

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
COMMISSIONER OF EDUCATION

STUDENT M. Doe, by her parents and	:
STUDENT J. Doe, by her parents	:
<i>Petitioners,</i>	:
	:
vs.	:
	:
CHARIHO REGIONAL SCHOOL	:
COMMITTEE,	:
<i>Respondent.</i>	:

DECISION AND ORDER

Held: Public college offering dual enrollment programs pursuant to the Dual Enrollment Equal Opportunity Act functions as a “public school” within the meaning of RIGL § 16-23-2(b), and thus public high school students enrolled in the programs are entitled to have their textbooks paid for by their public school districts of residence.

DATE: June 30, 2016

I. Introduction

Petitioners, STUDENTS M. DOE and J. DOE, by their parents (collectively, the “Students”), who are both seniors at Chariho Regional High School (the “High School”), challenge a policy adopted by Respondent, CHARIHO REGIONAL SCHOOL COMMITTEE (the “School Committee”), which provides that the Students must pay for the textbooks they need in order to participate in a dual enrollment program at the Community College of Rhode Island (“CCRI”).¹

II. Relevant Uncontested Facts and Applicable Law

A. Uncontested Facts

1. The Running Start Program (the “Program”) is a dual enrollment program for high school seniors at CCRI which was created pursuant to the Dual Enrollment Equal Opportunity Act (the “DE Act”), 16-10-1, *et seq.* High school seniors eligible for the Program are able to study at CCRI on a full-time basis during the day while simultaneously earning college credit as well as credit toward their high school graduation.²

2. The Students – who both reside in the Chariho Regional School District (“Chariho”) and are not “low-income students” within the meaning of the *Dual Enrollment*

¹ Although the Students filed separate petitions, they were consolidated due to the common issues of law and fact. *See* Consolidation and Scheduling Order dated April 8, 2016. Chariho objects to the continued use of pseudonyms since it alleges that “both students are over the age of eighteen” and “[t]ransparency dictates that the Chariho community knows who is bringing this case.” *See* Chariho’s Memorandum of Law (the “Chariho Mem.”), note 1 at 1, citing *Doe v. Blue Cross & Blue Shield United*, 112 F.3d 869, 872 (7th Cir. 1997). However, RIDE verified that both Students were seventeen (17) years of age when the Petitions were filed, and there is no competent evidence in the record establishing that both Petitioners have in fact reached the age of majority. Thus, Chariho’s request is denied, without opining as to the legal merits of the claim in the event that both Students have reached the age of majority and without prejudice to any motion Chariho may decide to make to amend the case caption and/or decision and/or the case caption on appeal.

² Under the Secondary School Regulations adopted by the Council on Elementary and Secondary Education, “[e]ach Rhode Island school committee shall adopt graduation requirements consistent with [the applicable regulations] in LEA policy” and submit evidence of their adoption to the Commissioner. *See id.* at § L-6-3.0. Thus, the School Committee has submitted its high school graduation requirements to the Commissioner, which are published on the High School website. *See* http://www.chariho.k12.ri.us/sites/default/files/policy/academic_requirements_for_hs_graduation_2016-2017.pdf.

Regulations adopted by the Board of Education (the “DE Regs.”)³ – enrolled in the Program during the 2015-16 school year and requested that the School Committee pay for the cost of the required textbooks. The Students did not raise the issue of any other fees or costs associated with the Program, which evidently were covered.

3. Chariho’s Superintendent denied the Students’ requests and the denial was then affirmed by the School Committee.

4. The Students’ Petitions appealing the School Committee’s decisions were filed with the Commissioner on March 3, and 15, respectively, and were then consolidated.

B. Applicable Law

1. RIGL § 16-23-2, which was enacted in 1913 and last amended in 2008, provides in pertinent part that in addition to textbooks “in the fields of mathematics, science, modern foreign languages, English/language arts and history/social studies”:

[e]very school committee shall also furnish at the expense of the community all other textbooks and school supplies used in the public schools of the community, the other textbooks and supplies to be loaned to the pupils of the public schools free of charge, subject to any rules and regulations as to care and custody that the school committee may prescribe. School books removed from school use may be distributed to pupils, and any textbook may become the property of a pupil who has completed the use of it in school, subject to rules and regulations prescribed by the school committee.

