

STATE OF RHODE ISLAND
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
OFFICE OF THE COMMISSIONER

In re the Petition for a declaratory order	:	
regarding unexpended school funds by the	:	
PROVIDENCE PUBLIC SCHOOL DISTRICT	:	
<i>Petitioner,</i>	:	
	:	
and	:	RIDE D.O. No. 26-002
	:	
THE CITY OF PROVIDENCE and	:	
SHOMARI HUSBAND, in his capacity as	:	
Treasurer of the City of Providence,	:	
<i>Interested Parties</i>	:	

In re the Petition for a declaratory order	:	
regarding the authority of the Providence	:	
School Board by the PROVIDENCE PUBLIC	:	
SCHOOL DISTRICT,	:	
<i>Petitioner</i>	:	
	:	
and	:	RIDE D.O. No. 26-005
	:	
TY'RELLE STEPHENS, in his official capacity	:	
as President of the PROVIDENCE SCHOOL	:	
BOARD and THE CITY OF PROVIDENCE	:	
and SHOMARI HUSBAND, in his capacity as	:	
Treasurer of the City of Providence,	:	
<i>Interested Parties</i>	:	

I. THE DECLARATORY ORDER PROCEDURE

Rhode Island’s Administrative Procedures Act (the “APA”) provides that “[a] person may petition an agency for a declaratory order that interprets or applies a statute administered by the agency or states whether, or in what manner, a rule, guidance document, or order issued by the agency applies to the petitioner” and “[n]ot later than sixty (60) days after receipt of a petition under subsection (a), an agency shall issue a declaratory order in response to the petition,

decline to issue the order, or schedule the matter for further consideration.” R.I. Gen. Laws § 42-35-8(a), (c). The APA also provides that “[i]f an agency declines to issue a declaratory order requested under subsection (a), it shall notify, promptly, the petitioner of its decision. The decision must be in a record and must include a brief statement of the reasons for declining.” Such orders are “subject to judicial review for abuse of discretion.” R.I. Gen. Laws § 42-35-8(d).

Moreover, neither the declaratory order statute nor the *Regulations Governing Declaratory Order Petitions*, 200-RICR-30-15-2, mandate that any hearing be conducted or that interested parties be afforded an opportunity to comment upon pending petitions. Such measures are left wholly to the discretion of the agency.

II. THE PENDING PETITIONS

1. The Surplus Petition

On June 5, 2026, Petitioner, the Providence Public School District (“PPSD” or the “Petitioner”), by and through Angélica Infante-Green, in her dual capacity as Commissioner of the Rhode Island Department of Elementary and Secondary Education (the “Commissioner” and “RIDE,” respectively) and as the delegate of the Council on Elementary and Secondary Education (the “Ed. Council”) under *The Paul W. Crowley Rhode Island Student Investment Initiative*, R.I. Gen. Laws § 16-7.1-5 (the “Crowley Act”), filed a *Petition for Interpretation of School Law on District Surpluses* (the “Surplus Petition”) and served the Petition upon the Solicitor for the City of Providence (the “City”). In its Petition, PPCSD has alleged that in an appropriation ordinance that was included in the City’s proposed municipal ordinances for Fiscal Year 2027 (the “Proposed Ordinance”), “[t]he City has either misinterpreted or ignored” R.I. Gen. Laws § 16-7-23,” which provides that “[a]ll state and local funds unexpended by the end of the fiscal year of appropriation

shall remain a surplus of the school committee and shall not revert to the municipality.” *See* Petition, ¶¶ 16-17 at 4-5 (quoting § 16-7-23(d)). (A copy of the Proposed Ordinance is included as Ex. B to the PPSD Mem.). In the Petition, PPSD has requested that the Commissioner:

- a. issue a declaratory order under R.I. Gen. Laws § 42-35-8 interpreting R.I. Gen. Laws § 16-7-23(d) and any other applicable School Law that may apply to the facts of this case;
- b. declare that the City’s Proposed Municipal Ordinance is inconsistent with and would violate school law, as it would redirect funds intended for education purposes only to the general fund, which serves broader municipal purposes;
- c. declare that the City cannot, by municipal ordinance, attempt to redefine the meaning of educational purposes under state law;
- d. declare that the City’s Proposed Municipal Ordinance would be preempted and unenforceable; and
- e. grant such other and further relief as the Commissioner deems just and proper to ensure observance of all laws relating to schools and education.

2. The Employment Decisions Petition

On June 12, 2026, the Commissioner filed a separate *Petition for Interpretation of School Law Concerning Authority Over Certain Employment Decisions* (the “Employment Decisions Petition”) on behalf of PPSD, which it also served upon the City Solicitor as well as upon counsel for the Providence School Board (the “School Board”). In the Employment Decisions Petition, PPSD alleged that the President of the School Board had recommended that in anticipation of the return of PPSD to local control on July 1, 2026: (a) the Labor and Employment Counsel position at PPSD be eliminated and those funds redirected into a School Board employment account so the School Board can support both a Director and a Coordinator position; and (b) that any full-time employment (“FTE”) positions supporting the School Board should report directly to the Board.

PPSD claims that the President's recommendations raise a legal issue with respect to the authority of the School Board to appoint, terminate and directly supervise administrators and other District personnel not assigned to individual schools, and has requested that the Commissioner:

- a. issue a declaratory order under R.I. Gen. Laws § 42-35-8 interpreting R.I. Gen. Laws § 16-2-9 and R.I. Gen. Laws § 16-2-11 and any other applicable school law that may apply to the facts of this case;
- b. declare that, pursuant to Chapter 2 of Title 16, the School Board only has the authority to appoint the Superintendent and that the Superintendent has the authority to appoint all other administrators and other personnel not assigned to individual schools;
- c. declare that the recommendation made and direction given in the School Board President's June 2, 2026 communication is inconsistent with and would violate school law, as it would usurp the Superintendent's express statutory powers under R.I. Gen. Laws § 16-2-11;
- d. declare that the Providence School Board cannot rewrite statutory school law or interpret it differently than the Commissioner to redefine its powers or that of the Superintendent; and
- e. grant such other and further relief as the Commissioner deems just and proper to ensure observance of all laws relating to schools and education.

III. THE INTERESTED PARTIES AND THE SCHEDULING ORDER

As noted, both Petitions were served upon the City Solicitor as well as upon counsel for the School Board, and on June 12, 2026, a Hearing Officer appointed by the Commissioner entered a *Notice and Order: (1) Consolidating the Request for Declaratory Orders Regarding Unexpended School Funds and the Authority of the School Board; and (2) Scheduling the Briefing by Interested Parties*. PPSD and the interested parties were provided up to and including the close of business on Tuesday, June 23, 2026, to file legal memoranda addressing or responding to any of the issues raised in either Petition, and the Notice and Order provided that the Commissioner would issue a declaratory order addressing the legal questions raised and relief requested in the Petitions by the close of business on Tuesday, June 30, 2026.

