

City of Woonsocket
EDUCATION DEPARTMENT
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Email: rgerardi@wedmail.org



Robert J. Gerardi, Jr., Ph. D.
Superintendent

RELAY RHODE ISLAND
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Web site: <http://woonsocketschools.com>

December 22, 2008

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

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

BOARD OF REGENTS FOR
ELEMENTARY AND SECONDARY EDUCATION

DEC 24 2008

OFFICE OF THE
COMMISSIONER

Dear Commissioner McWalters:

On October 14, 2008, a letter was sent to you with requests for waivers, as well as, an expedited advisory opinion of certified personnel mid-year lay-offs. I have been working closely with the RI Auditor General and have written an approved Corrective Action Plan for FY2008.

However, I am still trying to finish the Corrective Action Plan for the FY2009 shortfall. I have requested several 30-day extensions culminating in a December 31, 2008 deadline. I will request one more 30-day extension with an explanation that I am waiting for your response to the waivers and expedited review as can be viewed in the attached October 14, 2008 letter.

Deputy Commissioner Abbott has assured me that his staff is working on the expedited advisory opinion on mid-year lay-offs of certified personnel. I am hopeful that both a response to the request for waivers and the expedited advisory opinion will come early enough to help us resolve our shortfall.

Sincerely,

Robert J. Gerardi, Jr., Ph. D.
Superintendent of Schools

RJG:dd

c: Woonsocket School Committee
Susan D. Menard, Mayor
Leo Fontaine, City Council Chairman
Richard Ackerman, Esquire
File

Attachments

City of Woonsocket

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October 14, 2008

COPY

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

Dear Commissioner McWalters:

On September 16, 2008, the Woonsocket Education Department Finance Director, Mr. Robert Strom notified the Superintendent of Schools, who in turn notified the School Committee, that the FY 2008 budget was closed with a \$400,000 deficit. His assessment of the FY 2008 budget is that it was balanced on one-time payments to the district and the use of a previous FY 2007 budget surplus thus creating a structural deficit for the FY2009 budget. Mr. Strom's projected deficit for FY 2009 is approximately \$2,000,000. On Wednesday September 17, 2008, the School Committee held a special Budget Workshop to notify the community of this budget shortfall and describe the next steps including:

1. Placing a spending freeze on all non-essential purchases
2. Administrative investigation of any possible spending cuts within the FY2009 budget
3. Communication with union leadership about possible concessions
4. Communication with Commissioner of Education about possible waivers
5. Communicate with the Mayor about consolidations of services to produce mutual efficiencies

The Woonsocket Education Department Administration has already addressed steps 1 and 2. The Woonsocket Education Department Administration and School Committee are currently meeting with the unions and negotiating concessions. The Woonsocket School Committee does not feel that even with the maximum union concessions available, it can adequately operate the school department within the approved budget and remain in compliance with state law and regulation. Consequently, we are requesting waivers from the state as required by R.I.G.L. 16-2-21.4. For the Woonsocket School Committee, I am hereby requesting the following waivers:

1. Waiver of the requirement that the school department provide textbooks, nursing records, and transportation to non-public school students
2. Waiver of the requirement to provide bussing to any students, public or private, other than those who are physically or mentally disabled
3. Waiver of the regulation that requires Woonsocket High School to offer two foreign languages
4. Waiver of Middle Level and High School Restructuring requirements for personalized learning environments, advisories, individual learning plans, and common planning time

5. Waivers such that the Woonsocket Education Department can charge fees for student participation in extra-curricular activities, and also for transportation if the transportation waivers outlined above are not granted

Additionally, the Woonsocket Education Department Attorney, Richard R. Ackerman, has suggested that we seek an expedited advisory opinion on the school department's right to legally terminate teachers/teachers assistants during the school year. Attorney Ackerman does not believe that there are any court rulings in Rhode Island dealing with this subject, but does feel the following:

There is some support in early decisions of the Commissioner of Education that bona fide fiscal exigency can be considered just cause for termination of a teaching contract in an ensuing year under the Teacher Tenure Act, but none which holds that the bona fide unavailability of funds is just cause under Rhode Island law to terminate a teaching contract mid-year.

