016- 16

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
COMMISSIONER OF EDUCATION

STUDENT H. Doe, by her parents	:
Petitioner,	:
	:
vs.	:
	:
CHARIHO REGIONAL SCHOOL	:
COMMITTEE,	:
Respondent.	:

DECISION AND ORDER

Held: School Committee failed to raise a genuine issue of material fact by claiming that: (1) student had various non-academic reasons for wanting to attend a career preparation program offered outside of her district of residence, and (2) it would be more economically efficient for student to attend allegedly comparable program in her home district, and thus student had the right to attend the career preparation program "of her choice."

June 1st., 2016

I. Introduction

On March 28, 2016, the parents of Petitioner, STUDENT H. DOE ("Student H."), a resident of the Chariho Regional School District ("Chariho"), filed a petition on her behalf (the "Petition"), appealing the decision of Respondent, CHARIHO REGIONAL SCHOOL COMMITTEE (the "School Committee"), affirming its Superintendent's decision refusing to sign and approve Student H.'s application to a career preparation program in agricultural science offered at Narragansett High School primarily due to the fact that Chariho offered an agricultural science career preparation program of its own.

The case presents a pure question of law, i.e., whether the *Regulations Governing Career and Technical Education in Rhode Island* (the "C&T Regs." or the "Regulations") afford students the right – subject to three specific limitations – to attend the career preparation program "of their choice," regardless of cost, program location, or whether the student has non-academic reasons for wanting to attend an out-of-district program. As will be discussed and as the Commissioner made clear just last month in *Metropolitan Regional Career and Technical Center v. Chariho Regional School District* ("*Met. Center*"), RIDE No. 101-16 (April 12, 2016) (appeal pending), the answer to the dispositive legal question is evident from the plain language of the C&T Regs.

II. Relevant Undisputed Facts and Applicable Law

A. The Relevant Undisputed Facts

1. Student H. currently lives in Charlestown, Rhode Island with her parents and attends the eighth grade at the Chariho Middle School.

2. On or about January 25, 2016, she applied for admission to an agricultural science career preparation program approved by the Department of Elementary and Secondary Education

("RIDE") at Narragansettt High School (the "Narragansett Program").

3. Chariho also offered and currently offers a RIDE-approved agricultural science program at its Career and Technical Center (the "Chariho Program").

4. On February 24, 2016, Student H. requested that Chariho's Superintendent sign and approve her application to the Narragansettt Program, which arguably is required if she is to be admitted.[1]

5. If Student H. were accepted and enrolled in the Narragansettt Program, Chariho would be required to reimburse the Narragansettt Public School District ("Narragansettt") in accordance with the cost benchmark for the Program, *see* C&T Reg. at § 7.2 (quoted *infra*, § II(B), ¶ 8 at 8), and since Chariho is in the same transportation zone as Narragansettt, Student H. would be eligible for transportation from her home in Charlestown to Narragansettt High School at Chariho's expense. *See id.* at § 5.1(2) (quoted *infra*, § II(B), ¶ 7 at 7).

6. Although the School Committee has not indicated how many out-of-district students are enrolled in its career preparation programs, if students not residing in Chariho do attend the Chariho Program or other such Chariho programs, the sending district would be required to reimburse Chariho in accordance with the cost benchmark for the Program or programs, *see* C&T Reg. at § 7.2 (quoted *infra*, § II(B), ¶ 8 at 8), and if the student were in the same transportation zone as Chariho, the student would be eligible for transportation at the sending district's expense. *See id.* at § 5.1(2) (quoted *infra*, § II(B), ¶ 7 at 7).

