STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
COMMISSIONER OF EDUCATION

In re: Providence Public Schools District

Parents', Students', and Student Organizations' Response to RIDE's Objection and Memorandum

I. Introduction

In its Memorandum, the Rhode Island Department of Education (RIDE) asserts that the parent, student, and student organization petitioners ("Petitioners") have failed to demonstrate that they have standing to intervene, either as of right or permissive intervention, and that practical considerations weigh against permitting the intervention.

In this response, we address these arguments in turn. In Section II, we explain why Commissioner's decisions interpreting §§ 16-39-1 and 2, and not Rule 24 of the R.I. Superior Court Rules of Procedure, provides the proper standard to determine standing, and why Petitioners clearly have standing under the education statutes. Section III addresses how in the alternative, Petitioners nonetheless have standing under Rule 24, both as of right and permissive intervention. Section IV specifies that Petitioners must merely allege a potential harm to assert standing. Finally, in Section V, we describe why intervention by the petitioning parties would advance the goals of the intervention process.

II. Petitioners have standing to intervene under § 16-39-2, which provides the correct test of standing for the instant hearing.

R.I.G.L. § 16-39-2 provides that:

> 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. (emphasis added)

The requirements for standing to be included in an education hearing in Rhode Island are simple and direct, and substantially less stringent than the requirements of Rule 24, which sets the standard for inclusion in a suit in Superior Court. In their Motion to Intervene, Petitioners cited prior Commissioner hearing decisions, in matters brought under § 16-39-2[1], for the proposition that they have a right to intervene in this action. In those cases, parents and students were granted standing by the Commissioners where they had a direct interest in the decision being made by virtue of being parents and students in the public schools. Whether they were aggrieved by decisions being made about school breakfast programs,[2] school construction projects,[3] or the inclusion of common planning time as part of improving a high school,[4] they were deemed to have standing based on two simple requirements: (1) they or their children attended the school (in the matter of of school construction and common planning) or attended schools in the district (in hearings on school breakfast programs) and (2) they asserted that they would be harmed if the decision was not changed.

RIDE argues that the Commissioners' prior hearing decisions on standing do not apply to this case because it arises under the Crowley Act. This ignores the plain language of R.I.G.L. §

[1] R.I.G.L. § 16-39-1 also provides parents and students the right to inclusion as a party in the Show Cause hearing. It is identical to § 16-39-2 except that it does not reference school committees and provides a right to "[p]arties having any matter of dispute between them arising under any law" to "appeal to the commissioner of elementary and secondary education who, after notice to the parties interested of the time and place of the hearing, shall examine and decide the appeal without cost to the parties involved." The Commissioners' rulings on standing for hearings brought under § 16-39-2 are equally applicable to cases brought under § 16-39-1.

[2] *R.I. Parents for Progress v. Pawtucket School Committee,* Commissioner of Education, May 22, 1992; *Campaign to Eliminate Childhood Poverty v. Newport School Committee*, Commissioner of Education, August 5, 1993, p. 6.

[3] *Pattavina et al. v. Newport School Committee,* Commissioner of Education, May 26, 2011.

[4] *Certain Students at Hope High School v. Providence School Board,* Commissioner of Education, August 16, 2010.

16-39-2, which provides a right to challenge education-related "decisions or doings" to "any person aggrieved by any decision or doings of any school committee" (in this case, the Commissioner, who has subsumed the roles and responsibilities of the Providence School Board) or "in any other matter arising under any law relating to schools or education" (including the Crowley Act). RIDE's position also ignores Petitioners' right to be included in the hearing based on the plain language of §16-39-1, which grants entry to a hearing before the Commissioner to any party who has any dispute in any matter arising out of any law relating to schools or education.

As Petitioners meet the requirements of both §16-39-1 and §16-39-2, the Commissioner's prior hearing decisions apply to their Motion to Intervene. Under a straightforward application of those prior decisions, Petitioners have standing.

a) *The Commissioner is both a legal and practical stand-in and successor to a "school committee."*

The Proposed Order is a "decision or doing" of a school committee because it places the Commissioner in the shoes of the Providence School Board by reassigning all the powers and duties of the school board to the Commissioner.