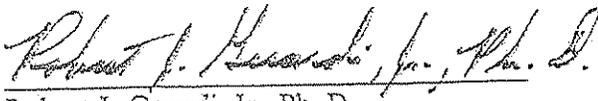
Finally, we understand that as a result of a recent Superior Court ruling, the Rhode Island Department of Education Commissioner has the authority to override individual district teacher contracts. We are requesting that the Commissioner address the following two issues with an override of the current Woonsocket Teachers Guild Contract:

1. Currently, the Woonsocket Education Department Special Education staffing is dictated by contract language that was aligned with the former Rhode Island Special Education Regulations. Now that RI Special Education Regulations have been aligned to the federal regulations, the Woonsocket contractual obligation is restrictive and precludes flexibility to address changes that may occur throughout the school year. Kevin Nerney was apprised of the Woonsocket Teacher contract and questioned the legality of denying rights guaranteed by IDEA and ADA through individual contractual obligations. We would like the Commissioner to negate that language in the current Woonsocket Teachers Guild contract that specifies class size limits by disability classification. We would also like the Commissioner to negate that language in the current Woonsocket Teachers Guild contract that specifies case loads for service providers.
2. In addition, teachers and teachers' assistant job fair/bumping rights should not apply to staffing decisions associated with students with IEPs and those in alternative placements and programs. Seniority should not be the determining factor in staffing decisions for those students. The decisions must be determined by student need, suitability, experience, qualifications, and IEP requirements.

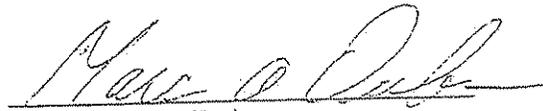
Please understand that the Woonsocket School Committee does not believe that all of these proposals are in the best interest of advancing the course of education in Woonsocket, but endorses these proposals for the purposes of complying with fiscal requirements simultaneously with existing state education laws and regulations. In addition, we would ask that you notify us if you or your staff has any other suggestions for cost saving ideas that can be implemented immediately.

Please address any responses or questions you may have regarding any of the information above to the Superintendent of Schools, Dr. Robert J. Gerardi, Jr. We look forward to your response as we have a deadline of October 28, 2008 to complete our corrective action plan.

Sincerely,



Robert J. Gerardi, Jr., Ph. D.
Woonsocket Superintendent of Schools



Marc Dubois, Chairman
Woonsocket School Committee

RJG:dd

- c:
- ✓ Woonsocket School Committee
 - ✓ The Mayor of Woonsocket
 - ✓ Woonsocket City Council Chairman
 - ✓ Richard Ackerman

TITLE 16

Education

CHAPTER 16-2

School Committees and Superintendents

SECTION 16-2-21.4

§ 16-2-21.4 School budgets – Compliance with certain requirements. – (a) Notwithstanding any provision of the general or public laws to the contrary, whenever a city, town, or regional school committee determines that its budget is insufficient to comply with the provisions of § 16-2-21, 16-7-23, or 16-7-24, the city, town, or regional school committee shall adhere to the appropriated budget or the provisions of § 16-2-23 in the absence of an appropriated budget. The chairperson of the city, town, or regional school committee, in accordance with the provisions of § 16-2-9, shall be required to petition the commissioner, in writing, to seek alternatives for the district to comply with state regulations and/or provide waivers to state regulations and, in particular, those which are more restrictive than federal regulations that allow the school committee to operate with a balanced budget. Waivers which affect the health and safety of students and staff or which violate the provisions of chapter 24 of this title shall not be granted. The commissioner must consider alternatives for districts to comply with regulations and/or provide waivers to regulations in order that the school committee may operate with a balanced budget within the previously authorized appropriation. In the petition to the commissioner, the school committee shall be required to identify the alternatives to meet regulations and/or identify the waivers it seeks in order to provide the commissioner with the revised budget which allows it to have a balanced budget within the previously authorized appropriation. The commissioner shall respond within fifteen (15) calendar days from the date of the written petition from the school committee. If the commissioner does not approve of the alternatives to meet regulations or the waivers from regulations which are sought by the school committee, or if the commissioner does not approve of the modified expenditure plan submitted by the school committee, then: (1) within ten (10) days of receiving the commissioner's response, the school committee may submit a written request to the city or town council for the council of the municipality to decide whether to increase the appropriation for schools to meet expenditures. The decision to increase any appropriations shall be conducted pursuant to the local charter or the public law controlling the approval of appropriations within the municipality; or (2) in a regional school district, the chairperson of the school committee may, within ten (10) days of receiving the commissioner's response, submit a written request to the chief elected official of each of the municipalities to request that the city or town council in each of their respective towns meet to decide whether or not to increase the appropriation for schools to meet expenditures. The decision to increase any appropriations shall be conducted pursuant to the local charter or the public law controlling the approval of appropriations within the municipality.

