STATE OF RHODE ISLAND
COMMISSIONER OF EDUCATION

IN RE THE PROVIDENCE PUBLIC SCHOOL DISTRICT	: :	RIDE No. 23-099 A

DECISION AND ORDER

Held: The Commissioner's proposed order directing the General Treasurer to withhold approximately $7 million in non-education-related State aid allocated to the City of Providence was proper as the City's FY 2024 funding of its School District, which is the subject of a State intervention, was, in total, some $25 million less than mandated by the statutory maintenance of effort provision governing intervention in failing school districts.

August 15, 2023

I. INTRODUCTION

The Paul W. Crowley Student Investment Initiative (the "Crowley Act"), which governs State intervention and control of failing school districts, provides in clear, unambiguous language that a municipality must fund a school district subject to intervention "at the same level as in the prior academic year *increased by the same percentage as the state total of school aid is increased*." R.I. Gen. Laws § 16-7.1-5(a) (emphasis added). Yet, in each and every fiscal year ("FY") since the Providence Public School District ("PPSD") came under State control, i.e., in FY's 2021, 2022, 2023 and now, 2024, the City of Providence has appropriated the exact same amount of money to PPSD, and at no time was in compliance with the Crowley Act's plain maintenance of effort ("MOE") mandate.

The City argues that the language of the Act is ambiguous and justified its flat funding with a plethora of policy arguments, thus ignoring: (1) the Commissioner's decisions in 2021 and 2022 holding that the MOE language was not ambiguous. *See In Re the PPSD,* RIDE No. 21-023A (August 30, 2021) (the "2021 Decision") at 11; *In Re the PPSD,* RIDE No. 22-016A (April 28, 2022) (the "2022 Decision") at 16; and (2) the well-settled rule of statutory construction that even the most compelling public policy considerations are not a license to ignore clear and unambiguous statutory language. *See* 2022 Decision at 14, quoting *Grasso v. Raimondo,* 177 A.3d 482, 489 (R.I. 2018).

To rectify the City's funding shortfalls in FYs 2021 and 2022, the Commissioner authorized the entry of orders to the State's General Treasurer pursuant to R.I. Gen. Laws § 16-5-30[1] requesting that he withhold millions in non-education-related State aid allocated to the City

[1] R.I. Gen. Laws § 16-5-30 provides, in pertinent part, that the Commissioner:

> . . . may, for violation or neglect of law or for violation or neglect of rules and regulations in pursuance of law by any city or town or city or town officer or school committee . . . order the general treasurer to withhold the payment of any portion of the public money that has been or may be apportioned to the city or town; and the general treasurer upon the receipt in writing of the order shall hold the public money due the

and provide the funds to the Commissioner for use on behalf of PPSD. *See* Exhibit A to the 2021 and 2022 Decisions. However, before the withholding occurred, the parties entered into an agreement in February of 2023 reciting that they had settled their differences as to FYs 2021, 2022 and 2023 (the "2023 Agreement").

Yet, in FY 2024 the City once again appropriated the exact same amount to PPSD that it had appropriated in the three prior FYs. The sufficiency of the City's MOE is thus once again before the Commissioner.

II. FACTUAL AND PROCEDURAL BACKGROUND

On July 24, 2023, counsel for the Commissioner[2] sent an email to the undersigned Hearing Officer requesting that a show cause hearing be scheduled to provide the City of Providence with an opportunity to:

(1) Contest the Commissioner's claim that the City had failed to meet its MOE obligation to PPSD for FY 2024 under the Crowley Act, R.I. Gen. Laws § 16-7.1-5(a), resulting in a Twenty Five Million, Five Hundred and Fifty Four Thousand, Two Hundred and Eighty Dollar ($25,554,280) shortfall in its funding of PPSD for FY 2024; and

(2) Show cause why the Commissioner should not immediately issue a withholding order to the General Treasurer pursuant to R.I. Gen. Laws § 16-5-30 requesting that he deduct Seven Million, Sixty-Nine Thousand, Four Hundred and Twenty-Eight Dollars ($7,069,428.00) from the Distressed Communities Relief Fund scheduled to be disbursed to the City of Providence in August of 2023 pursuant to R.I. Gen. Laws § 45-13-12 and to deliver said funds to the Commissioner for use on behalf of the District (the "Proposed Order").

