



# CRANSTON PUBLIC SCHOOLS

845 PARK AVENUE  
CRANSTON, RHODE ISLAND 02910-2790

**M. RICHARD SCHERZA**

SUPERINTENDENT  
BOARD OF REGENTS FOR  
ELEMENTARY AND SECONDARY EDUCATION

December 26, 2007

**SENT VIA CERTIFIED MAIL AND REGULAR MAIL**

DEC 27 2007

Mr. Peter McWalters, Commissioner  
Rhode Island Department of Elementary and Secondary Education  
Shepard Building  
255 Westminster Street  
Providence, RI 02903-3400

OFFICE OF THE  
COMMISSIONER

Dear Commissioner McWalters:

The Cranston School Committee (Committee) adopted a FY 2007-2008 Budget of \$126,395,975, the exact amount appropriated by the Cranston City Council (Council). This Budget was adopted by the Committee even though the Committee knew that it was insufficient for the Cranston School Department to operate its PK-12 educational program under laws, regulations and/or contracts currently in force.

Expert consultants were engaged to review the budget and to make recommendations with regard to any possible cost savings measures. The experts completed a thorough financial and programmatic analysis of the 2007-2008 Budget and determined that \$130,280,165 was needed to complete the fiscal year without violating Federal or State Laws or Regulations or negotiated agreements. The shortfall for the 2007-08 Budget was therefore identified to be \$3,888,190 as of December 6, 2007.

In short, the Committee has been advised by their Finance Director and experts that the School Department cannot adequately operate the School District within the approved Council Budget and be in compliance with existing law. Consequently, the Committee resolved, on December 6, 2007, to direct me, as their Superintendent, to request alternatives and/or waivers from you that would reduce this pending deficit. These requests are being made pursuant to R.I.G.L. §16-2-21.4.

The Committee would request your consideration of the following alternatives and waivers:

1. Permission to eliminate all non-Special Education transportation for the last quarter of the school year. Potential savings - \$350,000
2. Permission to utilize the same waiver given to the Providence School System with regards to Special Education class size. Although this waiver would have insignificant financial savings this year, it would provide up to \$150,000 in cost avoidance, if enrollments should exceed existing numbers during the remainder of the school year.

Mr. Peter McWalters, Commissioner  
December 26, 2007

3. Request that Second Semester Special Education Tuitions be paid out of RI Department of Education 2007-08 funding and that the cost for such become part of the Department's 2007-08 supplemental funding requests to the Governor and Legislature. Potential savings – \$2,300,000
4. Request that the RI Department of Education provide an additional \$1,234,190 for the education of students at the Cranston Area Career & Technical Center similar to the funds appropriated for students at Davies. Said funds could then be requested as part of the Department's supplemental 2007-08 funding request to the Governor and Legislature.

In addition, we would ask that you notify us if you or your staff has any suggestions for cost saving ideas that can be implemented immediately.

Please address any questions you may have regarding the above directly to me, and I will forward them to the School Committee. We look forward to your response.

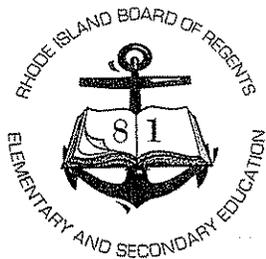
Sincerely,



M. Richard Scherza  
Superintendent of Schools

MRS:cmm

c: Michael Napolitano, Mayor, City of Cranston  
Cranston City Council  
Cranston School Committee



Peter McWalters  
Commissioner

State of Rhode Island and Providence Plantations  
**DEPARTMENT OF EDUCATION**  
Shepard Building  
255 Westminister Street  
Providence, Rhode Island 02903-3400

January 15, 2008

Mr. M. Richard Scherza  
Superintendent of Schools  
Cranston Public Schools  
845 Park Avenue  
Cranston Rhode Island 02910-2790

Dear Superintendent Scherza:

Thank you for your letter of December 26, 2007 in which you request certain regulatory waivers under the Caruolo Act. (R.I.G.L.16-2-21.4) As a legal matter, I must note that requests for Caruolo Act waivers must be submitted by the *chairperson* of the city, town, or regional school district making the request. Still, to expedite consideration of your request I will treat your letter as if it signed by the chairperson of the school committee. However, a waiver request from the chairperson of the school committee should immediately be filed with my office to fulfill the requirements of the law. I will respond to your waiver requests individually:

**1. First Waiver Request:** Permission to eliminate all non-Special Education transportation for the last quarter of the school year. **Response to First Waiver Request:** A statute enacted by the General Assembly requires a school committee to provide transportation to a student if the circumstances are such that it would be "impractical" for the student to walk to school:

**R.I.G.L. 16-21-1 Transportation of public and private school pupils. –**  
(a) The school committee of any town or city shall provide suitable transportation to and from school for pupils attending public and private schools of elementary and high school grades, except private schools that are operated for profit, who reside so far from the public or private school which the pupil attends as to make the pupil's regular attendance at school *impractical* and for any pupil whose regular attendance would otherwise be impracticable on account of physical disability or infirmity. (Emphasis added)

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The Board of Regents does not discriminate on the basis of age, color, sex, sexual orientation, race, religion, national origin, or disability.

