

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[Filed: August 28, 2015]

CENTRAL FALLS SCHOOL DISTRICT :
BOARD OF TRUSTEES and :
FRANCES GALLO, in her capacity :
as Superintendent of Schools, :
Central Falls School District :
v. :
CENTRAL FALLS TEACHERS UNION :

C.A. No. PC 2014-6275

DECISION

VAN COUYGHEN, J. This matter comes before this Court on the Central Falls School District Board of Trustees' (the Board) and Superintendent Dr. Frances Gallo's (collectively, Plaintiffs or the District) Complaint seeking declaratory relief and a permanent injunction against Defendant Central Falls Teachers Union (the Union). The Union has demanded arbitration of the present controversy pursuant to the Collective Bargaining Agreement (CBA) in effect between the parties. The Union initiated a grievance in response to the District's decision to contract with an outside company to provide an enrichment program to students at Calcutt Middle School (Calcutt) rather than hiring certified teachers. After the District denied the remedy requested in the grievance, the Union demanded arbitration. In response, the District filed the instant Complaint alleging that the subject matter of the grievance is not arbitrable. Jurisdiction is pursuant to G.L. 1956 § 8-2-13, the Uniform Declaratory Judgments Act (UDJA), G.L. 1956 §§ 9-30-1 through 9-30-16, and Super. R. Civ. P. 65. For the reasons provided herein, this Court grants declaratory judgment and a permanent injunction in Plaintiffs' favor.

I

Facts and Travel

The public school system of Central Falls, Rhode Island is governed by the Board. See G.L. 1956 § 16-2-34. The Rhode Island General Assembly has vested its municipal school committees, including the Board,¹ with the “entire care, control, and management of all public school interests.” Sec. 16-2-9(a). The Board is given “broad policy making authority for the operation of the school, as well as[, inter alia,] the following powers and duties: (1) To identify the educational needs of the district; [and] (2) To develop educational policies to meet the needs of students in the school district.” Sec. 16-2-34(f).

The General Assembly has also charged school superintendents with “the care and supervision of the public schools” under the direction of their respective school committees. Sec. 16-2-11. Specifically, a school superintendent’s duties include the duty “(1) To implement policies established by the school committee[;] (2) To recommend educational plans, policies, and programs to meet the needs of the district[; and] (3) To recommend policies governing curriculum, courses of instruction, textbooks, and transportation of students.” Sec. 16-2-11(a). Additionally, the Board has given the superintendent “the power to exercise his or her discretion in [the] absence of Board policy.” (Pls.’ Ex. 2.)

In Central Falls, the Board, its administrators, and its teachers face numerous challenges when attempting to satisfy their mission, which is to provide education to the students of Central Falls and encourage them to become responsible citizens, effective communicators, innovative problem-solvers, and critical thinkers. See Pls.’ Ex. 1, § 1.1. The Plaintiffs entered statistical data into evidence provided by Rhode Island Kids Count (Kids Count), a nonprofit organization

¹ Under § 16-2-34(a), the Central Falls School District board of trustees “shall have the powers and duties of school committees.”

whose mission is to improve children's well-being and development in Rhode Island. (Pls.' Ex. 3.) The 2014 data details the struggles faced by the District and Central Falls families.²

Dr. Gallo, who was qualified as an expert in education,³ testified as to the Kids Count statistics as well as her own experience with the struggles of Central Falls and the corresponding impacts on student education. She testified that the District faces the challenge of educating a community that is largely impoverished, urban, and academically challenged. (Tr. at 15-17, 20-21, 25.) Dr. Gallo described Central Falls as "the most impoverished city in the State of Rhode Island." (Tr. at 15.) She testified that from 2008 through 2012, the median family income in Central Falls was \$29,396, while the state median was \$68,326. (Tr. at 20; Pls.' Ex. 3.) She also testified that over forty percent⁴ of Central Falls children are from families with income below the federal poverty level, compared with only 18.4% of children statewide. Pls.' Ex. 3; see Tr. at 20.

In addition to poverty issues, Dr. Gallo described, based on her own experience and the Kids Count statistics, the Central Falls students face other social challenges that inhibit their ability to learn. The statistics reflect that, statewide, only seven percent of students are English language learners (ELL), but in Central Falls, twenty-seven percent of students are ELL. Id.

² Dr. Gallo testified that each year Central Falls invites Kids Count to present these statistics to the school community and explain "what educators can expect in the classroom when children are suffering from" the struggles detailed in the statistics. (Tr. at 19-20.)

³ Dr. Gallo testified that she has a doctorate in educational leadership. She has been working in education since 1971. She began in parochial schools and moved into public school administration in 1987. She began as a principal at an elementary school in East Greenwich, and then spent ten years in the Jamestown school system, first as a principal and then as the superintendent. She has also been the director of middle schools and then deputy superintendent in Providence. Finally, she moved to the Central Falls school system first as the deputy superintendent and now the superintendent. She holds certifications in elementary education and administration. (Tr. at 14-15.)

⁴ The Kids Count statistics indicate that the percentage is 41.5%, but the authors concede that this figure has a high margin of error due to a small sample size. (Pls.' Ex. 3.)

Additionally, student mobility is high, which Dr. Gallo attributes to poverty, forcing families to relocate more frequently than families with stable incomes. (Tr. at 25; Pls.' Ex. 3.) Dr. Gallo also detailed that many students enter the Central Falls school system with no prior experience with reading books, and even those who speak English may have a limited vocabulary. (Tr. at 20-21.)

According to Dr. Gallo, these and other factors⁵ impact student academic achievement. (Tr. at 20-21.) The Kids Count statistics reflect that, in 2013, Central Falls students were well below the state average in math and reading proficiency, particularly at the eighth grade level.⁶ (Pls.' Ex. 3.) Calcutt Principal Heather Dos Santos⁷ testified that these behavioral and academic problems amplify in the seventh and eighth grade when the students are first given freedom to travel the school independently between classes. (Tr. at 191-92.)

⁵ Calcutt Middle School Principal Heather Dos Santos testified that many students lack basic necessities, such as electricity or heat, other students have home care responsibilities exceeding those typically associated with children of their age, and others suffer home trauma, all of which can manifest as displaced aggression and inappropriate behavior. (Tr. at 192-93.)

⁶ For math proficiency, only forty-two percent of Central Falls fourth graders were at or above the applicable proficiency level, while statewide sixty-three percent met proficiency. A particularly large gap exists at the eighth grade level, with only fourteen percent of Central Falls students meeting the proficiency level while fifty-seven percent of eighth graders met proficiency statewide. At the eleventh grade level, thirteen percent of Central Falls students met proficiency, compared with thirty-six percent statewide. In reading proficiency, forty-four percent of Central Falls fourth graders were at the proficiency level while seventy-one percent of statewide fourth graders met the level. For eighth graders, the gap widened with thirty-nine percent of Central Falls students reaching proficiency compared with seventy-four percent of students statewide. (Pls.' Ex. 3.)