A copy of the Proposed Order is attached as Exhibit A.

Following telephone conferences on July 26 and July 28, 2023 involving the assigned Hearing Officer and counsel for the respective parties – i.e., the Commissioner, the Mayor of the

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> city or town until the time as the commissioner by writing requests the withheld funds for the purposes of eliminating the violation or neglect of law or regulation that caused the order to be issued . . .

Id.

[2] Representing the Commissioner in her dual capacity as State Commissioner of Education and as the delegate of the Rhode Island Council on Elementary and Secondary Education (the "Ed. Council") under the Crowley Act.

City of Providence (the "Mayor") and the Providence City Council (the "City Council" and together with the Mayor, the "City") – the parties agreed to a briefing schedule. The Commissioner then submitted a thirty-page legal memorandum and the Proposed Order along with various exhibits on July 31, 2023 (the "Commissioner's Mem."), and the City responded with a twenty-eight page memorandum and various exhibits (the "City's Mem.") on August 7, 2023. A show cause hearing was then conducted on August 10, 2023.

1. RIDE's 2021 and 2022 Decisions and the 2023 Agreement

As noted, this is not the first time that the Commissioner has alleged that the City of Providence has failed to meet its MOE obligation under the Crowley Act. Section 5(a) of the Act provides, in relevant part, that:

> If a school or school district is under the board of regents' [now Ed. Council's[3]] control as a result of actions taken by the board pursuant to this section, the local school committee shall be responsible for funding that school or school district at the same level as in the prior academic year *increased by the same percentage as the state total of school aid is increased.*

R.I. Gen. Laws § 16-7.1-5(a) (emphasis added). Yet, the City has flat-funded PPSD in the amount of $130,046,611 every year since the start of the State's Crowley Act intervention on October 15, 2019. *See* 2021 Decision, ¶¶ 1-2, 12 at 3, 6; 2022 Decision, ¶ 12 at 7.

In FY 2021, the total amount of State aid allocated to local educational agencies ("LEAs") throughout the State was increased from the prior fiscal year by 3.73%. The Commissioner, following the submission of legal memoranda by the parties and a show cause hearing, held on August 30, 2021 that the City's flat-funding from the prior year resulted in a $4,850,739 MOE shortfall for FY 2021. Thus, the Commissioner issued a withholding order to the General Treasurer for that amount under R.I. Gen. Laws § 16-5-30. *See* the 2021 Decision at 10-13 and

[3] The Ed. Council assumed all the relevant powers and duties of the former Board of Regents for Elementary and Secondary Education on January 1, 2013 pursuant to the Rhode Island Board of Education Act. *See* R.I. Gen. Laws § 16-97-1, *et seq*.

Exhibit A attached thereto. Similarly, in the 2022 Decision, the Commissioner held that the City had failed to allocate sufficient funds in FY 2022.[4] In that year, the total amount of State aid allocated to LEAs was increased from the prior fiscal year by 3.84%, resulting in a MOE shortfall of $10,028,455. Again, the Commissioner issued a withholding order to the General Treasurer. *See id*. at 13-26 and Exhibit A attached thereto. The City appealed both the 2021 and 2022 Decisions to Superior Court.[5]

In FY 2023, the total amount of State aid allocated to LEAs was increased from the prior fiscal year by some 3.8%, arguably resulting in a City MOE shortfall of $5,446,551. However, before another show cause hearing was requested or the prior withholding orders were implemented, the parties signed the 2023 Agreement pertaining to FY's 2021, 2022 and 2023, and the City dismissed its pending Superior Court appeals of the 2021 and 2022 Decisions. Significantly, the 2023 Agreement, which was signed by the Mayor, City Council and the Commissioner, provided that it was:

> . . .without prejudice, in any way, to either Party's position relating to the Funding Disputes or any other disputes that arose, may have arose, or may in the future arise, between the Parties, subject to the Parties' mutual understanding and agreement that the terms of this Agreement shall not be taken or otherwise interpreted in any manner as an admission of liability, a concession on the part of either Party, or as an agreement concerning the proper formula for determining the amount, if any, owed by the City to the PPSD for any other fiscal year during the period of control and reconstitution, and pursuant to the express understanding that this Agreement is being entered into solely and exclusively as a compromise and final settlement of the Funding Disputes in Fiscal Year 2021, Fiscal Year 2022, and Fiscal Year 2023.

