

CONNECTICUT STATE BOARD OF EDUCATION
Hartford

TO BE PROPOSED:

June 19, 2018

RESOLVED, That the State Board of Education, pursuant to Connecticut General Statutes (C.G.S.) Section 4-176 and Regulations of Connecticut State Agencies Section 10-4-22, agrees to issue declaratory rulings regarding C.G.S. Sections 10-64, 10-65, and 10-97, on the issues included in the Petition of the Thomaston Board of Education for a Declaratory Ruling, submitted by the Thomaston Board of Education, as such issues may be combined or modified by the Board, by the Board's October meeting, and directs the Department to:

- (1) provide such notice that the Board will issue a ruling to the public and interested parties as the Department determines is necessary, reserving the Board's option to combine issues or modify the issues to be decided as it may deem appropriate;
- (2) determine the procedure and schedule by which the Region 6 BOE and the TBOE may provide written submissions as to their position on the issues raised in the Petition, as combined or modified;
- (3) determine the procedure and schedule by which other interested persons may provide written submissions as to their position on the issues presented by the Petition, as combined or modified; and
- (4) provide the Board with the materials received from interested parties, or a summary thereof, and other material as appropriate to allow the Board to deliberate on a proposed ruling.

and directs the Commissioner to take the necessary action.

Approved by a vote of ____ this nineteenth day of June, Two Thousand Eighteen.

Signed: _____

Dr. Dianna R. Wentzell, Secretary
State Board of Education

CONNECTICUT STATE BOARD OF EDUCATION
Hartford

TO BE PROPOSED:

June 19, 2018

RESOLVED, That the State Board of Education, pursuant to Connecticut General Statutes (C.G.S.) Section 4-176 and Regulations of Connecticut State Agencies Section 10-4-22, declines to issue the declaratory rulings regarding C.G.S. Sections 10-64, 10-65, and 10-97, included in the Petition of the Thomaston Board of Education for a Declaratory Ruling submitted by the Thomaston Board of Education for the reasons stated by the Board at the meeting.

and directs the Commissioner to take the necessary action.

Approved by a vote of ____ this nineteenth day of June, Two Thousand Eighteen.

Signed: _____

Dr. Dianna R. Wentzell, Secretary
State Board of Education

CONNECTICUT STATE BOARD OF EDUCATION

Hartford

TO: State Board of Education
FROM: Dianna R. Wentzell, Commissioner of Education
DATE: June 19, 2018
SUBJECT: Thomaston Board of Education, Petition for a Declaratory Ruling

Introduction and Background Information

The Thomaston Board of Education (TBOE) has filed a Petition for Declaratory Ruling (“Petition”) seeking several declaratory rulings as to the application of Connecticut General Statutes (C.G.S.) Sections 10-64, 10-65, and 10-97 to the circumstances stated in the Petition. These statutes provide for the provision of agricultural science and technology education to high school students by local and regional boards of education (boards of education). Not all boards of education maintain an agricultural science and technology education center (ASTE Center) for their students. The sections of the statutes at issue in the Petition address the provision of agricultural science and technology education to students where the board of education does not maintain an ASTE Center. We have previously provided the Board with the Petition.

Boards of education that do not maintain an ASTE Center have the obligation to offer their students the opportunity to receive this education elsewhere. Sections 10-64(d) and 10-97(d) provide that a board of education that does not maintain an ASTE Center approved by the State Board of Education shall designate an approved “school or schools having such a course” and that “[t]he board of education shall pay the tuition and reasonable and necessary cost of transportation of *any person . . .* who attends the designated school.” (Emphasis added) Neither § 10-64(d) nor § 10-97(d) limits the number of students for whom the local or regional board of education must pay the tuition and cost of transportation, as they require payment for “any person” attending a designated school.

Section 10-65(b), however, prescribes a minimum number of students to whom a board of education must offer the opportunity to attend an ASTE Center if the board of education does not maintain an ASTE Center. This is either the number of students at least equal to the number specified in any written agreement with a Center, or, in the absence of an agreement, a number at least equal to the average number of its students that the board of education enrolled in each such center(s) during the previous three school years. A board of education must also provide opportunities for its students to enroll in an ASTE Center in ninth grade in a number at least equal to the number specified in any written agreement, or, in the absence of an agreement, a number at least equal to the average number of students that the board of education enrolled in the ninth grade in a center(s) during the previous three school years.

There is an apparent conflict between Sections 10-64(d) and 10-97(d) and Section 10-65(b). Sections 10-64(d) and 10-97(d) require a board of education that does not maintain an ASTE Center to designate a center or centers for its students and to pay for the tuition and transportation of “any person,” not a high school graduate, who attends the designated school. These statutes do not limit the number of persons who may attend the designated school or schools. Section 10-65(b), however, arguably allows a board of education that does not maintain an ASTE Center to limit the number of students which it will allow to attend an ASTE Center to the number stated in an agreement with the ASTE Center or the three-year average of the number of students the board of education has enrolled in an ASTE Center.