⁷ Ms. Dos Santos holds a Bachelor of Arts degree in elementary regular and special education, a Master's Degree in special education, and several certifications including administration, elementary education, middle school education, and special education. She was an elementary special education teacher from 1998 through 2011. In 2011, she became the Dean of Students and Assistant Director of Special Education for Central Falls High School, and in 2012, she moved to Calcutt Middle School as Assistant Principal before becoming Principal in July 2013. (Pls.' Ex. 13.)

Aware of these challenges and the resulting educational impacts, the District has implemented various programs to address the underlying social problems. Like many school districts, Central Falls offers free or reduced meals to students to ensure that students do not come to school hungry. (Tr. at 15-16.) Principal Dos Santos testified that hunger and other social struggles can interfere with student behavior and learning. (Tr. at 192-93.) Central Falls has expanded its meal program to include free breakfast, lunch, and a snack to all students regardless of demonstration of need. Free dinner is also available four nights each week to students participating in after school programs. (Tr. at 15-16, 192, 278.) The District also implemented a “parent college” in which parents may attend classes to expand their own education and gain skills. (Tr. at 16.) The District has also sought increased parent involvement with student education, such as the parent navigators program where parents of frequently absent children are called to the school to discuss the absences and the importance of the children’s regular attendance.⁸ (Tr. at 25.) Dr. Gallo testified that Central Falls has recently experienced an improvement in attendance and graduation rate, giving credence to the value of this holistic approach to improving student education. (Tr. at 23-24.)⁹

Enrichment programs for the students during the summer, beyond the traditional summer school,¹⁰ have been in place for over ten years. (Tr. at 267.) Dr. Gallo testified that one of her priorities was to expand these programs to increase student engagement. (Tr. at 28-29.) Andrea

⁸ Dr. Gallo observed that student absences are often the result of parents requiring the children to accompany them to a meeting or other encounter and act as a translator because many parents do not speak English. (Tr. at 24.)

⁹ The Rhode Island Kids Count statistics indicate that the Central Falls graduation rate rose from 47% to 74% from 2009 through 2013. (Pls.’ Ex. 3, at 2.)

¹⁰ According to Ms. Dos Santos, a traditional credit recovery program was run concurrently with this summer enrichment program, and the credit recovery program was designed to expose students to the curriculum content. (Tr. at 204-05.)

Summers, the Central Falls 21st Century¹¹ Program Director and Grant Manager who was qualified as an expert in education and urban education,¹² testified regarding the importance of student engagement, explaining:

[B]efore any student or any learner engages in any—any thinking, any cognitive task, the first thing is engagement. If that person is not intrinsically motivated, it's very difficult to even get that person to engage in whatever that task is, math or whatever it is . . . [a]nd you know, as educators it's very important to create learning environments that help students to become motivated. (Tr. at 265.)

Not only were the summer enrichment programs designed to enhance student engagement, they were also voluntary so that all students, rather than just those who had failed the academic school year, could attend. (Tr. at 29.) Dr. Gallo testified that these summer programs were important because children of poverty, even those who perform well during the academic year, tend to regress over the summer when they do not remain mentally engaged. (Tr. at 29-30.) Ms. Summers testified that the hands-on learning environment of these enrichment programs helps to connect learning to the students' life experiences, which has been shown to increase student engagement. (Tr. at 266.)

¹¹ Ms. Summers testified that “21st Century is a federally funded initiative” that seeks to provide “out of school time programs for elementary through high school, including after school and summer programs.” (Tr. at 260-61.)

¹² Andrea Summers testified as to her extensive education and training in the educational field. She holds a Bachelor's Degree in African studies with a focus on urban education from Bryant University and a Master's Degree in education from the Harvard Graduate School of Education. (Tr. at 261.) She has also worked for “the nonprofit education sectors doing a lot of grant writing” as well as some teaching. (Tr. at 261-62.) She testified that, while attending Harvard, she was in the school leadership program, which focused on school reform and figuring out how to transform under-performing schools, especially in high poverty areas, and establishing best practices for doing so. (Tr. at 264.)

The summer enrichment program is partially funded¹³ by a grant from Hasbro's Summer Learning Initiative,¹⁴ which requires that the programs be co-taught by a certified teacher and a community partner with some specialized expertise. (Tr. at 117.) Community partners have included, among others, Save the Bay, Aperion Institute for Sustainable Learning, Audubon Society of Rhode Island, and VSA Arts. (Tr. at 277.) The presence of the certified teacher is mandated by the grant.¹⁵ In addition, the presence of a certified teacher also allows for credit recovery for students who have failed a course during the academic year. (Tr. at 117.)

When seeking potential community partners for the 2013 summer enrichment program, Ms. Summers approached Dr. Gallo about the Center for Dynamic Learning (CDL), and the two agreed to utilize CDL for the summer program.¹⁶ (Tr. at 27.) CDL is a non-profit corporation that provides enrichment programming and teaches career readiness to youth.¹⁷ (Tr. at 121.) The organization utilizes science, technology, engineering, arts, mathematics, and manufacturing to encourage student engagement and is therefore labeled a STEAMM organization. (Pls.' Ex. 5, at 2.) CDL's Executive Director Elizabeth Cunha¹⁸ testified that the goal of CDL is "to get

¹³ Ms. Summers testified that the Hasbro grant is \$35,000, so it only partially covers the cost of the program. Funding is also based on federal 21st Century grants and other sources. The Hasbro grant covers the cost of the community partners, while 21st Century grant funds are used to pay the certified teachers. (Tr. at 290.)

¹⁴ Ms. Summers testified that the Hasbro Summer Learning Initiative is an education grant managed through United Way Rhode Island. (Tr. at 263.)

¹⁵ Dr. Gallo testified that the goal of Hasbro's requirement for co-teaching is that the experience will influence the teacher's future teaching practices and approach. (Tr. at 117.)

¹⁶ Ms. Summers testified that she had become aware of CDL through the 2012 Breakfast of Champions annual statewide event that celebrates out-of-school-time programs, and she learned that CDL had a really good reputation. (Tr. at 271.) Dr. Gallo testified that she was already aware of CDL because she had assisted in review of many grants for outside organizations throughout her career, and CDL was a frequent applicant. (Tr. at 27.)

¹⁷ Currently, CDL provides its programming at schools in Providence, Central Falls, Lincoln, and at its own center in South Providence. (Tr. at 122.)

¹⁸ Ms. Cunha testified that she holds a Bachelor's Degree in Theater and a Master's Degree in Fine Arts, Theater Performance, and Social Change, both from Rhode Island College. (Tr. at

children to reach beyond the classroom, to want more, to be inspired, to reach for whatever it is that they personally desire and to know that [] they have the capacity and the intelligence to achieve those goals,” thus enhancing student engagement. (Tr. at 136.) The CDL program is comprised of two departments: Traveling Theatre—utilizing the performing arts, including acting, directing, designing, and scriptwriting—and a science-based program entitled Science Learning Industrial Design Engineering (SLIDE). (Pls.’ Ex. 5, at 2.) CDL utilizes these theater and science content areas as the “vehicle” to reach the program goals of enhancing student engagement in and beyond the classroom. (Tr. at 136.)

