STATE OF RHODE ISLAND
COMMISSIONER OF EDUCATION

IN RE THE PROVIDENCE PUBLIC SCHOOL DISTRICT	: :	RIDE No. 24-058 A

DECISION AND ORDER

Held: The legal challenge by the Mayor and City Council to the Commissioner's proposed order directing the General Treasurer to withhold approximately $8.5 million in non-education-related State aid to the City was denied as the City's FY 2025 funding of its School District was some $29.3 million less than mandated by the statutory maintenance of effort provision in the statute which governs State interventions in failing school districts, and contrary to the City's arguments: (1) the term "state total of school aid" in the provision is not ambiguous and should not be construed such that legally deficient funding by the City in one fiscal year serves as the baseline for calculating the legally mandated level of funding for the following year, which would incentivize municipal under-funding of public schools; (2) the provision does not conflict with other statutes otherwise applicable in the absence of a State intervention, nor with statutory restrictions on municipal taxation; (3) the payment made by the City pursuant to the parties' settlement agreement covering funding deficiencies in prior years was not intended to apply when calculating future funding requirements; and (4) the Commissioner lacks the legal authority to nullify plain statutory language authorizing her to remedy violations of school law by withholding non-education-related state aid on constitutional grounds.

October 28, 2024

I. INTRODUCTION AND PROCEDURAL BACKGROUND

This is the fourth time since the State intervention in the Providence Public School District (the "PPSD") was initiated in October of 2019 that Commissioner Angélica Infante-Green (the "Commissioner")[1] has alleged that the City of Providence (the "City") has failed to meet its maintenance-of-effort obligation to the PPSD under the Crowley Act (the "MOE Obligation") and been compelled to request a show cause hearing to determine whether an order should enter pursuant to her authority under R.I. Gen. Laws § 16-5-30 directing the State's General Treasurer to withhold non-education-related State aid owing to the City to remedy a school funding deficiency. Indeed, as a result of the City's flat funding of its schools in Fiscal Years ("FYs") 2021, 2022 and 2024, such withholding orders were entered in an attempt to address a $4,850,739 deficiency in FY 2021,[2] a $10,028,455 deficiency in FY 2022,[3] and a $25,554,280 deficiency in FY 2024;[4] and the only reason that the City's $15,475,006 deficiency in FY 2023 was not the subject of such an order was that, as part of a settlement that included FYs 2021, 2022 and 2023, the Commissioner agreed to accept an amount from the City that was less than half of what was legally required.

The 2024 Decision is the subject of a pending appeal before the Superior Court.[5] At issue here is the adequacy of the City's funding of PPSD in FY 2025, which was the subject of

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[1] Acting in her dual capacity as the delegate of the Rhode Island Council on Elementary and Secondary Education (the "Ed. Council") under The Paul W. Crowley Student Investment Initiative, R.I. Gen. Laws § 16-7.1-1 *et seq.* (the "Crowley Act") and as Commissioner of the Department of Elementary and Secondary Education ("RIDE").

[2] *See In re the Providence Public School District*, RIDE No. 21-023-A (August 30, 2021) (the "2021 Decision") at Exhibit A.

[3] *See In re the Providence Public School District*, RIDE No. 22-016-A (April 28, 2022) (the "2022 Decision") at Exhibit A. However, the Order addressing this deficiency directed the General Treasurer to withhold only $5,223,639.22 of the total amount.

[4] *See In re the Providence Public School District*, RIDE No. 23-099-A (August 15, 2023) (the "2023 Decision") at Exhibit A. However, the Order addressing this deficiency directed the General Treasurer to withhold only $7,069,428 of the total amount.

[5] *See Brett P. Smiley, et al v. Angelica Infante-Green, et al.*, C.A. No. PC-2023-03940 (Providence County Superior Court) (Lanphear, J.).

an October 10, 2024, Order to Show Cause that was served upon Mayor Brett P. Smiley and the Providence City Council inviting them to show cause why the City was not in violation of its MOE Obligation for FY 2025 at an evidentiary hearing scheduled for October 21, 2024.

II. JURISDICTION AND BURDEN OF PROOF

The Commissioner, who serves as the Ed. Council's Chief Executive Officer and RIDE's Chief Administrative Officer, *see* R.I. Gen. Laws § 16-60-6, has jurisdiction over this matter 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.*

She also has jurisdiction as the Ed. Council's Crowley Act delegate, and the Commissioner's interpretation and attempt to enforce Section 5 of the Crowley Act in prior decisions and orders were (and here will be) undertaken pursuant to her broad interpretative and enforcement powers and duties under Title 16 of the R.I. General Laws, which include the duty to both "to interpret school law," R.I. Gen. Laws §§ 16-1-5(10) and 16-60-6(9)(viii), and to "require the observance of all laws relating to elementary and secondary schools and education." R.I. Gen. Laws §§ 16-1-5(9) and 16-60-6(9)(vii).[6]

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[6] Whether the Commissioner, or the Ed. Council for that matter, had the legal authority to agree to a reduction in statutorily mandated MOE amounts in a settlement agreement or otherwise, while beyond the scope of this decision, was addressed briefly in a footnote in the 2023 Decision, where the Commissioner noted that:

> . . . 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').

Id. at 5-6, n. 6.

Finally, as the party challenging this statutory interpretation and attempted enforcement, the City bears the burden of proof by a fair preponderance of the evidence. *See, e.g., Larue v. Registrar of Motor Vehicles, Dept. of Transp.*, 568 A.2d 755, 758-59 (R.I. 1990) (citing *Gorman v. University of Rhode Island*, 837 F.2d 7, 15 (1st Cir.1988)) (general presumption in administrative proceedings "favors the administrators" and places the burden of proof upon the party challenging the action "to produce evidence sufficient to rebut this presumption.").

III. UNDISPUTED FACTS

During the oral argument before the Superior Court in connection with the City's pending appeal of the 2024 Decision and its motion to stay enforcement of the related withholding order, the Court questioned why the RIDE Hearing Officer had "made no findings of fact." *See* Exhibit C to the City's October 21, 2024, Memorandum in Opposition to the Commissioner's Proposed Withholding Order (the "City's 2024 Memo"), Tab 2 at 171 (City App. 181).

By way of explanation, there was a lack of factual findings in the 2024 Decision because, as with respect to the 2021 and 2022 Decisions, the material facts – i.e., the total amount of State aid allocated to local educational agencies ("LEAs") in relevant fiscal years, the applicable percentage increases as compared with the prior fiscal year, the total amount of the City budgets, and the amount of the City's financial allocations to the PPSD – were all matters of public record and were expressly set forth in the withholding orders that were attached to the various orders to show cause. The relevant data underlying the numbers were not challenged by the City, as opposed to certain legal conclusions reached by the Commissioner which determined how she calculated the funding deficiency totals in each FY, which the City has challenged (and is

challenging).[7] However, the City presented no witnesses in any of the prior cases, but rather relied solely upon a variety of purely legal arguments.

In its most recent challenge, the City once again has not challenged the data underlying the numbers in the FY 2025 order being proposed by the Commissioner pertaining to the percentage increases in State aid to LEAs or the amounts the City reported as having been provided to the PPSD. Indeed, at the hearing on October 21, 2024, the parties stipulated that all the exhibits that they submitted with their memoranda could be entered into evidence as full exhibits, and they were so entered, along with two additional exhibits presented by counsel for the Commissioner.[8] These exhibits, as well as the more fulsome presentation of the City's legal arguments contained in its briefs to the Superior Court in support of its prior and pending administrative appeals, calls for a more detailed recitation of the facts. Thus, although the current (October 10, 2024) Order to Show Cause only pertains to the City's funding in FY 2025, the withholding orders that entered in 2021, 2022 and 2024, as well as the parties' February 20, 2023, Settlement Agreement (City Exhibit 20), are relevant to some of the legal arguments being proffered by the parties.

The following undisputed facts were based upon the exhibits that were entered into evidence by agreement at the October 21 hearing, the admissions of the parties in pleadings

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[7] For example, although the City argued that when calculating the "state total of school aid" for FY 2021, the Commissioner should have included not only (a) the City's share of the $41.7 million in Stabilization Funds intended to replace a like amount of re-allocated general revenue funds, but also (b) the City's share of the additional $50 million in COVID Relief Funds that were distributed to LEAs in 2020, *see 2021* Decision at 9, the City did not challenge the accuracy of the numbers *per se*.

[8] The stipulated exhibits include Exhibits A – F attached to the City's 2024 Memo ("City Exhibits A – F", respectively), Exhibits 1 – 18 attached to the Commissioner's August 18, 2024 Show Cause Memorandum (the "Commissioner's 2024 Memo" and "Commissioner's Exhibits 1 – 18", respectively), and Exhibits 19 and 20 presented at the hearing, and by subsequent email, by counsel for the Commissioner.

before the Commissioner and the Superior Court,[9] as well as the City's published budgets for FYs 2021 through 2025.[10]

A. The City Budget and School Funding During FY's 2021 and 2022

1. In April of 2020, the Mayor and City Council approved a budget for the City for FY 2021 in the amount of approximately $511 million, of which $130,046,611 was allocated to the PPSD.[11]

2. On August 30, 2021, the Commissioner rendered the 2021 Decision (*see supra* at 2, n. 2) and rejected the City's argument that its MOE Obligation should be tied solely to the yearly increase in the State school aid provided to the City, and instead held that it should be "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), which refers to the yearly increase in the State school aid to all LEAs throughout the State.