The Petition

The Petition arises from a dispute between the TBOE and the Regional School District No. 6 Board of Education (“Region 6 BOE”). The TBOE does not maintain an ASTE Center. The Region 6 BOE maintains an ASTE Center at Wamogo Regional High School (the “Wamogo Center”). The TBOE has provided the opportunity for its students to attend the Wamogo Center. The TBOE does not have a written agreement with the Region 6 BOE. Rather, the TBOE has provided opportunities to Thomaston students to attend the Wamogo Center based on the three year averages required by C.G.S. § 10-65(b).

In accordance with this statutory formula, the TBOE authorized the Wamogo Center to accept up to five (5) then current eighth grade Thomaston students to attend the Wamogo Center during the 2017-2018 school year as part of the ninth grade class. However, other students were interested in attending the Wamogo Center, and there was a waiting list for enrollment consisting of four students (three eighth grade and one ninth-grade student). Over the objection of the TBOE, the Region 6 BOE permitted these four students as well as the five students authorized by the TBOE to enroll in the Wamogo Center during the 2017-2018 school year.

The TBOE challenged the action of the Region 6 BOE by filing a lawsuit in August 2017 in the Connecticut Superior Court. The Superior Court dismissed this lawsuit on May 21, 2018.

The Requested Declaratory Rulings

The Petition seeks declaratory rulings in seven numbered paragraphs. We can group these as falling into three categories.

The first category requests rulings on the interpretation and application of Sections 10-64, 10-65, and 10-97 to particular issues. These include: (1) whether a board of education which does not maintain an ASTE Center may limit the number of opportunities available to its students to the minimum number required pursuant to § 10-65 (b); (2) whether a board of education maintaining an ASTE Center may accept students from a board of education that does not maintain a Center (Sending Board) in a number that exceeds the number authorized by the Sending Board; and (3) the effect of enrolling students on a tuition free basis on various issues. (Paragraphs 1-3)

The second category seeks rulings, based on the facts of this case, as to the legal authority of the TBOE and the Region 6 BOE with respect to certain actions relating to ASTE opportunities during the 2017-2018 school year and an action to be taken by the TBOE in 2018-2019. (Paragraphs 4-6).

The third category concerns the permissibility certain terms in agreements between boards of education that do and do not maintain an ASTE Center. (Paragraph 7).

Requirements Under the Connecticut Statutes and the Board's Regulations.

The Board must decide within sixty days, i.e. by the first week in July, whether to issue a ruling or not to issue a ruling. If the Board decides not to issue a ruling, it may either (1) state why it is not issuing a ruling or (2) initiate regulation-making proceedings on the subject of the petition. If the Board does not issue a ruling, the filing of the Petition will have fulfilled the TBOE's obligation to exhaust its administrative remedies and it may commence an action for a declaratory judgment to request that the Superior Court rule on the issues raised by the Petition. The Superior Court dismissed the TBOE lawsuit discussed above, because the TBOE did not exhaust its administrative remedies. If the TBOE initiates a declaratory judgment action, the State Board will be made a party to the action. This means that the Board will have the opportunity to participate in the litigation and to express its position on the issues being litigated. The Board would participate through counsel, presumably the Office of the Attorney General.

If the Board decides to issue a ruling, it must set a date in the future by which it will issue the ruling. The Board can also set the matter for specified proceedings to assist it in making the ruling. The specified proceedings may include a hearing, written submissions on the subject of the declaratory ruling, or both a hearing and written submissions. The Board's declaratory ruling will have the same status as a contested case under the Uniform Administrative Procedure Act and may be appealed to the Superior Court.

The Board's Recommended Options

We will present two options for the Board's consideration. We note that the differing views of the TBOE and the Region 6 BOE on the issues raised by the Petition have resulted in litigation in the Superior Court. These issues may arise between other boards of education in the future, although we are not aware that this is a common point of dispute between boards of education.

Option One. Decline to issue a ruling, because the General Assembly is best suited to resolve the statutory conflict as to the number of students who may attend an ASTE Center, especially as it may have a financial effect on school districts, or for such other reasons as the Board may consider applicable.

Option Two. Agree to issue a declaratory ruling by the Board's October meeting, to adhere to the statutory expectation that a ruling must be issued within 180 days. If the Board decides to issue a ruling, the Board should direct the Department to:

- (1) provide such notice that the Board will issue a ruling to the public and interested parties as the Department determines is necessary, reserving the Board's option to combine issues or modify the issues to be decided as it may deem appropriate;
- (2) determine the procedure and schedule by which the Region 6 BOE and the TBOE may provide written submissions as to their position on the issues raised in the Petition, as combined or modified;
- (3) determine the procedure and schedule by which other interested persons may provide written submissions as to their position on the issues presented by the Petition, as combined or modified; and
- (4) provide the Board with the materials received from interested parties, or a summary thereof, and other material as appropriate to allow the Board to deliberate on a proposed ruling.

Prepared by:

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Approved by:

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