Thus, on June 23, 2026, PPSD submitted a Memorandum of Law in Support of the Petitions (the “PPSD Mem.”), along with the affidavit of PPSD’s Deputy Superintendent of Operations, Zachary Scott (the “Scott Aff.”); the City and School Board jointly submitted a legal memorandum in opposition to the Employment Decisions Petition, along with the Affidavit of School Board President Ty’Relle Stephens (‘the “Joint Opp. Mem.” and “Stephens Aff.,” respectively), seeking dismissal or alternatively, an order “that declares the authority of the Board to engage appropriate and necessary staff support, within the constraints of budget and reason, under Title 16, Chapter 2, to assist in carrying out its governance work[.]” *id.* at 19; and finally, the City separately submitted a Motion to Dismiss the Surplus Petition (the “City’s Mot. Dismiss”).

IV. THE STATE INTERVENTION UNDER THE CROWLEY ACT

In May of 2019, the Johns Hopkins Institute for Education Policy (“Johns Hopkins”) led a review of PPSD to “(1) review the academic outcomes of students enrolled in PPSD, with some comparison to other districts; (2) visit and observe classrooms in multiple schools, and meet and converse with students, teachers, administrators, and members of the community; and (3) hear the views of individuals and groups who hold or have held leadership positions within PPSD governance structure.” *See* the Commissioner’s *Decision Establishing Control Over the Providence Public School District and Reconstituting Providence Public Schools* dated October 15, 2019 (the “Decision Establishing Control”), at 8-9.¹ The report subsequently issued by the Johns Hopkins team highlighted the fact that “notwithstanding RIDE’s years of progressive support and intervention in PPSD, there has not been improvement in the education of students, as determined by objective criteria,” and PPSD remained “one of the lowest-performing districts, and schools within it have consistently been among the lowest in the state.” *See* the Decision

¹ Citing the Johns Hopkins School of Education, Institute for Education Policy, *Providence Public Schools District: A Review* (June 2019) (the “Johns Hopkins Report”).

Establishing Control, Section E at 64-70 (citing the Johns Hopkins Report at 1, 3). In addition, the Report concluded that:

Governance comes from multiple individuals and institutions, with overlapping responsibilities. Vision suffers as a result. Very few participants thought the system worked well or posed a coherent vision. They differed only in their explanations and remedies. While there was some finger pointing at individuals, by far the most frequently stated view was that *the system lacks clear delineations of authority, responsibility, and accountability.*

Johns Hopkins Report at 7-8 (emphasis added).

As a result, the Commissioner issued an *Order of Control and Reconstitution* on October 15, 2019 which provided that:

The Commissioner shall control the budget, program, and personnel of PPSD and its schools and, if further needed, the Commissioner shall reconstitute PPSD schools, which may include restructuring the individual school's governance, budget, program, personnel and/or decisions related to the continued operation of the school. The Commissioner shall exercise all the powers and authorities delegated by the Council to the Commissioner and all powers of RIDE over the budget, program and personnel of PPSD and over the individual school's governance. The Commissioner shall also have all powers and authorities currently exercised by the Providence School Board and *Superintendent (Acting, Interim or Permanent)*, as well as all powers and authorities of the Mayor of Providence, and the Providence City Council as it pertains to PPSD and its schools.

Id., § 1 at 1-2 (emphasis added).

After PPSD had been under state intervention for more than five years, the Ed. Council approved the *Commissioner's Order Regarding the Return of the Providence Public School District Back to Local Control* on May 26, 2026, and as a result, "PPSD will exit turnaround status and return to local control on June 30, 2026." *See id.*, § 1 at 5.

V. THE POSITIONS OF PPSD AND THE INTERESTED PARTIES

1. The Arguments Regarding Justiciability and the Employment Decisions Petition

a. PPSD

PPSD argues that the declaratory order is the appropriate legal mechanism for interpretations of R.I. Gen. Laws §§ 16-7-23, 16-2-9, and 16-2-11, all of which “reside in Title 16, which is reserved for matters relating to education” and thus invoke the Commissioner’s “authority and the duty to interpret them and to require their observance.” *See* PPSD Mem. at 6. PPSD adds that “RIDE routinely entertains and issues declaratory orders at the request of school districts.” *Id.* at 7.²

In addition, PPSD posits that the State’s intervention in the PPSD pursuant to the Crowley Act “does not alter PPSD’s status as a governmental subdivision and thus a ‘person’ under the APA.” *Id.*; *see also id.* at 6 (quoting R.I. Gen. Laws § 42-35-1(15) (defining “person” as “any individual, partnership, corporation, association, the department of environmental management, governmental subdivision, or public or private organization of any character other than an agency.”)).

b. The City and School Board

In their statement of Joint Opposition, the City and School Board argue that the Employment Decisions Petition should be dismissed since “there is no ‘case or controversy’ alleged in the [P]etition,” which, they claim, “presents a non-justiciable, unripe and hypothetical issue, and appears to seek an advisory opinion.” *See* Joint Opp. Mem. at 3. According to the City

² Citing, e.g., *In re the October 21, 2025 Request for a Declaratory Order by the East Providence School District*, D.O. 26-01A; *In re the October 9, 2025 Request for an Advisory Opinion/Declaratory Order Pursuant to R.I. Gen. Laws § 42-35-8 by the Warwick Public Schools*, D.O. 25-01A; *In re the January 2, 2024 Request for an Advisory Opinion/Declaratory Order Pursuant to R.I. Gen. Laws § 42-35-8 by the North Kingstown School District*, D.O. 24-001K.

and School Board, “[o]ur Supreme Court has specifically applied justiciability doctrines to the declaratory relief procedure afforded by R.I. Gen. Laws § 42-35-8.” *Id.* at 5 (citing *Liguori v. Aetna Casualty and Surety Co.*, 384 A.2d 308, 312 (R.I. 1978)). The City and School Board then argue that:

President Stephens’ ‘Agenda Items for Discussion’ outlined proposed topics for discussion at a check-in meeting to take place the next day, on June 3, 2026. (Stephens’ Aff. at ¶¶ 2–3). A proposal for discussion with two District personnel is not the equivalent of Board action, much less an official act of the Board. [footnote omitted]. President Stephens did not put the topic of creating governance staff positions on any meeting agenda; propose or draft any job descriptions for the not-yet-created positions; or attempt to ‘appoint’ anyone to the non-existent positions with the as yet unidentified job functions. Thus, the President’s ‘recommendation’ is merely an idea, that lacks any modicum of concreteness from which the Commissioner can seek relief.

Id. at 7.

