STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
COMMISSIONER OF EDUCATION

In re: Providence Public Schools District

RI DEPARTMENT OF EDUCATION'S MEMORANDUM IN SUPPORT OF OBJECTION TO PROVIDENCE SCHOOL PARENTS', STUDENTS' AND STUDENT ORGANIZATIONS' MOTION TO INTERVENE

I. Introduction

Both the decline of the Providence Public School District (PPSD) and the success of the Commissioner's takeover efforts have, and will, impact a wide range of individuals and groups. In addition to the students, parents and organizations (hereinafter "Movants") who seek to join through the instant Motion, there are thousands of other students and parents, as well as future students and parents, that could be impacted by the Turnaround Plan. The taxpayers of the City as well as PPSD's teachers and administration also have an equally strong interest in seeing the Turnaround Plan succeed. However, under the plain mandates of the Crowley Act, the burden is placed on the Department of Elementary and Secondary Education to correct the errors of the past and ensure the school district meets not only the expectations of the students and parents, but the future students, taxpayers, teachers and staff. *R.I.G.L. § 16-7.1-5.*

In deciding the present Motion to Intervene, consideration must be given not only to the legal perquisites of granting the Movants intervenor status and ensuring proper standing of the proposed intervenors under the Crowley Act, but also on the practical implications of allowing the handful of students, parents and organizations the control requested by the instant motion in consideration of the Crowley Act's intent and purpose. As outlined below, RIDE submits that not only have the movants failed to demonstrate the right to intervene, either as of right or permissive, but they nevertheless lack standing to participate to the level sought by the instant

motion. Moreover, in the final analysis, the intervention is contradictory to the purpose of the Crowley Act turnaround scheme and thus should be denied.

II. Argument

In addressing the instant Motion, it must first be recognized that the instant proceeding does not fall neatly into any settled proceeding. While the Movants attempt to apply administrative decisions addressing the standing of an aggrieved party under the Administrative Procedures Act to intervene in support of their Motion, as the Movants themselves note, and reflected by the support voiced by the Mayor, City Council, Superintendent, and School Board, there is no true dispute in the instant matter because everyone agrees that the Commissioner needs to intervene and exert control of the PPSD. Moreover, the Crowley Act itself does not anticipate an adversarial proceeding in implementing a Turnaround Plan for a failing school district. It is also not a true cause of action as found in the typical court actions brought by one party against another. Nevertheless, tried and true constitutional standards of "standing" as well as standards governing the right to intervene offer the best and settled means of addressing the Movants' current request.

A. Movants do not satisfy the requirements of either intervention as of right or permissive intervention[1]

Guidance for determining whether to grant the Motion to intervene can be found in Rule 24 of the R.I. Superior Court Rules of Procedure. Rule 24 identifies two forms of intervention, intervention as of right and permissive intervention. The Movants' papers do not identify whether they seek intervention as of right or whether they are seeking permissive intervention.

[1] Although standing is a constitutional prerequisite to joining a cause of action, and thus itself is determinative of the instant motion. The permissive right of intervention also incorporates considerations of a party's requisite standing. Thus, RIDE addresses Rule 24's intervention standard as the framework for the instant Motion and incorporates the standing requirements therein.

Nevertheless, the Movants have indicated during conference that they are seeking entry alternatively under both forms of intervention. Settled precedent, however, demonstrates that the Movants failed to demonstrate the right to intervene either as a matter of right or under permissive considerations.

i. Intervention as of Right

Rule 24(a) itself identifies two (2) types of intervention as a matter of right. The first is the right to intervene because a state statute confers such an "unconditional right." R.I. R.Civ.Pro., Rule 24(a)(1). The Council of Elementary and Secondary Education ("Council") is exercising its authority to take control and reconstitute the PPSD under the Crowley Act. See *R.I.G.L. § 16-7.1-5.* This Act specifically states that the State "shall" take control over a failing school and/or district budget, program, and/or personnel. *Id.* While the statute permits such control to be exercised in collaboration with the school district and the municipality, the Act does not mandate such collaboration and specifically does not confer an unconditional right on any party to intervene. Rather, the Act specifically states that "[t]his control by the department of elementary and secondary education ***may*** be exercised in collaboration with ***the school district and the municipality***." *Id.* The discretion to include certain, identified parties, therefore, is not only left to the Council but is specifically limited to the entities already made a party to this proceeding – the school district and the municipality. More directly, however, the authority to reconstitute a district is delegated specifically and solely to the Board of Regents. The section reads:

> If further needed, the school shall be reconstituted. **Reconstitution responsibility is delegated to the board of regents.** *Id.* (emphasis added).

