



July 29, 2009

TO: District Superintendents
Superintendents of Public Schools

FROM: Johanna Duncan-Poitier
Senior Deputy Commissioner of Education - P-16

Rebecca H. Cort 
Deputy Commissioner
Vocational and Education Services for Individuals with Disabilities

SUBJECT: Clarifying Information related to Contracts for Instruction

We have recently received questions from the field about the authority of school districts to provide core instructional services through contracts with nonprofit and other entities. In response to these inquiries, we are sharing the following clarifying guidance.

Consistent with case law, school districts and BOCES do not have the authority to contract with independent contractors for instructional services which are the very core and function of a school district (see Board of Cooperative Educational Services for the Second Supervisory District of Erie, Chautauqua and Cattaraugus Counties, et al. v. University of the State of New York, et al., 40 AD3d 1349; Appeal of Barker, et al., 45 Ed Dept Rep 430, Decision No. 15,375; Appeal of McKenna, et al., 42 id. 54, Decision No. 14,774). To ensure that your district is in compliance with the law, we recommend the following:

- We encourage you to review all contractual or informal arrangements with your school attorneys to ensure that your district is in compliance with the law.
- Please pay particular attention to programs serving at-risk or previously suspended students. This includes students with and without disabilities. School superintendents are encouraged to work with your District Superintendents to provide for an orderly and smooth transition of any students determined to be enrolled in such programs to be sure that the students will be placed in the appropriate educational program for the next academic year.

- In cases where these arrangements include the administration of Regents Examinations by independent contractors, it is important to remember that:
 - Only public and nonpublic high schools, registered by the Board of Regents are permitted to issue diplomas and administer Regents examinations (see section 100.2 (p) of the Commissioner's regulations). Charter schools may issue diplomas and administer Regents examinations as authorized by article 56 of the Education Law.
 - Building principals are responsible for administering Department examinations and maintaining the integrity of examination content and programs, consistent with directions and procedures established by the Commissioner (see section 102.3 of the Commissioner's regulations).
 - Regents Examinations, RCTs, and Second Language Proficiency Examinations may only be administered at official centers within New York State. The official centers include all registered secondary schools and other educational institutions that have been given specific approval by the Department to administer secondary-level State examinations.

Additional information which you may find helpful is available on the Web at:

<http://www.emsc.nysed.gov/part100/pages/1002.html>

Registration of schools and school/district accountability.

<http://www.emsc.nysed.gov/osa/sam/secondary/foreword-contents/contents.html>

Examination Centers

Also, if you have any questions related to this memo, please contact Greg Bayduss, Coordinator Safe and Drug Free Schools at (518) 486-3640. Thank you for your efforts in helping to ensure that all students attend learning environments which are conducive to academic and social growth and are in compliance with statute and Commissioner's Regulations.

C: Jean C. Stevens
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Greg Bayduss
Allison Bianchi