

**STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS**

**COMMISSIONER OF EDUCATION**

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**Kingston Hill Academy &  
The Compass Charter School**

v.

**Chariho Regional School District**

.....

**DECISION**

Held: Chariho is directed to pay forthwith all sums due and owing to the Compass Charter School and to the Kingston Hill Academy using as a computational basis the reference year established by R.I.G.L. 16-7-16. If these sums are not promptly paid over we will exercise our authority under R.I.G.L. 16-77.1- 2 (e) to deduct the required sums from state school aid owed to Chariho and pay these sums over to the petitioners.

**DATE: June 14, 2010**

## **Jurisdiction and Travel of the Case**

This direct appeal brings before us a financial dispute about how the local share of charter school reimbursement should be computed. The petitioners in this matter are the Compass Charter School and the Kingston Hill Charter School. The respondent school district is the Chariho Regional School District. Jurisdiction is present under R.I.G.L. 16-39-1 and R.I.G.L.16-39-2 R.I.G.L. 16-77.1-2 (e). The Commissioner, in a prior interlocutory decision, has severed certain other issues alleged in this matter for separate consideration at a later point, if such consideration becomes necessary.

## **Positions of the Parties**

### **The Charter Schools**

The Charter schools contend that their reimbursement payments from Chariho should be computed on a reference year that immediately precedes the year in which the reimbursement is to be paid.

### **The Position of Chariho**

The Chariho Regional School district contends that the reimbursement due from Chariho to the petitioning charter schools must be calculated on a reference year that is two years back from the payment year. Chariho bases this contention on R.I.G.L. 16-7-16.

## **Findings of Fact**

For purposes of this decision there are no material factual issues. We are dealing solely with issues of law.

## **Conclusions of Law**

The gravamen of this dispute is based upon the meaning of the term “reference year” as this term is used in R.I.G.L. 16-7-16 and R.I.G.L.16-77.1-2. We will break out these somewhat dense statutory provisions into separate sentences for the sake of clarity:

- **R.I.G.L. 16-77.1-2 Operating costs.** – (a) **Operating costs** of a charter public school shall be the total of the per pupil payments for each student **attending** the charter public school.
- The per pupil **payment** for each student shall be determined based on **the per pupil cost** for the district of residence of each student.
- The **state's share** of the per pupil amount for each student attending the charter public school shall be paid by the state directly to the charter public school and shall be the percent, or share ratio, previously calculated under chapter 7 of this title; provided, that in no case shall the ratio be less than thirty percent (30%), minus the five percent (5%) of per pupil cost designated for indirect cost support to the student's school district as defined in subsection (b).

- The five percent (5%) indirect cost amount shall be deducted from the district per pupil cost **before** the state share is derived by applying the share ratio to the district per pupil cost.
- The **local share** of the per pupil amount for each student attending the charter public school shall be paid to the charter public school by the district of residence of the student and shall be the per pupil cost for the district of residence of the student minus the state share of that per pupil cost as designated in this section.
- (b) In addition to all state aid to education paid to a local district pursuant to chapter 7.1 of this title, the state will pay an additional amount to the district for each student from this district who is attending a charter public school. The additional amount of state aid per pupil shall be five percent (5%) of the districts per pupil cost. The additional state aid shall be for the purpose of assisting local school districts to undertake the indirect costs borne by a district when its student attends a charter public school.
- (c) The state department of elementary and secondary education shall **annually** determine **both** the state and local share of each charter public school's **operating costs** by deriving the respective shares associated with each student reported as a member of the charter public school **as of June 30 of the reference year** as defined in **§ 16-7-16(11)** (or the **enrollment as of October 1** of the current school year in the first year of operation of a charter school). All other data used in this determination shall be based upon the reference year as defined in § 16-7-16(11).
- (d) The state shall make payments of its share of operating costs to each charter public school on a quarterly basis in July, October, January, and April.
- The July and October payments will be based upon the reported student membership of the charter public school as of June 30 of the reference year as defined in **§ 16-7-16(11)** (or the enrollment as of October 1 of the current school year in the first year of operation of a charter school).
- Charter public schools **will report current student enrollment**, including district of residence for school purposes of each student enrolled, and each district will report **current total district operating expenses** and total district enrollments (including district students enrolled in charter public schools) annually by October 1. If the October 1 data on a charter public school's student enrollment show a ten percent (10%) or greater **increase or decrease in students** from the June membership count, the third and fourth quarter payments to the charter public school will be adjusted to reflect actual student enrollment in the charter public school.

- (e) Local district payments to charter public schools for each district's students enrolled in the charter public **school shall also be made quarterly** as designated in subsection (d); the first local district payment shall be made by August 15 instead of July. Any local school district more than thirty (30) days in arrears on a quarterly payment for its student(s) enrolled in a charter public school shall have the amount of the arrearage deducted from state aid to that district and the withheld arrearage shall be paid by the state directly to the charter public school.
- (f) Local school districts with student(s) enrolled in a charter public school shall continue to report these students in the total census of district public school students and will receive state aid for all these students pursuant to the provisions of chapter 7.1 of this title.
- (g) All entitlements except those provided for in § 16-24-6.2 shall be ratably reduced if less than one hundred percent (100%) of the expenditures is appropriated.
- (h) For fiscal year 2007, the indirect aid paid to districts pursuant to this section shall equal the amount received in the fiscal year 2006 enacted budget by the 2005 general assembly.

