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April 4, 2016

Carolyn Mark, Chair  
East Greenwich School Committee  
111 Peirce Street  
East Greenwich, RI 02818

***Re: Appropriateness of Charging Fees for School-sanctioned Field Trips***

Dear Carolyn:

You have requested that I provide an advisory opinion to the East Greenwich School Committee regarding the propriety of the East Greenwich School District's (the "District") practice of charging fees to students for school-sanctioned field trips that may be considered an enrichment activity of the school curriculum. We could find no advisory opinions or express authority under either state law or the Rhode Island Department of Elementary and Secondary Education's Basic Education Program ("BEP") that has dealt squarely with the specific topic of field trips. The issue may turn on whether or not the proposed field trip is a necessary part of the public school's core education curriculum. We conclude that if such a field trip is an integral component of the curriculum, otherwise essential or core to the delivery of instruction, then a fee may not be charged. If, however, such a field trip is simply an enhancement or enrichment of a program such that it has only a tangential benefit or bearing on the student's educational development, a fee may be charged.

An advisory opinion issued by the Department of Elementary and Secondary Education ("RIDE") has made clear that it is legally impermissible to charge fees for educational activities, such as athletics or extracurricular activities that the Board of Regents has found to be essential to the provision of a quality education. *See Opinion Letter of the Commissioner to Thomas Mezzanote (August 5, 2009)*. In that opinion, the Commissioner concluded that a school district does not have the right to charge families a fee for a student to participate in a high school sport, *id.*, relying on the rationale from a similar opinion letter opining that public school districts are restrained from imposing a fee for participation in athletics or extracurricular activities. *See id.* (citing *Opinion Letter of the Commissioner to Supt. DiLuglio, June 26, 1981*).

*Mezzanote* also cites to a Burrillville case in which that school district sought a waiver of RIDE's longstanding policy of prohibiting public school districts from utilization of a fee to participate in athletics and extracurricular activities (so-called "pay to play"). The advisory letter based its

conclusion upon the School Committee's lack of statutory authority in Rhode Island to charge school fees. *Id.* "A reading of the General Laws shows that, except in a very few special cases, the General Assembly has not granted school committees the authority to charge fees for school services." *Id.* at 2, citing *Greenhalg v. City Council*, 603 A.2d 1090 (R.I. 1992). In addition, the Commissioner opined that implementing a fee would cause financial difficulty within families, and akin to discrimination because not all students would be able to afford a fee to participate and would thus be left out of participation. *Id.* Moreover, it would unnecessarily stigmatize the child and family. Therefore, to charge a fee on essential public education is inconsistent with the basic premise of public education being made available to *all* students on an equal and non-discriminatory basis. *Id.* Discrimination and stigmatization aside, a fee to participate in school activities would adversely affect school attendance thus placing stress on students, parents, and siblings. *Id.*

Most recently, the Rhode Island Superior Court heard an appeal from a decision of the Council on Elementary and Secondary Education, which affirmed the denial of a request for a waiver of fees for summer school classes. *Giannini v. Council on Elementary and Secondary Education*, (C.A. No: 2014-5240, Carnes, J., March 30, 2016). In this case, a ninth-grade student had failed several core classes and was given the option to either take summer school classes for a fee in order to advance to tenth-grade, or be retained in the ninth-grade. The district imposed a \$700 fee and asserted that summer school classes were not part of the mandatory program imposed on students under the BEP. This rationale was upheld by the Commissioner and Council. Judge Carnes, however, reversed this decision and made clear that where a program is part of a student's core education, a fee may not be implemented. *Id.* The court held that regardless of whether summer school is defined in the BEP manual as a core element of education, the facts of the case reveal that the purpose of the school district's summer school program is to provide instruction on "core" courses that are required for graduation. *Id.* Moreover, the school committee lacked the authority to charge a fee for programs that were approved as part of the school budget and because Title 16 of the Rhode Island General Laws did not permit or warrant such a fee. *Id.* Although the school committee is required to adopt a budget not resulting in debt, it may not supplement the school budget through the use of fees. *Id.*

More important, the court concluded that a summer school class is an instructional program for credits that can be earned for required core classes that either advance the student to the next grade or ensure the student graduates. *Id.* It would be inappropriate and inexcusable to charge a student a fee for summer school classes when electing to repeat the entire ninth-grade would cost nothing. *See id.* Each and every student is entitled to the same free education and one student should not be inferior to another simply because they cannot afford to do so. *See id.* Thus, since summer school credits constitute a core element in the school's curriculum, to be



consistent with the concept of a “free” school system and education under the BEP and state law, a fee must not be charged. *Id.*

Turning now to the issue of field trips, it is true that in Rhode Island, there is no law or regulation mandating that local educational agencies establish and implement an offering of a field trip. However, R.I. Gen. Laws §16-7-15 states that it is necessary that all Rhode Island students receive a quality education.

