



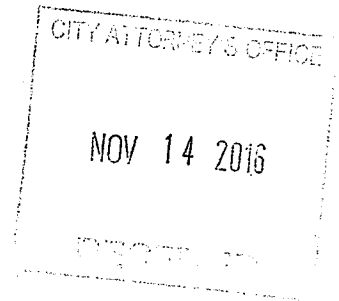
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Agency of Education

November 10, 2016

Eileen M. Blackwood, Esq.
City Attorney
City Hall 149 Church Street, Suite 11
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Re: Agreements for Services

Dear Attorney Blackwood,

Secretary Holcombe asked me to respond to your email of November 1, 2016 (sent to my colleague Clare O'Shaughnessy) regarding two proposed agreements the City is considering, one with Community Health Centers of Burlington and the other with Spectrum Youth and Family Services. Specifically, you asked if the Agency of Education has concerns with the City's funding of these programs which are conducted in part on school premises with the involvement of school personnel.

Community Health Centers of Burlington (CHCB). The proposed agreement between the City of Burlington and CHCB provides for the City to fund a program known as the "Tooth Tutor" whereby students in need of dental services are identified and connected with CHCB's dental services. This program is currently – and has been in the past - funded by the Burlington School budget. Now the City has determined that the services are not educational and proposes to fund this program through the municipal budget. The program is limited to students at the Burlington School District or siblings of such students. CHCB will enter into any necessary agreements with the school district to carry out the purpose of the agreement.

Spectrum Youth and Family Services (Spectrum). The City receives certain payments in lieu of taxes that were previously paid to the school district. Payment of these funds to the school district violated 16 V.S.A § 4029. The City wishes to use these funds to provide services to multicultural youth and Spectrum is willing to provide these services. The services will help multicultural youth and their families to "meet basic needs for housing, education, employment, health, and community connections; ensure that all youth graduating with a high school diploma or the equivalent are ready for college, job-training, or career; and to assist youth to be safe from violence and to have chances for success. The Spectrum employees will work with teachers and administrators to identify alternative educational and work programs and other community support services to address the high drop-out rate of multicultural youth.



The City has determined in both cases that these are not education services and therefore may be funded by the City without violating the prohibition on using municipal funds for education expenses.¹

Analysis:

Funds received by a municipality other than a school district may not be used directly or indirectly for education expenses. 16 V.S.A § 4029(b). Section 4029 was enacted in 1997 as part of Act 60, Vermont's Equal Educational Opportunity law.² Act 60 was the legislative response to *Brigham v. State*, 166 Vt. 246 (1997) which held that the "inequities in per-pupil funding based on disparities in local wealth" inherent in Vermont's school funding system rendered that system unconstitutional. *Brigham* made it clear that education is a fundamental responsibility of State government which must ensure "substantial equity" and that "the distribution of a resource as precious as educational opportunity may not have as its determining force, the mere fortuity of a child's residence." That is, a student's educational opportunities should not be dependent upon the size of the town's grand list or the municipality's ability to raise other funds. Act 60 and subsequent amendments established a statewide education tax rate that varies with a school district's spending decisions. Section 4029 is one of the tools enacted as part of Act 60 to prevent an end-run around these equitable goals. If a school district is able to cover its costs by accessing municipal funds, then equity is undermined since a municipality's ability to raise money through a municipal tax is unequal across Vermont for the same reason as municipality's ability to raise education taxes varies widely – the relative size of municipalities' grand lists.

The question here is whether the municipal funds are being used directly or indirectly for education expenses when they are paid to CHCB and Spectrum.

Historically, Burlington has funded the CHCB program with its education budget. While not determinative, it is an indication Burlington regarded these dental related services as part of its educational program. Indeed, this view is in accord with 16 V.S.A § 1386 which provides that a school board may expend a sum not to exceed three percent of its budget for any necessary health service for a student whose parents are unable to pay for it. Expenditures for this purpose may include the purchase of eyeglasses and "the provision of dental and other health services approved by the school nurse." The right to determine who is covered under this section is at the school board's discretion. Coordination with school district is necessary to the success of the CHCB program. Similar services are provided by other districts. In short,

¹ Each of the proposed agreements states that the City "receives certain payments in lieu of taxes that were previously paid to the school district, but are no longer permitted by state law, thus limiting the school's ability to provide certain services, and the City wishes to use these funds for [respectively, to provide a grant to CHCB and services to multicultural youth]." This statement is misleading in that it implies that the law was recently changed. Rather, section 4029 was effective on July 1, 1998. A more accurate statement would be: Whereas, the City receives certain payments in lieu of taxes that were previously paid to the school district in violation of state law, a correct reading of statute limits the school district's ability to provide certain services without increasing its budget.

² Section 4029 has been amended several times but without changing the original intent.



Burlington's current and former treatment of this program is correct – the expense should be included in the school budget and funded through the statewide education tax.

The Spectrum agreement has both educational and community aspects to it. For example, ensuring that “all youth graduating with a high school diploma or the equivalent are ready for college, job training or career” is clearly and traditionally an education expense. Moreover, the proposed agreement indicates that Spectrum's case managers will spend much of their time during school hours located at Burlington High School using available space there to meet with students helping them, among other things, to “decipher the school system, get tutoring...apply for college or other post-secondary programs and financial aid and work with teachers and administrators.” Spectrum's case managers “will liaise with teachers and administrators around the needs of multicultural youth and build strong bridges with alternative educational and work programs and other community support services in order to address the issue of the high number of New American youth dropping out of high school in the last two years.” All of the quoted provisions indicate an educational focus to Spectrum's services and lead to the conclusion that they must be funded through Burlington's education budget.

Moreover, these services dovetail with the mandate of 16 V.S.A § 2902 for a tiered system of educational supports. This law requires each public school to develop and maintain a tiered system of academic and behavioral supports for the purpose of providing all students with the opportunity to succeed or to be challenges in the general education environment.

Other Spectrum services – helping youth navigate the court system, find housing, obtain benefits and access health care and counseling – have a community focus. Assuming those services are available to the qualifying municipal population and not just Burlington students, they could be appropriately funded by the municipal budget. This would require a second agreement.

Section 4029 does not prohibit the provision of any of the services discussed above, it merely requires that funding of education and municipal expenses be kept separate to ensure that communities do not use municipal dollars to fund education to the detriment of equity among schools and in contraventions of the statewide education funding system which strives to put schools located in property poor communities on equal footing with schools located in communities with significantly greater resources.

Sincerely,



Molly Bachman

General Counsel, Vermont Agency of Education

c: Rebecca Holcombe, Secretary of the Agency of Education
William Talbott, Deputy Secretary of the Agency of Education

