



STATE OF MICHIGAN  
DEPARTMENT OF EDUCATION  
LANSING



JENNIFER M. GRANHOLM  
GOVERNOR

MICHAEL P. FLANAGAN  
SUPERINTENDENT OF  
PUBLIC INSTRUCTION

April 12, 2006

TO: Local and Intermediate School Superintendents, Public School Academy Directors, and Nonpublic School Administrators

FROM: Carol Wolenberg, Deputy Superintendent

SUBJECT: Implementation of Court Injunction Regarding Distribution of USDA Donated Commodity Food Items

The purpose of this message is to provide you with an update concerning the lawsuit brought by Northern Food Service (NFS) of Elmira, Michigan against the Michigan Department of Education (MDE) in December 2004. NFS is alleging that MDE has breached the contract it has with MDE for the delivery of USDA donated commodity food. MDE does not believe it has breached the contract. We are litigating the matter in the Michigan Court of Claims, the Michigan Court of Appeals, and the Michigan Supreme Court.

Early in 2005, Judge Beverly Nettles-Nickerson of the Michigan Court of Claims granted an injunction at the request of NFS. The injunction required that MDE move all donated commodity food items in the possession of the two consortia, Great Lakes Consortium (GLC) and School Purchasing And Resource Consortium (SPARC), to the NFS warehouse and allow NFS to deliver commodities to GLC and SPARC members. Prior to full implementation of the injunction, MDE obtained a stay from the Court of Appeals prohibiting implementation of the injunction until the Court of Appeals would rule on MDE's appeal. During the remaining months of 2004-05, GLC and SPARC continued to distribute commodity and commercial products to their members. For 2005-06, membership in both groups grew, and, again, commodity and commercial products were distributed to their members. Each consortium had procured its own distributor. Gordon Food Service (GFS) was awarded a contract by GLC; Sysco was awarded a contract by SPARC.

In December 2005, school districts had an opportunity to join, re-join, or drop out of the established consortia, or a new third one, Macomb-Oakland-Wayne RESA, for the 2006-07 school year. Membership decisions were made at the local district level. Membership in consortia statewide increased during this sign-up period.

The Court of Appeals issued an opinion on March 7, 2006, which reinstated the preliminary injunction. On April 4, 2006, the Court of Appeals gave immediate effect to its March 7, 2006 Opinion. On April 5, 2006, Judge Beverly Nettles-Nickerson ordered that starting April 27, 2006, all GLC members and all SPARC

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members in warehouse Region 1 and Region 3 are to receive their commodities from a state warehouse, Northern Food Service (NFS). It should be noted that in 2002, a pilot consortium was established by GLC. The original fifteen pilot school districts are exempt from this court order. The fifteen districts include: Dexter, Grand Rapids, Grandville, Kentwood, L'Anse Creuse, Lansing, Lincoln Park, Livonia/Garden City, Melvindale/Northern Allen Park, Rochester, Saginaw, Sparta, Traverse City, Walled Lake, and Washtenaw ISD. Additionally, this injunction does not apply to districts in our warehouse Region 2. Region 2 encompasses all districts in the following counties: Huron, Lapeer, Macomb, Oakland, Sanilac, St. Clair, Tuscola, and Wayne.

**Last week, per Judge Nettles-Nickerson's court order, MDE immediately began to make arrangements with NFS for inventory currently at GFS and Sysco to be moved to NFS and for NFS to begin to make deliveries of the USDA commodity items to the school districts as of April 27, 2006. The Court order implies that this arrangement will continue so long as NFS is under contract with the State of Michigan. Thus, as we move forward, we will not be honoring consortia designations made by local districts in December 2005 for 2006-07 for those not exempted in the previous paragraph.**

MDE is vigorously implementing the court order, for we do not in any way want to be cited for contempt of court. However, the USDA has advised MDE that the USDA believes the court order is in conflict with USDA regulations regarding ownership of donated commodities. USDA believes that the commodities currently at GFS and Sysco, as well as the commodity products at processors for the purpose of being transformed into a product such as chicken nuggets, all belong to the local districts and do not belong to MDE. USDA believes that ownership of these items was transferred to the school districts upon the districts' designation of where they wanted USDA to transport their products. USDA believes that MDE never had ownership of these products. USDA does not appear to contest NFS's right to deliver all products owned by MDE. USDA has cited the following USDA regulations in support of its position: 7 Code of Federal Regulations, § 250.13(c); § 250.14(a); § 250.14(d); § 250.24(e); § 250.24(i); and § 250.48(c).

MDE will keep you posted on further developments. As questions arise, you may direct them to Ruby Zavala at 517-373-0420. At this time, we continue to work with NFS, GFS, and Sysco to implement Judge Nettles-Nickerson's order.