3. The Commissioner then issued an order on August 30, 2021 finding that since: (a) the total amount of State aid allocated to LEAs during FY 2020 had increased from the prior FY by some 3.73 percent; and (b) the City had flat funded the PPSD by allocating the same total amount in FY 2021 as had been allocated during FY 2020 ($130,046,611), the City had failed to meet its MOE obligation under the Crowley Act for FY 2021 and underfunded PPSD by some $4,850,739.

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[9] Court pleadings which the City incorporated by reference into its 2024 Memo. *See id.* at 1, n. 1.

[10] There is no need to repeat the pertinent facts relating to the Ed. Council's delegation of authority to the Commissioner, the Decision Establishing Control over the Providence Public School District and Reconstituting Providence Public Schools, the Order of Control and Reconstitution, or the Collaboration Agreement between the Mayor and the Commissioner. The details have been adequately set forth in prior decisions of the Commissioner, which are hereby incorporated by reference. *See In re the Providence Public School District*, RIDE No. 21-023-A, *supra* at 2, n. 2 at 3-4 and Exhibit A; *In re the Providence Public School District*, RIDE No. 22-016-A, *supra* at 2, n.3 at 3-5 and Exhibit A.

[11] *See* Fiscal Budget Book 2021 Approved, available at https://data.providenceri.gov/api/views/thi2-ww85/files/c94e9a28-b5ef-425e-bcfb-ed2156d9370b?download=true&filename=FBbook2021approved.pdf) at 90-91.

4. Thus, pursuant to her authority under R.I. Gen. Laws § 16-5-30, the Commissioner directed the General Treasurer to deduct the sum of $4,850,739 from all non-education-related state aid owing to the City for use on behalf of the PPSD. The City promptly appealed the 2021 Decision and associated withholding order to Superior Court and enforcement of the Order was stayed.[12]

5. In July of 2021, the Mayor and City Council approved a budget for the City for FY 2022 in the amount of approximately $539 million, a 5.48 percent increase from the total City budget for the prior fiscal year, yet the same $130,046,611 was allocated to the PPSD.[13]

6. On April 28, 2022, the Commissioner rendered the 2022 Decision (*see supra* at 2, n. 3) reiterating her prior holding in the 2021 Decision as to the meaning of Section 5(a) of the Crowley Act and finding that since: (a) the total amount of State aid allocated to LEAs during FY 2021 had increased from the prior fiscal year by some 3.84 percent; and (b) the City had again flat funded the PPSD by allocating the same total amount in FY 2022 as had been allocated during FY 2021, the City had failed to meet its MOE obligation under the Crowley Act for FY 2022 and underfunded PPSD by some $10,028,455.

7. However, the Commissioner entered a withholding order for only $6,223,639.22 from any and all non-education-related state aid for use on behalf of the PPSD (without prejudice to her right to enter additional orders up to the full amount of the deficiency). The City once again appealed the 2022 Decision and associated withholding order to Superior Court, and enforcement of the Order was stayed.[14]

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[12] *See Jorge 0. Elorza, et al v. Angelica Infante-Green, et al.*, C.A. No. PC-2021-06132 (Providence County Superior Court).

[13] Available at https://pdf.live/edit?url=https://www.providenceri.gov/wp-content/uploads/2021/08/FY22-Approved-Budget-Book-Web.pdf&guid=db61272b-d741-602a-1710-3b05fa3bfaf0&installDate=110223&source=google-d_pdftab_crx.

[14] *See Jorge 0. Elorza, et al v. Angelica Infante-Green, et al.*, C.A. No. PC-2022-02180 (Providence County Superior Court).

B. The FY 2023 Budget and February 20, 2023 Settlement Agreement

8. In July of 2022, the Mayor and City Council approved a budget for the City for FY 2023 in the amount of approximately $567 million, a 5.19 percent increase from the total City budget for the prior fiscal year, of which once again $130,046,611 was allocated to the PPSD.

9. The total amount of State aid allocated to LEAs during FY 2023 had increased from the prior fiscal year by some 3.8 percent. Yet, since the City had again flat funded the PPSD, it failed to meet its MOE obligation under the Crowley Act for FY 2023, underfunding the PPSD by $15,475,006.

10. However, no withholding order was entered with respect to the FY 2023 deficiency as the parties agreed to mediate their differences with respect to the funding of the PPSD during FYs 2021, 2022 and 2023 with Retired Superior Court Justice Mark A. Pfeiffer, and as a result of the mediation, entered into a Settlement Agreement on February 20, 2023 (the "2023 Settlement Agreement") (Commissioner's Exhibit 20).

11. The 2023 Settlement Agreement provided, in pertinent part, as follows:

> [a] "For Fiscal Year 2021, Fiscal Year 2022, and Fiscal Year 2023, the Parties agree, acknowledge, and confirm that the sum of any and all additional funds owed under Section 5(a) of the Crowley Act shall total Eleven Million Seventy-Four Thousand Three Hundred Eighty-Eighty and 22/100 Cents ($11,074,388.00) . . ."; and
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> [b] "Within five (5) business days of the completion of the terms set forth in paragraph 2 hereof, the Parties shall collaborate in the drafting, execution, and filing of notices and/or stipulations of dismissal, as the case may be, to dismiss the Litigation,[15] with prejudice; provided, however, that each such notice or stipulation of dismissal shall, in no way, be interpreted, construed, or otherwise used as an admission of liability on the part the City, a concession on the part of the State, a final determination on the merits of the

[15] Defined as the appeals referenced *supra* at 7, ns. 12 and 14, and *Jorge 0. Elorza, et al v. Angelica Infante-Green, et al.*, C.A. No. PC-2022-03322 (Providence County Superior Court).

> claims in the Litigation (except as to the Funding Disputes for Fiscal Year 2021, Fiscal Year 2022, and Fiscal Year 2023), *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, including in any future proceeding(s) or in any future disputes that may arise between the Parties*. For the sake of clarity, this Agreement is limited to exclusively resolving the Funding Disputes for Fiscal Year 2021, Fiscal Year 2022, and Fiscal Year 2023, and the Parties expressly reserve and preserve all claims, defenses, arguments, contentions, and/or other positions they did assert. may have asserted, or may assert in the future as to other fiscal years under applicable law. It is the Parties' express intent that the dismissal with prejudice will not serve as a final determination on the merits of the claims asserted in the Litigation (except as to the Funding Disputes for Fiscal Year 2021, Fiscal Year 2022, and Fiscal Year 2023) or preclude a subsequent action based on the same or similar claims as to other fiscal years."

Id., § 2 at 2 and ¶ 4 at 2 (emphasis added).

C. The FY 2024 Budget, the City's Motion to Stay and the Pending Appeal

12. On June 6, 2023, the Mayor and City Council approved a budget for the City for FY 2024 in the amount of approximately $583 million, which was some 2.82 percent more than the total City budget for the prior fiscal year, and yet once again, the same $130,046,611 was allocated to the PPSD.[16]

13. On August 15, 2023, the Commissioner rendered the 2023 Decision (*see supra* at 2, n. 4) and after again reiterating her prior holdings as to the meaning of Section 5(a) of the Crowley Act, issued a decision and order finding that since: (a) the total amount of State aid allocated to LEAs during FY 2023 had increased from the prior fiscal year by some 6.93 percent; and (b) the City had again flat funded the PPSD by allocating the same total amount in FY 2024 as had been allocated during FY 2023, the City had failed to meet its MOE obligation under the Crowley Act for FY 2022 and underfunded the PPSD by some $25,554,280.

[16] Available at https://www.providenceri.gov/wp-content/uploads/2023/09/FY2024-Approved-Budget-Book.pdf.

14. Thus, pursuant to her authority under R.I. Gen. Laws § 16-5-30, the Commissioner directed the General Treasurer to deduct the sum of $7,069,428 that was owing to the City from the State from the Distressed Communities Relief Fund (without prejudice to her right to enter additional orders up to the full amount of the deficiency).

15. The City promptly filed an appeal along with a motion to stay the 2023 withholding order in Superior Court,[17] and the motion to stay was granted, the Court having concluded that the City was likely to succeed on the merits.

16. During oral argument in connection with the motion to stay on August 23, 2023, the Court made the following statement:

> The last sentence of 16-7.1-5(a) is clear and not ambiguous to the Court in itself, but for the most part there is much more to Section 5(a), but it can be read sufficiently independently, and it should. The only ambiguity that the Court sees is the amount of the increase, both by the same percentage as the state share of school aid. Is that the state share of school aid school wide, or the state's share to the community here in Providence? It seems to be logical and consistent to read it as the state's share to the community, as it is the goal of the Crowley Act to have the municipality pay for itself for its own fair share according to the increases it has received.[18]

In addition, at the same time, the Court opined that R.I. Gen. Laws § 16-5-30 was not unconstitutional as applied.[19]

D. The PPSD's Pleas to the Mayor, the Letter from the the State Department of Revenue, the FY 2025 Budget and the City's Motion to Stay the Instant Proceeding

17. On or about February 7, 2024, PPSD representatives met with Mayor Smiley and shared a memorandum from Zachary Scott, the PPSD's Deputy Superintendent of Operations, that set forth the PPSD's fiscal outlook for FY 2025 and highlighted the cost-saving measures

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[17] *See P. Smiley, et al v. Angelica Infante-Green, et al.*, C.A. No. PC-2023-03940 (Providence County Superior Court).
[18] *See* Exhibit C to the City's October 21, 2024, Memorandum in Opposition to the Commissioner's Proposed Withholding Order (the "City's 2024 Memo"), Tab 2 at 173 (City App. 183).
[19] *See id.* at 178 (City's App. 188).

that had already been taken by the PPSD, including closing three schools and reducing both teaching and office staff. The memorandum also detailed additional "planned cuts" that would be necessary if the City's flat funding of the District continued, including further reductions in both teaching and support staff and the accelerated closure of Gilbert Stuart Middle School. *See* Commissioner's Exhibit 5 at 1-2.

