

Pawtucket School Department

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BOARD OF REGENTS FOR
ELEMENTARY AND SECONDARY EDUCATION

NOV 27 2007

OFFICE OF THE
COMMISSIONER

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November 19, 2007

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

Dear Commissioner McWalters:

At its April 2007 meeting, the Pawtucket School Committee adopted a FY 2007-2008 budget of \$ 102,641,730. In June 2007, the Pawtucket City Council approved a School Department appropriation of \$ 26,974,531 which is the same appropriation as that given for the 2006-07 school year. State aid was also level-funded, except for a \$165,000 increase in Group Home Aid.

The School Department was able to reduce its budget by \$2,284,564, chiefly as a result of teacher breakage and by not filling 17 Certified and 5 Non-Certified vacant positions. Expert consultants were then engaged to review the remaining budget of \$100,357,166 and to make recommendations with regard to any cost savings measures.

The experts did complete a thorough financial and programmatic analysis of the 2007-2008 budget and determined that \$97,834,052 was needed to complete the fiscal year without violating Federal or State Laws or Regulations or negotiated agreements. This budget would result in a deficit of approximately \$2,800,000.

In short, the School Committee has been advised by the Business Administrator that the School Department cannot adequately operate the School District with the approved budget and be in compliance with existing law. Consequently, the Pawtucket School Committee resolved, on November 06, 2007, to direct me to request exemptions and/or waivers from you. These requests are being made pursuant to R.I.G.L. §16-2-21.4.

The Pawtucket School Department does not discriminate on the basis of age, sex, race, religion, national origin, color or disability in accordance with applicable laws and regulations.

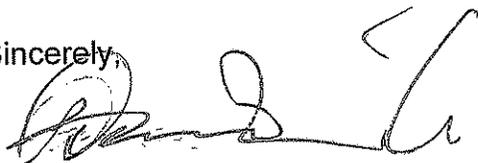
The Pawtucket School Committee would request your consideration of the following waivers and alternative:

1. Permission to eliminate all non-Special Education transportation for the last quarter of the school year when weather would be less of a problem. Potential savings - \$290,000
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 \$200,000 in cost avoidance, if enrollments should exceed existing numbers during the school year.
3. Request that the Commissioner consider the alternative 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 - \$2,510,000

In addition, we would ask that you notify us if you or your staff have 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,



Dr. Hans W. Dellith
Superintendent of Schools

cc: Mayor James E. Doyle
Pawtucket City Council
Pawtucket School Committee



Peter McWalters
Commissioner

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

January 10, 2008

Dr. Hans Dellith, Superintendent of Schools
Pawtucket School Department
286 Main Street
Pawtucket RI, 02860

Dear Dr. Dellith:

Thank you for contacting the Rhode Island Department of Education regarding a waiver request under the Caruolo Act (R.I.G.L. 16-2-21.4). Prior to discussing the substance of your request, we strongly suggested that you consult with your attorney, as all procedural and substantive requirements of the act must be completed. This would include the requirement that the written petition must be submitted by the *chairperson* of the city, town, or regional *School Committee*.

Because it appears from your letter that you are acting on behalf of the Pawtucket School Committee in requesting the waiver of certain education requirements to stay within the Committee's appropriated budget, and in order to avoid further delay, I will respond to the request as submitted:

1. Permission to eliminate all non-Special Education transportation for the last quarter of the 2007-2008 school year when the weather would be less of a problem.
2. Permission to utilize the same waiver given to the Providence School System with regards to Special Education class size.
3. That the Commissioner consider the alternative 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 request to the Governor and Legislature.

As I am sure you are aware, I have no authority to waive a Federal law, Federal Statute, or State statute. In addition, I have made it my policy not to waive any Special Education regulation for purely economic reasons pursuant to the Caruolo Act. Each of your requests falls within one of the aforementioned categories. I am therefore unable to grant any of the three waivers requested by Pawtucket, for reasons more specifically set forth below.

Telephone (401)222-4600 Fax (401)222-6178 TTY 800-745-5555 Voice 800-745-6575

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

1. Permission to eliminate all non-Special Education transportation for the last quarter of the school year when the weather would be less of a problem.

I must point out that a law 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)

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
- The hazards along the roadway.

The Supreme Court has 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. I therefore leave to the Pawtucket School Committee the initial decision of whether the coming of spring will mitigate the "hazards along the roadway" to a degree sufficient to have a material effect on the practicality of students being able to walk to school in the City of Pawtucket. 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 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.

2. Permission to utilize the same waiver given to the Providence School System with regards to Special Education class size.

It appears from your letter that you are requesting a waiver to Special Education Regulation 300.552(B)(1). It has been and continues to be my policy to deny Caruolo Act waivers to special education regulations, including regulations relating to class size.

Your specific request includes the statement "the same waiver given to the Providence School System with regard to Special Education class size." It is important to note that Providence was granted a *variance*, not a *waiver*. A waiver is an absolute negation of a regulation, while a variance is compliance with a regulation through alternative means.

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.

However, you should also know that the Board of Regents promulgated new special education regulations on December 19, 2007 that effectively do away with class size restrictions, effective July 1, 2008. There are some conditions attendant to this change. You may want to consult with your own attorney concerning the implications of these new regulations for student and teacher assignment for the 2008-2009 school year.

- 3. That the Commissioner consider the alternative 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 request to the Governor and Legislature.**

This is an unprecedented funding request. Without reaching the practical issues surrounding RIDE funding Pawtucket's special education tuitions, I must inform you that Rhode Island State Law prohibits this action. While I assist the Board of Regents in preparation and submission of the State's education budget to the General Assembly under R.I.G.L. 16-60-4(5), there are also required limitations. One such limitation states that "Nothing ... 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)(ii). I therefore have no authority to expend public money other than in accordance with the appropriations made by the General Assembly.

For the preceding reasons I am unable to grant your waiver requests. If I, or my staff, can be of further assistance to you in this matter please feel free to contact me.

Sincerely,



Peter McWalters
Commissioner

Cc: David V. Abbott, General Counsel