Id. at (b) (emphasis added).⁴

2. The state’s Basic Education Program Regulations (the “BEP”), which were

³Although not defined, it is reasonable to assume that “low-income student” would include any student who qualifies for a free and reduced Type A lunch under applicable federal and state regulations. See RIGL § 16-8-10.

⁴The Section goes on to provide that:

[n]othing in this section shall be construed to forbid requiring or accepting from a pupil a deposit of a reasonable amount of money as a guaranty for the return of school property other than the books and supplies required in this section to be loaned free of charge, provided that the school committee shall make suitable rules and regulations for the safekeeping and return of deposits; and, provided, further, that in establishing schedules for deposits, the school committee should include provision for waiver of deposit due to financial hardship.

Id. at (c).

adopted June 9, 2009, provide that:

[e]ach LEA shall provide the necessary programs, texts, and materials that ensure that students are supported fully in acquiring the knowledge and skills specified in a comprehensive program of study. Programs, *texts*, and materials ***shall be in sufficient quantity to ensure that students can engage in and complete all curriculum activities.***

Each LEA shall ensure that the selection of programs, texts, and materials are:

1. Aligned to the GLEs and GSEs and LEA curriculum design;
2. Research-based and current;
3. Selected with input from educators representing all grade levels and courses; and
4. Universally designed to ensure access for all students.

Id. at § G-13-2.2 (emphasis added).

3. In 2013, the General Assembly enacted the DE Act and directed the Board of Education to “prescribe by regulation a statewide dual enrollment policy” covering “students who are enrolled in a secondary school while simultaneously enrolled part-time or full-time at a local institution of higher learning, such as a community college or university.” *See* RIGL §§ 16-100-2 through 16-100-4.

4. The DE Regs., which became effective May 18, 2015 and were required to be adopted by all school districts by June 30, 2015, *see* RIGL § 16-100-4 – provide in pertinent part that local educational agencies (“LEAs”) such as Chariho:

shall support, ***if financially possible***, the cost of providing dual and concurrent enrollment programming. ***Given the postsecondary benefit, students and families may be asked to contribute all or a portion of the cost of providing dual and concurrent enrollment programming.*** No low-income student, as defined by the Rhode Island Department of Education, shall be denied access to dual or concurrent enrollment coursework on their inability to pay course related tuition and fees.

See DE Regs. at § 4.2. (emphasis added).

5. On April 7, 2015, roughly two months prior to the effective date of the DE Regs.,

the 2015-2016 Chariho Regional School District budget was approved by referendum. The approved budget provided no funds for dual enrollment. See <http://www.chariho.k12.ri.us/sites/default/files/budgetfy16.pdf>.

6. On June 9, 2015, the School Committee adopted its *Early College, Dual and Concurrent Enrollment Policy* (“Chariho’s DE Policy”), which was effective July 1, 2015 and provides that:

[u]nless specifically provided for in the Chariho Regional School District budget, all costs associated with early college, dual and concurrent enrollment courses are the responsibility of students and their families. The availability of funding from the State of Rhode Island may or may not be available to defray these costs. The District will ensure the participation of students receiving a free or reduced lunch by providing assistance in identifying funding sources. The District will not provide transportation to postsecondary institutions.

See *id.* at http://www.chariho.k12.ri.us/sites/default/files/policy/early_college_dual_and_concurrent_enrollment_policy.pdf (emphasis added).

7. In a section of its Web site entitled “Dual and Concurrent Enrollment,” the Rhode Island Department of Elementary and Secondary Education (“RIDE”) provides as follows:

Course Tuition and Costs

Governor Raimondo's Prepare RI Dual Enrollment Fund for school year 2015-16 provides funding for every qualifying student to take college courses from Rhode Island’s public higher education institutions as part of their high school requirements at no cost to the student or family. This means you do not have to pay the cost of tuition or fees. The course costs outlined in the concurrent enrollment course catalog are covered by the Prepare RI Dual Enrollment Fund.

The cost of books and associated course materials will be covered by your school or district if you are taking the course for high school credit.

The Prepare RI Dual Enrollment Fund for the 2016-17 school year is pending approval as part of Governor Raimondo’s proposed budget.

<http://www.ride.ri.gov/StudentsFamilies/EducationPrograms/DualEnrollment.aspx#32131111-students-and-families> (emphasis added).