18. It also was noted in the February 7 memorandum that PPSD's student body demographics had shifted after the pandemic, and the share of students with high needs had increased dramatically. The Deputy Superintendent also stated that the City's funding to the PPSD has not kept up with inflation, and concluded that "[w]ithout additional funding, PPSD is projecting an initial budget gap of $15M to $30M for FY 25." *See id.*

19. On or about April 15, 2024, PPSD Superintendent Javier Montañez, Ed. D., sent a letter to both Mayor Smiley and the City Council describing the gap between the City's proposed funding for FY 2025 and the requirements of the Crowley Act, and emphasizing the dire effects that the City's inadequate funding of the PPSD was having on students' education, noting that:

> . . . the District has seen two areas where increased need has been particularly acute: K-12 special education as well as pre-kindergarten special education. In K-12 special education, the District has seen a significant increase in the number of Providence students needing out of district-special education support which has led to a projected $10M+ increase in tuition and transportation services. For pre-kindergarten special education, the District has had to increase the number of classrooms as well as adding centralized evaluation, screening and diagnostic rooms, which led to a $5M increase in spending for FY24. The District is required to add additional capacity to support this increased need, even though the cost per student to operate these classrooms is typically three times what the District receives in state aid per student. In fact, pursuant to PPSD's recent settlement of a federal court class action, its ability to meet this increased need will be the subject of Court supervision and, if necessary, enforcement, at least until July 1, 2025. See Parents Leading for Educational Equity v. PPPSD, et al., C.A. No. 23-cv-00301-MSM-PAS.

See Commissioner's Exhibit 7 at 2.

20. In April and May of 2024, the PPSD shared with the Providence School Board the City's updates to its FY 2025, and highlighted the fact that:

(a) "PPSD local budget has grown by ~2.3% annually over the last decade, with state funding increasing in amount and proportionate share of PPSD's budget while City funding remaining largely flat." *See* Commissioner's Exhibit 8 at 4;

(b) "Near flat City funding with flat enrollment has resulted in a cumulative ~3% change in per pupil funding over the past 8 years despite more than 20% cumulative increase in inflation over that same time." *See id.* at 5;

(c) "Based on enrollment, revenue, and expense projections for FY 2025, PPSD anticipated a starting budget gap of $45 M to begin the budget season." *See id.* at 14; and

(d) "Only Woonsocket contributes less per student with less cumulative increase in contributions since FY 14." *See* Commissioner's Exhibit 9 at 14.

21. On May 30, 2024, the State Department of Revenue (the "DOR") sent a letter to Mayor Smiley stating that the City's proposed school appropriation for FY 2025 did not satisfy the City's MOE Obligation, noting that:

> The Department of Revenue has received the City of Providence's Notice of Proposed Property Tax Rate Change for fiscal year 2024-2025 . . . Your notice hereby is not approved.
>
> It should be noted that the property tax estimates used in the City's proposed Notice of Proposed Property Tax have not 'been computed in a manner approved by the Rhode Island Department of Revenue' and as a result no representation should be made by the City that the Department has granted such approval. Please find the reasons for this disapproval below:
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> 1) After thorough review of all documentation submitted by the City, the Department determines that the requirements of 280-RICR-40-00-1: Standards and Procedures for Property Tax and Fiscal Disclosure for Rhode Island Cities and Towns are not met because the City's proposal does not include a sufficient enough level of funding to the Providence Public School District to satisfy its maintenance of effort obligation under R.I. Gen. Law § 16-7.1-5(a) (Crowley Act).
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> 2) The City is proposing to split the residential tax rate for class 1 property into owner occupied and non-owner occupied. Although the City is

> allowed under R.I. Gen. Laws § 44-5-11.8(b)(1)(ii) to split the rates in lieu of a homestead exemption, it must however maintain the ratios between the classes identified under R.I. Gen. Laws § 44-5-11.8(c). The City's proposal does not satisfy these requirements.

Commissioner's Exhibit 10.

22. On June 6, 2024, the PPSD Deputy Superintendent followed up the Superintendent's letter of April 15, 2024, reiterated that the City's proposed allocation to the PPSD for FY 2025 did not comply with the requirements of the Crowley Act, and emphasized that without additional funding from the City, the PPSD would have a budget shortfall of at least $11.7 million. *See* Commissioner's Exhibit 11 at 1-2.

23. According to the City, when the State began its intervention in the PPSD in October of 2019:

> enrollment in the PPSD stood at 23,955 students. But since then, enrollment in the PPSD has continuously declined: from 23,836 as of October 2019; 22,440 as of October 2020; 21,656 as of October 2021; and then, down to 20,725 as of October 2022. [Footnote omitted]. And, according to RIDE's Resident Daily Average Membership ("RADM") data for this year's funding formula calculation [footnote omitted], that decrease will continue for FY2024, down to a RADM of 19,625 students. So, from FY2023 to FY2024, there has been a decrease in enrollment in the PPSD of 1,100 students.

City's Exhibit A at 6-7.

24. In June of 2024, the Providence City Council approved a budget for the City for FY 2025 in the amount of approximately $599 million, which was some 2.74 percent more than the amount of the total City budget for the prior fiscal year, and $135,546,611 was allocated to the PPSD.[20]

25. There was an increase in the total amount of state aid allocated to LEAs for FY 2025 from the prior fiscal year of approximately 5.95 percent, and so the Commissioner once

[20] *See* Operating & Capital Budget FY 2025, available at https://stories.opengov.com/providenceri/f5909dce-e3d9-4f9c-829b-1b823045d6b6/published/WA_0GrRYa?currentPageId=667c4483e6de6525f3ab73aa.

again alleged that the City's funding of the PPSD for FY 2025 totaling some $135,546,611 failed to meet its MOE Obligation for FY 2025 and underfunded PPSD by some $29,313,306.

26. In August of 2024, representatives of RIDE and the PPSD met with Mayor Smiley and other City officials and reiterated that the City's proposed school funding for FY 2025 did not satisfy the City's MOE Obligation, and emphasized that without additional funding from the City, the PPSD would have to make additional, substantial reductions. *See* Commissioner's Exhibit 12 at 6-7, 9-12 (describing PPSD's projected budget gap for FY 2025 and potential cuts).

27. The Commissioner is presently seeking a withholding order for $8,532,899.07, the amount owed the City pursuant to the phase out of the State motor vehicle excise tax which would otherwise be paid to the City on or before November 1, 2024 (without prejudice to her right to enter additional orders up to the full $29,313,306 deficiency).

28. An Order to Show Cause was thus served upon Mayor Smiley and the Providence City Council inviting them to show cause at an evidentiary hearing on October 21, 2024 why the Commissioner should not enter: (a) a final decision holding that the City had failed to meet its MOE Obligation for FY 2025 and was deficient by some $29,313,306; and (b) an order directing the State's General Treasurer to withhold the scheduled $8,532,899.07 payment to the City (without prejudice to the Commissioner's right to request further withholding orders up to the total alleged deficiency).

29. The parties were invited to submit (a) written memoranda, (b) a list of any evidence to be submitted at the hearing, (c) a copy of any evidence to be submitted, and/or (d) a list of proposed witnesses to the undersigned Hearing Officer by the close of business on Friday, October 18, 2024.

30. The City then filed an Emergency Motion for Temporary Restraining Order and Preliminary Injunction in Superior Court in an attempt to stay the scheduled show cause hearing. The Court denied the request to stay the hearing scheduled for October 21, 2024, and will be scheduling a hearing with respect to the motion for injunctive relief.

31. Legal counsel for the Mayor and City Council then complied with the most recent Show Cause Order by submitting an eight-page memorandum along with five exhibits to the undersigned Hearing Officer, and the Commissioner submitted a forty-eight-page memorandum along with eighteen exhibits.

IV. POSITIONS OF THE PARTIES

1. The Mayor and the City Council

The City argues that the Commissioner's interpretation of the Crowley Act:

(a) "ties the increase, if any, to the state total of school aid to the entire State, rather than to the state total of school aid to the City of Providence[,]" *see* the City's 2024 Memo at 1, and according to the City, this would undermine a purpose of the Crowley Act, i.e., "[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.*" *Id.* at 2, n.2 (quoting § 16-7.1-1(a)(iv) (emphasis added)); and

(b) fails to calculate the MOE Obligation on a per-pupil basis and thus "ignores the City's statutory right under R.I. Gen. Laws § 16-7-23(a) to adjust its baseline, level funding obligation based on the decrease in enrollment in the PPSD." *Id.* at 1-2.