First, per the terms of the Proposed Order, the Commissioner would subsume all rights and responsibilities of the Providence School Board ("The Commissioner shall also exercise all powers and authorities currently exercised by the Providence School Board and Superintendent…").[5]

Secondly, as a practical matter, the movants would no longer be able to petition any alternative elected representatives or local governing bodies with control over school matters.

[5] Proposed Order, § 1 (p. 1).

When schools are managed by local governing bodies, dissatisfied community members can organize to replace elected officials. Without this safeguard, both electoral accountability and the transparency statutorily required of local governmental bodies like the City Council and the School Board vanish. The Proposed Order of Control and Reconstitution eliminates these safeguards. If the Commissioner of Education takes over the role and responsibilities of the local governing bodies, she will become the only link between community members and the Providence Public Schools, a responsibility that formerly included the school committee.

b) *The Proposed Decision and Order is a "decision or doing" and the Crowley Act is a "matter arising under any law relating to schools or education."*

A party can seek a hearing from the Commissioner under § 16-39-2 if they are aggrieved by a "decision or doing" of a school committee or if they are aggrieved by a "matter arising under any law relating to schools or education." (emphasis added) Both clauses are applicable in this case.

First, the Commissioner's Proposed Decision and Order—initially as a proposal, then as an implementation guide to a takeover of a public school system—is undoubtedly a "decision or doing."

Second, the petitioners are aggrieved "in any other matter arising under any law relating to schools or education," as the proceedings are taking place pursuant to the Crowley Act, § 16-7.1-5, which explicitly and solely concerns schools or education.

c) *Petitioners are "aggrieved" parties (§ 16-39-2) and have "any matter of dispute"(§ 16-39-1) arising under "any law relating to schools or education" (both statutes)*

As explained more fully in Petitioners' Motion to Intervene, in matters within the scope of § 16-39-1 and § 16-39-2, Commissioners have consistently ruled that parents, students, and

student organizations have standing to challenge education-related decisions if they are, or may be, adversely affected by those decisions.

For example, in the school breakfast cases, *R.I. Parents for Progress v. Pawtucket School Committee*[6] and *Campaign to Eliminate Childhood Poverty v. Newport School Committee*,[7] the Commissioner found that because the statewide advocacy organizations included at least one parent with a child enrolled in the respective districts' schools, the organizations had standing in a Commissioner's hearing regarding the district-wide policy on school breakfasts.

RIDE suggests in its Memorandum that these school breakfast cases are not applicable to the matter at hand because they address matters of "minor importance" for the school districts. One, it must be noted that the cases involved years-long campaigns by parents to enroll in schools in federally-funded school breakfast programs, ensuring that no children were forced to go hungry. But more significantly, RIDE's insistence that the instant case has higher stakes than the school breakfast cases merely highlights the extent to which the current petitioners are "aggrieved" parties in the proposed takeover.

III. Although Rule 24 is not applicable to this action, Petitioners nonetheless have standing under the Rule, both as of right and permissive intervention.

R.I. R. Civ. P. Rule 24 is inapplicable to Petitioners' motion. The Board of Education has promulgated its own distinct Procedural Rules for Appeals to and Hearings Before the Commissioner[8]; these are separate from the Rhode Island Rules of Civil Procedure, which "govern the procedure in the Superior Court of the State of Rhode Island in all suits of a civil

[6] Commissioner of Education, May 22, 1992.
[7] *Campaign to Eliminate Childhood Poverty v. Newport School Committee*, Commissioner of Education, August 5, 1993, p. 6.
[8] 200-RICRI-30-15-4.

nature." The state Administrative Procedures Act, R.I.G.L .§ 42-35-1 et. seq., and the RIDE regulations are the controlling rules of procedure in this case.

Nonetheless, Petitioners meet the requirements for standing under both intervention as of right and permissive intervention.

Rule 24 outlines two paths under which movants may intervene in an existing action. Rule 24(a) concerns intervention of right, when (1) a state statute confers such a right, or (2) the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties. Rule 24(b) describes permissive intervention, when (1) a state statute confers a conditional right to intervene or (2) the applicant's claim or defense and the main action have a question of law or fact in common.

a) Petitioners have Rule 24(a)(1) standing through §§ 16-39-1 and 2.