Moreover, the City and School Board claim that the Commissioner should refrain from considering the merits of the Petition because she lacks standing to pursue the requested relief on the District’s behalf,” as the Employment Decisions Petition “does not even attempt to describe the District’s ‘injury,’ except to allude vaguely to ‘usurping’ the Superintendent’s authority.” *Id.* at 8.³

2. The Arguments Regarding the Surplus Petition

a. PPSD

According to PPSD:

The Commissioner should issue the declaratory order requested in the [] Surplus Petition for two independent reasons. First—in a textbook case of preemption—the General Assembly has expressly forbidden the very result the ordinance demands: the reversion of unexpended school funds to the City. Second, the City has no constitutional or statutory authority to address—much less, direct—any school funds surplus, as the Rhode Island Constitution expressly commits that authority to the General Assembly and its agents rather than the municipalities.

³ Citing *City of Providence Bd. of Licenses v. Dep’t of Bus. Regulation of R.I.*, Case No. PC-2013-2429, 2013 R.I. Super. LEXIS 195, at *9–*10 (R.I. Super. Nov. 18, 2013); *Meyer v. City of Newport*, 844 A.2d 148, 151 (R.I. 2004).

PPSD Mem. at 8.

According to PPSD, Section 2 of the Proposed Ordinance – which directs that “[a]ny surplus resulting from excess revenue receipts overestimates and unencumbered balances of appropriations at the end of any fiscal year shall revert to the general fund current operating surplus account and shall be subject to such reservations or other disposition as the city council may direct,” *see id.* at Ex. B § 2 – “directly and irreconcilably conflicts with R.I. Gen. Laws § 16-7-23(d),” which provides that “‘[a]ll state and local funds unexpended by the end of the fiscal year of appropriation shall remain a surplus of the school committee and shall not revert to the municipality.’” *Id.* at 9-10 (quoting § 16-7-23(d)). According to PPSD “[c]ompliance with both state law and the Proposed Ordinance is impossible” and thus “[i]t follows that conflict preemption renders the latter unenforceable.” *See id.* at 10.⁴

PPSD also argues that the field preemption doctrine renders the Proposed Ordinance unenforceable since § 16-7-23(d) “is the centerpiece of a comprehensive statutory structure the General Assembly implemented within Title 16 to shield school funds from general municipal revenues at every stage of the fiscal cycle.” *Id.* at 14; *see also id.* at 15 (discussing *Coventry Sch. Comm. v. Richtarik*, 411 A.2d 912, 914 (R.I. 1980)).

PPSD rejects the City’s argument that the Proposed Ordinance is valid under Section 808 of the City’s Home Rule Charter, which provides, in pertinent part, that:

Any [school department] surplus resulting from excess revenue receipts over estimates and unencumbered balances of appropriations at the end of any fiscal year shall revert to the general fund current operating surplus account . . .

See PPSD Mem. at Ex. D. According to PPSD, “[o]nly sections of a home rule charter that the Rhode Island General Assembly expressly validates may ‘take[] precedence over any inconsistent

⁴ Citing e.g., *Grasso Service Center, Inc. v. Sepe*, 962 A.2d 1283, 1290-91 (R.I. 2009) and *Rhode Island Cogeneration Assocs. v. City of E. Providence*, 728 F. Supp. 828, 838-839 (D.R.I. 1990)

provisions of the general laws. . .” *Id.* at 11 (quoting *Loc. No. 799, Int'l Ass'n of Firefighters AFL-CIO v. Napolitano*, 516 A.2d 1347, 1349 (R.I. 1986) (internal citation and quotation marks omitted). And according to PPSD, although R.I. Pub. Laws No. 1981, ch. 37 (the “1981 Act”) validated certain provisions of the Providence City Charter, it did not specifically validate Section 808. *See id.* at 11-12 (quoting the 1981 Act).⁵ In addition, PPSD argues that “even if the General Assembly had validated Section 808, that validation would not authorize the City to take control of a school funds surplus” since according to PPSD, the power to legislate the destination of any school funds surplus “rests exclusively with the General Assembly” under the Rhode Island Constitution. *See id.* at 13, 15 (quoting R.I. Const. art. XII, § 1).⁶

b. The City

In a separate two-page submission, the City urges the Commissioner to dismiss the Surplus Petition, arguing that:

a) the Petition is moot and (b) even assuming, arguendo, that it was not, the Petition seeks relief that the Hearing Officer lacks the power to grant. To the extent, however, that the Hearing Officer concludes otherwise—either in whole or in part—the City requests that the Hearing Officer schedule this matter for further consideration and discussion,⁷ and provide the City with a meaningful opportunity to address the merits of the Petition, including the ability to submit briefing, information, and documents.

City’s Mot. Dismiss at 1-2.

⁵ And citing *Purcell v. Johnson*, 297 A.3d 464, 484-485 (R.I. 2023) (Goldberg, J., dissenting) (quoting *Ret. Bd. of Employees’ Ret. Sys. of City of Providence v. City Council of Providence*, 660 A.2d 721, 728 (R.I. 1995)).

⁶ And citing *Dawson v. Clark*, 176 A.2d 732, 734-35 (R.I. 1962).

⁷ Citing the D.O. Regs., 200-RICR-30-15-2.5(B), which provides that RIDE may “in its discretion”:

1. Hold a hearing for further consideration and discussion on the Petition; or
2. Request further information or documents from the Petitioner necessary for the full evaluation of his or her Petition.

Id.

3. The Arguments Regarding the Merits of the Employment Decisions Petition

a. PPSD

According to PPSD, “[t]he plain text of Title 16, Chapter 2 assigns the appointment of non-school-assigned personnel to the Superintendent and not the School Board,” and “expressly empowers the Superintendent “to appoint administrators and other personnel not assigned to individual schools.” PPSD Mem. at 18 (citing R.I. Gen. Laws §§ 16-2-11(a), 16-2-11(a)(7)). Moreover, PPSD argues that: (i) “[t]he School Board’s personnel role—by contrast—concerns policy and oversight: it may set ‘overall policy’ for personnel and ‘approve a table of organization.’” *Id.* (citing R.I. Gen. Laws §§ 16-2-9(6), 16-2-9(14)); and (ii) “[t]he School Board’s only appointment power is limited to appointing the Superintendent.” *Id.* (citing R.I. Gen. Laws § 16-2-9(12)).