Ms. Cunha testified that she discusses the program goals with each client and then tailors a custom program to the client’s needs. (Tr. at 124.) The District hired CDL to conduct two enrichment programs for Central Falls’ Calcutt¹⁹ students during the summer of 2013. The Traveling Theatre program was a theater arts through literacy program in which the students would read, act, create sculptures and movies, and give presentations. (Tr. at 33.) The SLIDE program utilized science, technology, engineering, and math (STEM) and taught the students to engage these skills to build go-karts and rockets. (Tr. at 33.) CDL utilizes these hands-on, student-directed learning techniques with no specific curriculum or grades. (Tr. at 52-54.) The summer 2013 program was co-taught with a substitute teacher hired when no existing collective bargaining member applied for the position. (Tr. at 273.)

121.) For over twenty years, she has been teaching as a “teaching artist,” the classification given by CDL to their instructors, as well as teaching at Rhode Island College, Community College of Rhode Island, and Dean College. Id.

¹⁹ Calcutt Middle School includes grades five through eight. The fifth and sixth grades are structured as an elementary school, with the students remaining with a single teacher for the majority of the day other than when they attend classes in the itinerant schedule—art, music, etc. The seventh and eighth grades follow a team structure where a single group of students will rotate between five professional educators for English, science, math, social studies, and intervention as well as attending an itinerant schedule of classes outside of the five core teachers. (Tr. at 187.)

Dr. Gallo viewed CDL's summer program, combined with the potential for credit recovery for students who had failed a course the prior academic year, as an opportunity to get away from the punitive nature of traditional summer school and allow the students to do something different while still making educational gains. (Tr. at 27.) A big motivator for Dr. Gallo in hiring CDL was that she wanted to determine if such a program could increase student engagement and keep students returning to the summer program, which traditionally suffered from frequent absences and a high drop-out rate. (Tr. at 32.)

Ms. Cunha testified that CDL's programs are designed to emphasize essential life skills, such as self-awareness, competency, cooperative learning, and problem solving. (Tr. at 143-44.) She also testified that CDL staff is specifically trained to highlight these skills while engaging students. Id. Ms. Cunha explained that the CDL program also promotes social development, and if the instructors encounter "social and emotional challenges in the classroom," they will "focus more on building a community and not so much worry about the content" because encouraging students to work cooperatively is a fundamental skill that enhances student engagement as well as future academic success. See Tr. at 142. She testified that the program uses various academic subjects as a "vehicle" towards developing these essential life skills. (Tr. at 136.)

Based on the pre- and post-assessments performed by CDL, which were consistent with the District's administrative staff observations, Dr. Gallo considered the first summer a remarkable success. (Tr. at 33-34.) Ms. Cunha testified that all of the children made gains in the summer 2013, some improving a full grade level in proficiency. (Tr. at 129-30.) Dr. Gallo and Principal Dos Santos both observed an improvement in the demeanor, attitude, attendance, and academic abilities of the students involved in CDL's summer programs, not only during the

summer, but also when they returned to their regular academic programs in the fall. (Tr. at 33-34, 38, 205-06.)

Based on CDL's success in enhancing student engagement during the 2013 summer program, the District contracted with CDL again during the 2013-14 academic school year. (Tr. at 34.) CDL ran one of the District's several after school programs.²⁰ (Tr. at 279.) In the summer of 2014, CDL again participated in the summer programs, and the CDL programs were filled to capacity. (Tr. at 37-38.) As in the 2013 summer enrichment program, the grant from the Hasbro Summer Learning Initiative required that a certified teacher participate in the program with the CDL instructor, and thus credit recovery was made available for students who had failed during the academic year. (Tr. at 206-07, 282.) Principal Dos Santos testified that the student and parent response to the 2014 summer program was the "same if not better" than the response to the 2013 summer program. (Tr. at 206-07.) Students were engaged, excited, and developing the essential skills fundamental to academic success. See Tr. at 33-34, 143, 182, 206-07.

According to Dr. Gallo, she decided that the entire student population could benefit from CDL's program with its proven student engagement success, so she contracted with CDL to run its program for all students at Calcutt for the academic year 2014-15.²¹ (Tr. at 38.) Dr. Gallo testified that based on her observations of the CDL summer programs, that students "can learn, can be excited about school, can be respectful in the classroom and can make appropriate

²⁰ The 2013-14 after school CDL program was located at Veterans Memorial Elementary School, not Calcutt Middle School. (Tr. at 279.) The District did not provide details concerning the content of the after school programs.

²¹ CDL also continued to run an after school program at Calcutt for the 2014-15 school year. (Tr. at 279.) That program is not involved in the present controversy as the Union did not file a grievance in regard to the after school program.

achievement gains,” and she wanted to continue this success into the academic year to benefit the entire school population. (Tr. at 38.)

The school year program followed the same stylistic format as the summer programs, and it did not include grades, academic credit, or connection to the general school curriculum. (Tr. at 52-54.) As the program was not intended for credit recovery, nor was it funded by the Hasbro grant, CDL ran the program on its own and did not involve a certified teacher. (Tr. at 54-55, 268, 279, 281.)

Principal Dos Santos testified that the CDL program was worked into the itinerant class schedule²² so that the program could be taught during the classroom teachers’ unassigned periods or common planning time, which was the easiest way to fit this program into the existing schedule. (Tr. at 224-25, 231-32, 248.) At the time that CDL was added into the itinerant schedule, the block that CDL was placed into was labeled only as an indeterminate “E,” meaning either elective or extra, and no existing itinerant teacher was displaced. (Tr. at 226, 233, 238-39.) In hiring CDL to run its program during the school year, no bargaining unit members lost their positions, salaries, or benefits. (Tr. at 46.) However, the District never notified the Union’s existing bargaining unit members of the two instructor positions for the enrichment programs, and never provided them with an opportunity to apply for said positions. (Tr. at 338-39.)

Upon learning that Plaintiffs were intending to include CDL’s program as part of the academic year, the Union filed a grievance with Principal Dos Santos on September 3, 2014.

²² Principal Dos Santos testified as to the distinction between the itinerant schedule and an itinerant teacher or subject. Itinerant teachers are defined in the CBA, and they are teachers who teach itinerant subjects—art, health, library, music, and physical education. (CBA Art. V, § 28.) The term itinerant schedule, on the other hand, is unrelated to the CBA definition. The schedule merely designates student classes outside of the core subjects, and it is comprised of both itinerant classes, as defined in the CBA, as well as other classes, such as electives or study halls. See Tr. at 223-24, 231-32.