[1]In fact, it is not entirely clear whether the Superintendent's signature and approval are required by the C&T Regs., although the Commissioner has opined that "the need for a student to request access from his or her resident LEA applies only when the student chooses a fully-enrolled program." *See* the Commissioner's August 18, 2014 *Ruling on Motion for Summary Judgment* in *Met. Center, supra*, at 5. That being said, it appears that Chariho's approval is a part of the Narragansettt Program application, *see* Exhibit A to *Chariho's Show Cause Brief Setting Forth Why Student H.'s Appeal Should Be Denied* (the "Chariho Brief") at 2, and thus it will be assumed, at least for present purposes, that the Superintendent's signature on Student H's application is a pre-requisite for admission.

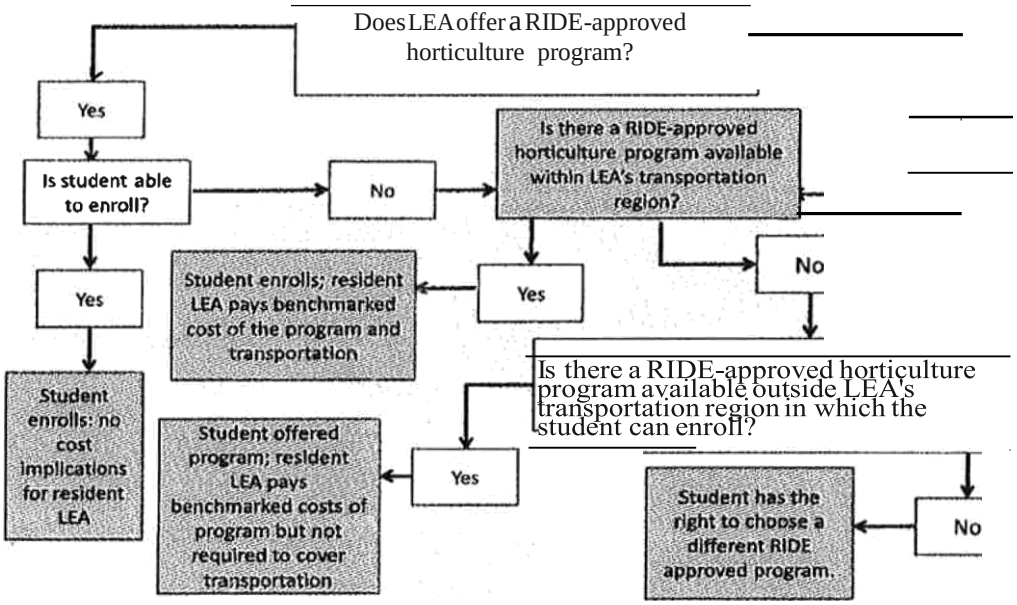
7. Chariho's Superintendent denied Student H.'s request that he sign her application to the Narragansett Program in a letter dated February 29, 2016, alleging that:

> [RIDE] has established Career and Technical Education Regulations Guidance. Section 5.1, Table 1 "illustrates student access to a program of their choice and the resulting LEA obligations." Clearly, when the local district offers a RIDE-approved program of the student's choice, the student must enroll in that program. Chariho offers a RIDE-approved Agriculture Science program with both a plant and science pathway.

See Exhibit C to Chariho's Brief.

8. In December 2012, RIDE published *Rhode Island Career and Technical Regulations Guidance* ("RIDE's C&T Guidance") on its Web site, which included the following Table 1:

Student Access and Transportation Obligations



9. As per RIGL § 42-35-10(4), judicial notice is taken of the fact that RIDE's C&T Guidance was removed in its entirety from RIDE's Web site on April 22, 2016.

10. Student H. appealed to the School Committee, and after a hearing, the Committee affirmed the Superintendent's denial of her request. *See* Exhibit D to the Chariho Brief.