As described in Section II, *supra*, §§16-39-1 and 2 confers a statutory right to formally challenge education-related decisions through a hearing in front of the Commissioner of Education. In other words, §16-39-1 and both clauses of § 16-39-2 "confer[] an unconditional right to intervene," per the language of Rule 24(a)(1), in the show-cause hearing.

b) Petitioners have Rule 24(a)(2) standing to protect an unrepresented interest.

To show standing under Rule 24(a)(2), movants must demonstrate that (1) they have an interest relating to the transaction which is the subject of the action, (2) they are so situated that the disposition of the action may impair or impede their ability to protect that interest, and (3) the

applicant's interest is not adequately represented by existing parties. RIDE does not dispute that Petitioners have an interest in the action (1). The remaining requirements are met.

1. The disposition of the action may impair or impede Petitioners' ability to protect their interests.

RIDE's motion argues that the proposed school takeover will not "impair or impede" Petitioners' ability to protect their education-related interests. This is not the correct standard under Rule 24(a)(2). Petitioners need not conclusively prove that the provisions of the Proposed Order are inadequate to protect their interests; they must merely show that disposition of the action may impair or impede their ability to protect that interest. As described at length in the Motion to Intervene, this burden is met for all petitioners, who have a significant vested interest in the success of the state takeover.

2. The Petitioners' interests are not adequately represented by the Commissioner.

The Rhode Island Supreme Court has adopted the federal test for intervention as a matter of right, whereby "[i]ntervention will be allowed if an applicant establishes some tangible basis to support a claim of purported inadequacy of representation by the current contestants." *Town of Coventry v. Baird Props., LLC*, 13 A.3d 614, 620 (R.I. 2011), *quoting Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10 (1972) (emphasis added). This burden is minimal: "The requirement of the Rule is satisfied if the applicant shows that representation of his interest 'may be' inadequate.'" *Id.* (emphasis added); *see also Credit Union Cent. Falls v. Groff*, 871 A.2d 364, 368 (R.I. 2005), *quoting Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10 (1972) ("The United States Supreme Court has made clear that the requirement of [Rule 24] is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal.'").

Petitioners have met this low bar based on the four named parties (elected and appointed officials') removing themselves from the Show Cause hearing without asserting any role for students and parents. The only remaining party to the action is the Commissioner. The essence of their claim is that the Commissioner's Proposed Order does not adequately protect their rights and interests.

The failure of an existing party to appeal an adverse matter may be considered an indication that a would-be intervenor's interest is not being adequately represented by existing parties. *See Marteg Corp. v. Zoning Bd. of Review*, 425 A.2d 1240, 1243 (R.I. 1981). Similarly, a failure to object to a proposed action—in this case, the Proposed Order of Control and Reconstitution in its current form—may be viewed as an indication that the proposed intervenors' interests are not adequately represented in this matter.

Here, the Mayor, School Committee, and Providence City Council have all filed notices of "no objection" to the proposed Decision and Order of Control and Reconstitution, and RIDE has filed an objection to Petitioners' Motion to Intervene, despite the legislature's pointed finding that "[r]esearch supports a positive correlation between family engagement with a student's school or school district and the performance of the student, school, and district." R.I.G.L. § 16-94-3. The parties' actions—despite the absence of any articulated, meaningful mechanisms for family engagement, transparency, and accountability to students and parents—are sufficient to support a finding that the existing parties "may" not adequately represent their interests.

In its motion, RIDE claims that because "the Movants' elected representatives, the Mayor and City Council, over whom the Movants maintain such electoral control, are actually named parties at this show cause status," and because "[t]he Movants maintain electoral control over

those same officials," that "there is no basis to conclude that they lack the ability to protect themselves." This is incorrect.

When schools are managed by local governing bodies, dissatisfied community members can organize to replace them through electoral processes. Without this safeguard, both electoral accountability and the transparency statutorily required of local governmental bodies like the City Council and the School Board vanish. The Proposed Order eliminates these safeguards. In their place, state officials and their designees control and direct the Providence Public Schools, outside electoral control and purview of the Open Meetings Act.

Although the democratic process allows Providence residents to participate in the election of the Governor, this is a state-wide vote, encompassing voters in many communities outside Providence that have no vested interest in its public schools. Conversely, the proposed intervenors not only have a right to be directly involved in the education of their children, theirs is a fundamental one, separate and distinct from any interest of the state, state appointed officials, or state residents at large. *See Pierce v. Soc'y of Sisters*, 268 U.S. 510, 535 (1925) ("The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.").

c) Petitioners have Rule 24(b)(2) standing.