The term “reference year” is defined in R.I.G.L. 16-7-16 (11) as follows:

**R.I.G.L. 16-7-16 Definitions.** – The following words and phrases used in §§ 16-7-15 to 16-7-34 have the following meanings:

(11) "Reference year" means the next year prior to the school year immediately preceding that in which the aid is to be paid;

This somewhat opaque language may be broken down into the following elements:

1. *The Reference Year*
2. *The Year Following the Reference Year*
3. *The Year in which Reimbursement based on the “reference year” is paid.*

Students of Latin accentuation might say that the “reference year” is the “antepenultimate year, the reference year is the penultimate year, and the “payment year” is the “ultima” year.<sup>1</sup> In any event, this convoluted “reference year” procedure doubtlessly reflects the computational difficulties of calculating reimbursement back in 1960 when R.I.G.L. 16-7-16 was enacted. Back then the “year following the reference year” would be needed to gather fiscal information from all the school districts in the state, calculate reimbursement amounts, and prepare the budgetary material needed

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<sup>1</sup> “If the penultimate syllable of a word is long, it takes the accent, but if it is short, the accent falls on the proceeding [antepenultimate] syllable.” Latin, Gavin Betts, NTC Publishing Group, page xvi.

for executive and legislative approval, so that reimbursement could be paid. Under modern conditions it might well be possible to dispense with the intermediate year, since reimbursements could presumably be calculated much more quickly now.<sup>2</sup> Still, the legislation is what it is, so we must follow its requirements.

The reference year to be used in calculating the local share of Charter school reimbursement is specified at R.I.G.L. 16- 77.1-2 (c):

(c) The state department of elementary and secondary education shall **annually** determine **both** the state and local share of each charter public school's **operating costs** by deriving the respective shares associated with each student reported as a member of the charter public school **as of June 30 of the reference year** as defined in § 16-7-16(11) (or the **enrollment as of October 1** of the current school year in the first year of operation of a charter school). All other data used in this determination shall be based upon the reference year as defined in § 16-7-16(11).

The statute could not be clearer. Payments are to be calculated, “by deriving the respective shares associated with each student reported as a member of the charter public school **as of June 30 of the reference year** as defined in § 16-7-16 (11) (or the **enrollment as of October 1** of the current school year in the first year of operation of a charter school). As we have already pointed out, the “reference year” defined in R.I.G.L. 16-7-16 (11) is the year “two years back” from the year in which payment is made. The exception to this two year “look back rule” involves newly established charter schools where enrollment “as of October 1 of the current school year in the first year of operation of a charter school” is used in making the requisite calculation. The potential harshness of using an “antepenultimate” reference year in cases where a charter school has seen a recent increase in enrollment is mitigated to some extent by R.I.G.L. 16-77.1-2 (d) which provides in pertinent part that: : If the October 1 data on a charter public school's student enrollment show a ten percent (10%) or greater **increase or decrease in students** from the June membership count, the third and fourth quarter payments to the charter public school will be adjusted to reflect actual student enrollment in the charter public school.”

The petitioners, in contend that, “the legislature’s use of the term ‘enrolled’ in R.I.G.L. 16-77.1-2 (d) clearly establishes that it intended ‘district’s student enrolled in the charter public school,’ as used in R.I.G.L. 16-77.1-2 (e), to mean the district’s students enrolled during the current school year for purposes of calculating a district’s payment obligations for the current fiscal year.” The problem with this argument is that when we look at subsection (e) of R.I.G.L. 16-77.1-2 we are referred back to subsection (d) of R.I.G.L. 16-77.1-2 which establishes the “antepenultimate” reference year defined in R.I.G.L. 16-7-16 as the reference year to be used in calculating charter school reimbursement.

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<sup>2</sup> See: Financing Tomorrows Schools Today: *The Story of Rhode Island’s School Finance Program* (1961) , page 34.

The petitioners also contend that the Rhode Island Department of Education (RIDE) has interpreted R.I.G.L. 16-77.1-2 in a way which supports their contentions. We have carefully examined the testimony of a RIDE official that was submitted in this matter. A reading of this testimony establishes that the official carefully testified about how RIDE calculates the state share and about how RIDE makes the modifications required by R.I.G.L.16-77.1-2 if there is an increase or decrease in a charter schools enrollment. We find however that when called to provide support for the petitioners' position in this matter she could give no definite testimony. In any event we think the plain meaning of an unambiguous statute must prevail over any administrative interpretation of the statute. *Seide v. State*, 875 A.2d 1259 (2005)

**Conclusion**

Chariho is directed to pay forthwith all sums due and owing to the Compass Charter School and to the Kingston Hill Academy using as a computational basis the reference year established by R.I.G.L. 16-7-16. If these sums are not promptly paid over we will exercise our authority under R.I.G.L. 16-77.1- 2 (e) to deduct the required sums from state school aid owed to Chariho and pay these sums over to the petitioners.

We find that the prior issues severed in this case are separate from the payment issues we have dealt with in this decision. We therefore conclude that this matter is immediately appealable to the Board of Regents under R.I.G.L.16-39-3. Since only legal issues are present here the Board has authority to make a de novo review of our decision in this matter. *Altman v. School Committee*, 115 R.I. 399, 347 A.2d 37 (1975).

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Forrest L. Avila, Hearing Officer

APPROVED:

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Deborah A. Gist, Commissioner

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June 14, 2010  
Date