Accordingly, in the first instance, because the Crowley Act limits the authority of reconstituting and taking control of a flailing school district to the Board alone while only granting permissive

inclusion to school districts and municipalities, the Movants cannot claim a statutory right to intervene as of right under Rule 24(a)(1).

Rule 24(a)(2), which offers an alternative mean of intervening as of right, similarly fails to support the Movants' Motion. This alternative intervention as of right is guided by the four-factor test articulated by the Supreme Court in *Tonetti Enterprises, LLC v. Mendon Road Leasing Corp.*, 943 A.2d 1063, 1072-73 (R.I. 2008) (hereinafter *Tonetti*). Under these factors, the Movants must: 1) file a timely application, 2) "claim[] an interest relating to . . . [the] transaction which is the subject matter of the action, [(3) demonstrate that] the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, and [(4) show] the applicant's interest is not adequately represented by current parties to the action * * * ." *Tonetti*, 943 A.2d at 1072-73. *Hines Rd., LLC v. Hall*, 113 A.3d 924, 927 (R.I. 2015). In this case, movants fail to demonstrate either being impeded by the ability to protect their interest in the Turnaround Plan and on the claim that they are not adequately represented.[2]

First, there is absolutely no basis to support a finding that the Movants will suffer an inability to protect themselves without being granted intervenor status. *Id.* The Movants have specifically claimed that their ability to protect themselves will be impaired because they have no input or control over the Turnaround Plan under the proposed Order and that they lack the ability to act as a check on the Commissioner's actions by means similar to the electoral authority they hold over the Mayor and City Council. The Movants' fears, however, have no basis in fact.

[2] Although timely, as described infra, the named students' and parents' interest in the Commissioner succeeding in the formulation and implementation of the Turnaround Plan, that is their "standing" to participate in this action, is not a distinct interest or injury different from the thousands of other students and parents or even an interest distinct from that held by the entire electorate of the City. Thus, for the reasons outlined below, the Movants fail to demonstrate standing to support intervention as of right in the instant action.

More directly, while the Commissioner, as designated by the Council and identified in the Proposed Order of Control and Reconstitution, is the final decisionmaker on the Turnaround Plan, the Movants appear to misread the proposed Order as it relates to input from various interested parties. That is, the Movants have sought to intervene in order to champion transparency in the formulation of the Turnaround plan and to ensure the inclusion of the Movants' perspective in the formulation of the Turnaround Plan. However, a plain reading of the Proposed Order demonstrates that the Commissioner has clearly recognized not only the desire for transparency but also the benefit of obtaining input from various sources, including the current Movants. Paragraph 4 of the proposed Order specifically states:

> 4. Upon appointment, the State Turnaround Superintendent and/or other designee(s) shall immediately begin a process to co-create a Turnaround Plan with the Commissioner. Before, during, and after the development of such a Turnaround Plan, the State Turnaround Superintendent and/or other designee(s) **shall** engage, be accessible, and be responsive to **students, parents, families, educators and the public broadly**. This engagement may include, but not be limited to, **public forums and current existing structures such as parent organizations and community advisory boards**, as well as any new undefined structures at the discretion of the State Turnaround Superintendent and/or other designee(s) and the Commissioner. This process of developing a Turnaround Plan **shall** also include an opportunity for public engagement **for the purpose of soliciting recommendations for the content and ultimate goals of the Turnaround Plan from a broad variety of stakeholders, including school leaders, educators, students, parents, families, city leaders and community members.**

