No. 17-21 and *DCYF v. Pawtucket School Department*, RIDE No. 17-22 (November 21, 2017);
- (f) eliminating school bus monitors on all school buses in the absence of “an alternative plan providing substantially equivalent safety for children” is precluded by RIGL § 16-21-1(b); and finally

Superintendent Thornton and Chair Furtado
July 27, 2018
Page Three

- (g) although the nature of your request with respect to the treatment of debt service is unclear, the treatment of debt service is a matter of state law, whether in connection with the statutory requirement of adequate funding under RIGL § 16-2-21(b), the MOE mandated under § 16-7-23(a) or § 16-7-24, or the cap mandated under § 16-2-21(d)(vi). And of course the fact that “Warwick is one of very few systems currently paying debt service” is a function of the Warwick City Charter and local ordinance.

Please feel free to call with any questions.

Sincerely,



Ken Wagner, Ph.D.
Commissioner of Education

KW/crb