Thus, according to PPSD, any attempt by the School Board President to: (i) eliminate the Labor and Employment Counsel position; (ii) create a new Director and Coordinator position; and (iii) direct that “[a]ny FTE positions supporting the Board should report directly to the Providence School Board,”” *id.* at 19 (citing PDF attached to the June 2, 2016 email from Ty’Relle Stephens to Lisa DiMartino (*see id.*, Ex. E at 3)), “falls strictly within the appointment and supervisory authority that § 16-2-11 vests in the Superintendent.” *Id.*

b. The City and School Board

The City and School Board argue that when the General Assembly adopted the language in R.I. Gen. Laws § 16-2-11(a)(6) and (a)(7) as part of the Education Accountability Act of 2019,⁸

⁸ Providing that it shall be the duty of the Superintendent:

- (6) To appoint principals for each public school within the district at levels of compensation determined in accordance with policies established by the school committee.
- (7) To appoint administrators and other personnel not assigned to individual schools. Also, to appoint, at the recommendation of the principal, personnel at individual schools in accordance with policies established by school district policies and collective bargaining agreements.

Id.

it did not intend “to strip school committees across the state of the authority to engage personnel to assist them in carrying out their governance work.” *See id.* at 11-12 (citing *Grasso v. Raimondo*, 177 A.3d 482, 491 (R.I. 2018)).

Moreover, according to the City and School Board, “the plain language of the seven lines upon which the [P]etition relies [quoted in note 9, *supra*] do not say what is claimed,” since: (i) “although the Superintendent can appoint, that is all he can do, and even then, his powers are cabined by the personnel policies, standards, table of organization, and employment contracts adopted and entered into by the Board[,] *id.* at 14;⁹ and (ii) “the Superintendent can only exercise this appointment power with respect to ‘*employees of the district*,’ R.I. Gen. Laws § 16-2-11(a) (emphasis added), “identified in the statute as building principals, administrators and other personnel not assigned to individual schools, and personnel at individual schools (but only after considering the recommendation of the principals and school improvement teams at those schools).” *Id.* at 15, (citing R.I. Gen. Laws § 16-2-9(a)(6) and (a) (7)).

According to the City and School Board:

The Commissioner’s reading contorts Title 16, chapter 2, and specifically R.I. Gen. Laws §§ 16-2-11(a)(6) & (7), to mean that the General Assembly intended to deprive school committees of any direct staff support. That would be an absurd result, contrary to the plain language of R.I. Gen. Laws § 16-2-9, and contrary to longstanding and best practice among school committees. (Stephens’ Aff. at 18); *see also Berthiaume v. School Comm.*, 397 A.2d 889, 892 (R.I. 1979) (noting that ‘we adhere to the canon that statutes should not be construed to achieve meaningless or absurd results’).

Id. at 17-18.

⁹ Citing R.I. Gen. Laws §§ 16-2-9 (a)(6), 16-2-9(a)(14), 16-2-9(a)(15), 16-2-9(a)(18); 16-2-9(c); 16-2-9(a)(9)-(11); 16-2-11(a)(7); 16-2-11.1(a)(1) and *Providence Teachers’ Union Local 958, AFT v. Hemond*, 227 A.3d 486, 492 (R.I. 2020).

VI. DISCUSSION

1. The Employment Decisions Petition

a. The Justiciability Arguments

The City and School Board are correct that justiciability doctrines apply to the declaratory relief procedure afforded by R.I. Gen. Laws § 42-35-8. *See* Joint Opp. Mem. at 5-6. However, their claim that that the Employment Decisions Petition “presents a non-justiciable, unripe and hypothetical issue,” *see* Joint Opp. Mem. at 6-8, and that the Commissioner lacks standing to bring the request on behalf of PPSD, *see id.* at 8-9, are not supported by the applicable facts or law.

The cases relied upon by the City and School Board almost all involve civil actions brought before a federal or state court seeking specific affirmative relief that is distinguishable from what would be appropriate here under the declaratory order statute and its implementing regulations.¹⁰ For example, in *Liguori v. Aetna Casualty and Surety Co.*, 384 A.2d 308, 312 (R.I. 1978), the Court affirmed the Superior Court’s holding that the State Insurance Commissioner lacked the authority to reinstate a cancelled insurance policy when proceeding

¹⁰ *See Thomas, supra*, 473 U.S. at 580-81 (pesticide chemical manufacturers federal court action challenging constitutionality of binding arbitration provision of 1978 amendments to the Federal Insecticide, Fungicide, and Rodenticide Act); *In re Episcopal Diocese of R.I.*, 289 A.3d 164, 168 (R.I. 2023) (landowner’s petition for certiorari seeking review of an order of the Public Utilities Commission that permitted electric company to charge landowner for electricity transmission costs associated with a proposed solar development project on landowner’s property); *Riley, supra*, 275 A.3d at 556 (appeal of complaint filed by former police officer and his wife seeking review of decision by town pension board revoking former police officer’s pension and denying wife’s right to all or portion of pension as innocent spouse); *Watson v. Fox*, 44 A.3d 130, 135 n.12 (R.I. 2012) (taxpayer action seeking a ruling that process General Assembly used to allocate \$2.3 million in state money for legislative grants to local and private organizations violated State Constitution); *Meyer v. City of Newport*, 844 A.2d 148, 151 (R.I. 2004) (abutting landowners’ action seeking declaration that consent judgment between city and developer regarding use of wharf was invalid); *Morris, supra*, 416 A.2d at 139 (action challenging adequacy of due process afforded juvenile who was held pending delinquency proceedings); and *Lamb v. Perry*, 225 A.2d 521, 523 (R.I. 1967) (proceeding challenging validity of city ordinance amending civil service system and creating department of personnel); *see also McKenna, supra*, 874 A.2d at 225-226 (action for declaratory and injunctive relief claiming that the chief justice had vacated his position by virtue of his acceptance of an appointment as a member of a military review panel).

pursuant to a declaratory order proceeding under the APA. The Supreme Court held that “Section 42-35-8 simply states that in an agency proceeding of this type, the agency shall declare whether the regulation applies. The statute goes no further and is silent as to whether, after making a declaratory ruling, the agency may then grant some form of affirmative relief.” *Id.* at 882.

A declaratory order procedure is not a proper forum for the adjudication of contested facts. Thus, the *Regulations Governing Declaratory Order Petitions* make clear that a declaratory order means an order issued by RIDE that:

- a. Interprets or applies a statute administered by the Department;
- b. Clarifies whether a rule, guidance document, or order issued by the Department applies to a Petitioner; or
- c. Clarifies how a rule, guidance document, or order issued by the Department applies to a Petitioner.

200-RICR-30-15-2.3.A.1. At the same time, one seeking a declaratory ruling must set forth some facts in support, *see, e.g., City of Providence Bd. of Licenses v. Dep’t of Bus. Regulation of R.I.*, Case No. PC-2013-2429, 2013 R.I. Super. LEXIS 195 (R.I. Super. Nov. 18, 2013) (Procaccini, J.) and also show some “actual or imminent” harm in order to satisfy the dictates of standing and ripeness.