In addition, the City argues that:

(c) The withholding statute, R.I. Gen. Laws § 16-35-30, is inconsistent with R.I. Gen. Laws § 16-5-30.1, which limits withholding to violations of §§ 16-21-7, 16-21-9, 16-21-12, 16-21-14, and 16-38-2. *See id.* at 4, n. 3;

(d) "The exclusive mechanism for resolving disputes under Section 5(a) of the Crowley Act resides in the Caruolo Act, rather than through short-notice, show-cause proceedings to enforce withholding orders." *Id.* ;

(e) The City "contributed the maximum funds it could to the PPSD . . . because, consistent with the mandates of R.I. Gen. Laws § 44-5-2-(b) (the "Taxation

Statute"), its FY 2025 total levy increase was $15,184,333: a 4 percent levy increase." *Id.* at (citing to the City's Operating & Capital Budget for FY 2025);

(f) In her calculation of the alleged deficiency for FY 2025, the Commissioner neglected to account for the $11,074,388 the City paid pursuant to the 2023 Settlement Agreement. *Id.* at 1; and

(g) "The Commissioner's use of R.I. Gen. Laws § 16-5-30 to intercept and reappropriate non-education related state aid to the PPSD" is an unconstitutional violation of both the nondelegation and separation of powers doctrines. *Id.* at 4.

2. The Commissioner

The Commissioner argues that:

> . . .the 'state total of school aid' for FY 2025 increased [by] approximately 5.95% over the amount in FY 2024. Thus, the City's funding obligation for FY 2025 is the amount of the City's MOE obligation for FY 2024 ($155,600,952) increased by 5.95% (the percentage that the state total of school aid increased from FY 2024 to FY 2025), which equals $164,859,917. As the City is funding the PPSD for FY 2025 in the amount of only $135,546,611, [there is] a shortfall of $29,313,306, [and] the City violated the Crowley Act.

Commissioner's 2024 Memo at 45-46. In reply to the arguments which the Commissioner either anticipated, or had heard made by the City before the Superior Court, the Commissioner argues that:

(a) To hold, as the City does, that its MOE obligation for a given year should be calculated with reference solely to the percentage increase of State aid solely to the City and based on the amount of aid the City actually provided the prior year, is contrary to the plain language of the Crowley Act, which refers to the "same percentage as the *state* total of school aid is increased" and "would incentivize the City to violate its MOE obligation for successive years to continually bring down its baseline and thereby perpetually underfund the PPSD." *Id.* at 20-22; and

(b) The City's claim that the MOE Obligation should be calculated on a per-pupil basis compares the Crowley Act to the Caruolo Act, R.I. Gen. Laws § 16-7-23(a), which "imposes a level-funding obligation for school districts that are not subject to state control," an "attempted juxtaposition" which is "inapt," *id.* at 15, and ignores the fact that on the "very same day" the Legislature amended R.I. Gen. Laws § 16-7-23(a) to include a per-pupil exception, it "amended the Crowley Act, R.I. Gen. Laws § 16-7.1-5(a), to

include an obligation on the part of those municipalities responsible for funding schools or school districts under state control to fund '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,' without the per-pupil exception." *See id.* at 17-19;

(c) Contrary to the City's claim that R.I. Gen. Laws § 16-5-30 is inconsistent with § 16-5-30.1, the two provisions are "easily harmonized." *Id.* at 29-30;

(d) "The Crowley Act governs when a school district is under the control of the [Ed.] Council; conversely, the Caruolo Act governs a municipality's contributions to a school district when there has not been a state intervention and exercise of control over the school district. Thus, the two statutes do not relate to same subject matter and the Crowley Act takes precedence as the specific statute that controls over the general law set forth in the Caruolo Act." *Id.* at 25 (citing *Purcell v. Johnson*, 297 A.3d 464, 471 (R.I. 2023));

(e) The Taxation Statute "does not limit the amount by which the City may increase its spending for the PPSD. Rather, it merely limits the amount by which the City may increase its taxes on an annual basis[,]" *id.* at 23, citing R.I. Gen. Laws § 44-5-2(b). *Id.*;

(f) The terms of the 2023 Settlement Agreement provide that the payment made by the City pursuant to the Agreement was not to be applied when calculating future funding requirements; and

(g) The Commissioner's "authority to order withholding does not divest the General Assembly of any legislative power; rather, it merely provides the Commissioner a method of enforcing the school laws that the General Assembly has enacted." *Id.* at 41.

V. DECISION

The parties are in agreement that the City's challenge to the withholding order proposed by the Commissioner for FY 2025 is premised, not upon any factual dispute, but rather solely upon legal arguments. *See* Commissioner's 2024 Memo at 14, n. 3 and the arguments summarized in the City's Memo (*supra* at 15).[21] However, before addressing the merits of the

[21] Although, as was noted by the Commissioner in the 2022 Decision, "'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,'" *see id.* at 13, citing *Mancini v. City of Providence*, 155 A.3d 159 (R.I. 2017), it is equally the case that, as noted by the Commissioner:

legal issues posed by the City, the Commissioner will first address its argument that she should stay any such consideration until the Superior Court decides the pending appeal of the 2024 Decision.

1. The City's argument for abstention ignores the Commissioner's duty to interpret and enforce school law and that any conclusions of the Court when deciding a motion to stay are not binding.

The most compelling argument against abstention is the fact that the Superior Court denied the City's motion to stay the Commissioner from going forward with the scheduled show cause hearing on October 21. Obviously, if the Court thought the Commissioner should refrain from once again weighing in on the legal issues posed by the City, it would have granted the City's motion despite the doctrine of administrative exhaustion.

In addition, the fact that in considering the City's motion to stay the 2024 Order, the Court made some initial pronouncements concerning the meaning of the statute setting forth the Crowley Act's MOE Obligation (R.I. Gen. Laws § 16-7.1-5(a)), as well as the constitutionality of the statute authorizing withholding orders (R.I. Gen. Laws § 16-5-30), *see* § III, ¶ 16 at 10, *supra*, does not mandate abstention. A motion to stay is akin to a motion for a preliminary injunction, and comments made in either context are no more binding upon the Commissioner than they would be upon a court. *See University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981)[22] ("The purpose of a preliminary injunction is merely to preserve the relative positions of

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The Rhode Island Supreme Court has held that substantial weight should be given to an executive agency's interpretation of a statute that it has been entrusted to administer. *See Town of Warren v. Bristol Warren Reg'l Sch. Dist.*, 159 A.3d 1029, 1038 (R.I. 2017). "'[D]eference is due to that agency's interpretation of an ambiguous statute unless such interpretation is clearly erroneous or unauthorized,'" *Unistrut Corp. v. State Dep't of Labor & Training*, 922 A.2d 93, 99 (R.I. 2007) (citing *Arnold v. Rhode Island Dep't of Labor & Training Bd. of Review*, 822 A.2d 164, 169 (R.I. 2003)), 'even when other reasonable constructions of the statute are possible,' *Labor Ready Northeast, Inc. v. McConaghy*, 849 A.2d 340, 345 (R.I. 2004) (citing *Pawtucket Power Assoc. Ltd. Partnership v. City of Pawtucket*, 622 A.2d 452, 456–57 (R.I. 1993)).
Commissioner's 2024 Memo at 14-15, n. 3.

[22] Citing *Industrial Bank of Washington v. Tobriner*, 405 F.2d 1321, 1324 (1968); *Hamilton Watch Co. v. Benrus Watch Co.*, 206 F.2d 738, 742 (C.A.2 1953).

the parties until a trial on the merits can be held" and thus "findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits"); *Cohen v. Brown University*, 879 F.Supp. 185, 193 (D.R.I. 1995)[23] ("It is well-settled that at the preliminary injunction stage, an appellate court's 'findings' and 'holdings' as to the merits of the case are not final but should be understood to be merely statements of probable outcomes based on the record as it existed before the district court."); *Quillen v. Marcera*, 160 A.3d 1006, 1013 (R.I. 2017) (Finding that the trial justice did not err in refusing to take judicial notice of the findings made at a hearing on the preliminary injunction since the issues involved in the two proceedings were markedly different, but rather "was addressing the ultimate merits of plaintiff's claims, whereas the hearing justice was tasked with determining whether to issue a preliminary injunction preventing defendant from distributing funds in the annuity accounts.").

Thus, any comments made by the Superior Court in the context of the City's motion to stay should not deter the Commissioner from discharging her statutory duty to "require the observance of all laws relating to elementary and secondary schools and education." R.I. Gen. Laws § 16-60-6(9)(vii).

2. The City's interpretation of Section 5(a) of the Crowley Act is not supported by its plain language.

The Crowley Act specifically provides that:

> If a school or school district is under the board of regents' [now Ed. Council's[24]] control as a result of actions taken by the board [now Ed. Council] 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.*

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[23] Quoting *LeBeau v. Spirito*, 703 F.2d 639, 643 (1st Cir.1983) (citing *Planned Parenthood League of Mass. v. Bellotti*, 641 F.2d 1006, 1009 (1st Cir.1981)).

[24] 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.*

R.I. Gen. Laws § 16-7.1-5(a) (emphasis added). The City objects to the Commissioner's interpretation of the above, which provides that the annual increase in the City's school funding is tied to the percentage increase from the prior FY of the State total of school aid to LEAs throughout the entire State, calculated from a baseline consisting of what the City was legally required to have contributed the prior fiscal year, and argues that: (a) the mandated increase should be tied to the percentage increase from the prior FY of the State total of school aid to the City only; (b) the baseline from which any increase should be calculated should be the amount that was actually contributed to the schools in the prior FY (even if the amount contributed the prior year was in violation of the City's MOE Obligation); and (c) the Caruolo Act's per-pupil exception should be ingrafted onto the Crowley Act. *See* City's 2024 Memo at 1-2.

