

Lavallee, Deanne

From: Kautz, Bob
Sent: Wednesday, April 22, 2015 1:12 PM
To: Ande Smith, Vice-Chair (ande@maine.rr.com); jana.f.lapoint@gmail.com; John Bird - Maine Charter School Commission (jabmab51@gmail.com); Michael Wilhelm (Mwilhelm75@gmail.com); Nichi Farnham (nichifarnham@gmail.com); Pendletonlaurie@gmail.com; Shelley Reed, Chair (shelleys.reed@gmail.com)
Cc: Lavallee, Deanne
Subject: FW: Response to Letter
Attachments: Letter To Commissioner HCA.doc

FYI.
Bob

From: Bradley Smith [<mailto:smithb@link75.org>]
Sent: Wednesday, April 22, 2015 12:59 PM
To: Desjardin, Tom
Cc: Plowman, Debra; Kautz, Bob; Connie Brown; Peter D. Lowe
Subject: Response to Letter

Dear Commissioner,

Attached is a response to a letter you sent April 10th regarding charter school students participation is extracurricular activities. I am including Connie Brown, from MSMA and Peter Lowe, our attorney who has asked for a response to several questions that have not yet been received.

Please feel free to contact me directly any time an issue reaches your level. There are always two sides to the story.

Respectfully,

Brad Smith
Superintendent of Schools
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April 22, 2015

Dear Commissioner Desjardin:

I have received the letter that you sent to Mr. D'Anieri of Harpswell Coastal Academy ("HCA") in which your opening comment states that you had become aware of "SAD 75's refusal to allow public charter school students to participate in interscholastic activities." I am very disappointed by this inaccurate statement for the reasons explained below.

First, you are misinformed. SAD 75 has not refused to allow HCA students to participate in District sports. In fact, since the beginning of this year HCA students have participated in sports at both our Middle School and High School. These students participated without a written agreement, and were riding District buses without formal approval. Therefore, when I learned of this, I called Mr. D'Anieri and advised him that HCA needed to propose an agreement for HCA students to participate in extra-curricular activities, and that we would need to determine a "reasonable share" of costs to be borne by HCA in accordance with statute. HCA's proposal was presented to the District just a few days before spring tryouts, and this delay contributed to the uncertainty about HCA's participation in Spring sports.

I am disappointed that no one from the Department ever contacted me about this issue before sending your letter. If they had, they would have learned not only about the HCA students who have already participated in District sports, but also that the District's Board of Directors prior to your letter had authorized me to increase the size of two of our Spring teams in order to allow HCA students to participate. The Board adopted a resolution at its meeting on April 9.

I understand that the Department takes a different view of the definition of the term "capacity" which is contained in Title 20 M.R.S.A. § 2415 (2). When reading this term in the statute, I sought a legal opinion from the District's legal counsel, and consulted with the Maine Principals Association, who as you know, regulates interscholastic sports in our state. MPA and our legal counsel provided me with the same opinion on the meaning of "capacity". It should be noted that we had not received directly any guidance from the Department about its interpretation of the statute.

Our attorney has searched the history of this issue. He advises me that the statute in question was amended last year. Prior to the amendment there was no reference to the superintendent's ability to withhold approval for the enrollment of charter school students in extra-curricular or interscholastic activities. In 2013, a bill was

introduced named “An Act to Permit A School Administrative Unit Discretion Concerning Participation of Students from Charter Schools in School Extra-Curricular and Interscholastic Activities”. Subsequently the statute was amended to provide that:

“the superintendent . . . may withhold approval only if the public charter school provides the same extra-curricular or interscholastic activities or if the noncharter public school does not have the capacity to provide the public charter school student with the opportunity to participate. . .”

It is noteworthy that the legislation was opposed by the Maine Association for Charter Schools who argued “this proposal would limit equal opportunities for public charter school students.” The Bill’s sponsor, Representative Momen, emphasized that the legislation did not prohibit a charter school student from participating in extra-curricular activities, but vested the public school with some discretion regarding participation.

The statute was duly amended to include the “capacity” language, vetoed by the Governor and on May 1, 2014, the veto was overridden with a unanimous vote in the Senate.

Our interpretation of the statute is based both on the plain language of the law and two other sections of Title 20-A that address the participation of home-school students and private school students in extra-curricular and interscholastic activities.

The home school law contains no reference to “capacity” and states, “home-school [students] are eligible to try out for extra-curricular activities sponsored by the local school unit.” We interpret this law to mean that home-school students compete for places on a District team on an equal footing as District students.

The private school statute, by contrast, is almost identical to the charter school statute. It provides that private school students are eligible to try out, but the public school may withhold approval “if the school does not have the capacity to provide the student with the opportunity to participate in the extra-curricular or interscholastic activity.” 20 A M.R.S.A. ' 5021-A(2)(A).

We interpret both the private school and charter school statutes to mean that if capacity is reached on a team, then the school may withhold approval to the charter school and private school students. For example, if we have a maximum of 17 places on a Middle School baseball team, and 17 District students enroll for the team, we are at capacity and may withhold approval to a charter school student to participate on this team. The same analysis applies to an NYA student who wants to join an SAD 75 team which is already fully subscribed by District students. However, in the case of the home-school students, the law is materially different, and the home-school student tries out for one of the 17 slots on the team.

The Department instead explains that “capacity” means that the District has capacity for the charter school students provided it does not have to buy a new uniform, create a new spot or arrange for “new” transportation. However, if we are already at our maximum of 17 students for the baseball team, we would be required to create a new spot for an HCA student. It seems that in order to get around this obvious problem with its interpretation, the Department states that “public charter school students must be treated in the same manner as the non-charter school students for the purposes of tryouts.” However, as our legal counsel advises, the statute contains no such statement, and with respect, the Department lacks the authority to legislate in this manner and create such a right.¹

In an effort to engage the Department in a dialogue to help us understand where the Department is coming from, our lawyer asked the Department several key questions:

¹ The legislature has demonstrated that it knows how to write a law to provide such equality—namely in the home-school statute. If it intended to treat charter school students in the same manner then why not adopt the same language?

- (1) Is it the Department's position that charter school students have the same rights to eligibility for extra-curricular activities as home-school students?
- (2) Has the Department given an opinion on the scope of Section 5021-A and the definition of capacity in this Statute?
- (3) Is it the position of the Department that private school students residing in SAD 75 have the same participation rights on school teams as public school students?

None of these questions were answered by the Department.

As you'll appreciate, these are not theoretical questions for our District. For the sake of safety, supervision, opportunity to participate and resources, we have to set a limit (or capacity) on our teams. Then we must address and balance the competing needs of all students, whether they be school district students, charter school students or private school students. I am very confident that we have done so in a manner that is consistent with the Maine Education Statute.

The Department's inaccurate description of the District's refusal to allow students to participate is not only wrong, but it is harmful to the relationship between the District and HCA. It also ignores that fact that the District has cooperated with HCA since its inception. By way of example, the District has contracted with HCA to provide vital special education support services. During the first year of HCA's operation, we provided transportation to HCA students for a minimal fee, although not required to by statute. The Department's willingness to characterize the District's decision-making without researching the facts and without reaching out once to the District, risks fraying any remaining ties between the two school units.

We as educators are working toward the same goal. In the future, I would greatly appreciate that you contact me first before making such judgments about our actions. Our students and communities deserve nothing less.

Very truly yours,

Bradley V. Smith
Superintendent of Schools
MSAD No. 75