STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: February 26, 2019]

CHARIHO REGIONAL SCHOOL DISTRICT,	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. PC-2017-1866**
	:	
RHODE ISLAND COUNCIL ON ELEMENTARY AND SECONDARY EDUCATION and the METROPOLITAN REGIONAL CAREER AND TECHNICAL SCHOOL,	:	
Defendants.	:	

DECISION

CARNES, J. Before this Court is the Chariho Regional School District's (District) administrative appeal from a decision by the Rhode Island Council on Elementary and Secondary Education (Council). The Council affirmed the Commissioner of Education's (Commissioner) grant of partial summary judgment in favor of the Metropolitan Regional Career and Technical School (Met School) and ordered the District to reimburse the Met School for the Chariho residents who attended the Met School during the 2012-2013 school year. Jurisdiction is pursuant to G.L. 1956 §§ 42-35-15 and 16-39-4.

I

Facts and Travel

The material facts of this case are not in dispute. The Met School has been authorized by the Rhode Island Department of Education (RIDE) as a career and technical school pursuant to § 16-45-6 since 1996. Currently, the Met School has campuses in Providence and Newport, Rhode Island. However, the school serves students from throughout the state, including students

residing in the District. The Met School is the only school in the state that offers an Individual Vocational Studies (IVS) program. Hr'g Tr. 51:2-14, Apr. 30, 2015 (Tr.) The Met School's IVS program is designed to allow students to work with faculty, mentors, and parents to create their own education plans to further their individual career goals. Tr. 48:17-49:5; 54:22-55:13. Another key aspect of the IVS program is its focus on learning through internship experiences. Tr. 62:9-63:22.

The Met school requested the District reimburse it for the Chariho residents who attended the school during the 2011-2012 and 2012-2013 school years. In August 2011, the Superintendent of Schools for the District informed the Met School that the District would only pay tuition and provide transportation for its residents attending the Met School, who were enrolled during the 2010-2011 school year. Aug. 19, 2011 Letter from Barry J. Ricci, Pet'r's Ex. 1.

After the District failed to provide reimbursement for the District's share of the Chariho students' tuition, on May 28, 2013 the Met School sent a letter to the Commissioner requesting that the Commissioner have the General Treasurer withhold state funding from the District and provide such payment to the Met School pursuant to § 16-7-31. May 28, 2013 Letter to the Commissioner, Pet'r's Ex. 1. Subsequently, the Met School moved for summary judgment. September 12, 2013 Letter from Attorney Matthew R. Plain. In support of its motion, the Met School asserted that it was entitled to reimbursement under § 16-7.2-5 as a matter of law because Section 5.1 of the Regulations of the Board of Regents Governing Career and Technical Education in Rhode Island (Career and Technical Regulations) provided out-of-district students with the right to attend the Met School. *Id*. at 2. The Met School based its conclusion on the fact

that the Met School is "the only RIDE-approved independent vocational studies (IVS) innovation program of study in the state." *Id.*

In response, the District contended that summary judgment was inappropriate for the 2011-2012 school year because the Met School had not established that no comparable programs were available closer to the students' residences, as required by the Career and Technical Regulations in effect at that time. As to the 2012-2013 school year, the District asserted that summary judgment should be denied because the current regulations require students to request permission from their local school districts in order to attend a RIDE-approved career and technical program, and that none of the students at issue requested such permission. Additionally, the District asserted that the Commissioner needed to hear evidence regarding the programs available at the Met School to determine if the programs complied with state and federal law.

On August 18, 2014, the Commissioner granted summary judgment as to the Met School's claim for reimbursement for the 2012-2013 school year but denied summary judgment as to the 2011-2012 school year.[1] Commissioner's Ruling on Mot. Summ. J., Compl. Ex. A, at 5-6. In support of this holding for the 2012-2013 school year, the Commissioner found that the newly adopted Career and Technical Regulations, which became effective on July 1, 2012, clearly and unambiguously provide that

> "the only limitations on a student's choice of a RIDE-approved career preparation program are enrollment availability, lack of district transportation for programs outside the student's school

[1] The Commissioner denied the Met School's request for summary judgment as to the 2011-2012 school year, finding that the regulations in effect at the time required a determination be made as to the in-district availability of a specific program. Commissioner's Ruling on Mot. Summ. J., Compl. Ex. A, at 3. The Commissioner found that additional evidence was needed to determine the specific programs each Chariho resident was participating in at the Met School and thus, summary judgment was inappropriate at that time. *Id.* at 3-4.