*Proposal for Decision and Order Establishing Control Over the Providence Public School District and Reconstituting Providence Public School District, at A2, ¶ 4 ([Proposed] Order of Control and Reconstitution).*As this provision makes clear, not only does the proposal mandate transparency by requiring the engagement of the various groups and public forums, but it also mandates the inclusion of these groups in order to solicit the very same guidance the Movants claim to be able to offer – "recommendations for the content and ultimate goals of the Turnaround Plan from a broad variety of stakeholders." *Id.*

Despite these mandates and the inclusion of the Movants in the formulation of the Turnaround Plan, the Movants appear to focus on the appointment of the Turnaround Superintendent and seek authority to "review finalist credentials and provide their perspectives on which leader will best serve the community's goal of improved schools." *Motion, at 8.* In the first instance, this complaint ignores the fact that 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. As allowed under the Crowley Act, they have been asked for their input on the proposed plan and have expressed support for the same. The Movants maintain electoral control over those same officials, and thus there is no basis to conclude that lack the ability to protect themselves. Moreover, any perceived failure to allow such involvement in this aspect of the takeover of the district does not automatically give rise to an inability to protect their interests. As noted, the proposed Order not only requires the Turnaround Superintendent to maintain transparency and solicit recommendations from these very Movants in formulating and implementing the Turnaround Plan, but the Commissioner maintains final decision-making authority over every aspect of the plan. *Proposal for Decision and Order Establishing Control Over the Providence Public School District and Reconstituting Providence Public School District, at A2, ¶ 3 ([Proposed] Order of Control and Reconstitution).* This authority emanates from the Crowley Act itself, which the Movants' own electorate in the General Assembly enacted and implemented. Thus, the Movants' complaint about a lack of input over the individual who may be designated to assist the Commissioner during the Turnaround phase does not undermine their ability to protect their interest without being made a party to the instant action. In fact, the Movants' position begs the question of what degree of involvement they claim is needed to protect their interests. Do they claim a right to intervene in

order to obtain veto power over decisions such as the designation of a Turnaround Superintendent or particular aspect of the Turnaround plan? As discussed *infra*, such multiple, overlapping bureaucracy hinders the goal of ensuring transformative change needed in the school district.

Even if the Movants could demonstrate the need to intervene to protect themselves, the Motion to Intervene should nevertheless be denied because there is no support for the claim that their interests are "not adequately represented by current parties to the action…", the final element necessary to allow intervention as of right. *Tonetti*, 943 A.2d at 1072-73. As the parties seeking to intervene, the Movants bear the burden of showing inadequate representation. However, the inadequate representation "requirement is more than a paper tiger." See *Pub. Serv. Co.*, 136 F.3d at 207.[3] The Movants must produce "some tangible basis to support a claim of purported inadequacy." *Groff*, 871 A.2d at 368 (emphasis added); see *Pub. Serv. Co*., 136 F.3d at 207. *Harris*, 113 F.R.D. at 622. This burden become more imposing "when the party on whose behalf the applicant seeks intervention is a governmental body or officer charged by law with representing the interests of the proposed intervenor." *Am. Nat'l Bank & Trust Co. of Chi. v. City of Chicago*, 865 F.2d 144, 148 (7th Cir. 1989) (quoting *Keith v. Daley*, 764 F.2d 1265, 1270 (7th Cir. 1985)). The reason is when "a party litigant is charged with representing the proposed intervenor's interests" the adequacy of representation is presumed by default. *United States v. Am. Inst. of Real Estate Appraisers of the Nat'l Ass'n of Realtors*, 442 F. Supp. 1072, 1082 (N.D.

[3] Rule 24(a) of the R.I. Superior Court Rules is aligned with its federal counterpart. *Credit Union Cent. Falls v. Groff*, 871 A.2d 364, 366 (R.I. 2005). See also Rule 24 Committee Notes (stating that "the 1995 amendment of subdivision (a) follows the 1966 amendment of Federal Rule 24(a)"). Thus, the R.I. Supreme Court has sought guidance from Federal precedent when interpreting Rhode Island's Rule. See ie *Groff*, 871 A.2d at 366; *Tonetti*, 943 A.2d at 1073 (R.I. courts "properly look to the federal courts for guidance" on the application of Rule 24(a)).