Thus, in *McKenna v. Williams*, 874 A.2d 217 (R.I. 2005), the Court, while noting that “[t]he Declaratory Judgments Act is a vehicle by which parties can obtain relief for actual *or* imminent harm,” *id.* at 227 (emphasis added), explained that:

The test to determine whether a party has the requisite standing was well articulated in *Rhode Island Ophthalmological Society v. Cannon*, 113 R.I. 16, 317 A.2d 124 (1974). The plaintiff must allege to the court’s satisfaction that “ ‘the challenged action has caused him injury in fact, economic or otherwise.’ ” *Id.* at 22, 317 A.2d at 128. This often has been characterized as a legally cognizable and protected interest that is “concrete and particularized * * * and * * * actual or imminent, not ‘conjectural’ or

‘hypothetical.’ ” *Pontbriand v. Sundlun*, 699 A.2d 856, 862 (R.I.1997) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). In *Pontbriand*, we looked to a corresponding area of our standing jurisprudence and adopted the following statement: ‘The line is not between a substantial injury and an insubstantial injury. The line is between injury and no injury.’ *Id.* (quoting *Matunuck Beach Hotel, Inc. v. Sheldon*, 121 R.I. 386, 396, 399 A.2d 489, 494 (1979)).

Id. at 226.

Unlike the plaintiff in *City of Providence Bd. of Licenses*, *supra*, who merely filed a bald request for an advisory opinion without including any of the underlying facts that gave rise to the questions raised, *see id.* at *9-*10, PPSD has set forth sufficient facts to evidence an actual case or controversy to form the foundation of its Petition, which include the allegation that the School Board President stated the following:

- My recommendation is that we eliminate the Labor and Employment Counsel position, with those funds redirected into the Board employment account so the Board can support a Director and a Coordinator position.¹¹
- Any [Full-time equivalent (“FTE”)] positions supporting the Board should report directly to the Providence School Board.

PPSD Mem. at 5 (and at Ex. E). Moreover, in his own affidavit the School Board President stated that: “It is my understanding that most school committees, particularly those in urban districts, have at least one dedicated staff person reporting directly to and serving the committee[,] Stephens Aff., ¶ 18 at 5, adding that: “In my view, it would be helpful and consistent with best practices among other school committees to create one or two positions whose staff would directly support

¹¹ According to the City and School Board, the Board President was “notifying the Superintendent that once local control was restored, the engagement of legal counsel was within the ambit of the Board, under R.I. Gen. Laws § 16-2-9(g), and the City Solicitor, under the Home Rule Charter.” Joint Opp. Mem. at 9. Section 16-2-9(g) provides that “[n]otwithstanding any other provision of law, whether of general or specific application, and notwithstanding any contrary provision of any city or town charter or ordinance, the *elected* school committee of any city, town, and regional school district shall be, and is hereby authorized to retain, the services of independent legal counsel as it may deem necessary and convenient[.]” *id.* (emphasis added), whereas Art. 603(b)(c) of the City’s Home Rule Charter provides that the City Solicitor has sole and exclusive authority to appoint attorneys to represent the School Board unless approved by the City Council. Thus, the School Board President has merely raised a legal issue of first impression that is beyond the scope of the pending Petitions, i.e., whether Providence’s hybrid School Board is an “elected school committee” within the meaning of § 16-2-9(g).

the Board in carrying out its governance work.” *Id.*, ¶ 19 at 5. Indeed, the City and School Board take the position that the Board has the authority to appoint an evidently unlimited number of employees who would “not, by definition, [be] *district or school department* employees. They [would be] *Board* employees.” *See* Joint Opp. Mem. at 18 (emphasis in original).

The above statements concerning the proper role and authority of the School Board with respect to the hiring of personnel not assigned to an individual school appear on their face to conflict with the working understanding of PPSD and its current Superintendent and would threaten to usurp the Superintendent’s express statutory powers, as will be discussed (*see infra* at 18-22), thereby illustrating the “actual or imminent harm” described in *Rhode Island Ophthalmological Society, supra*, and related cases. The opposing views of PPSD and the Board also illustrate one of the problems in the District highlighted by the Johns Hopkins team who, as noted, emphasized in their 2019 report that “the system lacks clear delineations of authority, responsibility, and accountability.” Johns Hopkins Report at 7-8 (quoted *supra* at 6).

That being said, in the absence of a more complete evidentiary record than is proper in the context of a request for a declaratory order concerning the intent and context of the School Board President’s quoted statements, it would be premature to reach any factual conclusions other than to reiterate that on their face, they would appear to usurp the Superintendent’s express statutory powers.

In any event, none of the cases relied upon by the City and the School Board to support their argument that the Petition is not ripe, *see* Joint Opp. Mem. at 6-7, involve facts that bear any resemblance to those at issue here.¹² Indeed, aside from the presence of “actual or imminent” harm,

¹² Thus, in *Riley v. Narragansett Pension Bd.*, 275 A.3d 545 (R.I. 2022), the Court remanded a Superior Court decision reinstating the pension of a former police officer to the Narragansett Pension Board for reconsideration and held that an award of attorneys’ fees was not ripe as relevant issues remained undecided. *Id.* at 557-558. In *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568 (1985), pesticide chemical manufacturers filed suit in

the claim that the Commissioner lacks standing to represent PPSD with respect to the Employment Decisions Petition is belied both by her status as: (a) the Ed. Council's Crowley Act delegate who "shall control the budget, program, and personnel of PPSD and its schools" and "shall also have all powers and authorities currently exercised by the Providence School Board and *Superintendent* (Acting, Interim or Permanent)." *See Order of Control and Reconstitution* dated October 15, 2019 (quoted *supra* at 6) (emphasis added); and (b) the Commissioner of Education statutorily empowered to interpret and enforce school law. *See* R.I. Gen. Laws §§ 16-60-6(9)(vii) and (viii). In short, the Employment Decisions Petition is ripe, the issues at stake are not "moot, abstract, academic, or hypothetical," and addressing the issues will "have a practical effect on the existing controversy."

Nonetheless, any declaratory order here should be limited to interpreting the relevant education statutes and clarifying how they apply in the recited factual context and should not opine on the legality of specific ordinances or the specific behavior of any individual. If either the PPSD or any interested party believes they are entitled to more specific affirmative relief, they should follow the procedures applicable to actions by aggrieved parties before the Commissioner under R.I. Gen. Laws §§ 16-39-1 or 16-39-2.¹³

federal court challenging the constitutionality of a binding arbitration provision in certain amendments to the Federal Insecticide, Fungicide, and Rodenticide Act. Because no arbitrations had as yet taken place when the claims were brought, the Court concluded that the constitutional claim involved "contingent future events that may not occur as anticipated, or indeed may not occur at all." 473 U.S. at 581 (citing 13A C. Wright, A. Miller, & E. Cooper, *Federal Practice and Procedure* § 3532 (1984)). And in *Morris v. D'Amario*, 416 A.2d 137 (R.I. 1980), a juvenile who had been denied bail became ill and was released by the Training School officials after having petitioned for certiorari and alleging various due process violations related to his confinement. The Court heard the now moot case because of "the issues of extreme public importance, which are capable of repetition but which evade review." *Id.* at 139. In short, none of the cases relied upon by the City and the School Board involve facts that bear any resemblance to those at issue here.