The City's argument concerning the applicability of the Caruolo Act's per-pupil exception will be addressed separately, *see infra* at 23, but as to the basic interpretation of the language in R.I. Gen. Laws § 16-7.1-5(a) highlighted above, the Commissioner noted in the 2022 Decision that:

> 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." *See* City's Apr. 22 Mem. at 14 (emphasis in original). 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. Thus, in *Grasso v. Raimondo*, 177 A.3d 482, 489 (R.I. 2018), the Court noted that:
>
> > We begin our analysis with the basic principle of statutory construction that, when a statutory section is clear and unambiguous, we apply the plain and ordinary meaning of the statute and *we need not delve into any further statutory interpretation. State v. Diamante*, 83 A.3d 546, 548 (R.I. 2014). *'It is only when a statute is ambiguous that we apply the rules of statutory construction and examine the statute in its entirety to determine the intent and purpose of the Legislature.' Id.* (internal quotation marks omitted).

Id. (emphasis added). Moreover, as the Court noted in *Citizens for Preservation of Waterman Lake v. Davis*, 420 A.2d 53 (R.I.1980), '[i]t is well settled that when the language of a statute is clear and unambiguous, the statute may not be construed or extended but must be applied literally.' *Id.* at 57.[25]

2022 Decision at 14. The Commissioner went on to hold that:

> The City's claim of ambiguity is premised upon the fact that '[t]he General Assembly left the phrase "state total of school aid' undefined.' *See* City's Apr. 22 Mem. at 17.
>
> However, not all undefined terms are ambiguous, as the Rhode Island Supreme Court has made clear on any number of occasions. For example, in one of the cases cited by the City – *Drs. Pass and Bertherman, Inc. v. Neighborhood Health Plan of Rhode Island*, 31 A.3d 1263, 1269 (R.I. 2011) – the Court made short shrift of plaintiff's claim that the phrase 'public funds' was ambiguous merely because it was 'not a defined term, either under this statute [R.I. Gen. Laws § 5–35–21.1(b)] or any of the laws of Rhode Island.' 31 A.3d at 1269. The Court interpreted the phrase by simply referring to other uses of the phrase in the General Laws, the dictionary definition, the need for internal consistency within the statute, as well as 'common sense.' *Id.*

Id. at 16. In addition, as the Court noted in *Grasso, supra*, the Supreme Court:

> generally follow[s] the principle that, if a statute's requirements 'are unclear or subject to more than one reasonable interpretation, the construction given by the agency charged with its enforcement is entitled to weight and deference as long as that construction is not clearly erroneous or unauthorized.' *State v. Swindell*, 895 A.2d 100, 105 (R.I. 2006) (internal quotation marks omitted); *see also Town of Richmond v. Rhode Island Department of Environmental Management*, 941 A.2d 151, 157 (R.I. 2008).

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[25] Adding in a footnote:

> *See also In re Kapsinow*, 220 A.3d 1231, 1235 (R.I. 2019) ('Since it is readily apparent to this Court that the statutory sections at issue are clear and unambiguous, our inquiry is at an end. We need only apply the plain and ordinary meaning of the words in the statute.'); *Morel v. Napolitano*, 64 A.3d 1176, 1179 (R.I. 2013) ('[W]hen we examine an unambiguous statute, there is no room for statutory construction and we must apply the statute as written.'); and *McCain v. Town of North Providence ex rel. Lombardi*, 41 A.3d 239, 243 (R.I. 2012) ('When that statutory language is "clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.'") and *Unistrut Corp. v. State Department of Labor and Training*, 922 A.2d 93, 98-99 (R.I. 2007) ('When a statute is clear and unambiguous we are bound to ascribe the plain and ordinary meaning of the words of the statute and our inquiry is at an end.').

Id. at 14, n. 14.

177 A.3d at 486-87 (emphasis added). Moreover, in *School Comm. v. Giroux*, KC-2010-1106, 2012 R.I. Super. LEXIS 89, at *5-6 (R.I. Super. Ct. May 8, 2012), Judge Rubine flatly rejected a substantially similar argument in the context of a Caruolo action and concluded that the Town could not base its FY 2009 MOE obligation on a baseline that failed to represent the Town's actual MOE for FY 2008.

Adopting the City's argument that the baseline of any calculation of its MOE Obligation must be based on what it actually contributed the prior fiscal year, as opposed to what the City was legally required to have contributed, would incentivize underfunding of the public schools, contrary to the Crowley Act's objectives of "[c]losing the inequitable resource gaps among school districts and schools" and "[c]losing inequitable gaps in performance and achievement among different groups of students, especially those correlated with poverty, gender, and language background." R.I. Gen. Laws § 16-7.1-1(a)(1)(i), (ii). Indeed, if the underfunded amount for a fiscal year is then used as the baseline for calculating the MOE obligation for the next fiscal year, the impediment to the Crowley Act's objectives would be compounded.

The City's emphasis on one of the four purposes of the Crowley Act, i.e., "[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[,]" City's 2024 Memo at 2, n.2 (quoting § 16-7.1-1(a)(iv) (emphasis added), ignores the other three stated purposes of the Act, which all focus on closing inequitable gaps in student resources and achievement.[26] With inflation growing since

[26] As adopted by the General Assembly, the purpose of the Crowley Act is to provide all Rhode Island children a high-quality education:

> The intent of this legislation is to enact a comprehensive state education aid funding program which addresses four (4) fundamental principles:
>
> (i) Closing the inequitable resource gaps among school districts and schools;
>
> (ii) Closing inequitable gaps in performance and achievement among different groups of students, especially those correlated with poverty, gender, and language background;
>
> (iii) Targeting investments to improve student and school performance; and

2015 by some 30% (according to the Deputy Superintendent) and with the City's total budget increasing from 2020 through 2024 by some 17%,[27] it is hard to justify flat funding a school district experiencing dramatic increases in its share of students with high needs and that is already under State intervention due to poor student performance. *See* § III, ¶¶ 17-20, 22 and 26, *supra* at 10-12, 13-14.

In short, the City's most recent memoranda and counsel's most recent oral argument on October 21, 2024, have not provided any sound basis for the Commissioner to amend her prior interpretation of R.I. Gen. Laws § 16-7.1-5(a).

3. The MOE provision in the Caruolo Act (§ 16-7-23(a)), which contains a per-pupil exception, and the Crowley Act's MOE provision (§ 16-7.1-5(a)), which contains no such exception, were not meant to be read together.

The City argues that a provision in the Caruolo Act (R.I. Gen. Laws § 16-7-23(a)) and one in the Crowley Act (R.I. Gen. Laws § 16-7.1-5(a)) are inconsistent with one another, and because they relate to the same subject matter, should be construed in a manner that harmonizes the two. The City, pointing to the decrease in student enrollment in the PPSD, *see* § III, ¶ 23, claims such harmonization would require incorporating the per-pupil exception in the Caruolo Act – 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," § 16-7-23(a) – into the Crowley Act. *See* City's 2024 Memo at 5. However, the two provisions are not inconsistent and do not relate to the same subject matter.

The Crowley Act and the Caruolo Act apply in entirely different contexts. The former, as noted, is applicable to districts that are under State intervention, whereas the latter is applicable

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(iv) Establishing 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 § 16-7.1-1(a)(1).

[27] *See* § III, ¶¶ 1, 5, 8, and 12, *supra* at 6, 7, 8 and 9.

to allegedly under-funded districts not under State intervention, as reflected in their very different MOE mandates.[28] The Caruolo Act's per-pupil exception in R.I. Gen. Laws § 16-7-23(a) is simply not included in the Crowley Act, *see* R.I. Gen. Laws § 16-7.1-5(a) (quoted *supra* at 19-20), and as the Rhode Island Supreme Court has emphasized, "when a statutory section is clear and unambiguous, we apply the plain and ordinary meaning of the statute and we need not delve into any further statutory interpretation." *See Grasso, supra*, 177 A.3d at 489 (citing *State v. Diamante*, 83 A.3d 546, 548 (R.I. 2014).

Significantly, the Caruolo Act was amended on June 25, 1998 to include the per-pupil exception codified at R.I. Gen. Laws § 16-7-23(a). *See* P.L. 1998, ch. 31, art. 31, § 4. On that very same day, the Legislature also amended the Crowley Act to include an obligation on the part of those municipalities responsible for funding schools or school districts under state control to fund "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," without the per-pupil exception, codified at R.I. Gen. Laws § 16-7.1-5(a). *See* P.L. 1998, ch. 31, art. 31, § 1.