Id. at 2. Thus, the only issue here is the adequacy of the City's MOE for FY 2024.[6]

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[4] The City filed a complaint and motion in Superior Court seeking to enjoin this second show cause proceeding and requested judicial declarations concerning both the Commissioner's calculation of the alleged MOE shortfall for FY 2022 and the constitutionality of R.I. Gen. Laws § 16-5-30. The City's motion was denied from the bench by Superior Court Associate Justice Jeffrey A. Lanphear on April 21, 2022. *See Jorge O. Elorza v. Angélica Infante-Green et al*., C.A. No. PC 2021-06312.

[5] *See Jorge O. Elorza v. Angélica Infante-Green et al*., C.A. No. PC 2022-02180 and *Jorge O. Elorza v. Angélica Infante-Green et al*., C.A. No. PC 2022-03322.

[6] The 2023 Agreement was reached following mediation by retired Superior Court Justice Mark A. Pfeiffer. Whether the Commissioner, or the Ed. Council for that matter, had the legal authority to agree to a reduction in statutorily

III. THE POSITIONS OF THE PARTIES

1. The Commissioner

The Commissioner alleges that:

(a) The total amount of State school aid allocated to LEAs in FY 2023 was $1,116,204,084, and the total amount of such aid allocated in FY 2024 was $1,193,515,809, an increase of approximately 6.93 percent. *See* Commissioner's Mem. at 24, citing FY 2023 Enacted Education Aid (June 27, 2022) and FY 2024 Enacted Education Aid (June 16, 2023) (Exhibits C and D attached thereto);

(b) "On or about June 26, 2023, the Mayor and the City Council President signed an approximately $583 million budget for FY 2024, which allocated $130,046,611 to PPSD, the same amount that had been allocated to PPSD in FY 2020, FY 2021 and FY 2022." *Id*., citing Fiscal Budget Book 2024 Approved (Exhibit E attached thereto);

(c) In doing so, the City violated the Crowley Act as it was required to increase its funding of PPSD for FY 2024 at the same level as was legally required (as opposed to actually appropriated) in the prior academic year, increased by the same percentage as the State total of school aid is increased, which should have resulted in an increase of 6.93 percent, or a minimum total allocation to PPSD of $155,600,891." *Id*.; and

(d) "The City's violation resulted in a $25,554,280 shortfall in its funding of the PPSD for FY 2024." *Id*.

And the Commissioner argues that:

(e) "The Commissioner has the power to order the General Treasurer to withhold State aid for a violation of the Crowley Act" and "R.I. Gen. Laws §

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mandated MOE amounts is beyond the scope of this decision, which is limited to the adequacy of the City's MOE in FY 2024. However, the arguably *ultra vires* nature of the parties' settlement agreement may be addressed by the Superior Court, *sua sponte*, should this decision be appealed by the City. *See In re Advisory Opinion to the Governor*, 627 A.2d 1246, 1248 (R.I. 1993) ("Agency action is only valid . . . when the agency acts within the parameters of the statutes that define their powers."); *Tidewater Realty, LLC v. State of Rhode Island*, 942 A.2d 986 (R.I. 2008) (Agency's purchase of property was void as agency lacked authority under its enabling act); and Schwartz, *Administrative Law*, § 4.4 at 171 (3d ed.1991) (If an agency act is within the statutory limits (or *vires*), its action is valid; if it is outside them (or *ultra vires*), it is invalid. No statute is needed to establish this; it is inherent in the constitutional positions of agencies and courts"); *see also Romano v. Retirement Bd. of Employees' Retirement System of R.I.*, 767 A.2d 35, 44 (R.I. 2001) ("[A] party who has conferred a benefit upon another by mistake is not precluded from maintaining an action for restitution because the mistake was caused by that party's own lack of care").

16-5-30 authorizes the Commissioner to Order the Treasurer to withhold *any* state aid." *See id*. at 8-15;

(f) "The General Assembly's grant of authority to the Commissioner is consistent with constitutional principles of delegation." *See id*. at 15-21; and

(g) The Crowley Act's reference to an increase "by the same percentage as the state total of school aid is increased" is not limited to the rate of increase in Providence alone. *See id*. at 25-28.