Ill. 1977). In such cases, a movant must provide a "compelling showing" of the inadequate representation in order to overcome the presumption of adequacy. *Id.*; see *Pub. Serv. Co.*, 136 F.3d at 207. Cf *Narragansett Improvement Co. v. Marcantonio*, Nos. PC-2008-6504, PC-2008-7468, 2012 R.I. Super. LEXIS 49, at *33-34 (Super. Ct. Mar. 30, 2012) citing *Pub. Serv. Co.*, 136 F.3d at 207 and *U. S. v. Hooker Chems. & Plastics Corp.*, 749 F.2d 968, 985 (2d Cir. 1984)) (the putative intervenor must make "a strong affirmative showing" that the government is not fairly representing the applicant's interests).

In this case, there is absolutely no basis, let alone a "compelling showing" that undermines the presumption of the adequacy of the representation at the show cause hearing. Quite simply, the Movants' interests are represented by all the parties involved in this action – Commissioner, RIDE, Mayor, School Board and City Council. In the first instance, as noted, the Commissioner was specifically appointed and charged by law to represent the Movants' interest by virtue of the pure nature of the office as well as the mandates of the Crowley Act's takeover provisions and designation by the Council. See R.I.G.L. §§ 16-6-60 & 16-7.1-5. While the Movants complain that they lack the same oversight over the Commissioner that they have over the elected officials who had previously been in charge of the school district, such lack of electoral control does not undermine the presumption that the Commissioner, specifically appointed to represent the Movants' interests, will adequately represent those interests. Rather, the Movants' arguments merely touch on whether a party can take an action in the future to display their displeasure with certain decisions, not whether the individual or entity can adequately represent them in the first instance. But that being said, as demonstrated above, the presence of the elected officials, elected by the Movants and other electors, at the show-cause level, resolves the Movants' concerns. That is, the parties to the proceeding are the Movants'

chosen elected officials. Thus, the Movants cannot show that "their interest [are] not adequately represented by current parties to the action * * * " such to warrant intervention as of right. *Tonetti*, 943 A.2d at 1072-73.

The Motion to Intervene should thus be denied because the Movants cannot demonstrate an entitlement to intervention as a matter of right. Not only do they lack the statutory authority to claim such a right, but they fail to demonstrate either that disposition at the show cause level without their involvement will impair or impede their ability to protect their interest or that they are not adequately represented by current parties.

ii. Permissive intervention

As noted, the Movants have indicated an intent to alternatively seek permissive intervention in the event their claim of intervention as of right fails. However, the Movants' claim to permissive intervention under Rule 24(b)(2) fairs no better. Rule 24(b)(2) specifically provides:

> [u]pon timely application anyone may be permitted to intervene in an action * * * [w]hen an applicant's claim or defense and the main action have a question of law or fact in common….In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. Super. R. Civ. P. 24(b)(2).

Courts have identified a number factors to take into consideration in determining whether to grant permissive intervention. These factors include, to some extent, the factors required under a claim of intervention as of right. *In Re Acushnet River v. New Bedford Harbor*, 712 F. Supp. 1019, 1023 (D. Mass 1989) ("The Court may also consider the prejudice that may be suffered by the existing parties along with whether the intervenors' interests are adequately represented by other parties and whether parties seeking intervention will significantly contribute to the full development of the underlying factual issues in the suit and to the just and equitable adjudication

of the legal questions presented"); *Spangler v. Pasadena City Bd. of Ed*, 552 F.2d 1326, 1329 (9th Cir. 1977). In addition, consideration must be given to whether the intervenor seeks to raise a claim or defense not already in the case. *Standard Heating & Air Conditioning Co. v. City of Minneapolis*, 137 F.3d 567, 573 (8th Cir. 1998). The Movants must also demonstrate their individual standing to raise relevant legal issues in order to justify being permissively added to the proceeding. *Hatton v. County Bd. of Educ*., 422 F.2d 457, 461 (6th Cir. 1970). See also *Napolitano v. Burgess*, C.A. No. 96-5823, 1997 R.I. Super. LEXIS 96, at *7-8 (Super. Ct. Feb. 13, 1997).