If the General Assembly had intended to graft onto the Crowley Act the exception it created for a municipality's general funding obligation, it could have done so. The General Assembly's decision to enact two separate statutes in the same legislative session with two different funding obligations is strongly indicative of its intent that different funding obligations apply to each statute. "The General Assembly knew how to craft language" to create a per-pupil

[28] Unlike the Crowley Act, the Caruolo Act mandates merely "[e]ach community shall contribute local funds to its school committee in an amount not less than its local contribution for schools in the previous fiscal year except to the extent permitted by §§ 16-7-23.1 and 16-7-23.2." R.I. Gen. Laws § 16-7-23(a). (Section 16-7-23.1 provides that "high per pupil expenditure communities," i.e., communities that have "a local appropriation that funds at least eighty-five percent (85%) of the basic education program," *id.* at (a), are "authorized to reduce [their] local appropriation to schools by an amount up to ten percent (10%) of any increase it receives in state school funds." Id. at (b). And § 16-7-23.2 provides that supplemental funds appropriated to eliminate or reduce a school budget deficit "shall not be used in the computation of the maintenance of effort requirements established by § 16-7-23." *Id.*

exception, but chose not to include such an exception in the Crowley Act, which precludes the Court from grafting such language onto the Crowley Act. *See Castelli v. Carcieri,* 961 A.2d 277, 286 (R.I. 2008).

It is a well-recognized principle of statutory construction that the legislature "acts intentionally when it uses particular language in one section of a statute but omits it in another." *Dep't of Homeland Sec. v. MacLean*, 574 U.S. 383, 391 (2015); *see also In re Proposed Town of New Shoreham Project*, 25 A.3d 482, 525 (R.I. 2011) ("[W]here [the Legislature] includes particular language in one section of a statute but omits it in another section of the same [a]ct, it is generally presumed that [the Legislature] acts intentionally and purposely in the disparate inclusion or exclusion.") (quoting *Kucana v. Holder*, 558 U.S. 233 (2010) (alteration in original)).

Finally, the City's overreliance upon one of the four principles underlying the Crowley Act, "address[ing] the overreliance on the property tax to finance education," R.I. Gen. Laws § 16-7.1-1(a)(1)(iv), ignores two other crucial principles of the Act, "[c]losing the inequitable resource gaps among school districts and schools" and "[c]losing inequitable gaps in performance and achievement among different groups of students, especially those correlated with poverty, gender, and language background." *See supra* at 22, n. 26.

4. The withholding statute, R.I. Gen. Laws § 16-35-30, is not inconsistent with R.I. Gen. Laws § 16-5-30.1, which limits withholding to violations of specified statutory violations.

By its plain language, R.I. Gen. Laws § 16-5-30 applies to any "violation or neglect of law," as to which the Commissioner "may" order the General Treasurer to withhold state aid. Therefore, under R.I. Gen. Laws § 16-5-30, the General Assembly has conferred on the Commissioner permissive power to order the General Treasurer to withhold state aid when school law has been violated. However, R.I. Gen. Laws § 16-5-30 does not require the

Commissioner to do so. By contrast, R.I. Gen. Laws § 16-5-30.1 compels the Commissioner to order the General Treasurer to withhold funds for violations of certain statutes: "Any community that does not comply with the provisions of §§ 16-21-7, 16-21-9, 16-21-12, 16-21-14, and 16-38-2 *shall* be subject to the penalty provided in § 16-5-30." R.I. Gen. Laws § 16-5-30.1 (emphasis added). The specified provisions pertain to school health programs (§ 16-21-7), health examinations and dental screenings of students (§ 16-21-9), dental treatment for students (§ 16-21-12), hearing, speech, and vision screens of students (§ 16-21-14), and immunization of students (§ 16-38-2) (collectively, the "Student Health Provisions").

Rhode Island courts have consistently recognized the distinction between "may," which is permissive, and "shall," which is mandatory. For example, in *Downey v. Carcieri*, 996 A.2d 1144, 1151 (R.I. 2010), the Supreme Court observed that "[i]t is an axiomatic principle of statutory construction that the use of the term 'may' denotes a permissive, rather than an imperative, condition." Consistent with *Downey*, the use of "may" in R.I. Gen. Laws § 16-5-30 must be interpreted as permissive and the use of "shall" in R.I. Gen. Laws § 16-5-30.1 must be interpreted as mandatory.

R.I. Gen. Laws § 16-5-30.1 establishes a specified category of school laws, the Student Health Provisions, as to which the Commissioner's authority to order withholding of state aid under R.I. Gen. Laws § 16-5-30 is mandatory as opposed to discretionary. It does not eliminate the Commissioner's discretionary authority under R.I. Gen. Laws § 16-5-30. Thus, R.I. Gen. Laws §§ 16-5-30 and 16-5-30.1 are easily harmonized without rendering either one superfluous.

5. Compliance with the funding requirements of the Crowley Act would not cause the City to violate the Taxation Statute.

The City has referenced the Taxation Statute, R.I. Gen. Laws § 44-5-2(b), which limits the amount by which the City may increase its taxes on an annual basis.[29] Importantly, the Taxation Statute does not limit the amount by which the City may increase its spending for the PPSD. Rather, it merely limits the amount by which the City may increase its taxes. The effect of the Taxation Statute is that it requires the City, on an annual basis, to set its non-PPSD budget items in a manner that permits the City to satisfy its obligations under the Crowley Act in light of the City's taxing limitations. As noted by the Commissioner, "[n]othing in the Taxation Statute provides the City a 'free pass' to disregard the funding requirements of the Crowley Act," Commissioner's 2024 Memo at 23, especially in light of the fact that while flat funding its schools during FYs 2021-2024, the City increased its total budget by some 17% during that same period.[30]

The City also has invoked the Caruolo Act, which only further demonstrates that the City cannot evade the unambiguous funding requirement under the Crowley Act. The sentence limiting the tax increase to four percent for FY 2013 and thereafter, *see supra* at 26, n. 28, was added to the Taxation Statute on July 3, 2006. *See* City's Exhibit 13 at 1 (Act Relating to Taxation—Property, Pub. L. No. 06-253, § 1 (2006) (codified at R.I. Gen. Laws § 44-5-2(b)). On that very same day, via the same Public Law (No. 06-253), the General Assembly also amended the Caruolo Act to require that a school committee's budget for each fiscal year not exceed 104

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[29] R.I. Gen. Laws § 44-5-2(b) provides that:

> In its fiscal year 2013 and in each fiscal year thereafter, a city or town may levy a tax in an amount not more than four percent (4%) in excess of the total amount levied and certified by that city or town for its previous fiscal year.

Id.

[30] *See supra* at 23, n.27.

percent of "the total of municipal funds appropriated by the city or town council for school purposes for the previous fiscal year." *See id.* at 5 (Act Relating to Taxation—Property, Pub. L. No. 06-253, § 5 (2006) (codified at R.I. Gen. Laws § 16-2-21(d)(vi))). This amendment was contained in Section 5 of the same Public Law (No. 06-253) that amended the Taxation Statute to provide a four percent taxation limit for FY 2013 and thereafter.

Importantly, the General Assembly did not so amend the Crowley Act, and thus the MOE Obligation in the Crowley Act to fund "at the same level as in the prior academic year increased by the same percentage as the state total of school aid is increased" is not limited, in any way, by the four percent taxing limit set forth in R.I. Gen. Laws § 44-5-2(b). *See* R.I. Gen. Laws § 16-7.1-5; Commissioner's Exhibit 14 at 62 (Act Making Appropriations for the Support of the State for the Fiscal Year Ending June 30, 1999, Public Law No. 98-31, Art. 31, § 1 (1998) (codified at R.I. Gen. Laws § 16-7.1-5)).

If the General Assembly had intended to limit the Crowley Act by the taxation limitation set forth in R.I. Gen. Laws § 44-5-2(b), the General Assembly would have amended the Crowley Act via Public Law No. 06-253, as it did for the Caruolo Act. The absence of any such amendment for the Crowley Act is consistent with the Crowley Act's purposes of providing all Rhode Island children a high-quality education and granting RIDE and the Council broad powers to intervene in, exercise control over, and reconstitute, failing schools. *See* R.I. Gen. Laws §§ 16-7.1-1(a)(1), (2) and 16-7.1-5(a).

Furthermore, as has been noted, the Crowley Act governs when a school district is under the control of the Ed. Council. Conversely, the Caruolo Act governs a municipality's contributions to a school district when there has not been a state intervention and exercise of control over the school district. Thus, the two statutes do not relate to same subject matter and the Crowley Act takes precedence as the specific statute that controls over the general law set

forth in the Caruolo Act. *See Purcell*, 297 A.3d at 471 ("This Court follows the rule of statutory construction that, when faced with 'competing statutory provisions that cannot be harmonized, we adhere to the principle that the specific governs the general . . . .'").[31] Accordingly, the funding limitation in the Caruolo Act cannot be grafted onto the Crowley Act's unambiguous funding obligation.

6. The parties did not intend that the payment made pursuant to the 2023 Settlement Agreement would be used when calculating the City's MOE Obligation.

The City states that the Commissioner "wholly fails to account for the $11,074,378 contributed by the City to the [PPSD] for Fiscal Years 2021, 2022, and 2023." City's 2024 Memo at 1-2. In fact, the 2023 Settlement Agreement expressly provides that it:

> . . . shall, in no way, be interpreted, construed, or otherwise used . . . 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, including in any future proceeding(s) or in any future disputes that may arise between the Parties.

Commissioner's Exhibit 20 at 2.[32]

Thus, in calculating the amount of the City's MOE Obligation for FY 2025 the Commissioner simply adhered to the above-quoted language, which reflects the fact that the parties agreed that the City's belated $11,074,378 payment for a funding deficiency which amounted, in total, to over $30,000,000, was not to be used when calculating the City's MOE Obligation in the future.[33]

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[31] Quoting *Felkner v. Chariho Regional School Committee*, 968 A.2d 865, 870 (R.I. 2009); *South County Post & Beam, Inc. v. McMahon*, 116 A.3d 204, 214-5 (R.I. 2015) ("'When a specific statute conflicts with a general statute, our law dictates that precedence must be given to the specific statute.'") (quoting Warwick Housing Authority v. McLeod, 913 A.2d 1033, 1036-37 (R.I. 2007)).