2. The Mayor and the City Council

The Mayor and the City Council argue that:

(a) "R.I. Gen. Laws § 16-7-23(a) instructs that '[a] community that has a decrease in enrollment may compute maintenance of effort on a per-pupil rather than on an aggregate basis when determining its local contribution"' and "from FY 2023 to FY 2024, there has been a decrease in enrollment in PPSD of 1,100 students. As a result, following the clear and unambiguous language of § 16-7-23(a), the City is statutorily empowered, by right, to compute its level funding obligation 'on a per-pupil basis,' rather than on an aggregate basis." City's Mem. at 5-6 (quoting § 16-7-23(a));

(b) "Using that per-pupil adjustment reveals the following. For FY 2023, the City appropriated $130,046,611 to PPSD. Taking that appropriation and dividing in by the number of students in the PPSD for FY 2023 (20,725) results in a per-pupil cost of $6,274.87. Then, taking that per-pupil cost ($6,274.87) and multiplying it by the number of students in the PPSD for FY 2024 (19,625), the result is: $123,144,324. Under Section 5(a) of the Crowley Act and § 16-7-23, that amount—$123,144,324—was the City's baseline, level-funding obligation for FY 2024." *Id*. at 7;

(c) "Any increase called for under Section 5(a) of the Crowley Act should be tied to the "'State total of school aid' to the City of Providence," not to the "State total of 'school aid to the entire State," and "[t]he City's annual appropriation to the PPSD should not compound." *See id*. at 12-17;

(d) "Even accepting, arguendo, the Commissioner's interpretation of the manner in which the increase is calculated, the City did not actually pay $145,521,617 to PPSD 'in the prior academic year[.]' As a result, the baseline used in calculating the City's FY2024 contribution under the Proposed Withholding Order is mistaken." *Id*. at 9; and

(e) Section 16-5-30 is unconstitutional under the non-delegation and separation of powers doctrines, and "even assuming, arguendo, that it could survive constitutional scrutiny, under principles of statutory construction, § 16-5-30

does not apply to disputes arising under Section 5(a) of the Crowley Act." *See id*. at 17-26.

IV. DECISION

As the Commissioner made clear in the 2021 and 2022 Decisions, she has jurisdiction over this matter both under R.I. Gen. Laws § 16-39-1, which confers jurisdiction over "any matter of dispute . . . arising under any law relating to schools or education," *id.*, and as the Ed. Council's delegate under the Crowley Act. *See* 2021 Decision at 2; 2022 Decision at 2-3. In addition, the Commissioner has been charged by the General Assembly with the duty to "interpret school law," and to "require the observance of all laws relating to elementary and secondary schools and education." R.I. Gen. Laws § 16-60-6(9)(vii) and (9)(viii).

At the outset, it should be reiterated that the Rhode Island Supreme Court has emphasized that "'considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer.'" *Town of Warren v. Bristol Warren Reg'l Sch. Dist*., 159 A.3d 1029, 1038 (R.I. 2017) (quoting *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc*., 467 U.S. 837, 844 (1984)); *see also* State's Administrative Procedures Act (the "APA"), R.I. Gen. Laws § 42-35-15(g).[7] Concededly, deference is not owed with respect to the Commissioner's consideration of constitutional issues. *See Members of Jamestown Sch. Comm. v.*

[7] The APA provides that:

> The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;
> (4) Affected by other error of law;
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Id.

Schmidt, 427 F.Supp.1338, 1345 (D.R.I. 1977), citing *Altman v. School Committee of Town of Scituate*, 347 A.2d 37 (R.I.1975). As has been observed, "the true measure of a court's willingness to defer to an agency's interpretation of a statute 'depends, in the last analysis, on the persuasiveness of the interpretation, given all the attendant circumstances.'" *Town of Burrillville v. Pascoag Apartment Associates, LLC*, 950 A.2d 435, 446 (R.I. 2008) (quoting *United States v. 29 Cartons of * * * an Article of Food*, 987 F.2d 33, 38 (1st Cir.1993)).

