

West Warwick Public Schools

Kenneth M. Sheehan
Superintendent of Schools
401-821-1180
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Administration Building
Miriam A. Duffy School
10 Harris Avenue
West Warwick, RI 02893

BOARD OF REGENTS FOR
ELEMENTARY AND SECONDARY EDUCATION

FEB 01 2008

OFFICE OF THE
COMMISSIONER

January 30, 2008

Mr. Peter McWalters
Commissioner of Education
Rhode Island Department of Education
255 Westminster Street
Providence, RI 02903

Dear Commissioner McWalters:

As you may be aware, the FY 2008 budget of the West Warwick School Department (WWSD) was under appropriated by the West Warwick Town Council (WWTC) and subsequently by the West Warwick Town Meeting (WWTM). The original request of the WWSD was \$51,559,100. The WWTC and WWTM actually appropriated \$49,829,685 on May 15, 2007 which resulted in an original budget shortfall of \$1,729,415.

The West Warwick School Committee cannot adequately operate the school department within the approved budget and remain in compliance with state law and regulation. Consequently, the School Committee authorized me, through a vote taken at its meeting of January 29, 2008, to request waivers from the state as required by R.I.G.L. 16-2-21.4.

For the West Warwick School Committee, I am hereby requesting the following waivers:

- 1) Waiver of the requirement to provide bussing to any students other than those who are physically handicapped for the second semester of the 2007-08 school year (potential savings – approximately \$500,000);
- 2) Waiver of the requirement that the WWSD must provide tuitions for students who attend the Warwick Career and Technical Center for the second semester of the 2007-08 school year (potential savings – approximately \$440,000);
- 3) Waiver to invalidate unilaterally several existing IEPs' and return students to existing in-house programs in order to reduce the cost of out of district tuitions (potential savings – approximately \$200,000).

The West Warwick Public Schools do not discriminate on the basis of age, sex, race, religion, national origin, color or handicap in accordance with applicable laws and regulations.

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Please understand that the School Committee does not believe that these proposals are in the best interest of advancing the course of education in West Warwick, but endorses these proposals for the only purpose of complying with existing state law. In addition, we would ask that you notify us, if you or members of your staff have any suggestions for cost saving ideas that can be implemented immediately.

Please address any questions you may have regarding the above to our Superintendent of Schools, Mr. Kenneth Sheehan, We look forward to your response.

Sincerely,



Daniel Burns,
Chair, West Warwick School Committee

Cc: West Warwick School Committee
West Warwick Town Council
Superintendent of Schools



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

Peter McWalters
Commissioner

March 5, 2008

Mr. Kenneth M. Sheehan
Superintendent of Schools
West Warwick School Department
10 Harris Avenue
West Warwick RI, 02893

Dear Mr. Sheehan,

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). As I am sure you realize, the Caruolo Act has numerous procedural and substantive requirements that may require consultation with your legal counsel.

I regret to inform you that the waivers that you have requested relate to statutes and regulations that I cannot waive, I am therefore unable to grant your requests.

You have requested the following waivers:

1. A waiver to the requirement to provide bussing to any students other than those who are physically disabled for the second semester of the 2007-08 school year;
2. A waiver to the requirement that WWSD provide tuitions for students who attend the Warwick Career and Technical Center for the second semester of the 2007-08 school year; and,
3. A waiver to the regulation prohibiting the unilateral invalidation of IEPs.

As I am sure you are aware, I have no authority to waive a federal law, federal Regulation, or State law. In addition I have made it my policy not to grant outright waivers of any Special Education regulation. As stated earlier, each of your requests falls within one of the aforementioned categories.

- 1. Waive the requirement to provide bussing to any students other than those who are physically disabled for the second semester of the 2007-08 school year.**

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.

R.I.G.L. § 16-21-1 specifically requires each 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.” *Id.*

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*, cannot, therefore, be granted. We must therefore leave it to the West Warwick School Committee to decide 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 West Warwick. 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*.

- 2. Waive the requirement that WWSD provide tuitions for students who attend the Warwick Career and Technical Center for the second semester of the 2007-08 school year.**

Regulations Governing the Management and Operation of Area Vocational-Technical Centers, section III(C)(1) states:

All School Districts Shall Provide:

Fiscal resources for the operation of the area vocational-technical center and its satellite programs operated on the basis of enrollment...

While this is a state regulation, which theoretically could be waived by the commissioner, doing so would result in an underfunded career and technical center, effectively burdening other school districts. In addition, this particular regulation is closely aligned with a State statute that cannot be waived. R.I.G.L. §16-45-1.1 (d)(1)(i) states:

All youth and adults who choose vocational education shall have access to those [vocational] programs.

Granting this waiver request would be tantamount to denying students the option of vocational education. As this would violate a State statute, I have no authority to waive this regulation. Furthermore, waiving this regulation is contrary to my responsibility for the "coordination of the various elementary and secondary educational functions among the educational agencies of the state including local school districts and to encourage and to assist in the cooperation among them so that maximum efficiency and economy may be achieved" as described in R.I.G.L. §16-60-6(5). It should also be noted that if a sending district fails to pay tuition, I am obligated to deduct funds from the state aid of the sending district in accordance with R.I.G.L. §16-45-10.

3. Waive the regulation prohibiting the unilateral invalidation of IEPs.

The Individuals with Disabilities Education Act (IDEA) and the corresponding federal regulations establish requirements for educating students with IEPs. Federal regulations 34 CFR §§ 300.324 and 300.325, under authority of 20 U.S.C. §1412(a), 20 U.S.C. §1414(d), and 20 U.S.C. §1414(e), require that revisions to an IEP be made by an IEP team, which includes the parents.

34 CFR §300.324, in pertinent part, states:

"(b) Review and revision of IEPs—... the *IEP Team*—... (ii) Revises the IEP, as appropriate..." (emphasis added)

With regard to private school placements, 34 CFR §300.325, in part, states:

(b) Reviewing and revising IEPs. (1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.

- (2) If the private school or facility initiates and conducts these meetings, the public agency must ensure that the parents and an agency representative—
- (i) Are involved in any decision about the child's IEP; and
 - (ii) Agree to any proposed changes in the IEP before those changes are implemented.

Unilateral invalidation of an IEP is a violation of federal regulation, and contrary to the letter, intent, and spirit of the IDEA. As such, I have no authority to waive this regulation.

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 let me know.

Sincerely,



Peter McWalters
Commissioner

Cc: West Warwick School Committee
West Warwick Town Council
Superintendent of Schools
David V. Abbott