“The purpose...is to provide equality education for all Rhode Island Youth by requiring minimum per pupil expenditure level, by encouraging school committees to provide superior education beyond this minimum, by identifying fiscal responsibilities of school committees, by further improving the efficiency of our school systems...”

Moreover, RIDE’s BEP, *Establishing Requirements for the Basic Education Program G-12-2.1(a)* provides:

“In order to fulfill its mission, the Board of Regents has articulated the requirements for the BEP for all LEAs to ensure that every public school student will *have access* to a high quality, rigorous, and equitable array of educational opportunities from PK-12.”

RIDE’S BEP, *Aligned and Cohesive Education System Dedicated to Continuous Improvement G-12-2.2* also states:

“To accomplish the delivery of a sound, high-quality education to every student, the school, LEA, and the state must ensure that policies, programs, and systems are connect and directed towards the common purpose of improving achievement for all students.”

In order to be consistent with both RIDE regulations and state law, any field trip used for core educational purposes must be easily accessible for each and every student to participate regardless of the student’s financial ability to do so.

This does not mean the General Assembly is ignorant to budget constraints faced by many, if not all, school districts in Rhode Island. The legislature recognized that school districts may often need assistance to fund non-core extracurricular or educational programs that are not part of the BEP. *See Mezzanote (citing Opinion Letter of the Commissioner to Supt. DiLuglio, June 26, 1981).* Pursuant to §16-89-1 et seq., it would be permissible for public schools to receive funding. For instance, §16-89-4 provides:

Carolyn Mark, Chair  
April 4, 2016  
Page Four

“Any school district, school department/committee may accept any and all gifts and donations of money, equipment, supplies, materials, services, and any other contribution of value, condition, or otherwise, from any local, state, or federal government or governmental subdivision thereof... provided however, that the gift, grant or donation is utilized and disposed of pursuant to the express terms or conditions stipulated by such gift, grant or donation.”

Similarly, school districts are also provided with the ability to conduct fund raising activities pursuant to §16-38-6, which ordains:

“No public school official or public school employee shall solicit or exact from any pupil any contribution or gift of money... except (c) any approved fundraising activity shall be conducted on a voluntary basis and in accordance with the rules and regulations promulgated by the school committee...”

Therefore, public school fundraising may be appropriate when it supports school goals and organizations, enhances classroom and school activities, or engages students in community service.

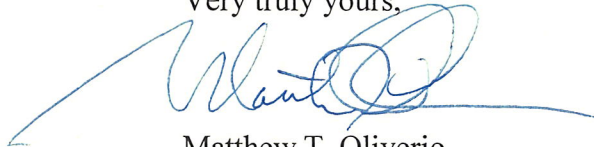
Consequently, if any field trip is determined to be a necessary component to and in furtherance of a student's learning experience, then the East Greenwich School Department likely cannot charge a fee. Conversely, if the field trip is simply an enhancement or enrichment of a program such that it has only a tangential benefit or bearing on the student's educational development, a fee may be charged. In other words, if the field trip is unnecessary for the delivery of a free and appropriate education, it is likely that a fee may be implemented. To charge a fee for a field trip in the face of a finding that the trip is crucial to its curriculum would be detrimental to a student's core educational development, as well as inconsistent with the Rhode Island General Laws and the BEP.

Bear in mind that school districts are not left empty handed in regard to funding non-core extracurricular activities or educational programs that are not part of the BEP. Thus, East Greenwich may be entitled to other alternatives, such as fundraising or its independent Educational Foundation, to help support its already self-sustaining independent educational groundwork.

Carolyn Mark, Chair  
April 4, 2016  
Page Five

I look forward to discussing this in greater detail at our upcoming meeting.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Matthew T. Oliverio", with a long horizontal flourish extending to the left.

Matthew T. Oliverio

C: East Greenwich School Committee Members