Under this statute the Rhode Island Supreme Court has listed *three factors* to be weighed in deciding whether it is *impractical* for a student to walk to school:

- The age of the child;
- The distance walked; and
- The hazards along the roadway.

The Supreme Court ruled that if these factors, taken separately or together, make it impractical for an individual student to walk to school, the school committee must provide transportation. *Brown v. Elston*, 445 A.2d 279 (R.I. 1982). The Court also stated that: "The committee cannot avoid its statutory obligation to supply transportation to students who would otherwise find it impractical to attend school by neglecting to set aside sufficient funds to do so."

As you know, the Commissioner has no authority to repeal statutes or to vacate decisions issued by the Rhode Island Supreme Court. A waiver of the requirement of R.I.G.L.16-21-1, as this statute has been construed by the Supreme Court in *Brown*, therefore, cannot be granted. We must leave to the Cranston School Committee the initial decision of deciding whether its present transportation service levels exceed statutory requirements. The *Brown* case stressed the importance of individualized decisions in transportation matters. It is also evident that any recalibration of walking distances should be based on consultation with local public safety officials and with timely notice to, and input from, the parents concerned.

If a dispute develops about whether or not transportation is required in a given case the matter must initially be heard and decided by the school committee. If an appeal is then made to the Commissioner, it would be necessary for the Commissioner to determine in a *de novo* hearing whether, "...it would be impractical for the student to go back and forth to school on his own..." *Brown, supra*.

**2. Second Waiver Request:** Permission to utilize the same waiver given to the Providence School System with regard to Special Education class size. **Response to Second Waiver Request:** Providence was not given a waiver of class size limits. As part of a remedial program of progressive support and intervention Providence was granted a *variance* to certain class size provisions, *provided that an extensive program of compensatory educational programming was instituted*. This variance was granted in furtherance of progressive support and intervention and it was implemented under the detailed procedures, including public hearings, required for variances granted outside of the Caruolo Act. Variance requests must include thorough procedural and substantive compliance in order for the variance to be considered by the Commissioner. Listed below are the requirements necessary prior to the Commissioner's consideration of a variance.

The variance process is a thorough and detailed procedure designed to create an alternative method of compliance with the regulations. A variance request should include a comprehensive description of the reasons for the request, the methods the district will use to carry out the alternate compliance, and the educational benefits and costs to the students if the variance is granted. Any alternative compliance must also assure equal educational opportunity, consist of best educational practice, and demonstrate greater or equal student achievement.

Proper procedure in requesting a variance consists of the following:

1. Prior to requesting a variance the superintendent of schools will review the variance to determine if the Commissioner of Education has the authority to grant the request.
2. The Superintendent shall then call for a school committee meeting on the variance request. Notice of the meeting shall be published twenty (20) work days in advance of the meeting and shall include the text of the variance sought with an explanation of the variance. Notice of the meeting shall also be given to the Commissioner of Education and to any recognized groups including parent and community groups, bargaining agents, and professional organizations whose interest would be directly affected by the granting of the variance.
3. The Committee's recommendation shall be forwarded to the Commissioner with a copy of the minutes of the meeting and with any written comments received concerning the proposed variance. The Commissioner in his/her discretion, may direct the taking of further testimony.
4. Any decisions made by the Commissioner can be appealed to the Board of Regents.

If you have any questions regarding the variance protocol please contact David Abbott, General Counsel, at 222-8703. You should also note that the Superior Court has recently expressed doubt as to whether the Commissioner, in the simple context of a Caruolo Action, can grant variances relating to special education regulations.

**3, Third and Fourth Waiver Requests:** Your third and fourth waiver requests seek to have the Rhode Island Department of Education assume responsibility for paying Cranston's bills for special education and vocational education tuitions. **Response:** Without reaching the issue of the practicality of your suggestion that RIDE pay Cranston's tuition bills, I must inform you that the applicable law would prohibit such an action. While it is true that the Board of Regents prepares and submits the state's education budget to the General Assembly, the General Assembly has provided that: "Nothing contained in this section shall authorize any individual or group of individuals to reallocate resources in a manner other than that prescribed in the budget as appropriations by the general assembly. R.I.G.L.16-60-4(5)" I simply have no authority to expend public money other than in accordance with the appropriations made by our General Assembly.

Your letter also seeks suggestions concerning other regulatory waivers that might result in significant savings. However, as you know, neither the Board of Regents nor the Commissioner of Education has the authority to waive:

- **Federal law** (e.g. the *No Child Left Behind Act* (NCLB), the *Individuals with Disabilities Act* (IDEA), or *Section 504 of the Rehabilitation Act*.)
- **Federal regulations** (e.g. NCLB regulations, IDEA regulations, and Section 504 Regulations)
- **State law** (e.g. tenure, certification, transportation, special education, health and safety, and the length of the school year.)
- **Collective bargaining agreements**

The law at R.I.G.L.16-2-21.4 also provides that:

Waivers which affect the health and safety of students and staff or which violate the provisions of chapter 24 [Special Education] of this title shall not be granted.

Given these limitations, school committees, the Department of Education, interested parties, and very experienced and knowledgeable superintendents have had difficulty in identifying exclusively regulatory, rather than statutory, waivers and allowable compliance alternatives that would produce perceptible savings. If I can be of any further help to you in this matter please let me know.

Sincerely,



Peter McWalters  
Commissioner

PM(FLA):scp