



The Commonwealth of Massachusetts
AUDITOR OF THE COMMONWEALTH
STATE HOUSE, BOSTON 02133

SUZANNE M. BUMP, ESQ.
AUDITOR

TEL: 617-727-2075

November 21, 2018

Mayor William F. Martin
City of Greenfield
City Hall
14 Court Square
Greenfield, MA 01301

RE: The Financial Impacts of the Failure to Reimburse the Greenfield Public Schools for Educational Services Provided to Out-of-District Foster Care Children Under G.L. c. 76, § 7

Dear Mayor Martin:

On March 28, 2018, the Mayor of Greenfield petitioned the State Auditor's Division of Local Mandates (DLM) regarding the failure by the Commonwealth to reimburse the Greenfield Public Schools for educational services provided to students in foster care in out-of-district placements covered by the provisions of G.L. c. 76, § 7.¹ Greenfield indicated that in FY 2015 it spent \$709,931.24 to provide educational services to students placed in foster care in Greenfield.² Greenfield believed that the failure to fund the provisions of Section 7 impose a direct service or cost obligation on the Greenfield Public Schools in contravention of the Local Mandate Law, G.L. c. 29, § 27C.

When Greenfield petitioned DLM, the Division was in the process of undertaking a municipal impact study regarding the fiscal impact of providing educational services to students in foster care. Consequently, DLM asked if we could address this matter in the municipal impact study, which Greenfield agreed to. DLM is continuing to work on its municipal impact study, but we did not want to delay our response to you any further, so we are issuing a mandate determination separate from our report.

¹ Letter from William Martin, Mayor, City of Greenfield to Suzanne M. Bump, State Auditor (Mar. 28, 2018) (on file with Division of Local Mandates).

² This is calculated based on 47 enrolled student who met the status multiplied by the average per pupil cost of education in the district (\$15,104.92), as certified by DESE in FY 2015.

In preparation for this determination, DLM staff met with Superintendent Jordana B. Harper and Student Services Director Dianne Ellis from the Greenfield Public Schools. DLM also spoke with officials at the Department of Elementary and Secondary Education, including Deputy Commissioner Jeffrey Wulfson, Legal Counsel Joshua Varon, Associate Commissioner Jay Sullivan, and Director of School Finance Robert O'Donnell. Finally, DLM researched whether the state ever provided funding for educational services provided to out-of-district foster care students. The Commonwealth did provide for the reimbursement of educational services to out-of-district foster care students until fiscal year 2001. However, funding ceased after fiscal year 2001.

This is not the first time DLM has received a petition regarding G.L. c. 76, § 7. In 1989, DLM received a petition from the City of Worcester which raised 11 items of concern, including issues related to special education notifications, language education in schools and testing preparation.^{3 4 5} These issues were later reviewed by the Supreme Judicial Court in 1994.

Although we understand that providing services to out-of-district foster care students is a significant financial cost, DLM concludes that the Local Mandate Law does not apply to the issue you raised because there was no substantial change in the law that imposed a new burden on Greenfield.

Application of the Local Mandate Law to Foster Care Student Reimbursement under G.L. c. 76, § 7

In general terms, the Local Mandate Law, G.L. c. 29, § 27C, provides that any post-1980 state law, rule, or regulation that imposes additional costs upon any city or town must either be fully funded by the Commonwealth or be made conditional to local acceptance. Pursuant to the Local Mandate Law, any community aggrieved by an unfunded state mandate may petition the Superior Court for an exemption from complying with the mandate until the Commonwealth provides sufficient funding. Prior to taking this step, a city or town may request an opinion from DLM as to whether the Local Mandate Law applies in a given case, and, if so, a determination of the cost for complying with the unfunded mandate. DLM's deficiency determination is *prima facie* evidence of the amount of funding necessary to sustain the local mandate.⁶

³ City of Worcester: In Re City of Worcester and Certain Laws and Regulations Relative to Public Education (Office of the State Auditor May 9, 1990) (on file with the Division of Local Mandates).

⁴ Letter from Jordan Levy, Mayor, City of Worcester to A. Joseph DeNucci, State Auditor (June 19, 1989) (on file with the Division of Local Mandates).

⁵ It should be noted that part of Worcester's concerns were the promulgation of regulations that ended intra-district transfers which were used to support the education services provided to children in state care. Additionally, Worcester also believed that a statutory change in G.L. c. 76, § 7 that amended the state reimbursement from the full cost of educating a student to the average cost of educating a student in the district was a mandate under the Local Mandate Law. This change could have had a serious impact on the funding of the services as students with special needs can be significantly costlier to educate than the average student in a district.

⁶ See M.G.L. c. 29, § 27C (e).