In this case, permissive intervention is not appropriate in the first instance because the Movants fail to "raise any claim or defense different from those already in the case." *Standard Heating, 137 F.3d at 573*. In this case, the Movants attempt to claim that they will be raising their own interests rather than those currently represented by the parties, when in fact they are merely seeking to interject their own perspective on the same issues. This perspective, however, has a clear avenue for expression in the mandates of paragraph 4 of the Order. *Proposal for Decision and Order Establishing Control Over the Providence Public School District and Reconstituting Providence Public School District, at A2 ([Proposed] Order of Control and Reconstitution)*. Pursuant to that section, the current Movants will have an opportunity to share their perspectives and offer "recommendations for the content and ultimate goals of the Turnaround Plan." *Id.* Thus, because "the proposed intervenor merely underlines issues of law already raised by the primary parties," permissive intervention is not appropriate. *United States v. Am. Inst. of Real Estate Appraisers etc.*, 442 F. Supp. 1072, 1083 (N.D. Ill. 1977).

The Movants also fail to demonstrate the requisite standing to support their permissive intervention in the instant case. The basic understanding of requisite standing under R.I. law

hinges upon proof that the individual "has alleged an injury in fact." *R.I. Ophthalmological Soc'y v. Cannon*, 317 A.2d 124, 129 (R.I. 1974). An "injury in fact" is defined as "invasion of a legally protected interest which is (a) concrete and particularized * * * and (b) actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560 (internal quotation marks omitted).[4] Moreover, "it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" *Id.* at 561.

Notably, and especially relevant to the instant case, is the fact that the plaintiffs must "allege his[/her] own personal stake in the controversy that distinguishes his[/her] claim from the claim of the public at large." *Burns v. Sundlun*, 617 A.2d 114, 116 (R.I. 1992). R.I. Courts have thus repeatedly denied standing to parties that have failed to demonstrate "a discrete "injury in fact" distinct from the public at large." *Nye v. City of Warwick*, 736 A.2d 82, 83 (R.I. 1999). See

[4] In support of their claim of injury and being an aggrieved party entitled to intervene, the Movants cite prior decisions of the Commissioner in which students, parents or student organizations were allowed to intervene. The cases cited, however, are all distinguishable primarily because of the issues being addressed in those cases did not involve the takeover of entire school districts. Rather, those cases involved comparatively minor disagreements such as the construction of new building or implementation of new breakfast program. *R.I. Parents for Progress v. Pawtucket School Committee*, Commissioner of Education (May 22, 1992) (seeking implementation of school breakfast program at particular schools in district); *Pattavina et al. v. Newport School Committee*, Commissioner of Education (May 26, 2011) (design of new school); *Certain Students at Hope High School v. Providence School Board*, Commissioner of Education (Aug. 16, 2010) (challenge to decision to reduce common planning time at Hope High School). In those case, the intervenors were individual specifically impacted by the potential decision, separate and distinct from the general population. For example, in *Pattavina*, the intervenors included parents of children who were "likely to attend" the school under construction. In *R.I. Parents for Progress* the group similarly had at least two parents whose children attended the school that would be affected by the breakfast program. Contrariwise, in the instant case, the Movants cannot claim a distinct interest, separate from the rest of the school body. Moreover, those cases are further distinguishable because in each of those cases the intervenors were in conflict with the governing body and were seeking to overturn or compel the governing body (school committee) to take a particular action. Thus, there could be no finding that the intervenors' interests were being adequately represented such to deny their inclusion in the administrative appeal.

