

CONNECTICUT STATE BOARD OF EDUCATION**Hartford**

TO: State Board of Education
FROM: Dianna R. Wentzell, Commissioner of Education
DATE: October 3, 2018
SUBJECT: Petition for a Declaratory Ruling, Thomaston Board of Education

Introduction and Background

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. An agency is authorized to issue declaratory rulings as to the applicability of the general statutes to specified circumstances by the Connecticut General Statutes and the Board’s regulations *See* C.G.S. § 4-176; R.C.S.A. §§ 10-4-20 through 10-4-22.

The TBOE does not maintain an agricultural science and technology education center (ASTEC), but has designated the ASTEC operated by the Region 6 Board of Education (R6BOE) at Wamogo Regional High School (the “Wamogo Center”) as the ASTEC that TBOE students may attend. The Petition resulted from a dispute between the TBOE and the R6BOE concerning the enrollment of students from Thomaston in the Wamogo Center.

On June 19, 2018, the Board agreed to issue the rulings requested by the TBOE, reserving the option to combine or modify the issues presented. The Board also directed the Department to provide notice to the public and interested parties that the Board had agreed to issue rulings and to determine the procedure and schedule by which the TBOE, the R6BOE, and other interested parties may provide written submissions as to their position on the issues raised in the Petition.

The Department provided notice to all Superintendents and Chairpersons of Boards of Education and offered the opportunity to petition for party or intervenor status and to submit any data, facts, arguments, or opinions relevant to the requested declaratory rulings. *See* R.C.S.A. § 10-4-22 (a). The Department also notified the Connecticut Association of Boards of Education and the Connecticut Association of Public School Superintendents of the Petition.

Only the R6BOE responded to the Department's notice. The R6BOE has requested party status. Both the TBOE and the R6BOE have filed relevant data, facts, arguments, and opinions in a number of written submissions.

At its June 19, 2018 meeting, the Board also directed the Department to 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.

The issues presented by the Petition and the materials submitted by the parties are noted below.

Issues on Which Rulings are Requested

1. Can a local or regional board of education that does not maintain an ASTEC limit the number of opportunities available for its students to attend an ASTEC to the minimum number of opportunities it is required to provide pursuant to § 10-65(b)?
2. Can a local or regional board of education maintaining an ASTEC (hereinafter generally referred to as an "ASTEC Board") unilaterally elect to accept and enroll students of a local or regional board of education that does not maintain an ASTEC (hereinafter generally referred to as a "Sending Board") in a number that exceeds the number of opportunities for students the Sending Board has limited the ASTEC Board to accepting?
3. Are the rulings on issues 1 and 2 impacted by whether an ASTEC Board accepts and enrolls some or all of the students of a Sending Board on a tuition-basis versus non-tuition-basis? How does the tuition-paying status impact the manner in which the three-year averages under § 10-65(b) are calculated? Specifically, if an ASTEC Board accepts and permits to attend, on a tuition-free basis, a Sending Board's student, must that student be counted in the number of students attending the ASTEC as part of the calculation of the minimum number of opportunities the board of education is required to provide students in future years—on a tuition-basis—pursuant to § 10-65(b)? If so, (a) can the Sending Board limit the number of its students that attend an ASTEC on a tuition-free basis; and (b) can the ASTEC Board charge tuition for such student's attendance in future years?
4. As applicable to the 2017-2018 school year, did the TBOE have the authority under Connecticut General Statutes § 10-220, § 10-65, or any other provision of the Connecticut General Statutes, to limit the number of TBOE students the R6BOE was

- permitted to accept to attend the Wamogo Center to the minimum number required by § 10-65(b)?
5. As applicable to the 2017-2018 school year, did the R6BOE exceed its authority under § 10-65 or any other provision of the Connecticut General Statutes to accept TBOE students to attend the Wamogo Center when it accepted additional TBOE students in excess of the number that the TBOE had authorized the R6BOE to accept?
 6. How should the TBOE calculate the number of opportunities it is required to provide students to attend an ASTEC during the 2018-2019 school year?
 7. If a Sending Board enters into a written agreement with an ASTEC Board regarding the provision of opportunities for its students to attend an ASTEC as permitted by § 10-65(b), can the parties decide in such agreement that in future years, whether governed by the agreement or after the agreement has expired, numbers that are less than the actual numbers of students that attended the ASTEC in years governed by the agreement will be used in calculating the number of opportunities for students to attend the ASTEC that the Sending Board is required to provide pursuant to § 10-65(b)? Or must the actual number of students that attended the ASTEC be used? For example, is it permissible and enforceable under § 10-65(b) for the parties to agree to the following: “For the current year, Sending Board A agrees to send to ASTEC B: 8 students that will be counted as ninth graders, 4 students that will be counted as students in grades 10, 11, or 12, and an additional 3 students that will not be counted towards Sending Board A’s three-year average number of required students in future years under § 10-65(b)”?

Materials Submitted to the Board

1. Petition for Declaratory Ruling (TBOE) (“**Petition**”), dated April 26, 2018
2. Response of the Region Six Board of Education Re: April 26, 2018 Petition for Declaratory Ruling of the Thomaston Board of Education (“**R6 Response**”), dated August 8, 2018
3. Region Six Petition for Party or Intervenor Status, dated August 8, 2018
4. Petitioner’s Supplementary Argument Regarding Petition for Declaratory Ruling (“**TBOE Supp. Arg.**”), dated August 8, 2018
5. Petitioner’s Reply to the Respondent’s Response to the Petition (“**TBOE Reply**”), dated August 24, 2018
6. Region 6 Board of Education’s Response to the August 24, 2018 Reply of the Thomaston Board of Education, dated August 31, 2018 (“**R6 Sur-Reply**”)

Process and Schedule for the Board's Decision

The Board has two decisions to make: (a) whether to grant party status to the R6BOE, (b) and how to rule concerning the issues raised by the Petition. The Division of Legal and Governmental Affairs will provide the Board with a memorandum containing legal analysis and advice to assist the Board in its deliberations concerning these decisions. The Department recommends that the Board deliberate on its rulings and consider the legal advice memorandum at its October 3, 2018 meeting. Based on the deliberations, the Department will prepare proposed rulings for the Board to consider at its November 7, 2018 meeting.

An agency must issue a declaratory ruling within 180 days after the receipt of the petition unless the petitioner agrees to an extension. In the present matter, the TBOE has consented to an extension of the original deadline of October 30, 2018 to November 30, 2018 based on the R6BOE's agreement to delay any acceptances of Thomaston students into its ASTEC program for the 2019-20 school year until after November 30, 2018.

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