(Tr. at 338-39; Def.'s Ex. F, at 1-2.) The grievance alleged that the District violated several provisions of the CBA.²³ It alleged that the District “acted in bad faith when it failed to post a newly created itinerant teacher position at Calcutt Middle School[] and placed non-certified personnel employed by a private company into said position.” (Def.'s Ex. F, at 1.) The District denied the Union’s grievance at all levels, responding that there was no teaching position at issue. (Def.'s Ex. F, at 2-4.)

On October 28, 2014, the Union filed a demand for arbitration of the grievance in accordance with the CBA. (Compl. ¶ 49; CBA Art. III, § 3.) In response, the District filed a Complaint with this Court on December 23, 2014, seeking preliminary and permanent injunctions restraining arbitration of the grievance as well as declaratory relief declaring that the grievance is not arbitrable. (Compl. ¶¶ 64, 69.) On February 26, 2015, this Court granted a preliminary injunction, prohibiting the parties from pursuing arbitration while the matter is before the Court. This Court conducted hearings on April 14, 16, and 28, 2015 on the District’s request for permanent injunction and declaratory relief. The matter is currently before the Court for decision.

II

Standard of Review

The decision to grant injunctive relief rests within the sound discretion of the trial justice. Cullen v. Tarini, 15 A.3d 968, 981 (R.I. 2011). When seeking injunctive relief, a party must demonstrate that the merits of the case weigh in the party’s favor. See Nat’l Lumber & Bldg.

²³ Specifically, the Union alleged that the School District violated Article I, Section 1 (Recognition of the Central Falls Teachers’ Union); Article I, Section 4 (Bargaining Unit Positions); Article III, Section 1 (Definition); Article IV, Section 1 (Teaching Qualifications); Article IV, Section 2 (Job Specifications); Article IV, Section 3 (Notices/Job Postings); Article VI, Section 5 (Vacancies); and Article VI, Section 6 (Criteria Based Hiring Process). (Def.'s Ex. F, at 1.)

Materials Co. v. Langevin, 798 A.2d 429, 434 (R.I. 2002) (citing Fund for Cmty. Progress v. United Way of Southeastern New England, 695 A.2d 517, 521 (R.I. 1997)). Additionally, the party must “demonstrate that it stands to suffer some irreparable harm that is presently threatened or imminent and for which no adequate legal remedy exists to restore that plaintiff to its rightful position.” Nye v. Brousseau, 992 A.2d 1002, 1010 (R.I. 2010) (quoting Nat’l Lumber & Bldg. Materials Co., 798 A.2d at 434). The irreparable injury “must be either ‘presently threatened’ or ‘imminent’” rather than merely prospective. Id. (quoting Nat’l Lumber & Bldg. Materials Co., 798 A.2d at 434).

Prior to issuing injunctive relief, “a court must survey the facts and apply the traditional tests for equitable relief, [including] balancing the equities, weighing the hardships to either side, and examining the practicality of imposing the desired relief.” R.I. Tpk. & Bridge Auth. v. Cohen, 433 A.2d 179, 182 (R.I. 1981). Accordingly, to grant a permanent injunction, the Court must find that (1) the plaintiff’s legal arguments have merit, (2) the plaintiff will suffer irreparable harm if the injunction is not granted, and (3) balancing the equities and hardships of the parties weighs in favor of the plaintiffs. When balancing the equities, the Court shall also consider the public interest. See Rose Nulman Park Found. ex rel. Nulman v. Four Twenty Corp., 93 A.3d 25, 32 (R.I. 2014).

The UDJA “grants broad jurisdiction to [this Court] to ‘declare rights, status, and other legal relations whether or not further relief is or could be claimed.’” Tucker Estates Charlestown, LLC v. Town of Charlestown, 964 A.2d 1138, 1140 (R.I. 2009) (citing § 9-30-1). Under the UDJA, the decision to grant declaratory relief is discretionary.²⁴ See Sullivan v.

²⁴ However, the “decision concerning whether to entertain” a request for a declaratory judgment is more limited, and the Court should only dismiss a claim for declaratory judgment before addressing the merits if “the declaration prayed for is an impossibility.” Tucker Estates

Chafee, 703 A.2d 748, 751 (R.I. 1997) (citing Woonsocket Teachers' Guild Local Union 951, AFT v. Woonsocket Sch. Comm., 694 A.2d 727, 729 (R.I. 1997)). Although the availability of alternative methods of relief does not necessarily preclude declaratory relief, “a necessary predicate to a court’s exercise of its jurisdiction under the [UDJA] is an actual justiciable controversy.” Sullivan, 703 A.2d at 751; Berberian v. Trivisono, 114 R.I. 269, 272, 332 A.2d 121, 123 (1975). Declaratory judgment is not appropriate to determine abstract questions or to issue advisory opinions. Sullivan, 703 A.2d at 751 (citing Lamb v. Perry, 101 R.I. 538, 542, 225 A.2d 521, 523 (1967)). To be entitled to declaratory relief, a plaintiff must have both “a personal stake in the outcome of the controversy and . . . an entitlement to actual and articulable relief.” McKenna v. Williams, 874 A.2d 217, 227 (R.I. 2005).

III

Analysis

A

Merits of the District’s Claim of Statutory Authority

The General Assembly has vested school committees with power over “[t]he entire care, control, and management of all public school interests.” G.L. 1956 § 16-2-9. These powers include the power and duty to “identify educational needs in the community[, and to] develop education policies to meet” those needs. Id. Additionally, school superintendents have been vested with power over “the care and supervision of the public schools,” such as recommending educational policies necessary to meet the needs of their school districts and implementing educational policies established by the school committees. Sec. 16-2-11. These statutes not only give school districts power, but they also create duties that the districts are required to fulfill.

Charlestown, LLC, 964 A.2d at 1140 (citing Perron v. Treasurer of Woonsocket, 121 R.I. 781, 786, 403 A.2d 252, 255 (1979)).

The District correctly asserts that while private employers may bargain away any or all of their authority during the collective bargaining process, public employers cannot divest themselves of their statutory duties. Vose v. R.I. Bhd. of Corr. Officers, 587 A.2d 913, 915 (R.I. 1991). This recognition of non-delegable statutory authority extends into the education context as well. Pawtucket Sch. Comm. v. Pawtucket Teachers' Alliance, Local No. 930, Am. Fed'n of Teachers, 652 A.2d 970, 972 (R.I. 1995) (holding that “while the school committee can negotiate many items with the professional and nonprofessional employees of the system, it cannot bargain away statutory powers and responsibilities”). Rather than distinguishing among various public employers, our Supreme Court has applied the same analytical framework to cases involving different public employer classifications, such as municipal police, fire, and school departments. See, e.g., Town of N. Kingstown v. Int'l Ass'n of Firefighters, Local 1651 AFL-CIO, 107 A.3d 304, 314 (R.I. 2015) (relying upon Belanger v. Matteson, 115 R.I. 332, 363, 346 A.2d 124, 141 (1975) (Paolino, J., dissenting)).