Here, nearly all of the City's arguments as to FY 2024 were addressed by the Commissioner in her prior decisions, where she held that:

(1) "The City's interpretation of Section 5(a) of the Crowley Act is not supported by its plain language, which explicitly defines the MOE obligation with reference to 'the same percentage as the *state total of school aid is increased*,' R.I. Gen. Laws § 16-7.1-5(a) (emphasis added), not, as the City argues, by 'the state total of *local* school aid *to the City* is increased.'" 2022 Decision at 14 (quoting City, emphasis in original); 2021 Decision at 10-12;

(2) The City's claim of ambiguity is premised upon the fact that the General Assembly left the phrase "state total of school aid" undefined, however, not all undefined terms are ambiguous, as the Rhode Island Supreme Court has made clear on any number of occasions. *See* 2022 Decision at 16, citing *Drs. Pass and Bertherman, Inc. v. Neighborhood Health Plan of Rhode Island*, 31 A.3d 1263, 1269 (R.I. 2011);

(3) "The City's emphasis on public policy arguments ignores a well-settled rule of statutory construction providing that even the most compelling public policy considerations are not a license to ignore clear and unambiguous statutory language." *Id*. at 14, citing *Grasso v. Raimondo*, 177 A.3d 482, 489 (R.I. 2018); 2021 Decision at 11;

(4) The City had "failed to establish 'beyond a reasonable doubt' that R.I. Gen. Laws § 16-5-30 violates either the nondelegation or separation of powers doctrines or is otherwise unconstitutional," as "the principal policy concerns of the nondelegation doctrine – unbridled delegation of legislative power and ensuring that "politically accountable officials make fundamental policy decisions . . . [were] simply not implicated." 2022 Decision at 20, 23-24, citing *Marran v. Baird*, 635 A.2d 1179 (R.I. 1994); 2021 Decision at 12-13;

(5) "The Commissioner's authority under § 16-5-30 does not divest the General Assembly of any legislative power, it merely provides the Commissioner with a method to enforce school law by re-directing funds that had already

been, or will be, appropriated" and "none of the cases cited by the City support its claim that this violates the separation of powers doctrine." 2022 Decision at 24-25 and note 26; and

(6) "The plain language of [R.I. Gen. Laws § 16-5-30] unambiguously provides that the Commissioner 'may, for violation or neglect of law or for violation or neglect of rules and regulations . . . order the general treasurer to withhold the payment of any portion of the public money that has been or may be apportioned to the city or town.'" 2022 Decision at 12, quoting R.I. Gen. Laws § 16-5-30.

1. The City's New Argument that its MOE can be Computed "On a Per-Pupil, Rather than on an Aggregate Basis"

The City did make one argument with respect to FY 2024 that was not addressed in the Commissioner's prior decisions, and now argues that R.I. Gen. Laws § 16-7-23(a) – a MOE provision *which applies to LEAs not under State intervention* and which provides that '[a] community that has a decrease in enrollment may compute maintenance of effort on a per-pupil rather than on an aggregate basis when determining its local contribution"' – is applicable to the calculation of MOE under the Crowley Act. According to the City, if the per-pupil basis of calculating MOE were used it would result in a per-pupil cost of $6,274.87 – which represents the City's $130,046,611 appropriation in FY 2023 divided by the total number of students (20,725), multiplied by the reduced number of students in FY 2024 (19,625) – which would then result in the "baseline, level-funding obligation for FY 2024" of some $123,144,324. *See* City's Mem. at 7. The City simply ignores the Commissioner's prior holding that the relevant statutory language is unambiguous, *see* RIDE's 2021 Decision at 11; 2022 Decision at 14-18, and maintains that:

(a) " . . . the Hearing Officer should "avoid 'statutory interpretations that create absurd results or defeat the underlying purpose of an enactment.'" City's Mem. at 13-14, citing *Matter of Falstaff Brewing Corp*., 637 A.2d 1047, 1050 (R.I. 1994) and *Commercial Union Ins. Co. v. Pelchat*, 727 A.2d 676, 681 (R.I. 1999); and

(b) § 16-7-23(a) and § 16-7.1-5(a) are "inconsistent with one another," and "relate to the same subject matter" and "should be considered together so that they will harmonize with each other and be consistent with their general object and scope." *Id*. at 5, citing *Sch. Comm. of City of Cranston v. Bergin-Andrews*, 984 A.2d 629, 643 (R.I. 2009) (quoting *Berthiaume v. School Committee of Woonsocket*, 121 R.I. 243, 249, 397 A.2d 889, 893 (1979)).