(b) In the event of a negative vote by the appropriating authority, the school committee shall have the right to seek additional appropriations by bringing an action in the superior court for the county of Providence and shall be required to demonstrate that the school committee lacks the ability to adequately run the schools for that school year with a balanced budget within the previously authorized appropriation or in accordance with §§ 16-2-21, 16-2-23, 16-7-23, and 16-7-24. In no event shall any court order obtained by the school committee have force and effect for any period longer than the fiscal year for which the litigation is brought. Any action filed pursuant to this section shall be set down for a hearing at the earliest possible time and shall be given precedence over all matters except older matters of the same character. The court shall render its decision within thirty (30) days of the close of the

hearings. Upon the bringing of an action in the superior court by the school committee to increase appropriations, the chief executive officer of the municipality, or in the case of a regional school district the chief elected officials from each of the member municipalities, shall cause to have a financial and program audit of the school department conducted by the auditor general, the bureau of audits, or a certified public accounting firm qualified in program audits. The results of the audit shall be made public upon completion and paid for by the school committee to the state or private certified public accounting firm.



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

Peter McWalters
Commissioner

December 23, 2008

Robert J. Gerardi, Jr., Ph.D.
Superintendent of Schools
Woonsocket Public Schools
108 High Street
Woonsocket, Rhode Island 02895-4348

Dear Superintendent Gerardi:

Thank you for your letter of October 14, 2008 in which you request that I authorize various waivers or alternative methods to comply with regulatory requirements. As you know the Commissioner has no authority to waive:

- State statutes;
- Federal statutes;
- Federal regulations; or,
- Collective bargaining agreements.

The requests you have made involves waivers of state and federal laws which I have no authority to grant.

1. Waiver of the requirement that the school department provide textbooks, nursing records and transportation to non-public school students.

Response: Denied - This service is required by statute. R.I.G.L. §16-23-2.

2. Waiver of the requirement to provide bussing to any students, public or private, other than those who are physically or mentally disabled.

Response: 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:

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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.

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).

Pursuant to this statute, the Rhode Island Supreme Court has identified *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 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, cannot, therefore, be granted. The upshot of this is that we must leave to the Woonsocket School Committee the initial decision of whether these three factors require bussing and, if so, at what distance and along which routes. 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

3. Waiver of the regulation that requires Woonsocket High School to offer two foreign languages.

Response: R.I.G.L. § 16-22-8 states in part:

- (a) Whenever there shall be twenty (20) students who apply for a course in the Italian, Portuguese, or Spanish language in any high school of the state, the school committee of the specific city or town shall arrange a course in Italian, Portuguese, or Spanish to be conducted by a competent teacher.

As this is a statutory mandate, the commissioner does not have the authority to waive this requirement. Unfortunately, your letter does not provide me with sufficient information to determine if this statute applies to Woonsocket, and therefore I cannot make a determination as to whether your request can be granted at this time.

4. Waiver of Middle Level and High School Restructuring requirements for personalized learning environments, advisories, individual learning plans, and common planning time.

Response: Denied – Personalized Learning environments, advisories, individual learning plans and common planning time are essential to the implementation of the Board of Regents regulation L-6 (commonly known as the "High School Regulations") and the General Assembly's school reform efforts. R.I.G.L. §16-67.1-2 (Rhode Island High School Dropout Prevention Act of 2007).

5. Waivers such that the Woonsocket Education Department can charge fees for student participation in extra-curricular activities, and also for transportation if the transportation waivers above are not granted.

Response: Denied - Since no statute allows Woonsocket to charge fees for school services, students may not be charged fees to participate in school academic or extracurricular activities. School social events are not included in this prohibition. In 1917 the Board of Education wrote, "public schools ...should be free." The Board stated that the public schools had lost the authority to charge fees in 1868 when tuition bills were abolished and that the imposition of fees "amounts to a retroaction to conditions prevailing forty years ago, and introduces a new one of the greatest evils of the public school system."¹

¹ Rhode Island School Reports, 1917, page 21. See: *Sullivan v. Cumberland*, Commissioner of Education, January 10, 2001. The same rule applies to Charter Schools: "No student tuition or mandatory fees may be charged by any charter public school." R.I.G.L. §16-77-9

Page 4

Superintendent Robert J. Gerardi
December 23, 2008

By statute, however, a fee for material used in a vocational project that the student intends to keep may be charged, and a deposit may be charged for the safe keeping of school property, except for books and supplies that must be provided under the Free Textbook law.²

In addition to your five waiver requests, you ask for advisories, information, and action on three complex and ongoing legal issues. Unfortunately, I am not able to offer an answer or take action at this time. As responses become available I will communicate them to Woonsocket.

If you have any further waiver or variance request, please submit same in accordance with the terms of the applicable statute, including the signature of the school committee chair. I appreciate the strenuous efforts you and the Woonsocket School Committee are making to provide all students with a quality education while staying within budget requirements.

Sincerely,



Peter McWalters

² R.I.G.L. §16-38-6.