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STATE BOARD OF EDUCATION

Notice of Action on Petition for Rulemaking

N.J.A.C. 6A:23A-18.5(a)20ii and iii

Petitioner: Ryan O'Shea.

Take notice that on October 8, 2012, the New Jersey State Board of Education received a petition for rulemaking from the above petitioner requesting that the State Board of Education amend the rules pertaining to costs that are non-allowable in the calculation of the certified actual cost per student. Petitioner seeks a new rule or amendments to the end of N.J.A.C. 6A:23A-18.5(a)20ii and iii as noted below, to allow a nonprofit approved private school for children with disabilities (PSSD) whose director certifies to the Department of Education at the start of a fiscal year that requiring the school to collect lunch monies from its students would interfere with the school's educational mission shall have its costs of meals as an allowed expense and shall not be required to seek school board resolutions from its contracting districts.

The petitioner states that in 2007, the rules were enacted in a fashion that gave the affected schools little notice and the Department did not undertake an effective process to educate contracting districts. The petitioner also states that this resulted in a great waste of time and efforts at such private schools, needless friction and concern at contracting districts, and unfair disallowances of meal costs for the schools, putting them at financial risk. The petitioner further states that leaving the decision-making to a majority of contracting boards makes it a paper pushing or merely economic issue but for private schools such as these with disabled children it needs to be based on what is best for the children.

The petitioner further states that if the schools were required to collect the meal moneys from its disabled children unneeded time from classroom work would occur, the likelihood of disputes with staff and students would increase, and having the disabled students, many with emotional problems, carrying money to school on their busses and having it on them during the school day would lead to disciplinary issues like theft, strong arm "loans," gambling, intimidation, and physical altercations.

In accordance with applicable law, the Department concluded its review and determined that no amendments to the current regulations are warranted. Meals are critical to the educational health of all students in both public and private settings and this is one of the primary reasons the Child Nutrition Program (CNP) was established. The CNP offers reimbursement for the cost of meals to nonprofit organizations that comply with the agency's nutritional and financial requirements. Therefore, the full cost of these meals should not be charged to tuition when deferral reimbursement is available and State guidelines exist on the maximum amount allowable to charge

for paying students. The purpose of the regulations at N.J.A.C. 6A:23A-18.5(a)20ii and iii is to require all approved and eligible PSSDs to take advantage of the additional revenues that are available if they comply with certain requirements. Nonprofit PSSDs have the opportunity to receive Federal reimbursement from the Child Nutrition Program as administered by the New Jersey Department of Agriculture. All PSSDs have the opportunity for additional revenue by charging for paid and reduced meals in accordance with the income eligibility requirements of CNP. These additional revenues will decrease the cost of providing meals to students enrolled in PSSDs. Public school districts comply with the income eligibility requirements in order to receive Federal funding to decrease the cost to the taxpayers of their communities. Private schools should be similarly required to maximize reimbursement and minimize the burden on taxpayers of the sending districts.

Additionally, N.J.A.C. 6A:23A-18.5(a)20ii and iii provide an exemption wherein a PSSD that obtains district board of education approval from a majority of its sending districts may “opt out” of seeking full CNP reimbursement and/or charging students for meals. The CNP exemption provides an opportunity for sending districts that pay the out-of-district tuition to determine if the PSSD should reduce its expenditures by seeking the additional revenue which in turn reduces tuition and lessens the taxpayer's burden. The “opt out” provisions were decided in New Jersey Department of Education's favor by an Administrative Law Judge in February 2010. This case can be reviewed at the following link <http://www.state.nj.us/education/legal/commissioner/2012/feb/56-12.pdf>.

Furthermore, the petitioner expressed concern regarding the collecting of money from students and its *potential* disruption of instruction. A PSSD can remove the responsibility of paying for meals from students by implementing appropriate policies and procedures. Various examples include, but are not necessarily limited to: permitting parents to pay by mail, allowing parents to establish accounts electronically to add funds for student meals, restructuring the collection frequency to monthly rather than weekly, or designating a responsible adult to collect/submit payments. In addition, a PSSD's leadership could develop a plan to collect lunch money at suitable times such as during homeroom or before or after morning announcements to ensure that the collection of money does not interfere with the delivery of instruction. PSSDs may also consider contacting nearby school districts for other possible solutions since they have been engaged in the collection of payments for student meals for several decades.

Therefore, the petitioner's request is denied.