¹³ R.I. Gen. Laws § 16-39-1 provides that:

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.

Id. Section 16-39-2 provides that:

b. The Merits of the Employment Decisions Petition

The clear and unambiguous language of the Education Accountability Act, P.L. 2019, ch. 224, § 6, which has been codified at Title 16, Chapter 2 of the R.I. Gen Laws, expressly identifies the Superintendent as the “chief administrative agent of the school committee” and expressly empowers the Superintendent (not the School Board) “to appoint administrators and other personnel not assigned to individual schools.” R.I. Gen. Laws §§ 16-2-11(a), 16-2-11(a)(7). With similarly clear and unambiguous language, the appointment power of the School Board is limited to appointing the Superintendent. *See* R.I. Gen. Laws § 16-2-9(12).

The City and School Board have properly emphasized that:

‘when the language of a statute is clear and unambiguous, [the Rhode Island Supreme Court] [shall] interpret the statute literally and must give the words of the statute their plain and ordinary meanings.’ *Powers v. Warwick Public Schools*, 204 A.3d 1078, 1086 (R.I. 2019). ‘[I]t is well settled that the plain statutory language is the best indicator of the General Assembly’s intent.’ *Herbert*, 213 A.3d at 1082 (quoting *Twenty Eleven, LLC v. Botelho*, 127 A.3d 897, 900 (R.I. 2015) (quoting *Zambarano v. Retirement Bd. of Employees’ Retirement System of Rhode Island*, 61 A.3d 432, 436 (R.I. 2013))).

See Joint Opp. Mem. at 13. Yet, they seek to avoid the result dictated by clear and unambiguous statutory language and expand the appointment powers of the School Board by focusing upon general statutory language providing that the “entire care, control, and management of all public-school interests of the several cities and towns shall be vested in the school committees of the several cities and towns.” *See* R.I. Gen. Laws § 16-2-9(a). Based upon this general language, the City and School Board infer that the Board has the authority to appoint an evidently unlimited number of employees who, according to the City and School Board, “are not, by definition, *district*

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.

Id.

or school department employees. They are Board employees.” See Joint Opp. Mem. at 18 (emphasis in original).

To reach this conclusion, the City and School Board ignore other rules of statutory construction adopted by the Rhode Island Supreme Court making clear that:

‘[I]t is a “general rule of statutory construction that when a statute of general application conflicts with a statute that specifically deals with a special subject matter, and when the two statutes cannot be construed harmoniously together, the special statute prevails over the statute of general application.”’ *City of Woonsocket v. RISE Prep Mayoral Academy*, 251 A.3d 495, 501 (R.I. 2021) (deletion omitted) (quoting *Whitehouse v. Moran*, 808 A.2d 626, 629-30 (R.I. 2002)). If a statute cannot be construed as more specific, we will adopt the statute more recent in time. *Berthiaume v. School Committee of City of Woonsocket*, 121 R.I. 243, 248-49, 397 A.2d 889, 893 (1979).

Purcell v. Johnson, 297 A.2d 464, 471-72 (2023). Thus, even if, as the City and School Board seem to suggest, there was some conflict or tension between the *general* language of R.I. Gen. Laws §16-2-9(a) and the *specific* language of the Education Accountability Act at R.I. Gen. Laws §§ 16-2-11(a), 16-2-11(a)(7), the more specific and later-enacted provisions would prevail. However, there is not even a conflict between the provisions.

In the Education Accountability Act, which became effective on January 1, 2020, the General Assembly qualified the very language relied upon by the City and School Board to make clear its intention with respect to the appointment powers of school committees and superintendents. Thus, § 16-2-9(a) was amended as follows:

(a) Unless the responsibility is otherwise delegated by this chapter, the ~~The~~ ~~The~~ The entire care, control, and management of all public school interests of the several cities and towns shall be vested in the school committees of the several cities and towns. School committees shall have, in addition to those enumerated in this title, the following powers and duties:

Here, as noted, the appointment power with respect to all personnel not assigned to an individual school has been “otherwise delegated by this chapter” to superintendents.

The City and School Board, while conceding that the “Superintendent can “*appoint employees of the district*,” see Joint Opp. Mem. at 14-15 (quoting R.I. Gen Laws § 16-2-11(a)(7)), make much of the fact that this power is “cabined by the personnel policies, standards, table of organization, and employment contracts adopted and entered into by the Board.” See Joint Opp. Mem. at 14 (citing R.I. Gen Laws §§ 16-2-9(a)(6), (9)-(11), (14), (15), (18) and (c), as well as § 16-2-11(a)(7) and § 16-2-11.1(a)(1)). However, the acknowledged limitation upon the Superintendent’s authority reflected in the various provisions cited by the City and the School Board are not at issue and shed no light on whether or not the School Board has *any* appointment authority.

The City and School Board also claim that the Superintendent’s power of appointment is limited to “*employees of the district*,” *id.* at 15 (emphasis in original), whereas the School Board is authorized to appoint an unlimited number of employees “to support the Board in carrying out its governance work,” and none of these Board-appointed employees are “employees of the district.” See Joint Opp. Mem. at 15-16. However, none of the cases cited by the City and School Board support their creatively expansive reading of R.I. Gen. Laws § 16-2-9(a),¹⁴ and they cite no statutory language suggesting that the School Board actually has the authority to make such appointments, or that individuals so appointed would not be considered to be “employees of the

¹⁴ Thus, *Providence Teachers’ Union Local 958, AFT v. Hemond*, 227 A.3d 486 (R.I. 2020), concerned the meaning of the language “may retire” in R.I. Gen. Laws § 16-16-14 in the context of an appeal from a teacher’s appeal from an arbitration decision. *Grasso v. Raimondo*, 177 A.3d 482 (R.I. 2018), concerned whether a police officer who was receiving accidental disability pension was required undergo independent medical examination and whether his pension was not subject to adjustment based on his occupation as an attorney. *Town of Warren v. Bristol Warren Reg’l Sch. Dist.*, 159 A.3d 1029 (R.I. 2017) concerned the allocation of state education aid funds to a regional school district of which a town was a part. *Barrington Sch. Comm. v. Rhode Island State Labor Rels. Bd.*, 608 A.2d 1126 (R.I. 1992), concerned whether the secretary to a business manager for a school committee should be included in the collective bargaining unit for all secretaries employed by the school committee. And *Berthiaume v. School Comm.*, 397 A.2d 889 (R.I. 1979) concerned whether school committees were required to pay per diem substitute teachers according to contract salary schedules.

