



128 DORRANCE STREET, SUITE 400
PROVIDENCE, RI 02903
401.831.7171 (t)
401.831.7175 (f)
www.riaclu.org | info@riaclu.org

July 26, 2018

Dr. Kenneth Wagner, Commissioner
R.I. Department of Elementary and Secondary Education
255 Westminster St.
Providence RI 02903

BY EMAIL

RE: Warwick School District “Waiver” Request

Dear Commissioner Wagner:

It has come to our attention that, in attempting to address budgetary problems, the Warwick School Committee is seeking from RIDE a waiver of a number of educational requirements, including permission to impose charges on students and families for busing and school-sponsored sports. We strongly urge you to reject the request for these “waivers” that would burden students and families with fees. Such fees are not only contrary to law, they are also contrary to Rhode Island’s longstanding policy of ensuring that public education is free and therefore equally available to all children regardless of economic status.

Since 1868 when the Rhode Island General Assembly revoked the authority of school committees to charge fees for student services due to concerns about their impact on lower income students, RIDE has routinely refused permission to school districts to do so. For decades, Commissioners of Education have upheld the General Assembly’s clear stated intent, and have invalidated attempts by local school districts to levy fees on student programming as varied as night classes, after-school activities, interscholastic sports and Advanced Placement classes. The stated logic of these decisions has always been that RIDE cannot authorize what the legislature has prohibited, and that such fees “discriminat[e] against the boy and girl who have not a dollar, and the boy and girl who cannot afford to risk a dollar.”¹

Recently the Superior Court of Rhode Island reinforced this longstanding commitment to a completely free education by invalidating summer school fees imposed on students.² Echoing those earlier Commissioner of Education rulings, the Court concluded that school districts lack the authority to collect such fees, and such fees are “contrary to the spirit of the school system itself – which is to provide a free public education to all students.”³

¹ RI Board of Education Report of 1917, page 21, cited in Commissioner of Education letter to School Superintendents, October 26, 1999.

² *Giannini v. Council on Elementary and Secondary Education*, 2016 RI Super. LEXIS 40.

³ Whether a specific student service is specifically mandated (e.g. transportation, per R.I.G.L. 16-21.1 et seq.) or not (e.g. summer school or school sports) is beside the point where charging fees to students is concerned.

This rationale is just as applicable to the busing and sports fees proposed by Warwick's current request. Again, RI Commissioner of Education pronouncements as far back as 1981 and 1999 make clear that "districts may not charge fees to students for participating in extracurricular activities."⁴

While the school committee cites R.I.G.L. 16-2-21.4 for the proposition that you have the authority to "provide waivers to state regulations," we submit that this request is not a matter of waiving regulations, but rather waiving an implicit *statutory* prohibition on the imposition of fees.⁵

In short, the school district lacks the legal authority to charge such fees, RIDE cannot waive these legal requirements, and student fees are contrary to longstanding public policy because they inevitably contribute to the creation of a two-tier educational system, with better services for those students who can afford them and inferior ones for those who can't. Indeed, Rhode Island's commitment to the principle of a free education has been so strong that previous Commissioners have even found that the availability of a hardship waiver for student fees is insufficient to overcome the general prohibition on such fees, because it requires the family to petition for a charitable excuse from a payment for what, by law, is required to be a free and equally available public education in the first place.

To grant this request would not only undermine a century and a half of educational policy, it would open the door to every other school district seeking similar – or even more expansive - waivers in order to balance their budgets on the backs of students and their families. While we recognize that some districts may be struggling financially, transferring costs to families cannot be part of the solution.

For all of these reasons, we trust that RIDE will reject Warwick's request to be able to charge for busing and sports activities. We would be happy to meet with you should you have any questions regarding our concerns. Thank you in advance for your consideration of our views.

Sincerely,



Steven Brown
Executive Director
ACLU of Rhode Island



Veronika Kot
Education Law Attorney
RI Legal Services

⁴ See fn. 1, *supra*.

⁵ Even assuming this statute were deemed to apply – a position we strongly reject – the busing fee could not be subject to waiver under that statute's provisions in any event, since its implementation could clearly affect the "health and safety of students." One can easily imagine some students being forced to walk to school instead, potentially placing their safety at risk.