These most recent arguments are no more convincing than the City's varied policy arguments addressed by the Commissioner in prior decisions. *See* RIDE's 2021 Decision at 9-10; 2022 Decision at 11-12. The Crowley Act's MOE provision (§ 16-7.1-5(a)) and the MOE provision applicable to districts not subject to state intervention (§ 16-7-23(a)) were not meant to be read together as their plain language makes clear they apply in entirely different contexts. Thus, the City's foray into legislative intent is neither necessary nor justified. Indeed, it is "presume[d] that the General Assembly knows the state of existing relevant law when it enacts or amends a statute." *Power Test Realty Company Limited Partnership v. Coit*, 134 A.3d 1213, 1222 (R.I. 2016) (quoting *Retirement Board of Employees' Retirement System of Rhode Island v. DiPrete*, 845 A.2d 270, 287 (R.I. 2004)). Thus, one must presume that had the General Assembly wanted to make the per-pupil basis of calculating MOE described in § 16-7-23(a) applicable to districts under state intervention, it simply would have stated so in the Crowley Act, rather than setting forth an entirely separate methodology in unambiguous language in a separate chapter of title 16 of the General Laws.[8]

The mere fact that a district's MOE is calculated differently when under Crowley Act intervention does not render the Act's MOE provision (§ 16-7.1-5(a)) "absurd," which the Miriam-Webster Dictionary defines as "ridiculously unreasonable, unsound, or incongruous," or

[8] Especially since, as noted by the City, "R.I. Gen. Laws § 16-7-23(a) was amended to include level funding or maintenance of effort obligation in 1997 – which is the same year that the Legislature first enacted the Crowley Act." *See* City's Mem. at 4, note 2.

"extremely silly or ridiculous,"[9] nor does it justify the application of an MOE provision (§ 16-7.1-5(a)) in an entirely separate chapter of title 16 of the General Laws that is applicable to districts not subject to State intervention.

The City's argument that applying the plain, unambiguous language of § 16-7.1-5(a) would lead to an "absurd" result due to the City's alleged inability to pay the amount that would be owed, *see* City's Mem. at 14, also fails. The mere fact that the Crowley Act calls for "[e]stablishing a predictable method of distributing state education aid in a manner that addresses the over-reliance on the property tax to finance education," R.I. Gen. Laws § 16-17.1-1(a)(1)(iv), does not provide license to graft a vague ability-to-pay provision into the Act's unambiguous MOE formula, which is entirely devoid of any such criteria. Indeed, as a practical matter, the Commissioner is not qualified to determine a municipality's ability to pay, as the Legislature well knew when it approved the MOE formula in the Crowley Act.

Moreover, the cases the City relies upon in its most recent brief only confirm the conclusion originally reached by the Commissioner. *See, e.g., Balmuth, supra* 182 A.3d at 580 ("When we are confronted with a statute that is clear and unambiguous, we 'must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.'");[10]

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[9] https://www.merriam-webster.com/dictionary/absurd. Even if one were to accept the City's argument that the per-pupil basis of calculation described § 16-7-23(a) was applicable:

(a) the per pupil calculation should nonetheless be made with reference to the MOE the City was legally required to have made for FY 2023, or $145,521,617 (not, as the City argues, the statutorily inadequate $130,046,611 it actually appropriated), which would result in a per-pupil cost of $7,021 (not the $6,274 offered by the City), which, in turn, would yield a baseline, level funding obligation for FY 2024 of $137,797,722 (not the $123,144,324 suggested by the City); and

(b) the percentage increase should be applied in a manner consistent with the Commissioner's prior decision and according to the unambiguous language of § 16-7.1-5(a), *see* 2022 Decision at 14-19, which would result in a 6.93 percent increase to the $137,797,722, or $9,549,382, resulting in an MOE total for FY 2024 of $147,347,104, which is only $8,253,786 less than the $155,600,891 presently demanded by the Commissioner.