Rule 24(b)(2) allows for intervention where the proposed intervenor's claim shares common questions of law or fact with the underlying action. In considering permissive intervention, the tribunal "shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."

Here, the Petitioners' claim shares common questions of law and fact with the underlying action. The Takeover directly implicates their rights under §§16-39-1 and 2 and how those rights

are exercised during the implementation of and throughout the duration of Reconstitution—a clear question of law. The overall impact, success or failure of the Reconstitution and the Petitioners' role therein present questions of fact common to the underlying action and the claims of the Petitioners. Additionally, the Commissioner's grant of Petitioners' Motion to Intervene will not unduly delay or prejudice the adjudication of this matter. As such, permissive intervention pursuant to Rule 24(b)(2) is appropriate.

IV. Petitioners must only allege injury to establish standing and are not required to prove any particularized harm.

Contrary to RIDE's repeated assertions, Petitioners need not demonstrate any particularized injury, distinct from that of the public at large, for standing purposes.

a) Under §§ 16-39-1 and 2, Petitioners must merely allege plausible harm for standing purposes.

In education disputes brought under §§ 16-39-1 and 2, petitioners must only allege some plausible harm to establish standing, as described in Section II, *supra*. For example, in *Pattavina et al. v. Newport School Committee*,[9] the Commissioner confirmed that parents and students enrolled in schools within a school district had standing to challenge education policy decisions because they *alleged* that they were adversely affected by the challenged decisions. The Commissioner found that the petitioners had standing based on the general assertion that there were educational deficiencies in the design adopted by the School Committee, and the inference that the design would impair the delivery of a sound educational program to students. The exact nature of any deficiencies and their precise impact on the educational program to be delivered to

[9] Commissioner of Education, May 26, 2011.

students did not need to be established at this stage in order for standing to be granted.[10] Similarly, in the school breakfast cases, the Commissioner ruled that the petitioners had standing to be a party in the hearings but did not necessarily grant them the remedies they sought in the case-in-chief.

In federal and state court cases interpreting Rule 24, courts have consistently cautioned against conflating the need to *allege* harm at the standing phase and to *prove* that a right has been violated once standing has been granted. *See R.I. Ophthalmological Soc'y v. Cannon*, 317 A.2d 124, 129 (R.I. 1974) ("It must be *alleged* that the plaintiff has sustained or is immediately in danger of sustaining some direct injury as the result of the challenged statute or official conduct.") (emphasis added) (internal quotes and citations omitted). The First Circuit has likewise "applied the plausibility standard applicable under Rule 12(b)(6) to standing determinations at the pleading stage." *Hochendoner v. Genzyme Corp.*, 823 F.3d 724, 730 (1st Cir. 2016), whereby "the plaintiff bears the burden of *pleading* facts necessary to demonstrate standing." *Id.* (emphasis added).

Here, the proposed intervenors have done so by alleging that they (1) have sustained an injury-in-fact as a result of the failing school system, and (2) are in immediate danger of sustaining additional, direct injury if the Proposed Order fails to include specific, articulable mechanisms for transparency and accountability that will contribute to a successful intervention and improvements in the schools. *See* Motion to Intervene at 2 ("Their children are being systematically deprived of effective, responsive, culturally inclusive and rigorous educational experiences. . . the economic and social well-being of not only their children currently enrolled

[10] *See also Certain Students at Hope High School v. Providence School Board*, where the Commissioner held that students who alleged that they had a direct interest in the allocation of common planning time within the school day and that they would be harmed if changes were made to reduce common planning time had standing in the action.

in the schools, but generations of their families, will be harmed if the intervention for school improvement is ineffective."); *Id.* at 3 ("If the intervention in the schools is not meticulously structured for success, including incorporating enforceable transparency, inclusion and accountability mechanisms for parents and students, positive changes to the schools will not be sustained and the petitioners will be seriously harmed.").

b) Nonetheless, the harm suffered by Petitioners is distinct from that of the public-at-large.