However, controversy often arises in public employment cases where the alleged managerial decision made pursuant to statutory authority also impacts the terms and conditions of the employment of the public employees. For example, in Pawtucket School Committee, the associate director of the English as a Second Language Program (ESL) issued a directive requiring that all ESL teachers submit lesson plans in advance. 652 A.2d at 971. The purpose of the directive was to allow the associate director to ensure that the ESL teachers were conforming with state law. Id. at 971, 972. The Court held that a grievance filed by the union was not arbitrable, even though the new requirement altered the terms of the ESL teachers' employment, because the associate director was acting in accordance with her statutory authority to ensure that the ESL program was executed in accordance with state law. Id. at 972; see also Woonsocket

Teachers' Guild, Local 951, AFT v. Woonsocket Sch. Comm., 770 A.2d 834, 838 (R.I. 2001) (holding that a decision to require a school nurse to dispense medication to a student from a regional program leasing classroom space in the nurse's school was non-arbitrable because it was decided pursuant to the school committee's statutory duties).

Our Supreme Court also recognized a distinction between decisions made pursuant to managerial authority and decisions made affecting terms and conditions of employment in N. Providence Sch. Comm. v. N. Providence Fed'n of Teachers, Local 920, Am. Fed'n of Teachers, 945 A.2d 339 (R.I. 2008). In that case, a union filed a grievance after the school committee eliminated composition periods for English teachers, during which time the teachers would typically grade papers and work with students on their writing. Id. at 341. The school committee asserted that the decision was made pursuant to its non-delegable statutory authority over educational policy. Id. at 342. The Court rejected this assertion and upheld the arbitrator's decision that the grievance was arbitrable. Id. at 342, 345. However, the Court's reasoning was based on its finding that the decision was not made to further educational goals but admittedly was made for budgetary reasons. Id. at 347. The Court did observe that the statutory authority argument may have carried the day if the decision had been made for educational progress. Id. These and other cases support that "[w]hile school committees have exclusive statutory authority pursuant to Title 16 over matters of management and educational policy, unions representing teachers are statutorily entitled to negotiate matters that directly affect the work and welfare of their members." N. Providence Sch. Comm., 945 A.2d at 346.

Our Supreme Court has specified that "[r]ather than setting forth sweeping generalizations in this complex area [of the intersection between statutory authority and collective bargaining], we believe that making the determination of what constitutes a

management decision is a ‘chore [that] is best executed on a case-by-case basis in view of the dearth of available guidelines for decision.’” Town of N. Kingstown, 107 A.3d at 314 (quoting Belanger, 115 R.I. at 362, 346 A.2d at 141). The Court recognized that “what constitutes a management decision ‘eludes a precise description,’” therefore requiring the case-by-case determination. Id.

In Town of North Kingstown, our Supreme Court further elaborated that statutorily authorized management decisions may be non-arbitrable “notwithstanding the fact that action taken related to the employer’s mission or pursuant to a statutory obligation may impact something that is otherwise a mandatory subject of collective bargaining.” Id. at 313. The Court recognized that when a decision “concerns both a question of management and a term or condition of employment,”²⁵ the employer must still bargain with the union, but that duty “is limited to the obligation to negotiate over the effects of the decision” on the terms and conditions of employment. Id. at 314 (emphasis added). The Court cited a First Circuit Court of Appeals explanation that:

“[t]here is an important distinction between the right to bargain about a core entrepreneurial business decision (a right which a union does not possess) and the right to bargain about the effects of that decision on employees within a bargaining unit (a right which, depending upon the overall circumstances, a union may possess).” Id. at 314 (citing Providence Hosp. v. Nat’l Labor Relations Bd., 93 F.3d 1012, 1018 (1st Cir.1996)).

Accordingly, this Court’s role is to consider the individual facts of the instant case and determine (1) whether the District’s decision to hire CDL during the 2014-15 school year constituted an

²⁵ Our Supreme Court has recognized “terms and conditions of employment” as encompassing proposals affecting hours, salary, working conditions, workload, safety practices, minimum manpower, and more. See Barrington Sch. Comm. v. R.I. State Labor Relations Bd., 120 R.I. 470, 475, 388 A.2d 1369, 1373 (1978); Town of Narragansett v. Int’l Ass’n of Fire Fighters, AFL-CIO, Local 1589, 119 R.I. 506, 508, 380 A.2d 521, 522 (1977).

educational policy decision, and (2) whether that decision had any impact on the terms and conditions of employment of Union teachers that would justify arbitration.

In support of its case, the District argues that this Court should hold that the grievance is non-arbitrable because the District's decision to hire CDL to run an enrichment program was made as part of the Board's and Superintendent's non-delegable statutory authority pursuant to §§ 16-2-9 and 16-2-11. The District argues that it has the authority, and in fact the duty, to develop educational programs to meet the needs of the community and the decision to hire CDL was an exercise of that authority. The District argues that based upon the facts of this case, it had the statutory authority to hire CDL and thus the decision is not arbitrable.

The Union counters that an arbitrator would not infringe on the District's non-delegable statutory duties in rendering a decision in this matter. It asserts that the question to be reached by an arbitrator is whether the District violated the CBA in hiring CDL without allowing bargaining unit members the opportunity to apply for the positions, not whether the District had the authority to begin an enrichment program during the school day.²⁶ The Union argues that the CDL positions are, in fact, certified teaching positions and that they are thus governed by the CBA. Although the Union maintains that the arbitrator should decide the merits of the case, both parties agree that this Court has jurisdiction to determine the arbitrability of the matter. See G.L. 1956 § 28-9-14.

In evaluating the educational needs of the Central Falls community, the District considered the administrators' experience as well as demographic information provided by Kids Count, which describes an urban, impoverished community struggling to overcome the obstacles

²⁶ Counsel for the Union stated during the hearing that the Union does not dispute that the District had the authority to initiate enrichment programs utilizing the same format as CDL. The Union only contests the procedure followed in hiring CDL to staff the program.

inherent in such communities. These obstacles leave many students ill-prepared for academic development. As a result, teachers are faced with the challenge of educating students who are not engaged in the classroom.

The Board recognized these challenges, and it established a mission “to develop [Central Falls’] diverse student population into responsible citizens, effective communicators, innovative problem-solvers and critical thinkers who are able to fully participate in and positively contribute to society.” (Pls.’ Ex. 1, at § 1.1.) To achieve this mission, the Board has established a variety of innovative programs. These programs seek to increase parental involvement and to “develop/support alternate student learning opportunities” that promote student success. (Pls.’ Ex. 1, at § 1.5.) In fact, the CBA recognizes “that the Central Falls school system as a whole must do more to meet the needs and expectations of the community.” (CBA, preamble.)

Overall, these goals and objectives indicate a desire for educational policies to take a holistic approach to addressing the challenges of this poor community, attending to not just academic achievement but also student social development and parental/community involvement. The District has implemented several programs to effectuate these goals and objectives, such as free meals, parent college, and the parent navigators program.