[10] While making its way through a thicket of conflicting tax statutes, *see id*. at 585-85, the Court in *Balmuth* noted that:

> `Because ambiguity lurks in every word, sentence, and paragraph in the eyes of a skilled advocate * * * the question is not whether there is an ambiguity in the metaphysical sense, but whether the language has only

Drs. Pass and Bertherman, Inc., supra, 31 A.3d at 1269 ("Ambiguity exists only when a word or phrase in a statute is susceptible of more than one reasonable meaning.");[11] *Pelchat*, 727 A.2d at 682 ("We are guided by the canon of statutory construction that we must interpret the words of a statute in their plain and ordinary meanings and not in a manner that produces an absurd result.").[12]

Finally, the Commissioner's Proposed Order (Exhibit A) represents only $7 million of a $25 million MOE shortfall. In the event that the Commissioner at some time in the future requests further withholdings of any portion of the non-education aid that has been, or may be, apportioned to the City by the State, she has adequate authority to do so under R.I. Gen. Laws § 16-5-30, with or without notice to the City, as long as § 16-7.1-5(a) remains in effect and the withholdings (together with the withholding directed by this Order) do not, in total, exceed $25,554,280.

V. CONCLUSION

For all of the above reasons, a withholding order in form and substance identical to the attached Exhibit A shall be issued and served forthwith.

> one reasonable meaning when construed, not in a hypertechnical fashion, but in an ordinary, common-sense manner.'

Id. at 585, note 13 (quoting *Lazarus v. Sherman*, 10 A.3d 456, 464 (R.I. 2011)).

[11] 1n *Drs. Pass and Bertherman, Inc*., the Court found that the phrase "public funds" was not ambiguous when holding that insurer's payments for optometric services did not involve public funds, and thus an antidiscrimination statute did not apply. *Id*. at 1269.

[12] In *Pelchat*, the Court held that construing the slayer's act to preclude the relatives of a wife who was killed in a vehicle being driven by her inebriated husband from recovering wrongful death insurance proceeds would produce an absurd result. *See* 727 A.2d at 682-85. Thus, both the facts and relevant statutory language in *Pelchat* are entirely distinguishable.

ANTHONY F. COTTONE, ESQ.,
as Hearing Officer for the Commissioner

ANGÉLICA INFANTE-GREEN,
as Commissioner of Education
and Crowley Act Delegate

Dated: August 15, 2023

EXHIBIT A

STATE OF RHODE ISLAND
COMMISSIONER OF EDUCATION

IN RE THE PROVIDENCE PUBLIC
SCHOOL DISTRICT RIDE No. 23-099 A

COMMISSIONER'S ORDER TO THE GENERAL TREASURER TO WITHHOLD A PORTION OF NON-EDUCATION RELATED STATE AID OWING TO THE CITY OF PROVIDENCE

WHEREAS, on November 1, 2019, the Commissioner of the Rhode Island Department of Elementary and Secondary Education (the "Commissioner" and "RIDE," respectively) assumed responsibility for the budget, program and personnel of the Providence Public School District ("PPSD") pursuant to: (1) her duties as RIDE's Commissioner under R.I. Gen. Laws §§ 16-5-5 and 16-60-6; (2) the powers delegated to her on July 23, 2019 by the Council on Elementary and Secondary Education (the "Council"), which included the powers of the Council under The Paul W. Crowley Rhode Island Student Investment Initiative, R.I. Gen. Laws § 16-7.15 (the "Crowley Act"); and (3) the October 15, 2019 Order of Control and Reconstitution in the above matter; and

WHEREAS, the Commissioner is under a statutory duty "to interpret school law," to require the observance of all laws relating to elementary and secondary schools and education" and to examine and decide disputes "arising under any law relating to schools or education," *see* R.I. Gen. Laws §§ 16-60-6(9)(vii) and(viii) and 16-39-1; and

WHEREAS, Section 5(a) of the Crowley Act provides that school districts that are placed under the Council's control pursuant to the Act "shall be responsible for funding that school or school district at the same level as in the prior academic year increased by the same percentage as the state total of school aid is increased," R.I. Gen. Laws § 16-7.1-5(a) (emphasis added); and

WHEREAS, in Fiscal Year 2021, there was an increase in the total amount of state aid allocated to local educational agencies from the prior fiscal year of some 3.73 %; and in Fiscal Year there was an increase of some 3.93%; and during Fiscal Year 2023 there was an increase of some 3.8%.