8. Finally, in the “Frequently Asked Questions” section of its Web site pertaining to dual and concurrent enrollment, RIDE advises that:

4.1. What are the costs associated with participating in dual and concurrent enrollment programming?

Governor Raimondo’s proposed FY17 budget includes covering costs associated with students enrolling in dual and concurrent enrollment programming through the Prepare RI Dual Enrollment fund. If approved, qualified public school students and their families will not be assessed any tuition or fees associated with participating in dual and concurrent enrollment programming provided by Rhode Island’s public postsecondary institutions. The student or family is responsible for working with their high school to receive high school credit for a dual enrollment course. *The Prepare RI Dual Enrollment fund was approved last year as part of the Governor’s 2016 budget for courses taken during the 2015-2016 academic year.*

In future years, if state funding is not available, LEAs must ensure that low income students are not denied access to dual enrollment opportunities based on inability to pay. Local policies should not assume there will be statewide funding each year. Please see section 8 of the FAQs for more information.

4.2. What fees from the public postsecondary institution are covered as part of the Prepare RI Dual Enrollment fund?

Just as in the FY16 budget, Governor Raimondo’s FY17 Prepare RI Dual Enrollment Fund would cover all registration, application and testing fees. Other fees associated with attending a public postsecondary institution as a non-matriculating student will be waived by the institution with the exception of textbooks and course materials which are the responsibility of the LEA.

http://www.ride.ri.gov/Portals/0/Uploads/Documents/Students-and-Families-Great-Schools/Educational-Programming/Dual-Enrollment/FAQs_Dual%20Enrollment.pdf (emphasis added).

III. The Positions of the Parties

1. The Students

In support of their challenge, the Students cite to the DE Act and rely upon language from the Web sites maintained by both RIDE and CCRI, which they allege make clear that the

cost of “books and associated course materials” for the Program would be covered by their school district if they were taking the course for high school credit. *See* April 18, 2016 letter from Student J. Doe to the Hearing Officer at 2; *see also* Section II (B), *supra*, ¶¶ 7-8 at 5-6 (quoting RIDE’s Web site).⁵

2. The School Committee

The School Committee relies primarily upon the plain language of Section 4.2 of the DE Regs., which provides that it is required to support “the cost of providing dual and concurrent enrollment programming” only “if financially possible,” *see id.*, (quoted at Section II(B), *supra*, ¶ 4 at 4), and which recognizes that if not “low income,” students and families “may be asked to contribute all or a portion of the cost of providing dual and concurrent enrollment programming.” *Id.* *See* Chariho’s Memorandum of Law (“Chariho’s Mem.”) at 6. As noted by the School Committee:

Rule 4.2 is a legislative regulation expressly authorized by the General Assembly pursuant to R.I. Gen. Laws § 16-10-3(a). As such, it has the force of law. *Henry v. Earhart*, 553 A.2d 124, 126 n.1 (R.I. 1989). And the Commissioner is bound to follow it. *See United States ex rel. Bilokumsky v. Tod*, 263 U.S. 149, 155 (1923), overruled on other grounds, *INS v. Lopez-Mendoza*, 488 U.S. 1032 (1984).

Id.

The School Committee also relied upon its DE Policy and the fact that the School District’s budget did not specifically allocate any funds for dual enrollment. *See id.* at 7-8. Finally, the School Committee argued that RIGL § 16-23-2 (quoted at Section II(B), *supra*, ¶ 1 at 3) is inapplicable, as will be discussed. *See id.* at 8.

⁵ Student J. Doe quotes the CCRI Web Site as stating that: Governor Raimondo’s Prepare RI Dual Enrollment Fund provides funding for every qualified student to take college courses from Rhode Island’s public postsecondary institutions as part of their high school requirement *at no cost to the student or family*. This includes the cost of tuition, application and testing fees. April 18, 2016 letter from Student J. Doe to the Hearing Officer (emphasis provided). Although the Hearing Officer could not readily locate the quoted language on the CCRI Web site, it should be noted that the quote cited by Student J. Doe makes no mention of textbook costs. In any event, the issue is moot, as will become clear.