[32] *But see supra* at 3, n. 6.

[33] As noted, there was a $4,850,739 deficiency in FY 2021, a $10,028,455 deficiency in FY 22, a $15,475,006 deficiency in FY 2023, and a $25,554,280 deficiency in FY 2024. *See* supra at 2, ns. 2-4 and accompanying text; § III, ¶ 25, *supra* at 13-14.

7. The Commissioner has no authority to rule that § 16-5-30 is unconstitutional.

The City appears to concede that the Commissioner lacks the authority to declare the withholding statute, R.I. Gen. Laws § 16-5-30, null and void on constitutional grounds. *See* the City's Memorandum in Opposition to the Commissioner's Proposed Withholding Order in the 2023 Decision (City's Exhibit A) at 2, n. 1.[34] As the Commissioner noted in the 2022 Decision, she lacks the requisite authority to decide constitutional questions. *See id.* at 13 (citing *Members of Jamestown Sch. Comm. v. Schmidt*, 427 F.Supp.1338, 1345 (D.R.I. 1977)).[35]

That being said, the Commissioner is not absolved from undertaking the requisite constitutional analysis. Presumably, if she had concluded that § 16-5-30 was unconstitutional, the Commissioner would have filed a declaratory judgment action in Superior Court rather than enforce an unconstitutional statute. However, the Commissioner has concluded that § 16-5-30 is constitutional and not a violation of either the nondelegation or separation of powers doctrines.

Thus, in the 2022 Decision the Commissioner – after emphasizing that: (a) it is a "well-settled principle" that "legislative enactments of the General Assembly are presumed to be valid and constitutional," *id.* at 20;[36] and (b) "[o]ne who challenges the constitutionality of a statute bears the burden of 'prov[ing] beyond a reasonable doubt that the act violates a specific

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[34] Citing *Renaud v. Raimondo*, 2016 WL 6916959, at *6 (R.I. Super. Nov. 18, 2016) (Silverstein, J.) (quoting *Bowen v. Hackett*, 361 F. Supp. 854, 860 (D.R.I. 1973), supplemented, 387 F. Supp. 1212 (D.R.I. 1975) for the proposition that "[t]he expertise of state administrative agencies does not extend to issues of constitutional law"); *Murray v. Vaughn*, 300 F. Supp. 688, 695 (D.R.I. 1969) (Pettine, J.) (explaining in relevant part that "federal agencies have neither the power nor the competence to pass on the constitutionality of administrative or legislative action"); *Doe v. Sex Offender Registry Bd.*, 971 N.E.2d 800, 804 (Mass. App. Ct. 2012) ("The power delegated by the Legislature to an agency does not include the inherent authority to strike down a regulation or declare it void on constitutional grounds such as due process."); *Hawaii Insurers Council v. Lingle*, 201 P.3d 564, 585 (Haw. 2008) ("Agencies may not . . . pass upon the constitutionality of statutes."); and *Flint River Mills v. Henry*, 216 S.E.2d 895, 896-97 (Ga. 1975) (recognizing "that where the constitutional validity of a statute is challenged before an administrative hearing officer or board, such officer or board is powerless to declare the Act unconstitutional, and resolution of the constitutional question must await judicial review on appeal").

[35] Citing *Altman v. School Committee of Town of Scituate*, 347 A.2d 37 (R.I.1975).

[36] Quoting *Kennedy v. State*, 654 A.2d 708, 712 (R.I. 1995).

provision of the [Rhode Island] [C]onstitution,' *id.*[37] – addressed the City's constitutional arguments. As to the non-delegation doctrine, the Commissioner held that:

> The City alleges that [§ 16-5-30] violates the nondelegation doctrine since it 'purports to vest in the Commissioner the power to (a) define if and when there has been any "violation or neglect of law"' and then (b) in her discretion, decide if and when to issue a withholding order to remedy said violation.' City's April 22 Mem. at 2. Yet, in reciting the Commissioner's power to define if and when there has been any 'violation or neglect of law,' § 16-5-30 merely re-states one of the fundamental duties of the Commissioner as conferred by the General Assembly. Thus, R.I. Gen. Laws § 16-60-6 provides that 'it shall be the duty of the Commissioner . . . to interpret school law . . .[and] to require the observance of all laws relating to elementary and secondary education." *Id.* at (9)(vii) and (viii).
>
> The City also argues that § 16-5-30 violates the nondelegation doctrine because it fails to inform the Commissioner 'if and when the Commissioner may issue the remedy of a withholding order.' City's April 22 Mem. at 4. However, this claim is contradicted by the plain language of § 16-5-30, which makes clear when an order may properly enter, i.e., '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, or for nonpayment of tuition owed by one community to another including but not limited to those children in state custody, vocational education, or special education. . .' *Id.*[38] And throughout Title 16 of the Rhode Island General Laws the General Assembly has provided ample guidance to the Commissioner to determine whether there has been any 'violation or neglect' of school law.
>
> The City also claims that authorizing the Commissioner to order the withholding of non-school aid – in addition to school aid – is especially inappropriate. However, the intentional inclusion of this authority in § 16-5-30 evidences the General Assembly's recognition that limiting withholding to state aid to education would effectively be cutting a school district's nose off to spite its face. Indeed, the ability to enforce school law without at the same time depriving schools of badly-needed funds is particularly crucial when remedying

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[37] Citing *Oden v. Schwartz*, 71 A.3d 438, 456 (R.I. 2013) (quoting *Mackie v. State*, 936 A.2d 588, 595 (R.I. 2007)).

[38] And the Commissioner noted in a footnote that:

> The General Assembly often grants directors of executive agencies the power to determine whether statutory violations have occurred. *See, e.g.*, R.I. Gen. Laws § 23-24.6-27 (authorizing the director of the Department of Health to determine whether the Lead Poisoning Prevention Act has been violated); *id.* § 42¬14-16(a) (empowering the director of the Department of Business Regulation to determine whether insurance statutes have been violated); *id.* § 19-28.1-26(a) (authorizing the director of the Department of Business Regulation to determine whether the Franchise Investment Act has been violated). The Rhode Island Supreme Court has upheld statutory interpretations of agency directors. *See Wood v. Davis*, 488 A.2d 1221, 1222, 1224 (R.I. 1985) (affirming DEM's notice of violation and cease and desist order to violator of wetlands statute).

2022 Decision at 22, n. 23 (citing the Commissioner's April 22 Mem. at 14-15).

violations of the Crowley Act, which will typically involve school districts that are already under-funded.

We are thus left with the City's nondelegation argument based upon § 16-5-30's lack of "durational constraint." Yet, as the Commissioner has explained:

> The Rhode Island Supreme Court has upheld delegations that provided substantially less guidance than the standard and principle set forth in R.I. Gen. Laws § 16-5-30. In *Thompson v. Town of East Greenwich*, the Court upheld the General Assembly's delegation of power to local licensing boards based on the statute's requirement that the boards promote the 'reasonable control of . . . alcoholic beverages.' *Thompson v. Town of East Greenwich*, 512 A.2d 837, 842(R.I. 1986); *see also Davis v. Wood*, 427 A.2d 332, 336 (R.I. 1981) (holding that directive to conduct activities 'in an environmentally sound manner' provided sufficient standard for delegation); *J.M. Mills, Inc. v. Murphy*, 352 A.2d 661, 666 (R.I. 1976) (finding a valid delegation of power because the statute required the director of the Department of Natural Resources to act in the 'best public interest'). Statutory requirements of exercising 'reasonable control,' acting 'in an environmentally sound manner,' and acting in the 'best public interest' provide much less guidance, and are substantially less rigorous standards, than the statutory requirement of finding a violation of school law.

Id. at 17. Moreover, none of the cases cited by the City are factually similar or support the claim that § 16-5-30 violates the nondelegation doctrine.[39]

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[39] And the Commissioner noted in a footnote that:

> . . . in three of the cited cases the Court failed to find a violation of the doctrine. Thus, in *Marran v. Baird*, 635 A.2d 1174 (R.I. 1994), the Court held that a statute vesting the director of the State Department of Administration with the power to appoint a budget and review commission in any city or town where a recognized rating agency has assigned the community's bonds a rating below investment grade and the community faces imminent threat of default on any of its debt obligations did not delegate legislative power in violation of nondelegation doctrine of State Constitution. *See id.* at 1180-1181. In *Newport Ct. Club Assoc. v. Town Council of the Town of Middletown*, 800 A.2d 405, 417 (R.I. 2002), the Court held that legislation enabling municipalities to include charges for sewer-related debt service and capital costs on its sewer bills was not in violation of the doctrine. And in *Kaveny v. Town of Cumberland Zoning Bd. of Rev.*, 875 A.2d 1 (R.I. 2005), the Court upheld the Low and Moderate Income Housing Act against a challenge based upon an alleged violation of the doctrine. See id. at 11-12. And although the Court did strike down enabling legislation which permitted municipalities to issue and revoke licenses for the 'selling, purchasing, bartering and dealing in junk, old metals, and any other secondhand articles' in *Metals Recycling Co. v. Maccarone*, 527 A.2d 1127, 1129 (R.I. 1987), it only did so after finding that the provision 'articulates no legislative purpose and sets forth no primary standard to carry out the policy, nor does it establish an intelligent principle to guide the town council. Section 5–21–1 simply leaves the question of license renewal and revocation to the 'pleasure' of the town council.' *Id.* at 1130.

