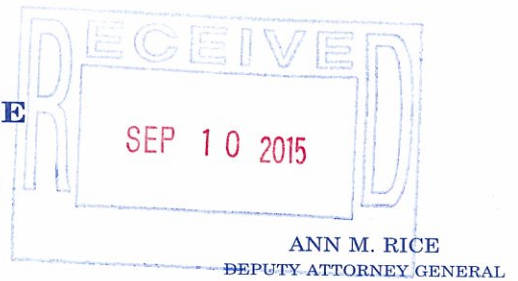


**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397



JOSEPH A. FOSTER
ATTORNEY GENERAL



September 8, 2015

Dr. Cindy Gallagher
Superintendent, SAU #43
247 North Main Street
Newport, NH 03773

Re: Croydon School Board

Dear Dr. Gallagher:

Based on information received by the Department of Education ("DOE") and my Office, we believe that the Croydon School Board is sending pupils to private schools using appropriated school funds to pay tuition. Be advised that this practice is contrary to law and must cease immediately.

The Attorney General's Office has consulted with both DOE and the Department of Revenue ("DRA") on this matter. All agencies agree that public funds may only be used to pay for public schools. *See* RSA 198:4 ("The school board of each district in its annual report shall state in detail the additional sums of money, if any, which will be required during the ensuing fiscal year for the support of the public schools..."). DRA examined the school board's annual report and SAU 43's certificate of appropriations to compute and establish a tax rate sufficient to meet those school money obligations. At no time did the Croydon School District request permission to raise public dollars to pay for private school tuition for its students. Further, Croydon did not request a hearing before DRA challenging the tax rate/appropriations for 2015, as permitted under RSA 21-J:35, V, and therefore, the decision for raising the revenue is final.

The July 14, 2015, Town of Croydon Select Board Meeting Minutes indicate that the Croydon Select Board voted to send appropriated school money to an account created by the Croydon School Board for payment of expense vouchers for students. Such payment is prohibited and as a result, such a transfer is prohibited. Croydon is required to pay the appropriated school money to SAU 43. Further, money required for the support of the public schools is appropriated by the school district, not the town. Municipal funds can only be used when an appropriation has been made. There is no appropriation for the Town of Croydon to pay for private school tuition, nor could there be as municipalities do not appropriate money for education. Therefore, the Town must provide the school district with its school money.

“It is the policy of the state of New Hampshire that public elementary and secondary education shall provide all students with the opportunity to acquire the knowledge and skills necessary to prepare them for successful participation in the social, economic, scientific, technological, and political systems of a free government, now and in the years to come; an education that is consistent with the curriculum and student proficiency standards specified in state school approval rules and New Hampshire curriculum frameworks.” See RSA 193-E:1. In Claremont School District v. Governor, 138 N.H. 183, 184 (1993) (“Claremont I”), the court held that “part II, article 83 imposes a duty on the State to provide a constitutionally adequate education to every educable child in the public school in New Hampshire and to guarantee adequate funding.” In order to meet its duty, the State of New Hampshire has implemented a system to guarantee that all public school children receive the opportunity for an adequate education. This system is exclusive to the public schools. Indeed, RSA 193-E:3-b requires that each public school “...demonstrate by the end of the school year that it [has provided] the opportunity for an adequate education.” The Commissioner is authorized to conduct site visits to ensure that public schools are meeting the school standards set forth in New Hampshire law. See RSA 193-E:3-b, I (b) (6). Private schools are not included in this system.

Moreover, RSA 193-E:3-c provides for the development of a performance based accountability system relative to the public school’s duty to provide an adequate education. One major element of the accountability system is the statewide assessment under RSA 193-C. All public school children in the designated grades are required to take the assessment. See RSA 193-C:6. All districts are required to implement the assessment. See RSA 193-C:6. Private schools are not under this obligation.

Although state law, RSA 186-C:10, does allow for placement of special education students in nonpublic schools, there is no equivalent provision of New Hampshire law that allows for non-special education students to be placed in private schools.

In Claremont I, the court found that the language of Part II, art. 83 of the New Hampshire Constitution, “commands, in no uncertain terms, that the State provide an education to all its citizens and that it support all public schools.” Claremont I, 138 N.H. at 187. In Claremont School District v. Governor, 142 N.H. 462, 475 (1997), the court recognized “that local control plays a valuable role in public education; however, the State cannot use local control as a justification for allowing the existence of educational services below the level of constitutional adequacy.” Id. Accordingly, by sending public school pupils funded by public money to private institutions, which are not accountable to the State under the statewide adequate education program, the Croydon School Board and Croydon Select Board’s actions threaten to undermine the public school accountability system in New Hampshire.

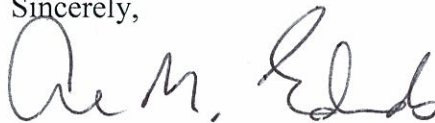
Finally, RSA 194:27 addresses tuition. In New Hampshire, all children are entitled to the opportunity for an adequate education. In those school districts that do not have a high school or school of corresponding grade, the district is required “to pay for the tuition of any pupil who with parents or guardian resides in said district or who, as a resident of said district, after full

Dr. Cindy Gallagher, Superintendent, SAU #43
Re: Croydon School Board
September 8, 2015
Page 9

investigation by the state board of education is determined to be entitled to have his or her tuition paid by the district where the pupil resides, and who attends an approved public high school or public school of corresponding grade in another district or an approved public academy." While this provision provides for an option for local schools to tuition students to other public schools, there is no authorization for payments for a private education.

As a result, neither the Croydon School Board, Croydon School District, nor the Croydon Select Board may use public funds to send students to private school and any such activity must cease and desist. Monies that have been raised for public education in Croydon must be forwarded to SAU 43 within 20 days of the date of this letter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Anne M. Edwards". The signature is fluid and cursive, with the first name "Anne" being more prominent than the last name "Edwards".

Anne M. Edwards
Associate Attorney General

cc: Virginia M. Barry, Commissioner, Dept. of Education
Charles G. Douglas, III, Esq.
Jody Underwood, Chair, Croydon School Board
Christy Whipple, Newport Montessori School
Town of Croydon, Board of Selectmen

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