IV. Discussion

1. Jurisdiction and Procedural Matters

The Agreed Facts make clear that: (a) the Students are “aggrieved,” (b) their consolidated appeals involve “decisions” or “doings” of a school committee, and (c) the school committee “decisions” or “doings” in question “[arose] under a law relating to schools or education.” Thus, the Commissioner has jurisdiction 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 the Students to prove their case by a preponderance of the evidence, and the Commissioner’s review of the School Committee’s decision is *de novo*.⁶

2. The Merits

The School Committee is correct that as “a legislative regulation expressly authorized by the General Assembly,” Section 4.2 of the DE Regs. has the “force and effect of law” and is binding upon the Commissioner. *See Chariho Mem.* at 6 (citations omitted). The School Committee fails to mention, however, that regulations only have such an effect as long as they do not conflict with applicable statutes. *See Verizon New England, Inc. v. Rhode Island Public Utilities Comm.*, 822 A.2d 187, 193 (R.I. 2003) (discussing principles of conflict preemption).

Duly enacted statutes also have the “force and effect of law” and also bind the Commissioner, and one such statute, RIGL § 16-23-2, provides that textbooks “used in the public schools of the community” must be “furnish[ed] at the expense of the community.” *Id.* at

⁶ *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”).

(b) (quoted at Section II(B), *supra*, ¶ 1 at 3). Thus, the dispositive question here is whether public colleges offering dual enrollment programs (such as CCRI) are “public schools of the community” within the meaning of the Section because, as noted, a general statutory mandate to cover the costs of the textbooks would trump any conflicting provision in a regulation, or for that matter, in a local school district policy.

The School Committee seeks to avoid the issue by arguing that Section 16-23-2 does not apply here since:

- (a) it “is a textbook loan statute,” which applies only when it is contemplated that a student is going to return a textbook. Chariho Mem. at 8;
- (b) “there is nothing in RIGL § 16-23-2 that speaks to local educational agencies like Chariho writing checks to students.” *Id.*; and
- (b) it refers only to textbooks on “the state-approved textbook list.” *Id.*

In fact, contrary to the School Committee’s arguments:

- (a) although Section 16-23-2 is titled “Loan of textbooks,” the Rhode Island Supreme Court has made clear that although “the title of an act or subpart thereof may be considered to aid construction,” it “cannot control or vary the meaning of a statute where that statute is unambiguous.” *Orthopedic Specialists v. Great Atlantic & Pacific Tea Co.*, 120 R.I. 378, 383-384, 388 A.2d 352, 355 (1978) (citations omitted).⁷ And the reference to loaning textbooks in the Section is merely reflective of the predominant practice by which districts fulfill their obligation to “furnish” the books. It neither prohibits other practices nor, for that matter, prevents districts from purchasing the textbooks required for dual enrollment programs and then loaning them to the students;
- (b) the Section’s reference to a school committee’s obligation to “furnish” textbooks “at the expense of the community,” RIGL § 16-23-2(b), is certainly broad enough to encompass the type of reimbursement the Students seek here, whether or not it expressly references “writing checks to students;” and
- (c) the reference in Section 16-23-2(b) to “*all other* textbooks and school supplies,” *id.* (emphasis added), is obviously meant to encompass

⁷ See also *Town of East Greenwich v. O’Neil*, 617 A.2d 104, 109 (R.I. 1992) (“The title of an act may only aid in a court’s interpretation if there is doubt about the meaning of a provision of the statute”).

textbooks “other” than those contained in the textbook list described in Section 16-23-3.

Thus, contrary to the School Committee’s theory of the case, it is not possible to simply ignore Section 16-23-2(b), but rather, as noted, one must address whether public colleges offering dual enrollment programs are “public schools of the community” within the meaning of the Section. Admittedly, it would appear, at least at first blush, that the conclusion with respect to the issue reached by the authors of the DE Regs. and of Chairho’s DE Policy was opposite that reached by the author of RIDE’s Web Site. Thus:

- (a) the DE Regs. provide that school districts are only required to support “the cost of providing dual and concurrent enrollment programming . . . if financially possible” and recognize that “students and families may be asked to contribute all or a portion” of such cost. *See* Section 4.2 of the ED Regs.; and
- (b) Chariho’s DE Policy allows for reimbursement only in the event it is “specifically provided in the Chariho Regional School Committee Budget,” *id.*, whereas, as the Students emphasize here,
- (c) RIDE’s Web site provides that the cost of “books and associated course materials” for the Program would be covered by their school district if they were taking the course for high school credit. *Id.*