Id. at 23, n. 24.

2022 Decision at 21-22.[40]

During the oral argument before the Superior Court in connection with the City's pending appeal of the 2024 Decision and its motion to stay enforcement of the related withholding order, the Court characterized R.I. Gen. Laws § 16-5-30 as "a very curious creature," and expressed concern "as to whether or not an intelligent principle to guide was provided to the hearing officer by the state itself or by any rules or regulations." *See* City's 2024 Memo at Exhibit C, Tab 2 at 175, 177 (City App. 185, 187).

Yet, the statute's triggering mechanism, i.e., a "violation or neglect of law,'' when read *in pari materia* with R.I. Gen. Laws § 16-60-6, clearly refers exclusively to "school law," which the Commissioner has been charged by the General Assembly with interpreting and enforcing. *See §* 16-60-6(9)(viii) and (9)(vii). And although § 16-5-30 does not provide any guidance with respect to the handling of show cause hearings – indeed, on its face, the statute does not require any such proceedings – the Commissioner must be guided in all her action by basic federal and state constitutional principles, one of which mandates that the State's deprivation of property "be accompanied by due process of law, which requires "'some kind of a hearing.'" *Id.* at 210-211 (quoting *Zinermon v. Burch*, 494 U.S. 113, 125, 127 (1990)). And the Commissioner is quite

[40] The Commissioner also has noted that:

> The General Assembly often grants directors of executive agencies the power to determine whether statutory violations have occurred. *See, e.g.*, R.I. Gen. Laws § 23-24.6-27 (authorizing the director of the Department of Health to determine whether the Lead Poisoning Prevention Act has been violated); *id.* § 42¬14-16(a) (empowering the director of the Department of Business Regulation to determine whether insurance statutes have been violated); *id.* § 19-28.1-26(a) (authorizing the director of the Department of Business Regulation to determine whether the Franchise Investment Act has been violated). The Rhode Island Supreme Court has upheld statutory interpretations of agency directors. *See Wood v. Davis*, 488 A.2d 1221, 1222, 1224 (R.I. 1985) (affirming DEM's notice of violation and cease and desist order to violator of wetlands statute).

2022 Decision at 22.

familiar with conducting evidentiary hearings to decide all manner of controversies involving school law.[41]

Finally, as to the violation of separation of powers claimed by the City, the Commissioner noted in the 2022 Decision that "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," *id.* at 24-25, adding that "none of the cases cited by the City support its claim that this violates the separation of powers doctrine." *Id.* at 25.[42]

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[41] *See, e.g.*, R.I Gen. Laws §§ 16-39-1 ("Parties having any matter of dispute between them arising under any law relating to schools or education may appeal to the commissioner of elementary and secondary education who, after notice to the parties interested of the time and place of hearing, shall examine and decide the appeal without cost to the parties involved."; 16-39-2 ("Any person aggrieved by any decision or doings of any school committee or in any other matter arising under any law relating to schools or education may appeal to the commissioner of elementary and secondary education who, after notice to the parties interested of the time and place of hearing, shall examine and decide the appeal without cost to the parties involved.") and 16-64-6 ("When a school district or a state agency charged with educating children denies that it is responsible for educating a child on the grounds that the child is not a resident of the school district or that the child is not the educational responsibility of the state agency, the dispute shall, on the motion of any party to the dispute, be resolved by the commissioner of elementary and secondary education or the commissioner's designee who shall hold a hearing and determine the issue.").

[42] And the Commissioner noted in a footnote that:

> *Quattrucci v. Lombardi*, 232 A.3d 1062 (R.I. 2020), involved the judicial, not legislative, branch, as the Court held that a municipal pension ordinance had violated the separation of powers doctrine by altering a decision of the Superior Court. *See id.* at 1067. In *State Dep't of Corr. v. Rhode Island Bhd. of Corr. Officers*, 115 A.3d 924, 933 (R.I. 2015), the Court affirmed the vacating of an 'irrational' arbitration award while expressly declining to 'venture into the arena of nondelegation and separation of powers.' *See id.* at 933. *In re Request for Advisory Opinion from House of Representatives (Coastal Res. Mgmt. Council),* 961 A.2d 930, 938 (R.I. 2008), also is irrelevant since rather than concerning the appropriation power, that case involved whether members of the General Assembly could serve on the Coastal Resources Management Council and whether the Council's performed a legislative function. *See id.* at 932. And finally, in *Chariho Reg'l Sch. Dist. v. Gist,* 91 A.3d 783, 790 (R.I. 2014), the issue was whether a regional school district should be reimbursed for the 'salary, fringe benefits, and travel expenses' of: (1) the directors of their vocational-technical programs; and (2) the guidance counselors working in their vocational-technical programs' under the Regulations of the Board of Regents Governing the Management and Operation of Area Vocational–Technical Centers in Rhode Island, *see id.* at 786, and thus also is simply irrelevant to the claim being made by the City relative to the separation of powers doctrine.

Id. at 25, n. 26.

VI. CONCLUSION

In summary, the City's MOE obligation for FY 2024 was $155,600,952. In FY 2025, there was an increase in the total amount of state aid allocated to LEAs from the prior fiscal year of approximately 5.95 percent. Thus, the City's MOE obligation for FY 2025 is $164,859,917. However, the FY 2025 budget that the City approved on June 28, 2024, in the amount of approximately $599 million, allocates only $135,546,611 to the PPSD, which results in a shortfall of $29,313,306.

Thus, and 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.

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

A. Infante-Green

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

Exhibit A

STATE OF RHODE ISLAND
COMMISSIONER OF EDUCATION

IN RE THE PROVIDENCE PUBLIC
SCHOOL DISTRICT RIDE No.

COMMISSIONER'S PROPOSED 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 § 16-7.1-5 (the "Crowley Act"); and (3) the October 15, 2019 Order of Control and Reconstitution; 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); 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 approximately 3.73%; and in Fiscal Year 2022 there was an increase of approximately 3.84%; and in Fiscal Year 2023 there was an increase of approximately 3.8%; and

WHEREAS, by order dated August 30, 2021, the Commissioner, as RIDE's Commissioner and the Council's delegate, determined that the City of Providence (the "City") was obligated to make a minimum total allocation to the PPSD under Section 5(a) of the Crowley Act, R.I. Gen. Laws § 16-7.1-5(a), of $134,897,745 for Fiscal Year 2021; and

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 Crowley Act, R.I. Gen. Laws § 16-7.1-5(a), of $140,195,229 for Fiscal Year 2022;[1] and

WHEREAS, in Fiscal Year 2024, there was an increase in the total amount of state aid allocated to local educational agencies from the prior fiscal year of approximately 6.93%; and

WHEREAS, in Fiscal Year 2024, the City failed to allocate sufficient funds to satisfy its maintenance of effort ("MOE") obligation under Section 5(a) of the Crowley Act, R.I. Gen. Laws § 16-7.1-5(a), which mandated an MOE increase from the Fiscal Year 2023 of 6.93%, or a minimum total allocation to the PPSD of $155,600,952; and

WHEREAS, on June 26, 2023, the Mayor of the City and the City Council President signed an approximately $583 million budget for the City for Fiscal Year 2024 which allocated the same

[1] 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.

total amount to the PPSD, $130,046,611, as had been allocated to the PPSD in the City's budgets for FY 2020, FY 2021 and FY 2022; and

WHEREAS, by order dated August 15, 2023, 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 Crowley Act, R.I. Gen. Laws § 16-7.1-5(a), of $155,600,952 for Fiscal Year 2024; and

WHEREAS, for Fiscal Year 2025, there is an increase in the total amount of state aid allocated to local educational agencies from the prior fiscal year of approximately 5.95%; and

WHEREAS, on June 28, 2024, the Mayor of the City and the City Council President signed an approximately $599 million budget for the City for Fiscal Year 2025 that allocated to the PPSD the amount of $135,546,611 for Fiscal Year 2025; and

WHEREAS, for Fiscal Year 2025, the City failed to allocate sufficient funds to satisfy its MOE obligation under Section 5(a) of the Crowley Act, R.I. Gen. Laws § 16-7.1-5(a), which mandates an MOE increase from Fiscal Year 2024 of 5.95%, or a minimum total allocation to the PPSD of $164,859,917; and

WHEREAS, the City's funding shortfall for the PPSD for Fiscal Year 2025 is $29,313,306; and

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; and

WHEREAS, the next available distribution of non-education state aid to the City will be $8,532,899.07 for the Motor Vehicle Phase Out, which would otherwise be paid on or before November 1, 2024.

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 **Eight Million, Five Hundred Thirty-Two Thousand, Eight Hundred Ninety-Nine Dollars And Seven Cents ($8,532,899.07)** from any and all state aid, other than aid to schools and/or education, that has been or may be appropriated to the City of Providence, and to deliver said funds to the Commissioner for use on behalf of the PPSD. The Commissioner reserves the right to request further withholding orders, the total amount of which orders shall not, in total, exceed $29,313,306.

Entered as an ORDER on this ___ day of October 2024.

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