also *McCarthy v. McAloon*, 83 A.2d 75, 78 (R.I. 1951) (no standing for a member of the public who is injured unless a distinct legal interest different from the public at large exists); *Bowen*, 945 A.2d at 317 (holding that the injury alleged must be personal and distinct from public interest); *Meyer v. City of Newport*, 844 A.2d 148, 151 (R.I. 2004) (holding that plaintiffs had no standing to challenge the construction of a marina interfering with their personal use of a wharf as their rights in the wharf were not distinct from the rights held by the general public); *W. Warwick Sch. Comm. v. Souliere*, 626 A.2d 1280, 1284 (R.I. 1993) (holding that no standing existed where "taxpayers failed to show any actual or concrete wrong beyond a general grievance common to all taxpayers"); *Save the Bay, Inc. v. State Coastal Res. Mgmt. Council*, No. PC-2014-1685, 2014 R.I. Super. LEXIS 139, at *19-20 (Super. Ct. Sep. 29, 2014).

In this case, the Movants claim of standing falters upon the recognition that their claimed injury or interest is no different or discrete from the potential injury and interest to the public. The Movants are comprised of nine (9) current students, four (4) alumni, eight (8) parents on behalf of their children along with four (4) Student organizations.[5] While the current students and parents may have an interest in the success of the Turnaround Plan, these individuals cannot demonstrate an injury discrete from "public at large," that is the entire student body. Simply put, the entire student body, inclusive of parents, is going to be affected by the implementation of the Turnaround Plan. These seventeen (17) current students and parents cannot identify any discrete or particular interest or potential injury different from the remaining study-body-at-large.

In fact, these students even fail to demonstrate an injury discrete from the public interest shared by the entire public. That is, the interest the Movants' claim is an interest in ensuring that

[5] As noted below, an organization must meet certain other elements in order to successfully prove standing to intervene.

the Turnaround Plan is successful and the PPSD's curriculum provides adequate and safe education. Although a current resident may not have a student enrolled in the PPSD, there are a number of citizens that have future students that will be affected and impacted by the success of the proposed Turnaround Plan. Even those members of the public without students enrolled in school or potential students have a similar interest in ensuring the Turnaround Plan is successful because they are the taxpayers of the City whose money will fund the Plan[6] and who could potentially benefit financially in the form of increased property values from the success of the plan. The teachers and administration are also members of the general public that have a similar interest in the success of the Turnaround Plan. Therefore, although the current students and parents who have moved to intervene can claim in interest in the success of the Turnaround Plan, this interest is not separate or discrete from that held by the general public – whether that public is comprised of the student body or the entire citizenry of the City. *Burns*, 617 A.2d at 116 (standing requires proof of "personal stake in the controversy that distinguishes his[/her] claim from the claim of the public at large").

In addition to the individual movants, there are also four (4) student organizations that seek to intervene in this action. Organizational standing is tied to the individual standing of its proposed members. Specifically, an organization has standing "when [the organization's] members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested require the participation of individual members in the lawsuit." *In re Review of Proposed New*

[6] See R.I.G.L. § 16-7.1-5 ("If a school or school district is under the board of regents' control as a result of actions taken by the board pursuant to this section, the local school committee shall be responsible for funding that school or school district at the same level as in the prior academic year increased by the same percentage as the state total of school aid is increased").

Shoreham Project, 19 A.3d 1226, 1227 (R.I. 2011) (quoting *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 181 (2000)).

In the first instance, the organizations represent that their membership is comprised of both current and former students of PPSD. See *Motion, Exhibit C.* As defined above, neither the current nor former students have standing to sue because they cannot cite an injury or interest discrete and unique from the general public. *Cranston Police Retirees Action Comm. v. City of Cranston*, No. KC-13-1059, 2016 R.I. Super. LEXIS 86, at *73 (Jul. 22, 2016) (citing 13A Fed. Prac. & Proc. Juris. § 3531.9.5 *Rights of Others—Organizational Standing* (3d ed. 2016)) (The question of whether the organization's members would otherwise have standing to sue "is evaluated by examining the injury in fact to the individual members of the organization"). Thus, at the outset, because the individual members do not otherwise have standing to sue in their own right, the organizations cannot claim standing to intervene on their behalf.