11. Student H. then appealed the School Committee's decision by filing the Petition.

B. The Applicable Law

1. In 1964, the General Assembly, authorized the Board of Regents[2] "to establish and maintain regional schools for vocational and technological training and instruction," RIGL § 16-45-1, and to "fix the standards and terms upon which students shall be received and instructed in and discharged from the schools, and make all rules and regulations necessary for the control, management, and operation of the schools." *Id.*[3]

2. In 1987, the Legislature declared that "[a]ll youth and adults who choose vocational education shall have access to those programs," RIGL § 16-45-1.1(1)(i), and then in 2005, the Legislature directed RIDE to develop a system of career and technical program offerings for Rhode Island students . . ." RIGL § 16-45-6.1(c). Finally, in 2011, the Legislature directed the Board of Regents to "establish and maintain a system of career and technical education that maintains ongoing connections with higher education and meets the needs of local business and industry, and promotes workforce development." RIGL § 16-45.1-2(a).

3. The Board of Regents first promulgated *Regulations Governing the Management and Operation of Area Vocational Centers in Rhode Island* in 1967, and then substantially amended the regulations in 1981, 1990, and then again in 2012, when they were re-styled as the C&T Regs. The Regulations provide that RIDE shall have the responsibility for and authority to, *inter alia*:

> [a]. [e]stablish a CTE System that promotes and ensures student access to . . . career preparation programs for students in grades 9-12; [and]

[2] Pursuant to the Rhode Island Board of Education Act, RIGL § 16-97-1, *et seq*., the Rhode Island Board of Education's Council on Elementary and Secondary Education (the "Council") became the "successor to all powers, rights, duties, and privileges pertaining to elementary and secondary education" that previously had been held by the Board of Regents. *See* RIGL § 16-60-1(a) – (b), as amended by P.L. 2014, ch. 145, art. 20, effective June 19, 2014.
[3] The Legislature made clear that "[t]he powers delegated and authorized in this chapter for the board of regents for elementary and secondary education and the department of elementary and secondary education shall be in addition to those previously authorized by any other general or public law." RIGL § 16-45-6.

[b]. [e]stablish and publish career preparation program admissions standards, when appropriate and applicable.

C&T Regs. at § 3.1(1) and (2).

4. "Career preparation programs" are defined under Section 2.1 of the Regulations as follows:

> [c]areer preparation programs are the most intense level of career and technical educational services available to secondary students. Career preparation programs provide students with rigorous academic and technical training and deep preparation for entry into postsecondary education, training programs, and/or careers. Career preparation programs are distinguished from career awareness and career exploration programs and activities by the depth and rigor of the education and technical training provided, the number of contact hours and/or sequenced, non-duplicative courses that focus on skill development in a single career-based or occupational area, and the opportunity to earn industry-recognized credentials whenever applicable to the program, and/or postsecondary credits, and/or advanced standing in training programs or jobs. RIDE-approved career preparation programs require review by the RIDE in accordance with section 4.0 of these Regulations.

Id.

5. The "Definitions" section of the Regulations does not define career preparation programs, which, as noted, are defined in Section 2.1, quoted *supra*. The Section does, however, include the following definitions:

[a]. Career and Technical Education Center -- a grade 9-12 public educational facility with the primary purpose of providing career preparation programs and other forms of career and technical education, either as a stand-alone institution or in conjunction with collaborating secondary schools.

[b]. Career Innovation Programs -- one of two forms of RIDE-approved career preparation programs that provide CTE academic and technical instruction and training through diverse venues and differing instructional approaches while meeting all of the outcomes defined by career preparation program standards and the program approval process.

Id. at § 1.0(5) and (6).

6. The Regulations emphasize that LEAs shall, *inter alia*, "[p]rovide all eligible

students the opportunity to enroll in an approved career preparation program," *id.* at § 3.2(2), and Section 5.1 makes clear that "all Rhode Island students shall have the right to access RIDE-approved career preparation programs as defined by section 2.1 of these Regulations." *Id.*