This holistic approach to addressing the challenges of education in a poor, urban community has also included direct action to improve student academic achievement. Ms. Summers testified that “tap[ping] into students’ intrinsic motivation . . . [to] create environments where there is a lot of hands-on learning, where we strive to connect the learning to the students’ life experiences . . . are the key [approaches] that help develop intrinsic motivation.” (Tr. at 266.) The statutory authority of §§ 16-2-9 and 16-2-11 allows school committees the

opportunity to experiment with such alternative approaches to the unique problems faced by each district.

To achieve this motivation, the District has been hosting various enrichment programs for Central Falls' students for several years. Until recently, these programs have been run exclusively after school and during summer vacations. (Tr. at 267-68.) These programs are voluntary, and the summer programs are designed to provide students with opportunities for educational enhancement during the summer because students tend to regress academically if they do not have access to resources over the vacation to remain academically challenged. (Tr. at 269-70.)

To its credit, the District has implemented these programs through its statutory authority pursuant to §§ 16-2-9 and 16-2-11, and the effort to address students' social development to increase students' achievements with their academic courses has proven to be a creative and successful approach. Dr. Gallo testified that Central Falls has seen increases in attendance and graduation rates since implementing these various programs. (Tr. at 24-25.) In this small urban city, the District has the opportunity to test these creative programs to improve the academic success of its students, and lessons learned from successes and failures of these various programs may benefit other urban communities as well. Therefore, the District seeks new, creative programs to increase student development in order to promote academic achievement.

To further enhance student achievement, Dr. Gallo approved the inclusion of CDL as a community partner for two of the Calcutt summer programs in the summer of 2013. (Tr. at 27-28.) Dr. Gallo testified that she wanted to utilize programs that were based on problem solving and hands-on learning in order to increase student engagement, and she believed that CDL could provide such programming. (Tr. at 30, 31.) Dr. Gallo and Principal Dos Santos both testified

that they observed a highly positive response from students to the CDL program as well as academic improvement of the attending students. (Tr. at 57, 205-07.)

Having observed positive results from the CDL program, Dr. Gallo decided to have CDL return for the summer of 2014, leading to the “same if not better” results according to Principal Dos Santos. (Tr. at 206-07.) Seeking to extend the benefits and gains of CDL instruction to the entire Calcutt student body, Dr. Gallo decided to bring CDL into the school day of the academic year. In reviewing the 2014-15 schedule, she recognized that all of the teaching requirements were being met for that year with room in the schedule for a non-academic enrichment program. (Tr. at 38.) She viewed this as a perfect opportunity to provide the CDL program to the entire student body. Id.

Upon weighing the facts of this particular case, this Court concludes that the decision to hire CDL to run a not-for-credit enrichment program during the school day was made as an educational policy decision pursuant to the District’s statutory authority to meet the needs of the school district. See §§ 16-2-11(a)(1), 16-2-34(f)(2). The decision was made for the purposes of promoting student academic and social engagement as part of a holistic program designed to combat the impacts of poverty and other challenges faced by Central Falls students. As Ms. Summers testified, engagement is fundamental to academic success. (Tr. at 265.) The Board had identified development of alternative learning opportunities as a way to promote student success, and Dr. Gallo viewed CDL as a suitable alternative learning opportunity to increase student engagement, leading to increased academic success. (Pls.’ Ex. 1, at § 1.5; Tr. at 27, 32.)

Not only was Dr. Gallo’s decision made pursuant to educational policy, but the design of the CDL program as applied in this case indicates that the program is outside of the collective bargaining context. The evidence presented demonstrates that CDL is a package program that

utilizes academic subjects as a vehicle to promote student engagement. However, the CDL program is clearly distinct from the academic curriculum. Rather than focusing on teaching content, CDL's primary focus is to build fundamental social and cognitive principles that enable the students to become more receptive to academic learning in their curriculum classes. See Tr. at 124-25, 143. Dr. Gallo's decision to hire CDL was not equivalent to hiring private contractors to replace existing teachers. Rather, she hired CDL to provide an all-inclusive program. CDL provided the instructors, most equipment,²⁷ and the curriculum. Dr. Gallo testified that she "contracted with the program" rather than contracting to hire teachers. (Tr. at 119.)²⁸

Aware of CDL's success over the previous two summers, Dr. Gallo elected to purchase the program for the school year and left the curriculum, staffing, and other detail decisions to Ms. Cunha and the CDL staff. (Tr. at 48, 52-53, 57, 65, 109, 131.)²⁹ Dr. Gallo testified that, while she and Ms. Cunha had extensive discussions regarding the program proposal, neither she nor the Board approved the CDL lesson plans or curriculum. (Tr. at 52-53, 131.) In contrast, the school's academic curriculum is jointly developed by the teachers and administrators, and the Board must approve the curriculum before it is implemented. (Tr. at 53.)

An additional added benefit of the CDL program is that the organization is able to provide extra resources to the Central Falls students, and simply hiring an additional teacher would not include this benefit. CDL brings extensive materials into the Calcutt classroom, such

²⁷ The CDL classroom is a Central Falls classroom with chairs, chalkboard, and other standard classroom furniture provided by the District. (Tr. at 76.)

²⁸ Dr. Gallo's response to the initial grievance similarly described the relationship as purchasing a program rather than contracting for teachers. Dr. Gallo's response stated that "the private company in question has been retained to provide an enrichment program in performing arts and STEM." (Def.'s Ex. F, at 3.)

²⁹ Ms. Cunha testified that for bespoke programs such as the one at Calcutt, she will generally speak with the client, discuss what the goals are, and then she and her staff will "go back to the table and we'll tailor that program specifically for" the client's goals. (Tr. at 124.)

as birds, reptiles, fish tanks, lab equipment, hydroponics and aquaponics set-ups, and in the first semester, all of the props and costumes for the theatrical performances. (Tr. at 144-45, 208.) The off-site CDL facility, which includes many sophisticated engineering and machining tools, was additionally available as a fieldtrip site for the students. (Pls.’ Ex. 9, at 1; Tr. at 122-23.) This curriculum development and equipment supply goes beyond supplying private teachers and speaks to a packaged program purchased by the District.

Additionally, the 2014-15 CDL program is outside the academic context, further separating it from the CBA and emphasizing its essence as an independent program purchased by the District. Unlike as in traditional academic education, students did not receive grades or academic credit for participation in the CDL program conducted during the school year. (Tr. at 54-55.)³⁰ As noted above, CDL develops its own curriculum, and that curriculum uses academic subjects as a “vehicle” to reach their social and developmental goals. (Tr. at 124-25, 136.) The curriculum component of the CDL program is distinct from the program goals of getting students engaged with learning, building a community, teaching respect and accountability, and developing essential skills—self-awareness, self-competency, cooperative learning, and problem solving. (Tr. at 136, 142-43.) The program instruction is designed to promote social progress for the children, encouraging them to engage in their academic courses but does not focus on teaching academic content. (Tr. at 136.) Ms. Cunha testified “we teach beyond the classroom, so they reach beyond the classroom, and we really look at the idea of practicing professionals and real world experience” to promote engagement. (Tr. at 124-25.) With this emphasis on

³⁰ During the summer CDL programs when credit recovery was available, the programs were co-taught by a certified teacher who would review each student’s progress and make a determination of whether the student was entitled to credit for the work performed in the program. (Tr. at 37.)

social development and the lack of academic credit or grades, the CDL program takes on a form independent and distinct from the academic curriculum of Calcutt.