district.” Yet, as the Court noted in *Greenhalgh v. City Council of City of Cranston*, 603 A.2d 1090 (R.I. 1992):

School committees do not enjoy a residual font of power beyond the dimensions of this authority over matters that may incidentally have an impact upon school operations. *The extent of their control over school affairs is fixed by their specifically enumerated powers and duties as set out in title 16 of the General Laws and elsewhere.* The General Assembly, through its plenary power to apportion authority over public school interests, may either extend or narrow the scope of these provisions if it so chooses. It may proscribe school committees from acting at all in an area that relates to public school operations. *See* R.I. Const., art. XII. It is of no legal import that school committees formerly exercised authority in such an area or have been typically given control over related affairs.

Id. at 1093 (emphasis added).

Indeed, if the General Assembly had actually intended to confer unlimited appointment powers upon school committees in R.I. Gen. Laws § 16-2-9, there would have been no need to add a specific subsection to the existing statute in order to enable *some* school committees to appoint their own attorneys, nor would they have limited this appointment authority to *elected* school committees. *See* note 13, *supra* (discussing § 16-2-9(g)).¹⁵

The above discussion makes clear that there are stark differences in the respective views held by PPSD, on the one hand, and the City and School Board on the other, with respect to the School Board’s authority to appoint District employees not assigned to an individual school. There seems to be less of a disagreement concerning the other roles to be played by the School Board and the Superintendent. Thus, PPSD states that:

The plain text of Title 16, Chapter 2 assigns the appointment of non-school-assigned personnel to the Superintendent and not the School Board. Section 16-2-11 identifies the Superintendent as the ‘chief administrative agent of the school committee’ and

¹⁵ In fact, § 16-2-9(g) was enacted on July 6, 2007, *see* P.L. 2007, ch. 413, § 1, not long after the Supreme Court rejected the argument that “the broad administrative powers” conferred upon school committees included the right to retain their own attorney in *Town of Johnston v. Santilli*, 892 A.2d 123, 128, 131 (R.I. 2006). In *Santilli*, the Court held that the Johnston School Committee was a mere department of the Town of Johnston and gave effect to a Town Charter provision, similar to Art. 803 of the Providence City Charter, that required that absent a disabling conflict of interest, the Town Solicitor must serve as the School Committee’s sole source of legal representation. *See* 892 A.2d at 131-132.

expressly empowers the Superintendent ‘to appoint administrators and other personnel not assigned to individual schools.’ R.I. Gen. Laws §§ 16-2-11(a), 16-2-11(a)(7). The School Board’s personnel role—by contrast—concerns policy and oversight: it may set ‘overall policy’ for personnel and ‘approve a table of organization.’ R.I. Gen. Laws §§ 16-2-9(6), 16-2-9(14).

PPSD Mem. at 18. And the City and School Board state that:

The Board is to exercise ‘legislative, policy-making, planning and appraising functions,’ and delegate to the Superintendent ‘the administrative functions in the operation of schools.’ R.I. Gen. Laws §§ 16-2-9.1(a)(2) & (12). Its most ‘critical responsibility’ is to select the superintendent, define his or her responsibilities, and evaluate his or her performance regularly – all the while “without directly engaging in administrative processes.” *Id.* at § 16-2-9(a)(3).

Joint Opp. Mem. at 16 (citing A. J. Crabill, *Great on Their Behalf: Why School Boards Fail, How Yours Can Become Effective* at 98-108 (2023)). Indeed, the City and School Board state flatly that “[t]he Board shall not micromanage or involve itself in District administration and operations. That will be the work of the Superintendent.” *Id.* at 17.

2. The Surplus Petition

The School Board has not objected to the relief requested in the Surplus Petition. For its part, the City, as noted, while requesting additional time to address the merits, argues baldly that the Petition is either moot, or if not moot, requests relief that is beyond the Commissioner’s authority. *See City’s Mot. Dismiss* at 1-2.

As noted by the Rhode Island Supreme Court, “[a] case is moot if there is no continuing stake in the controversy, or if the court’s judgment would fail to have any practical effect on the controversy.” *Boyer v. Bedrosian*, 57 A.3d 259, 227 (R.I. 2012).¹⁶ Neither is true in the instant case as it is apparent that: (a) the School Board has a continuing stake in retaining any surplus it might have at the end of a fiscal year; and (b) a declaration on behalf of the state agency

¹⁶ Citing *Lynch v. Rhode Island Department of Environmental Management*, 994 A.2d 64, 71 (R.I.2010); *H.V. Collins Co. v. Williams*, 990 A.2d 845, 848 (R.I.2010).

authorized to interpret and enforce school law, *see* R.I. Gen. Laws § 16-60-6(9)(vii) and (viii), will have some practical effect upon future attempts by the City to claim a right to such a surplus.

Yet, even if one were to conclude for argument’s sake that the precise issue raised with respect to the Proposed Ordinance has been rendered moot, at least in Providence and at least with respect to Fiscal Year 2027, the Supreme Court has made clear that it will review an otherwise moot case “when the issues are ‘of extreme public importance, which are capable of repetition but which evade review.’ ” *Boyer, supra*, 57 A.3d at 281.¹⁷ And the Court has explained that a case is “‘capable of repetition yet evading review’ if there is a ‘reasonable expectation that the same complaining party would be subjected to the same action again[,]’ ” *id.* (quoting *Weinstein v. Bradford*, 423 U.S. 147, 149(1975), and the “same action” generally refers to particular agency policies, regulations, guidelines, or recurrent or identical agency actions.” *Id.*¹⁸; *see also Morris, supra*, 416 A.2d at 139 (invoking rule to hear moot case involving allegations of due process violations in connection with juvenile bail proceedings). As the Court noted in *City of Cranston v. RI. Laborer’s Dist. Council Local 1033*, 960 A.2d 529, 534 (R.I. 2008), “[a]lthough we generally refrain from addressing issues that the case at hand does not require us to address, there are occasions when we deem it jurisprudentially sound to provide guidance with respect to an issue that ‘is bound to resurface’ at some future point in time.” *Id.*¹⁹

As noted, R.I. Gen. Laws § 16-7-23(d) provides that “[a]ll state and local funds unexpended by the end of the fiscal year of appropriation shall remain a surplus of the school

¹⁷ Citing *Campbell v. Tiverton Zoning Board*, 15 A.3d 1015, 1022 (R.I.2011) (quoting H.V. Collins, *supra*, 990 A.2d at 848.