7. Section 5.1 of the C&T Regs. clarifies the nature of this "right to access" by expressly providing that:

> [a]ll students shall have the right to request, from their resident LEA, access to a RIDE-approved career preparation program ***of their choice. This right of access shall be limited only by the following three conditions***:
>
> [a]. ***Availability of enrollment seats***: In the event that a student requests access to a RIDE-approved career preparation program that is fully enrolled, the resident LEA shall make every effort to identify and enroll the student in another RIDE-approved preparation program of the student's choice.
>
> [b]. ***Geographic location***: Students are guaranteed access to RIDE-approved career preparation programs. Students requesting access to RIDE-approved career preparation programs outside their established school transportation region may enroll in such programs, but the resident LEA shall not be responsible for the costs of the transportation. Students enrolled in career preparation programs between March 1, 2009 and September 1, 2012 shall maintain the transportation rights set forth under the 1991 Regulations of the Rhode Island Board of Regents Governing Career and Technical Education for the duration of their continuous enrollment in the career preparation program.
>
> [c]. ***Fair, equitable, and reasonable admission standards***: LEAs operating RIDE-approved career preparation programs are authorized to set reasonable, fair, equitable, and program-appropriate admission standards in accordance with section 5.3 of these regulations.

Id. at (1) – (3) (emphasis added).

8. LEAs are entitled under the Regulations to "to prioritize program enrollment for resident students," *id*. at § 5.3, and Section 7.2 of the Regulations provides that:

> [i]n the event that a student enrolls in a RIDE-approved career preparation program outside his or her resident district, the LEAs administering RIDE-approved career preparation programs shall be reimbursed by the resident LEA in accordance with the cost benchmark for the assigned program in which the student is assigned. The resident district shall also provide reimbursement for

> actual incremental services associated with student needs as defined by the student's Individual Education Program (IEP). Resident districts will reimburse the LEAs administering RIDE-approved career preparation programs based on a methodology established by RIDE using UCOA if the benchmarks are not available.

Id.

9. Recently, the Commissioner held that the Metropolitan Regional Career and Technical Center was entitled to reimbursement from Chariho for the cost of educating certain students under RIGL §16-7.2-5(b),[4] and opined that:

> [t]he program-access language in Section 5.1 is clear and unambiguous.[5] It is markedly different from the previous regulations and the position Chariho has taken in this case. It allows students to choose any RIDE-approved career preparation program in the state subject only to the three limitations set forth in Section 5.1. Those limitations do not include local availability or approval. Furthermore, 'guaranteed access' to out-of-district programs is clearly envisioned by the regulations' transportation provisions. The appeal process provided for in the regulations applies to disputes relating to seat availability, transportation and admission standards. And while the Council on Elementary and Secondary Education is required to promote maximum efficiency and economy in the delivery of educational services, the current regulations integrate those considerations into an expanded education model that incorporates student and family choice as an additional influence on program options and quality.

Met. Center, supra, at 3.

III. The Positions of the Parties

1. The School Committee

The School Committee made two basic arguments, one ostensibly based upon the actual language of the C&T Regs., and the other upon its opinion as to what the Board of Regents intended when it adopted the Regulations.

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[4] RIGL §16-7.2-5(b) provides that:

> [l]ocal district payments to charter public schools, Davies, and the Met Center for each district's students enrolled in these schools shall be made on a quarterly basis in July, October, January and April; however, the first local district payment shall be made by August 15 instead of July. Failure of the community to make the local district payment for its student(s) enrolled in a charter public school, Davies, and/or the Met Center may result in the withholding of state education aid pursuant to § 16-7-31.

Id.

[5] Consequently, there is no need to examine collateral material to determine its meaning.

As to its textual argument, the School Committee opined that *Met. Center*, *supra*, was factually distinguishable, and in any event, had been wrongly decided by the Commissioner, arguing that the right of access created in Section 5 of the Regulations is a right to attend a "career preparation program," not a specific "Career and Technical Education Center," which is defined as "a place, not a program." *See* Chariho Brief at 7; Chariho's Reply Memorandum ("Chariho Reply Mem.") at 4 (*see also* § II(B), *supra*, ¶ 5[a] at 6). Thus, the School Committee concluded that whenever a student's district of residence offers a career preparation program in a subject area, a student has no right to attend an out-of-district program in the same subject area. *See* Chariho Brief at 10. In further support of its position, the School Committee cited Chart 1 in RIDE's C&T Guidance (quoted *supra*, § II(A), ¶ 8 at 4), which, as noted, was removed from RIDE's Web site. *See id*. at 11.

