

TO: INTERESTED ORGANIZATIONS
FROM: STEVEN BROWN, ACLU OF RHODE ISLAND
SUSAN JACOBSEN, MENTAL HEALTH ASSOCIATION OF RHODE ISLAND
RE: DEPARTMENT OF EDUCATION RULING ON SCHOOL FEES
DATE: SEPTEMBER 4, 2014

We are writing to alert you to an opinion issued by the Commissioner of Education earlier this year, and recently affirmed by an appeals committee of the Board of Education, that could have a truly devastating impact on low-income children throughout the state and undermine the fundamental principle of the guarantee of a free public education in Rhode Island. We have learned that at its meeting this coming Monday, the Board of Education is scheduled to consider whether to approve this devastating decision, which is why we wanted to make you aware of it.

Based on Rhode Island's longstanding prohibition against charging students for educational programs and services, a Cumberland parent is challenging a hefty summer school fee she was forced to scrape together despite financial hardship in order to avoid her son's retention in 9th Grade. Potentially at stake is not just the legality of this one type of fee but of a whole array of fees for student services which school districts have, until now, been prohibited from imposing. The equity of educational opportunities without regard to income is at great risk.

Since you may not be familiar with the historical background of this issue – and why the Commissioner's ruling is of such great moment and concern – allow us to briefly summarize the gravity of this decision.

Since 1868, when the RI Legislature revoked the authority of school committees to charge fees for student services due to concerns about their impact on lower income students, the Department of Education has steadfastly refused permission to school districts to do so. For decades, Commissioners of Education have upheld the Legislature's clearly stated intent, invalidating attempts 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 1) the Rhode Island Department of Education and the Board of Education cannot authorize what the Legislature has revoked (i.e., imposition of fees on student programs and services), and 2) from a policy perspective, Rhode Island will not permit the creation of lesser educational opportunities for lower income families and students.

Rhode Island's commitment to this principle has been so strong that previous Commissioners have even found that the availability of hardship waivers 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 payment for what is intended to be a free and equally available public education in the first place. Moreover, families of limited means who may not qualify for a very low income waiver are still likely to be deterred from utilizing services that are available to students with greater means.

Despite this clear, repeated and lengthy tradition, Commissioner Gist, in a sudden and unexplained reversal, ruled in March that school districts may charge students for summer school, without meaningfully distinguishing this fee from all the other student fees – including fees that could be considered much less fundamental to a student’s educational success – that had been invalidated in Rhode Island over the preceding decades. Unfortunately, by a 2-1 vote, this opinion was recently upheld by an appeals committee of the Board of Elementary and Secondary Education and is now scheduled for consideration by the full Board on Monday.

The implications of the decision are momentous. Low-income students who can’t afford summer school frequently face retention, an outcome that other students do not have to face. It is well known that retention is linked to increased risk of school failure and dropping out, problems which already occur at much higher rates among low-income students. Moreover, lower income students already have fewer supports and opportunities available to them because their families frequently cannot afford privately funded tutoring and enrichment activities.

Permitting school districts to charge for summer school and to penalize and retain students who cannot afford such fees would only exacerbate already existing inequalities in academic achievement and drop-out rates, at the very time when closing such gaps is the professed goal of all educational leaders in the state. It could also encourage cash-strapped school districts to deny supports to struggling learners during the school year, only to charge for them during the summers. Of course, it also opens the doors for struggling school districts to begin charging for a wide array of other educational services, thereby severely undercutting the widely held notion that every child is entitled to a free public education.

In short, affirmance of such a decision would be contrary to one hundred and fifty years of precedent in RI and would for the first time officially give a green light to schools to give less to students who need more. By opening the door to the charging of a wide array of fees, it could result in a two tier public educational system, with enriched opportunities for those students who can afford them and an inferior track for those who can’t.

In addition to the Cumberland family that has been pressing this appeal, Rhode Island Legal Services has brought to our attention other real-life situations of parents and children who have had to scrape to find money to keep their children, including special education children, on track through attendance at their school’s summer school. They are likely to increase exponentially if the Board of Education approves this extraordinary change in state policy.

We are hopeful that this family, through their attorney, will be able to convince the Board of Education to overturn the Commissioner’s divisive and unprecedented ruling. If it does not, however, we believe it is important that your organization make families across the state aware of the financial consequences that may await them, and that you will join with us in seeking to overturn this decision by whatever means necessary. Nothing less than the future of a true free public education is at stake.

We will keep you posted. If you have any questions in the meantime, feel free to let us know. A copy of the Commissioner’s original decision is attached.