> transportation region (if the enrollment occurs after September 1, 2012) and program admission standards." *Id*. at 4.

The Commissioner further stated that following the Board of Education's adoption of the new Career and Technical Regulations, "students were permitted to choose any RIDE-approved career preparation program in the state. Their choice is not affected by the presence of in-district programs or the preferences of their resident school districts." *Id.* at 4-5. Thus, the Commissioner concluded that for the 2012-2013 school year, approval from the local school district was only necessary when the student's chosen program was full. *Id.* at 5. Accordingly, the Commissioner ordered the District "to pay its local share in accordance with § 16-7.2-5 for resident students who chose to attend the Met School in Providence." *Id.*

On April 30, 2015, the Commissioner conducted a hearing regarding the Met School's remaining claim for reimbursement for the 2011-2012 school year. Tr. 4:3-5:16. During opening statements, the District raised the issue of whether the Met School meets the statutory and regulatory requirements to be deemed a career and technical education program, and contended that the District is not required to pay the students' tuition if the Met School cannot show that it meets the requirements. Tr. 14:20-19:14. At the hearing, only one witness testified, Joe Battaglia, the Director of Curriculum at the Met School. Tr. 28:7-168:19. Mr. Battaglia testified regarding the details of the Met School's IVS program, including how the program was established and the curriculum design during the 2011-2012 school year. Through his testimony, the District repeatedly objected to Mr. Battaglia's testimony and the introduction of exhibits on relevance grounds asserting that the proffered evidence failed to show that the program constituted career and technical education. The hearing officer overruled the District's relevance objections.

Following the April 30, 2015 hearing, the District filed a Motion for A Stay and in the Alternative Reconsideration of the Commissioner's decision granting summary judgment for the 2012-2013 school year contending that the Commissioner misinterpreted the Career and Technical Regulations and raising an argument that the Commissioner's previous ruling was erroneous because "the payments sought by the Met School are not 'education funding' under R.I.G.L. 16-7.2-5." On April 12, 2016, the Commissioner issued a decision affirming the original interpretation of Section 5.1 of the Career and Technical Regulations.[2] Comm'r's Decision, Compl. Ex. A, at 3. As to the District's contention that reimbursement was not required because the funds were not for "education purposes," the Commissioner found that it was not the proper time or place for raising a challenge to RIDE's approval of the Met School as a career preparation program. *Id.* The Commissioner held that "RIDE's approval of a career preparation program will be presumed to be valid in a proceeding under R.I.G.L. 16-7.2-5 to collect overdue payments of local funding for career and technical educational services." *Id.*

On May 2, 2016, pursuant to § 16-39-3, the District timely appealed the Commissioner's decision ordering the District to reimburse the Met School for the tuition of the students who resided in the District to the Council. On March 28, 2017, the Council issued a decision affirming the Commissioner's decision and reasoning and finding that the Commissioner's decision was not "patently arbitrary, discriminatory, or unfair." Council's Decision, Compl. Ex. B. Specifically, the Council agreed with the Commissioner's interpretation of § 5.1 of the Career and Technical Regulations. *Id.* at 3. Additionally, the Council emphasized that RIDE has

[2] Following the Commissioner's ruling on its summary judgment motion, the Met School voluntarily dismissed its claim for reimbursement for the 2011-2012 school year. Thus, the Commissioner refrained from adjudicating the merits of the Met School's claim for that particular school year in its final decision. Comm'r's Decision, Compl. Ex. A, at 2, 4.

approved the Met School's IVS program, and challenging such approval through a "collateral attack through the appeals process" is inappropriate. *Id.*

On April 25, 2017, pursuant to § 42-35-15, the District timely appealed the Council's decision affirming the Commissioner's decision to this Court. Compl. On appeal, the District asserts that the Council's decision was arbitrary and capricious because it failed to recognize that the Met School does not meet the requirements to be a career and technical program. Specifically, the District contends that the Met School is not entitled to "educational funding" from the District under § 16-7.2-5 unless the Met School can prove that its IVS program meets statutory and regulatory education requirements. Additionally, the District asserts that the Council erroneously interpreted § 5.1 of the Career and Technical Regulations to allow students to choose to attend any career and technical program in the state, regardless of whether the student obtained the District's approval.