The School Committee also argued that the following factual allegations constituted genuine issues of material fact and mandated an evidentiary hearing:

(a) that Student H. allegedly had various non-academic reasons for wanting to attend the Narragansettt Program, including the fact that her father was a teacher at Narragansettt High School. *See id.* at 4; Chariho Reply Mem. at 5; Affidavit of Superintendent Barry J. Ricci (the "Ricci Aff."), ¶ 4 at 1;

(b) that the monetary cost to Chariho in the event Student H. were allowed to attend the Narragansettt Program would be exorbitant. *See* Chariho Brief, ¶ 9 at 5 (quoting RIGL § 61-60-6(5); Chariho Reply Mem. at 1-3 and the Ricci Aff., ¶ 10 at 2; and

(c) that according to proffered hearsay testimony, a former Chair of the Board of Regents made the statement that the C&T Regs. were "not intended to create a system of school choice." *See* Chariho Brief at 12.

2. Student H.

In her Petition and May 23, 2016 *Memorandum in Reply to Chariho's Show Cause Brief* ("Student H's Mem."), Student H., who was *pro se*, relied upon Section 5.1 of the C&T Regs.,

which, she claimed, afforded her the right to attend the Narragansettt Program since none of the Section's three exceptions to her right to attend the program of her choice was applicable. *See* Petition at 1; Student H's Mem., ¶ 3 at 1-2. As to Table 1 in RIDE's C&T Guidance (quoted *supra*, § II(A), ¶ 8 at 4), Student H. argued that it was "provided as guidance," was "not always followed by LEAs in the state of Rhode Island," and, in any event, did not eliminate the requirement that Chariho "adhere to the law." *See* Petition at 1.[6]

IV. Discussion

1. Jurisdiction and Procedural Matters

The Agreed Facts make clear that: (a) Student H. is "aggrieved," (b) her appeal involves a "decision" or "doing" of a school committee, and (c) the school committee "decision" or "doing" in question "[arose] under a law relating to schools or education." Thus, the Commissioner has jurisdiction over the Petition under RIGL § 16-39-2. *See Sch. Cmmttee. of the City of Providence v. Bd. of Regents for Educ*., 429 A.2d 1297, 1300-01 (R.I. 1981).

In addition, it should be noted that the burden of proof is on Student H. to prove her case by a preponderance of the evidence, and the Commissioner's review of the School Committee's decision is *de novo*.[7]

[6] Student H. also: (a) challenged the School Committee's calculations with respect to the cost of transportation, which it characterized as "ludicrous," *see* Student H. Mem., ¶ 1 at 1; (b) noted that the share of state funding attributable to Student H. "should follow her to the public career and tech high school of her choice," *see id*., ¶ 2 at 1; (c) argued that, unlike the Chariho Program, the Narraganset Program was "a flagship program offering a more rigorous curriculum," *see id*., ¶ 4 at 2; and (d) suggested that it was "deplorable that Chariho continues to ridicule [Student H.s] mention of soccer and swim teams in her draft essay" in support of her application to the Narraganset Program. *See id*., ¶ 5 at 2.

[7] *See, e.g., Lyons v. Rhode Island Pub. Employees Council 94*, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the "normal" standard in civil cases); *see* also 2 Richard Pierce, *Administrative Law Treatise*, § 10.7 at 759 (2002); *see also Pawtucket Sch. Cmmttee. v. Bd. of Regents*, 513 A.2d 13, 17 (R.I. 1986), citing *Brown v. Elston*, 445 A.2d 279, 285 (R.I.1982) and *Slattery v. School Committee of Cranston*, 116 R.I. 252, 263, 354 A.2d 741, 747 (1976) ("We have consistently held that section 16–39–2 provides aggrieved persons *de novo* review by the commissioner of education of school committee decisions").