WHEREAS, by order dated August 30, 2021, the Commissioner as RIDE's Commissioner and the Council's delegate, determined that the City was obligated to make a minimum total allocation to the PPSD under Section 5(a) of the Act, R.I. Gen. Laws § 16-7.1-5(a) of $134,897,350 for Fiscal Year 2021;

WHEREAS, by order dated April 29, 2022, the Commissioner as RIDE's Commissioner and the Council's delegate, determined that the City was obligated to make a minimum total allocation to the PPSD under Section 5(a) of the Act, R.I. Gen. Laws § 16-7.1-5(a) of $140,075,066 for Fiscal Year 2022;[13]

WHEREAS, in Fiscal Year 2024, the City has failed to allocate sufficient funds to satisfy its maintenance of effort ("MOE") obligation under Section 5(a) of the Act, R.I. Gen. Laws § 167.1-5(a), which mandates a MOE increase from the 2023 Fiscal Year of 6.93%, or a minimum total allocation to the PPSD of $155,600,891;

WHEREAS, on June 26, 2023, the Mayor of the City of Providence (the "City") and the City Council President signed an approximately $583 million budget for the City for Fiscal Year 2024 which allocated the same total amount to the Providence Public School Department (the "PPSD"), $130,046,611, as had been allocated to the PPSD in its budgets for FY 2020, FY 2021 and FY 2022; and

[13] The City challenged the 2021 and 2022 withholding orders in litigation and a resolution was reached with respect to the City's funding obligation for Fiscal Year 2021, Fiscal Year 2022 and Fiscal Year 2023.

WHEREAS, the City has failed to allocate sufficient funds to satisfy its MOE obligation under Section 5(a) of the Act, R.I. Gen. Laws § 16-7.1-5(a), which mandates a MOE increase from the 2023 Fiscal Year of 6.93%, or a minimum total allocation to the PPSD of $155,600,891, which is $25,554,280 more than the amount actually allocated by the City to the PPSD in the enacted City budget for Fiscal Year 2023;

WHEREAS, the City was obligated to make a minimum total allocation to the PPSD under Section 5(a) of the Act, R.I. Gen. Laws § 16-7.1-5(a) of $155,600,891 for Fiscal Year 2022;

WHEREAS, the City violated that obligation by failing to allocate an additional $25,554,280 to the PPSD;

WHEREAS, pursuant to R.I. Gen. Laws § 16-5-30, the Commissioner is authorized to "order the general treasurer to withhold the payment of any portion of the public money that has been or may be apportioned" to the City for any "violation or neglect of law" or "violation or neglect of rules and regulations in pursuance of law," *id.*, and

WHEREAS, withholding any portion of the state education aid owing to the City as a remedy for the City's failure to meet its MOE obligation under Section 5(a) of the Crowley Act would only compound the problem the MOE requirement was intended to address, and therefore this withholding order shall not apply to any such state education aid to the City;

WHEREAS, pursuant to R.I. Gen. Laws § 45-13-12, the City is eligible for $7,069,428 in distressed communities relief funds in the month of August 2023;

NOW, THEREFORE, the Commissioner hereby respectfully demands that the Honorable James A. Diossa, in his capacity as General Treasurer for the State of Rhode Island, deduct the sum of **Seven Million, Sixty Nine Thousand, Four Hundred and Twenty Eight Dollars ($7,069,428.00)**—the total amount of the funds to which the City is otherwise eligible from the

distressed communities relief funds in August 2023 pursuant to R.I. Gen. Laws § 45-13-12—as a result of the City's violation of the Crowley Act.[14]

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ANGÉLICA INFANTE-GREEN,
as Commissioner of Education and
Crowley Act Delegate

Entered as an Order on this 15th day of August, 2023.

[14] This Order is without prejudice to the Commissioner's right to return to the Hearing Officer and request further withholdings of any portion of the public money that has been, or may be, apportioned to the City by the State, exclusive of state aid to schools and/or education, that has been or may be appropriated to the City of Providence, which withholdings (together with the withholding directed by this Order), shall not, in total, exceed $25,554,280, and delivery of said funds to the Commissioner for use on behalf of the PPSD as part of the ongoing intervention.