Between the non-academic nature of the school year CDL program and the comprehensive provision of a staff, equipment, and curriculum, the 2014-15 CDL program was a distinct program that the District purchased, taking the program out of the collective bargaining context. Therefore, based on the evidence presented, this Court finds that Dr. Gallo's decision to purchase the CDL program for the 2014-15 school year falls squarely within the purview of an educational policy decision³¹ to improve student engagement and is outside of the collective bargaining context. Accordingly, the Union's challenge regarding Dr. Gallo's decision to hire CDL is non-arbitrable, absent a showing that the decision had a direct effect on the terms and conditions of teacher employment. See Pawtucket School Comm., 652 A.2d at 972; see also Town of N. Kingstown, 107 A.3d at 314.

Although the Union would be entitled to arbitrate any effects that the decision to hire CDL had on the terms and conditions of teacher employment, the evidence presented to this

³¹ The Union also asserts that the District's decision was motivated by a desire to save money rather than a desire to advance the quality of education, taking the decision out of the educational policy realm and placing it within the collective bargaining context. Our Supreme Court has held that when a school committee grounds its decision "primarily on a fiscal rationale," then the decision is not an educational policy decision within the purview of the non-delegable statutory authority. N. Providence Sch. Comm., 945 A.2d at 347. However, the Union presented no evidence that the District's decision to hire CDL was influenced by consideration of the cost differences. The Union presented evidence that hiring CDL to run the enrichment program was less expensive than hiring a new certified teacher to run such a program. See Tr. at 91; Pls.' Ex. 9, at 2. This standing alone is insufficient to establish that the District's motivation for hiring CDL was based on financial considerations. Dr. Gallo's testimony regarding the difficulties faced by Central Falls, the improvements that she and others observed from the CDL summer programs, and her desire to provide this proven program to foster student engagement for the entire Calcutt community overcomes any inference that can be drawn from mere reference to price differences. See Tr. at 15, 20-26, 33-34, 57. Based on this testimony and the lack of opposing evidence, this Court finds that Dr. Gallo's decision to hire CDL was based on educational policy, not monetary motivations.

Court has not demonstrated that there was any impact on existing bargaining unit members. Dr. Gallo testified that no teacher was fired or removed from a class assignment as a result of hiring CDL. (Tr. at 46, 55-56.) She additionally stated that the teaching budget was not reduced, and no teacher suffered a decrease in salary or benefits. (Tr. at 46, 55-56.) Principal Dos Santos testified that the CDL program was placed in a time-slot on the itinerant schedule that had previously been designated as an elective period and had not yet been matched with a course or teacher, so no currently employed teacher lost the opportunity for a planned course. (Tr. at 226, 247-48.) Thus, there was no direct impact on any existing bargaining unit member, and as a result, there was no effect on the terms and conditions of employment. See Barrington Sch. Comm., 120 R.I. at 479, 388 A.2d at 1375 (finding a grievance arbitrable when a school committee eliminated occupied positions but agreeing with the courts' reasoning in cases from other jurisdictions in which grievances were found to be non-arbitrable when the school board decisions to eliminate positions were made when the incumbents' employment was ending in any case, reflecting no direct impact on existing bargaining unit members).

The Union asserts that if a certified teacher had been utilized for the position, then a prospective teacher would have been hired and become a member of the collective bargaining unit. Dr. Gallo confirmed on cross-examination that an additional teacher would have been hired if a certified teacher had been utilized to co-teach with CDL. (Tr. at 91.) However, this potential harm to a prospective teacher—who is not a member of the collective bargaining unit—is insufficient to constitute an impact on terms and conditions of employment of teachers. In Barrington Sch. Comm., our Supreme Court recognized cases from other jurisdictions in which decisions to eliminate teaching positions were deemed non-arbitrable because the positions were vacant when they were eliminated. 120 R.I. at 476, 479, 388 A.2d at 1373, 1375. In those cases,

prospective teachers would similarly have been denied opportunities for hire. Yet, our Supreme Court agreed with the reasoning in those cases and found the decision at issue arbitrable because the eliminated positions were currently occupied by collective bargaining unit members. Id. Accordingly, loss of an opportunity for a prospective teacher to apply for a position does not constitute an impact on the terms and conditions of employment of collective bargaining members and does not establish arbitrability of the Union's grievance.

The Union additionally asserts that contracting with a private company to provide enrichment programming was unnecessary because existing Central Falls teachers were competent to teach the academic content of the CDL programs and were denied the opportunity to do so when the District hired CDL. However, this assertion misses the point. CDL was not hired to teach any subject included in the Calcutt curriculum. It was hired to enhance student engagement by fostering essential life skills such as self-awareness, competency, cooperative learning, and problem solving. (Tr. at 143.) Ms. Cunha testified that the program's focus is more on building a sense of community and that the content of the program is only a vehicle to accomplish these goals. See Tr. at 136, 142. Clearly, the focus of the program is not on academic content but rather on development of these foundational concepts designed to foster student engagement. The Union presented no evidence that any certified teacher within the bargaining unit had developed such a comprehensive program designed to address these issues.

As stated above, this Court finds that the District's decision to hire CDL was within its non-delegable statutory authority. This Court also finds that the decision to hire CDL had no effects on the terms and conditions of the Union employees. Accordingly, the District is entitled to declaratory judgment to that effect. The Court will proceed to consider the potential for irreparable harm, the balance of the equities, and the public interest relevant to the issuance of a

permanent injunction. See Nye, 992 A.2d at 1010 (citing Nat'l Lumber & Bldg. Materials Co., 798 A.2d at 434); R.I. Tpk. & Bridge Auth., 433 A.2d at 182.

B

Irreparable Harm

In determining whether to grant a permanent injunction, the Court must consider whether the District will suffer any irreparable harm. Nye, 992 A.2d at 1010 (citing Nat'l Lumber & Bldg. Materials Co., 798 A.2d at 434). This harm must be imminent, and there must be no adequate legal remedy. Id. (citing Nat'l Lumber & Bldg. Materials Co., 798 A.2d at 434).