2. The Merits

It is axiomatic that when the language of a statute or regulation is "clear and unambiguous," the statute or regulation must be interpreted "literally," and one interpreting the provision "must give the words of the statute [or regulation] their plain and ordinary meanings." *Alessi v. Bowen Court Condominium*, 44 A.3d 736, 740 (R.I. 2012). And the Rhode Island Supreme Court has indicated that "[w]ords are clear and unambiguous if, read within the context in which they appear, they give rise to but a single rational interpretation." *Drs. Pass and Bertherman, Inc. v. Neighborhood Health Plan of Rhode Island*, 31 A.3d 1263, 1269 (R.I. 2011).

It also is axiomatic that absent ambiguity, one's view of legislative intent is largely irrelevant. *See, e.g., Such v. State*, 950 A.2d 1150, 1158-59 (R.I. 2008) ("When the language of a statute expresses a clear and sensible meaning, this [C]ourt will not look beyond it" and "does not look to the public statements of officials . . ."); *Laird v. Chrysler Corp*., 460 A.2d 425, 428 (R.I. 1983) ("there is no recorded legislative history in Rhode Island from which to ascertain legislative intent"); and *First Republic Corp. of America v. Norberg*, 116 R.I. 414, 419, 358 A.2d 38, 41 (1976) ("Legislative history is properly used as an aid to construction only when the statute is itself ambiguous").

Here, both parties agree that the relevant language in the C&T Regs. is "clear and unambiguous," *see* Petition at 1 and Chariho Brief at 7-8, and thus the hearsay proffered by the School Committee relative to the alleged intent of the Board of Regents when it enacted the Regulations, *see* Chariho Brief at 12, is irrelevant. And there is no dispute over the fact that the relevant statutory language:

> (a) provides students with a "right of access" to "a RIDE-approved career preparation program ***of their choice***," *see* C&T Regs., § 5.1 (emphasis added) (quoted *supra*, § II (B), ¶ 7 at 7); and

(b) that this "right of access shall be limited ***only*** by the following three conditions," i.e., (i) availability of enrollment seats, (ii) geographic location, and (iii) fair, equitable, and reasonable admission standards. *See id.* (emphasis added).

It also is undisputed that:

(a) Student H. is a "student" and the Narragansettt Program is "a RIDE-approved career preparation program" within the meaning of C&T Reg. §5.1; and

(b) none of the three limitations applicable to a student's right of access to a career preparation program "of their choice" under C&T Reg. § 5.1 are applicable to Student H's decision to apply to the Narragansettt Program.

Thus, according to its "plain and ordinary" meaning, the unambiguous language of C&T Reg. § 5.1 supports Student H.'s right of access to the Narragansettt Program and compels the Superintendent to recognize that right by signing and approving her application. If, as the School Committee argues, the Board of Regents had intended that students be permitted to attend out-of-district programs only if their district of residence did not offer a program in the desired subject area, it simply would have said so, rather than making clear that students have the right to select the career preparation program "of their choice," and adding for good measure that "this right of access shall be limited ***only*** [by the three specific conditions set forth under C&T Reg, § 5.1]." *See id.*[8]

Chariho seeks to avoid the conclusion dictated by what it concedes is the "clear and unambiguous" language of the C&T Regs. by making two policy arguments, i.e., that:

(a) interpreting the C&T Regs. without reference to the cost to a student's district of residence (as the Commissioner also did in *Metro. Center, supra,* albeit with respect to materially different facts), violates the Commissioner's statutory obligation "to encourage and assist in the