Petitioners need not cite to any particularized or distinct harm under §§16-39-1 and 2; they must only be "adversely affected" in and of themselves. *See Pattavina* and the discussion in Section II(c). That said, even though Rule 24 standing requirements are inapplicable to the current action, a few misconceptions must be clarified, as RIDE's memorandum misstates Petitioners' position and interests.

First, RIDE's motion argues that the student petitioners lack standing because they "cannot demonstrate an injury discrete from [sic] 'public at large,' that is the entire student body."[11] The petitioners do, in fact, together represent the entire study body. Over the past ten years, the City of Providence has recognized these students as advocates in pressing for educational change and as representatives of students' interests. Through their advocacy on behalf of the student body for example, they have succeeded in eliminating high-stakes testing, restoring class scheduling, and increasing student access to bus passes.

Second, RIDE incorrectly notes that "the best student organizations can claim is that have [sic] an "interest in the problem" being addressed.[12] In fact, as organizations whose missions are centered around supporting students, and whose memberships are comprised of current and past

[11] Memorandum at 12.
[12] Memorandum at 15.

PPS students, the student organization petitioners have a direct stake in the outcomes of the intervention. The purpose of the Turnaround Plan is to provide much-needed and drastic improvements in the school system, mirroring the very core of the student organizations' missions, expenditures, and actions: nothing less than the work they have been engaged in for many years. The stakes are even higher for the student-members of each organization, whose futures will be determined by the success or failure of the intervention.

V. Practical considerations support intervention by Petitioners.

RIDE asserts that practical considerations weigh in favor of excluding the petitioning parents, students, and student organizations from education system decision-making so as to avoid "re-complicating" the district's progress toward improvement. In reliance on this assertion, RIDE cites to a primary finding in the Johns Hopkins report, comparing the inclusion of PPS parents, students, and student organizations to the current system of "multiple, overlapping sources of governance and bureaucracy..."[13] RIDE goes on to state that "permitting the intervention of these students, parents and organizations would be the first step to the same multiple and overlapping sources of governance that has hindered PPSD success in the past."[14]

RIDE maintains that formal inclusion of the Petitioners—the parents, students, and student organizations who wished to be heard prior to a formal state takeover of their school district—"would have a negative impact on the efficient and timely implementation of a Turnaround Plan."[15] It is precisely such skepticism of parental and student involvement that motivated the Petitioners' Motion to Intervene.

[13] Memorandum at 16.
[14] Memorandum at 16.
[15] Memorandum at 16.

All petitioners in this matter firmly support the implementation of a turnaround plan. However, the haste with which RIDE and the Commissioner appear to be proceeding, and the lack of any specific, articulable role for parents and students in the 122-page Proposed Decision and Order, leave Petitioners understandably skeptical of the time and effort that will be devoted for true parental and student input into the turnaround process. In short, Petitioners respectfully urge the Commissioner to not sacrifice the ultimate effectiveness of the intervention for expedience.

Without a clear role for parental and student definition of short- and longer- term measures for success at each stage of the Plan—from implementation through (hopefully) successful fruition—as well as the development, with parents and students, of clearly defined exit criteria for return of the control of the district to local authorities, the Turnaround Plan's likelihood of meaningful success will exponentially decline. Transparency and formal mechanisms for community involvement in the development of the Turnaround Plan *prior* to its adoption and throughout its implementation are essential to the shared goal of a successful intervention.

Finally, it apparently bears repeating that parents and students are not a hindrance, nor should they be compared to the very systems that have continually and systematically failed PPS students and families in the first place. Quite the contrary, literature examining the results of state interventions in public schools clearly demonstrates that an intervention *without* authentic and mandatory community inclusion will fail to bring significant and lasting improvements so desperately needed in the PPS. Petitioners only seek to be formally included to help revive the school district throughout the Turnaround Plan's inception and duration.

VI. Conclusion

For the reasons articulated herein, Petitioners respectfully maintain that they have standing to intervene and request that their motion be granted.

Respectfully submitted,

Providence Parents, Students and Student Organizations

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Certification

I certify that on September 12, 2019 a copy of this Motion and Memorandum with supporting materials was provided by electronic delivery to John A Tarantino (jtarantino@apslaw.com) Counsel to the Commissioner, and Marc DeSisto (marc@desistolaw.com) Counsel to the Department of Education, and both electronically and with four hard copies to legal@ride.ri.gov by hand-delivery.

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