In addition to arguing the merits of its Complaint, the District asserts that it will suffer immediate, irreparable harm for which there is no adequate remedy at law if this Court does not grant an injunction. The District argues that it will suffer substantial time loss and inconvenience if it is forced to arbitrate an issue that is non-arbitrable, and there is no avenue for the District to recoup that loss. Additionally, the District faces an even greater risk if it loses at arbitration in that it will be required to implement the arbitration award—ending CDL's program—even while it appeals the decision, unless it can persuade this Court to stay that decision. Discontinuing the CDL program will disrupt the benefits that students may gain from the program, harm the District maintains cannot be fully remedied. Finally, the District points out that this Court's review of arbitration awards is very limited, which would inhibit the District's ability to undue any errors made by the arbitrator.

The Union counters that the District has provided no evidence that it will suffer harm by following an arbitration clause to which the District agreed.³² The Union relies on the ability of

³² A decision on substantive arbitrability usually focuses on “whether an issue is properly the subject of an arbitration agreement[;] that is, whether a party has agreed to be bound by an arbitration decision concerning the subject matter of the case.” Theodore J. St. Antoine, The

the District to seek review of the arbitration decision with this Court, which would undermine the requirement that the harm must have no adequate legal remedy. The Union points out that not only will the District be able to obtain a substantive review of the arbitrator's decision, but the District may also obtain a review of the arbitrability of the dispute after the arbitrator has rendered his or her decision.

The District does face several harms if the Court does not grant a permanent injunction. If the arbitrator were to rule against the District, the beneficial CDL program would have to be terminated³³ until the District appealed the arbitrator's decision to this Court. An arbitrator's decision against the District would also interfere with the District's educational policy decisions, and the authority to make these decisions is non-delegable under state law. See Pawtucket Sch. Comm., 652 A.2d at 972.

The harm of a negative arbitration award does possess a legal remedy—appeal to this Court. G.L. 1956 § 28-9-18. However, the standard of review applied by this Court to an arbitration award is far more deferential than if the Court first reviewed the matter. See N. Providence Sch. Comm., 945 A.2d at 344 (observing that arbitration awards “enjoy a presumption of validity” and this Court's review is limited to statutorily prescribed instances, such as that the award was procured by fraud or the arbitrator exceeded his or her powers). Therefore, the District would suffer a loss of this Court's initial review of the matter, to which it

Common Law of the Workplace: The Views of Arbitrators § 1.21 at 16 (1998). However, in this case there is no question that the District agreed to submit to arbitration for disputes under the CBA. Rather, the arbitrability question here centers around whether the District acted under its statutory authority, taking the case out of the collective bargaining context. As this Court has held the District was so acting, the District's agreement to arbitration of CBA disputes is irrelevant.

³³ The Court notes that the 2014-15 school year has ended, and the District has not stated to this Court whether it will continue the CDL program in the 2015-16 school year. Therefore, the specific harm of interruption of the program is speculative and not imminent.

is entitled. See Sacco v. Cranston Sch. Dep't, 55 A.3d 147, 149-50 (R.I. 2012) (holding that whether a dispute is arbitrable is a matter for judicial review).

Greater still, the District has a statutory obligation to enact educational policies, and it cannot delegate this obligation to other parties. See Pawtucket Sch. Comm., 652 A.2d at 972. Having this statutory authority stripped away, even temporarily, and given to an arbitrator—or the Union if the arbitrator finds in the Union's favor—would constitute an immediate harm with no adequate legal remedy. If the District were stripped of its authority to satisfy its educational mission in accordance with its non-delegable duty by being forced to arbitrate, the compelled arbitration would constitute a roadblock to the District's ability to utilize creative approaches to learning and address the needs of its students. These losses are sufficient to constitute irreparable harm and justify a grant of a permanent injunction. See Nye, 992 A.2d at 1010 (citing Nat'l Lumber & Bldg. Materials Co., 798 A.2d at 434.)

C

Balancing of the Equities

This Court must also consider whether the balance of the equities, taking into account the public interest and possible hardships to each party, tip in favor of granting the permanent injunction. R.I. Tpk. & Bridge Auth., 433 A.2d at 182. In proceeding with this analysis, the Court is cognizant of its holding that the District's decision to hire CDL was made pursuant to the District's non-delegable statutory authority in §§ 16-2-9 and 16-2-11.

As noted above, the District stands to face hardships if the injunction is not granted in the form of loss of their statutory authority, potential interruption of a school program, and a lessened standard of review by this Court. In contrast, the Union's hardship if the permanent injunction is granted would be losing the right to pursue arbitration on a grievance as anticipated

under the CBA. However, as this Court has found, the Union does not have a right to arbitration in this case because the District was acting pursuant to its statutory authority. Additionally, the Union retained and exercised its right to present its argument to this Court.

Public policy also weighs in favor of granting an injunction. Our State Constitution recognizes the importance of education. R.I. CONST. art. XII, § 1. The General Assembly has elected to grant school committees significant discretion in drafting appropriate educational programs. See § 16-2-9. Therefore, public policy supports maintaining a school committee's educational policies in order to avoid disruption of student education. As this Court has noted, the students of Central Falls face many challenges that hamper academic success. The District presented considerable evidence to this Court that the CDL program has led to increased student engagement resulting in improved attendance, interest, and proficiency by the students who have attended. These benefits have been observed from two summer programs and the initial portion of the 2014-15 school year. Public policy supporting the advancement of the quality of education favors providing the District with the flexibility it needs to satisfy its mission, as long as the District's actions are not in violation of the CBA.

Upon balancing the parties' interests and the public interest, the Court finds that the equities balance in favor of granting a permanent injunction. If this Court denies the injunction, the District will suffer a loss of its statutorily granted authority to determine educational policy. In contrast, the Union does not stand to lose any rights or authority. The Central Falls students also risk a loss of the benefits of the CDL program if the injunction is denied. Therefore, the equities balance in favor of granting an injunction to the District because the public policy to avoid harm to student education exceeds the potential harm to the Union. See R.I. Tpk. & Bridge Auth., 433 A.2d at 182.

IV

Conclusion

This Court finds that the General Assembly granted broad, non-delegable authority to the Board and Superintendent Gallo to identify the educational needs of the District and create and implement educational policies to address those needs. Based on the evidence and testimony presented to this Court, the Court finds that the District was acting within its statutory authority when it elected to hire CDL to run an enrichment program during the school day at Calcutt. Additionally, the decision to hire CDL did not impact the terms and conditions of teacher employment. Therefore, the Court grants the District's prayer for declaratory judgment. The Court finds the District's decision to hire CDL was made pursuant to the District's statutory authority to create and execute educational policies, and thus the Union's grievance is not arbitrable.

The District has also demonstrated that it will suffer irreparable harm if the injunction is not granted. The Court's balance of the parties' equitable interests, as well as public policy considerations, favors a permanent injunction. For all these reasons, this Court grants the District's request for a permanent injunction. Counsel for the District shall submit the appropriate Order for entry.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Central Falls School District Board of Trustees, et al. v.
Central Falls Teachers Union

CASE NO: PC 2014-6275

COURT: Providence County Superior Court

DATE DECISION FILED: August 28, 2015

JUSTICE/MAGISTRATE: Van Couyghen, J.

ATTORNEYS:

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