[8] Contrary to the School Committee's suggestion, *see* Chariho Brief at 3, the undersigned Hearing Officer did not categorically refuse to hold an evidentiary hearing, but merely suggested to counsel and Student H.'s parents that it appeared to him that the Petition raised a purely legal question. The School Committee was then given ample opportunity to argue that there were material facts in dispute necessitating a hearing, and to address the legal issue posed. *See* the May 4, 2016 Scheduling Order in the above.

cooperation" among local school districts "so that maximum efficiency and economy may be achieved." *See id.* at 5 (quoting RIGL § 61-60-6(5)); and

(b) a student's non-academic motivations for wanting to attend a program should be considered when deciding whether to approve a student's application to a program. *See id*., ¶ 4 at 3; Chariho Reply. Mem. at 5 (citing non-academic reasons allegedly behind Student H.'s desire to attend the Narragansett Program).

Whatever the merits of these policy arguments, when the Board of Regents adopted the C&T Regulations it expressly rejected the option of including such limiting conditions by making crystal clear that students' right of access to the career preparation program "***of their choice***" is to be limited "***only***" by three expressly enumerated conditions.[9] Neither the School Committee – nor for that matter the Commissioner (who serves as the chief executive officer of the Council, *see* RIGL 16-60-6) – has the legal authority to add limiting conditions to the exercise of a right in the face of such clear and unambiguous language to the contrary.

Finally, the School Committee's reliance upon Chart 1 in RIDE's C&T Guidance, s*ee* Chariho Brief at 11 (quoted *supra*, § II(A), ¶ 8 at 4), is misplaced. Admittedly, Chart 1 is confusing and appears to support the School Committee's interpretation of C&T Reg. § 5.1. Yet, as noted, the Guidance document was removed in its entirety from RIDE's Web site, a fact which the School Committee simply ignores. And even if the Guidance had not been retracted, the Commissioner simply lacks the authority to countermand clear and obvious language in a regulation duly approved by the Board of Regents, as has been noted, and thus the Guidance is of no practical legal effect here, whether or not the decision to remove the Guidance was, as the School Committee claims, "much like [when] an apparatchik air brushed a commissar out of the picture in the 1930's." Chariho Brief at 11. As the Court made clear in *Romano v. Retirement Bd. of Employees' Retirement System of R.I.*, 767 A.2d 35, 39-40 (R.I. 2001):

[9] Thus, there is no need to address these arguments here, or Student H.'s rebuttal. *See* note 6, supra.

> neither a government entity nor any of its representatives has any implied or actual authority to modify, waive, or ignore applicable state law that conflicts with its actions or representations. *See Technology Investors*, 689 A.2d at 1062; *cf. Rhode Island Alliance*, 747 A.2d at 469 ('statutory obligations cannot be bargained away via contrary provisions in a [collective bargaining agreement], nor can they be compromised by the past or present practices of the parties').

Id.[10]

V. Conclusion

For all the above reasons:

1. Student H.'s Petition is hereby granted;

2. The School Committee shall forthwith instruct its Superintendent to sign and approve Student H.'s application to the Narragansettt Program; and

3. A hearing on the appropriateness of entering an interim order pursuant to RIGL § 16-39-3.2 so that this Order can go into effect pending any appeal shall be conducted at RIDE's Offices, 275 Westminster Street, 4th Floor in Providence, on a date and at a time to be mutually agreed upon by the parties and the undersigned hearing officer, and if an agreement is not reached by the close of business on June 10, 2016, on a date and at a time to be assigned.

For the Commissioner,

_____
Anthony F. Cottone, Esq.,
Hearing Officer

_____
Ken Wagner, Ph.D.,
Commissioner

Dated: June 1st. 2016

[10] Indeed, even if the School Committee had raised the doctrine of estoppel in connection with RIDE's C&T Guidance (which it did not), it would not have been applicable. As the Court noted in *Romano, supra,* "'estoppel cannot be applicable when the acts in question are 'clearly *ultra vires*.'" *Id*. at 40 (citation omitted).