¹⁸ Citing *Public Utilities Commission of California v. F.E.R.C.*, 236 F.3d 708, 715 (D.C.Cir.2001).

¹⁹ Citing *State v. Lead Industries Association, Inc.*, 951 A.2d 428, 470 (R.I.2008) (quoting *Splendorio v. Bilray Demolition Co.*, 682 A.2d 461, 464 (R.I.1996)).

committee and shall not revert to the municipality.” *Id.* Yet, PPSD has detailed several meetings with City Officials in the Scott Aff., which have not been disputed, in which “it became clear that the City believed it had authority to reappropriate for itself any surpluses resulting from excess revenue receipts overestimates and unencumbered balances of appropriations at the end of any fiscal year.” Surplus Pet. at 2 (citing Scott Aff. at ¶ 6). This belief by the City was made clear when the City released its proposed municipal ordinances for Fiscal Year 2027 and included the Proposed Ordinance, which, as noted, provided that any PPSD surplus would revert to the City’s general fund. *See id.* at § 2 (PPSD Mem. at Ex. B). In addition, PPSD has alleged without contradiction that the City’s belief that it has the authority to claim school department surpluses was advanced through its budget process. *See* PPSD Mem. at 3.

Thus, it would be sound to provide guidance with respect to an issue that “is bound to resurface at some future point in time.” Moreover, the City’s claim that the Commissioner lacks the authority to issue a declaratory order interpreting the plain language of R.I. Gen. Laws § 16-7-23(d) is belied by the fact that, as noted, it is the Commissioner’s statutory duty to interpret and enforce school law. *See* R.I. Gen. Laws §§ 16-60-6(9)(vii) and (viii).

PPSD has correctly observed that “[c]ompliance with both state law and the Proposed Ordinance is impossible,” and thus “[i]t follows that conflict preemption renders the latter unenforceable.” *See* PPSD Mem. at 10 (citing *Grasso Service Center, Inc. v. Sepe*, 962 A.2d 1283, 1290-91 (R.I. 2009) (applying conflict preemption to invalidate the City of Providence’s towing program that directly conflicted with a state statute); *Rhode Island Cogeneration Assocs. v. City of E. Providence*, 728 F. Supp. 828, 838-839 (D.R.I. 1990) (applying Rhode Island law in determining that a municipal ordinance declaring commercial burning of coal to be a *per se*

nuisance directly conflicted with the state statute authorizing the Rhode Island Department of Environmental Management to issue licenses to such coal burning facilities).

In addition, PPSD is correct that “field preemption doctrine likewise renders the Proposed Ordinance unenforceable” as “it is the centerpiece of a comprehensive statutory structure the General Assembly implemented within Title 16 to shield school funds from general municipal revenues at every stage of the fiscal cycle.” *See* PPSD Mem. at 10 (citing R.I. Gen. Laws §§ 16-9-1 (requiring the town treasurer to keep a separate accounting of all money appropriated for public schools and to pay that money only “to the order of the school committee.”); *The Uniform School District Grant, Gift and Donation and Acceptance and Expenditure Act of 2009*, R.I. Gen. Laws § 16-89-1, *et seq.* (requiring that money that a municipality receives for school district purposes be (1) deposited in a “separate, restricted receipt amount”; and (2) “expended solely by and upon the demand of the school district, school department or school committee.”) and R.I. Gen. Laws § 16-2-21.4(a) (expressly incorporating R.I. Gen. Laws § 16-7-23 as a compliance standard for school budgets.).

Finally, any argument relying upon Section 808 of the Providence Home Rule Charter – which, as noted, provides that “[a]ny [school department] surplus resulting from excess revenue receipts over estimates and unencumbered balances of appropriations at the end of any fiscal year shall revert to the general fund current operating surplus account,” *id.* – has been anticipated and effectively refuted by PPSD which has correctly pointed out that the Charter provision directly and irreconcilably conflicts with R.I. Gen. Laws § 16-7-23(d), and only sections of a home rule charter that the Rhode Island General Assembly expressly validates may take

precedence over any inconsistent provisions of the general laws, and Section 808 of the City Charter has not been so validated. Discussed *supra* at 9-10.²⁰

VII. THE DECLARATORY ORDER

For all the above reasons, and pursuant to R.I. Gen. Laws § 42-35-8(d), the Petitions for Declaratory Orders filed on behalf of the Providence Public School District pursuant to R.I. Gen. Laws § 42-35-8 are hereby granted, in part and denied, in part, and it is hereby ordered that as to RIDE D.O. No. 26-002 regarding the *Petition for Interpretation of School Law on District Surpluses* filed on June 5, 2026:

1. R.I. Gen. Laws § 16-7-23(d) makes clear that “[a]ll state and local funds unexpended by the end of the fiscal year of appropriation shall remain a surplus of the school committee and shall not revert to the municipality[,]” and thus any municipal ordinance that purports to redirect any unexpended state or local funds appropriated to a school committee for other than education purposes is rendered unenforceable pursuant to the conflict preemption and field preemption doctrines;
2. No portion of Section 808 of the Providence City Charter that conflicts with R.I. Gen. Laws § 16-7-23(d) is enforceable as that Section of the City Charter has not been expressly validated by the General Assembly; and
3. The requests for declaratory orders declaring that Section 2 of the City of Providence’s Fiscal Year 2027 Proposed Municipal Ordinances (a) violates school law; and (b) is preempted and unenforceable, are denied, without prejudice in the absence of a more complete evidentiary record relating to the current status of the Proposed Ordinance.

As to RIDE D.O. No. 26-005 regarding the *Petition for Interpretation of School Law Concerning Authority Over Certain Employment Decisions* filed on June 12, 2026:

1. Under the Education Accountability Act, P.L. 2019, ch. 224, § 6, which has been codified at Title 16, Chapter 2 of the R.I. Gen Laws, school superintendents, including the Superintendent of the Providence Public School Department, are expressly empowered “to appoint administrators and other personnel not assigned to individual schools,” and the appointment power of school committees, including that of the Providence School Board, is limited to appointing the superintendent of schools; and

²⁰ There is no need to address PSD’s argument that the power to legislate the destination of any school funds surplus “rests exclusively with the General Assembly” under the Rhode Island Constitution.

2. The requests for declaratory orders declaring that “certain recommendations made and direction given” by the President of the Providence School Board was “inconsistent and would violate school law and usurp the Superintendent’s express statutory authority” are denied, again without prejudice, in the absence of a more complete evidentiary record relating to the referenced “recommendations made and direction given.”

Entered as a final agency Order this 30th day of June, 2026.



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



ANGÉLICA INFANTE GREEN,
as RIDE’s Commissioner and the
Ed. Council’s Crowley Act delegate