However, since, as noted, a generally applicable statutory mandate would trump any conflicting provision in either a state agency regulation or a local school district policy, it is axiomatic that one cannot discern the meaning of RIGL § 16-23-2(b) from the language in either the DE Regs. or the DE Policy. Indeed, it is the DE Regs. and Chariho’s DE Policy which must be construed so as not to directly conflict with Section 16-23-2(b). Thus, the first task is to construe the plain language of RIGL § 16-23-2(b), which, if “clear and unambiguous,” must be interpreted “literally,” according to its “plain and ordinary meanings.” *Alessi v. Bowen Court Condominium*, 44 A.3d 736, 740 (R.I. 2012).

Yet, standing alone, the plain language of Section 16-23-2(b) does not address whether a

public college which functions as a “public school of the community” is in fact the type of public school contemplated by the statute. On the one hand, the Section was enacted well prior to the DE Act and so it could not have been the original intent of the General Assembly to include colleges offering dual enrollment programs (such as CCRI) as “public schools of the community.”

On the other hand, CCRI is in fact a public school, *see* RIGL § 16-59-9 (CCRI’s budget and appropriations approved by Board of Education and/or General Assembly), and is actually functioning as a “public school” by enabling the Students to meet the graduation requirements promulgated by Chariho. In addition, the purpose of the DE Act itself is to provide additional opportunity for students to attend dual enrollment programs. Moreover, as has been noted, the BEP emphasizes that “texts, and materials” shall be: (a) “in sufficient quantity to ensure that students can engage in and complete all curriculum activities;” (b) “[a]ligned to the GLEs and GSEs and LEA curriculum design;” and (c) “[u]niversally designed to ensure access for all students,” *see id.* at § G-13-2.2 (quoted at § II(B), ¶ 2, *supra* at 4). All of these facts support the conclusion that whatever their original intention in 1896 when § 16-23-2 was originally enacted, the General Assembly would now consider CCRI to be a “public school of the community” under Section 16-23-2(b), at least when it is clearly functioning as such. And as noted, under the Section, the costs of textbooks in such a “public school” must be furnished “at the expense of the community.” *Id.*

It therefore follows that the DE Regs. and Chariho’s DE Policy must be interpreted so as not to conflict with the mandate under Section § 16-23-2(b). Indeed, as the School Committee has recognized, it is a basic rule of statutory construction that “whenever possible statutes should be read together or *in pari materia.*” *See* Chariho Mem. at 7, citing *Sch. Comm. v. Bergin-*

Andrews, 984 A.2d 629, 643 (R.I. 2009). As has been noted:

[s]tatutes which are not inconsistent with one another and which relate to the same subject matter are *in pari materia* and should be considered together so that they will harmonize with each other and be consistent with their general object and scope, even though they contain no reference to one another and were passed at different times.

Providence Teachers Union, Local 958, Am. Federation of Teachers, AFL-CIO v. School Committee of City of Providence, 108 R.I. 444, 449, 276 A.2d 762, 765 (1971).

Yet, while properly reciting the rule, the School Committee neglected to follow it here by failing to interpret Section 4.2 of the DE Regs. and its own DE Policy *in pari materia*, not only with RIGL § 16-23-2(b), but also with the DE Act, the obvious purpose of which was to increase students' access to dual enrollment programs, as well as the BEP. When properly read *in pari materia*, the "costs" referenced in both Section 4.2 of the ED Regs., as well as in the Financial Responsibility Section of Chariho's DE Policy, should be construed so as to exclude the cost of textbooks which, under a proper reading of Section 16-23-2(b), must be "furnish[ed] at the expense of the community." *Id.*

V. Conclusion

For all the above reasons:

1. The Students' Petitions are hereby granted;
2. The School Committee shall forthwith pay for the textbooks necessary for the Students' participation in the Program, and/or reimburse the Students for the costs of said textbooks, as the case may be; and
3. Any dispute as to the dollar amount of the necessary textbooks should be raised and will be promptly heard.

For the Commissioner,

Anthony F. Cottone, Esq.,
Hearing Officer

Ken Wagner, Ph.D.,
Commissioner

Dated: June 30, 2016