In response, the Met School contends that the Council's decision was not arbitrary or capricious as it was supported by sufficient evidence in the record, and the Council's interpretation was not in error. The Met School also asserts that the Council correctly refused to consider the District's contention that the Met School's IVS program does not meet the requirements to be a career and technical education program. The Met School avers that its IVS program is on the RIDE-approved list of career and technical programs and the District failed to show that it possessed any authority to challenge the validity of the IVS program.

II

Standard of Review

This Court's review of an agency's decision is governed by § 42-35-15(g), which provides:

> "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> > "(1) In violation of constitutional or statutory provisions;
> >
> > "(2) In excess of the statutory authority of the agency;
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> > "(3) Made upon unlawful procedure;
> >
> > "(4) Affected by other error or law;
> >
> > "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> >
> > "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

Disputes arising under education law are reviewed through a two-tier administrative review process. *See* §§ 16-39-1 and 16-39-3. After the Commissioner conducts a hearing and renders a decision, the Council reviews the Commissioner's decision to determine if it "was patently 'arbitrary, discriminatory, or unfair.'" *D'Ambra v. N. Providence Sch. Comm.*, 601 A.2d 1370, 1374 (R.I. 1992) (quoting *Altman v. Sch. Comm. of Town of Scituate*, 115 R.I. 399, 404–05, 347 A.2d 37, 40 (1975)). The Supreme Court has compared this two-tier review process to a funnel with the hearing officer sitting at the mouth of the funnel. *Envtl. Sci. Corp. v. Durfee*, 621 A.2d 200, 207 (R.I. 1993). The court further explained that "the further away from the mouth of the funnel that an administrative official is when he or she evaluates the adjudicative process, the more deference should be owed to the factfinder." *Id.* at 208.

This Court's review of an agency decision "is limited to an examination of the certified record to determine if there is any legally competent evidence therein to support the agency's decision." *Barrington Sch. Comm. v. R.I. State Labor Relations Bd.*, 608 A.2d 1126, 1138 (R.I.

1992); *Power Test Realty Co. Ltd. P'ship v. Coit*, 134 A.3d 1213, 1218 (R.I. 2016). As to questions of fact, this Court may not "substitute its judgment for that of the agency whose action is under review." *Johnston Ambulatory Surgical Assocs., Ltd. v. Nolan*, 755 A.2d 799, 805 (R.I. 2000) (citing *R.I. Pub. Telecomms. Auth. v. R.I. State Labor Relations Bd.*, 650 A.2d 479, 485 (R.I. 1994)). However, "questions of law—including statutory interpretation—are reviewed *de novo*." *Iselin v. Ret. Bd. of Emps.' Ret. Sys. of R.I.*, 943 A.2d 1045, 1049 (R.I. 2008). If a statute is clear, '"this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings."' *Town of Smithfield v. Churchill & Banks Cos., LLC*, 924 A.2d 796, 802 (R.I. 2007) (quoting *Moore v. Ballard*, 914 A.2d 487, 490 (R.I. 2007)). Legislative rules enacted pursuant to an agency's statutory authority have the "force and effect of law" and must similarly be interpreted to give effect to their plain and ordinary meaning. *See Chariho Reg'l Sch. Dist. v. Gist*, 91 A.3d 783, 791 (R.I. 2014) (citing *Great Am. Nursing Ctrs., Inc. v. Norberg*, 567 A.2d 354, 356 (R.I. 1989)).