In addition, while the Movants may claim that the interests at stake are germane their organizational purpose, germaneness of the interests at stake to the organization's purpose "address[] the basic justification for organizational standing to represent members' interests." *Cranston Police Retirees*, 2016 R.I. Super. LEXIS 86, at *73-74 (quoting 13A Fed. Prac. & Proc. Juris. § 3531.9.5 *Rights of Others—Organizational Standing* (3d ed. 2016)). It must be determined that the "lawsuit would, if successful, reasonably tend to further the general interests that individual members sought to vindicate in joining the association and whether the lawsuit bears a reasonable connection to the association's knowledge and experience." *Id.* at *74 (quoting *Bldg. and Constr. Trades Council of Buffalo, N.Y. and Vicinity v. Downtown Dev., Inc.*, 448 F.3d 138, 149 (2d Cir. 2006)).

However, and importantly, "[m]ere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to grant an organization standing." *Blackstone Valley Chamber of Commerce v. Public Utils. Comm'n*, 452 A.2d 931, 933 (R.I. 1982) (quoting *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972)). Thus, "[c]onflict between a defendant's conduct and an organization's mission is alone insufficient to establish Article III standing . . . [and] frustration of an organization's objectives is the type of abstract concern that does not impart standing." *Nat'l Treasury Employees Union v. United States*, 101 F.3d 1423, 1430 (D.C. Cir. 1995). In this case, the best the student organizations can claim is that have an "interest in the problem" being addressed by the instant proposed Order of Control and Reconstitution. This, however, is simply not enough.

Accordingly, for all these reasons, the Movants' claim for permissive intervention should similarly be rejected and the Motion to Intervene should be denied.

B. Practical considerations weigh against permitting the intervention by the current parties

In the final analysis, it must be remembered that this action is brought pursuant the statutory mandate of the Crowley Act. The Act itself specifically identifies the proper entities to be involved in the promotion of the Order of Control and Reconstitution of a School District. Those entities are the elected representatives of the Movants – the Mayor and City Council. Reconstitution under the Crowley Act, meanwhile, includes "restructuring the school's governance, budget, program, personnel and/or may include decisions regarding the continued operation of the school." *R.I.G.L. § 16-7.1-5.* As described above, such actions will touch on a large contingent of individuals who may all claim some form of interest and or injury.

Moreover, as identified in the *Proposal for Decision and Order Establishing Control Over the Providence Public School District and Reconstituting Providence Public School District*, one of the identified problems with PPSD which requires the intervention of RIDE is the fact that PPSD is "overburdened with multiple, overlapping sources of governance and bureaucracy . . . The resulting structures paralyze action, stifle innovation and create dysfunction and inconsistency across the district." *Proposal for Decision and Order Establishing Control Over the Providence Public School District and Reconstituting Providence Public School District*, at 8 (citing Johns Hopkins Report). 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.

Finally, there is the further practical consideration as to the scope of these Movants' proposed participation. As noted, under the Proposed Order, the Movants are given an opportunity to provide recommendations and input into the content and ultimate goals of the Turnaround Plan as well as mandating public forums to keep the interested parties informed. This involvement begs the question of just what additional authority these Movants seek to exercise throughout the Turnaround Plan. They have indicated an interest in being granted the ability to meet finalists for key positions, such as the Turnaround Superintendent, and to review their credentials and provide feedback, but are they also seeking veto power over such appointments? What if they disagree with the Commissioner's ultimate choice? Practically speaking, the addition of the instant Movants to the instant proceeding, beyond that already proposed under the Proposed Order of Control and Reconstitution, would have a negative impact on the efficient and timely implementation of a Turnaround Plan.

III. Conclusion

Accordingly, for the reasons cited herein, RIDE respectfully submits that the Proposed Order on Control and Reconstitution provides the accountability, transparency and inclusion that the Movants seek to promote by their own intervention in the instant matter. In any event, the Movants fail to demonstrate entitlement to intervention as a matter of right or the right to permissive intervention. The Motion to Intervene should accordingly be denied.

RIDE,
By its attorneys,

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