Alternatively, a community may seek legislative relief. However, the Local Mandate Law does not apply to all laws governing local activity. Laws that notably fall outside the scope of the Local Mandate Law are federal laws and regulations and laws regulating the terms and conditions of municipal employment.⁷

To determine whether the anticipated local cost impact of a state law, rule, or regulation is subject to the Local Mandate Law, we apply the framework for analysis developed by the Supreme Judicial Court in *City of Worcester v. the Governor*. Of particular relevance to this petition, the challenged law must take effect on or after January 1, 1981, it must either be a new law or a change in a law that rises to the level of a new law, and it must result in a direct service or cost obligation that is imposed by the Commonwealth, not merely an incidental local administration expense.⁸ Moreover, the Legislature, in enacting the challenged law, must not have expressly overridden the Local Mandate Law.⁹

In 1994, the Supreme Judicial Court reviewed whether Chapter 76, Section 7 is an unfunded mandate in *Worcester*. In the *Worcester* decision, the Supreme Judicial Court found that G.L. c. 76, § 7 did not constitute an unfunded mandate, because the 1983 amendments to Chapter 76, Section 7 did not constitute substantive amendments that imposed new obligations on Worcester.¹⁰

Reviewing this matter in the light of the Supreme Judicial Court's decision, the post-1980 amendments to Chapter 76, § 7 do not impose any new obligations on Greenfield that would trigger the Local Mandate Law. The state's assurance to pay for the education of students in state care that are placed in a school district other than their home school district dates back to 1896.¹¹ While Section 7 of Chapter 76 has been amended numerous times over the years, the last substantive amendment occurred in 1978, which required the state to reimburse a school district for the educational expenses of all children placed in foster care other than their home town by the state; previously reimbursements were only for children over the age of five.¹² To trigger the Local Mandate Law there must be a change in a state law, regulation, or rule that imposes a new obligation on a city or town. Since there have been no substantive post-1980 changes that impose a new obligation on Greenfield, the Local Mandate Law does not apply to G.L. c. 76, § 7.

⁷ *Town of Lexington v. Commissioner of Education*, 393 Mass. 693, 697 (1985); *City of Cambridge v. Attorney General*, 410 Mass. 165, 170 (1991).

⁸ *City of Worcester v. the Governor*, 416 Mass. 751, 754-755 (1994).

⁹ *Lexington*, 393 Mass. at 698; *Sch. Comm. of Lexington v. Commissioner of Education*, 397 Mass. 593, 595 (1986).

¹⁰ *Worcester*, 416 Mass. at 759.

¹¹ St. 1896, c. 382, available at <http://archives.lib.state.ma.us/actsResolves/1896/1896acts0382.pdf>.

¹² Chapter 382 of the Acts of 1896 required the state to reimburse cities and towns for the education of children in state care between the ages of five and fifteen who were placed by the state in a municipality other than their home. The reimbursement rate was 50 cents for each week a child was attending a school district that was not their home school district.

¹³ St. 1978, c. 367, § 67, available at <http://archives.lib.state.ma.us/actsResolves/1978/1978acts0367.pdf> and St. 1921, c. 272 available at <http://archives.lib.state.ma.us/actsResolves/1921/1921acts0272.pdf>.

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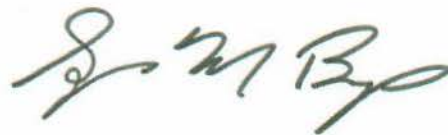
Conclusion

It is clear from our discussions that the Greenfield Public Schools have implemented procedures and protocols to best serve foster care students who either are attending the Greenfield Public Schools or require the Greenfield Public Schools to coordinate with their district of origin. DLM was impressed by the numerous ways in which the District provided services to these students. However, the Supreme Judicial Court made clear that, unless the amendments to a law impose a new obligation on municipalities, the Local Mandate Law does not apply.

This opinion does not prejudice the right of any city or town to seek independent review of the matter in Superior Court in accordance with Section 27C(e) of Chapter 29. Although we are sympathetic to the fiscal constraints facing all cities and towns, DLM must apply the Local Mandate Law consistently to each issue, as interpreted by the courts.

We would also like to express our gratitude to Greenfield for taking the time to meet with us regarding DLM's municipal impact study. Greenfield provided useful information for our study that clarified the complex issues facing school districts servicing students in foster care.

Sincerely,



Suzanne M. Bump
Auditor of the Commonwealth

cc: Superintendent Jordana B. Harper, Greenfield Public School System
Commissioner Jeffrey C. Riley, Department of Elementary and Secondary Education
Deputy Commissioner Jeff Wulfson, Department of Elementary and Secondary Education