III

Analysis

A

Failure to Consider the Validity of the Met School's IVS Program

The District asserts that Council erred by failing to recognize that the Met School is not entitled to reimbursement by the District for "educational funding" under § 16-7.2-5 unless the Met School can demonstrate that it meets the state and federal requirements to be deemed a "career and technical program." Specifically, the District contends that the Commissioner acted arbitrarily when he failed to allow the District to inquire as to the length of the school day and the certifications of its teachers because the District is under no obligation to provide funding to

the Met School that will not be used in compliance with state standards. The District further avers that the Commissioner should have allowed the District to elicit evidence regarding whether the Met School's IVS program results in "an industry-recognized credential, a certificate, or an associate's degree" as required under the Perkins Act to receive federal funding for career and technical education. In response, the Met school avers that the Council's decision was not arbitrary or capricious as the Met School is on the RIDE-approved list of career and technical programs and thus, it is entitled to funding from the District pursuant to § 16-7.2-5.

Particularly relevant to this case is § 16-7.2-5(b), which provides that "[t]he local share of education funding shall be paid to . . . the Met Center by the district of residence of the student and shall be the local, per-pupil cost." The language of § 16-7.2-5(b) clearly and unambiguously requires the local school district in which a student attending the Met School resides to pay the local, per-pupil cost of that student to the Met School. The statute's requirement to pay is not contingent upon a showing by the school that it meets any further requirements. Moreover, RIDE has continually approved the Met School's IVS program as a career and technical program since 1996.[3] Even if the District could challenge the Met School's compliance with statutory and regulatory funding requirements, such a challenge is certainly not a basis for a local school district to refuse to comply with the funding requirements of § 16-7.2-5(b).

[3] To support its proposition that the Met School is not entitled to funding if it does not meet statutory and regulatory requirements, the District relies upon a Third Circuit case upholding the United States Secretary of Education's decision requiring the Pennsylvania Department of Education to refund money awarded to the state for vocational education programs. *Pennsylvania v. Riley*, 84 F.3d 125, 127 (3rd Cir. 1996). In that case, the court upheld the United States Secretary of Education's finding that the state's "Customized Job Training Program" qualified as a "vocational education program" under federal law. *Id.* at 128-31. More importantly, the challenge to the state's compliance with federal law was originally brought by the Assistant Secretary of Education following an audit. *Id.* at 128. Thus the action was brought by the original provider of the funding, as opposed to another recipient as herein. *See id.*

Additionally, the only matter properly before the Commissioner was whether the District was required to pay for the Chariho students enrolled in the Met School during the relevant school years. Section 16-39-2, which provides the basis for the Commissioner's jurisdiction, states that

> "[a]ny person aggrieved by any decision or doings of any school committee or in any other matter arising under any law relating to schools or education may appeal to the commissioner of elementary and secondary education who, after notice to the parties interested of the time and place of hearing, shall examine and decide *the appeal* without cost to the parties involved." (Emphasis added.)

Thus, the Council's finding that the present appeal was not an appropriate avenue for challenging RIDE's approval of the Met School as a career and technical education program was not clearly erroneous. *See Ajootian v. Housing Bd. of Review of City of Providence*, 98 R.I. 370, 373, 201 A.2d 905, 907 (1964) ("When the local legislature creates an administrative tribunal pursuant to a legislative grant of authority, its function is determined by the legislature and its jurisdiction can neither be enlarged nor restricted by provisions contained in local ordinances.").

Moreover, Chapter 45 of Title 16 of the Rhode Island Board of Education Act, which addresses Regional Vocational Schools, addresses the Met School by name in multiple provisions and specifically states that the Met School "shall be the second school operated under the provision of this chapter," after the William M. Davies, Jr. career and technical high school. Sec. 16-45-6(d)(2). By addressing the Met School by name in the statutes, the Legislature clearly intended for the Met School to exist and serve the students of Rhode Island as a career preparation program. *See McCain v. Town of N. Providence ex rel. Lombardi*, 41 A.3d 239, 243 (R.I. 2012) (recognizing that "in ascertaining and effectuating that legislative intent, 'the plain statutory language' itself serves as 'the best indicator'").

B

Interpretation of § 5.1 of the Career and Technical Regulations

As to the merits of the Council's decision, the District contends that the Council's interpretation of § 5.1 of the Career and Technical Regulations was erroneous for multiple reasons. First, the District contends that the Council's interpretation ignores the regulation's requirement that a student obtain the District's approval before enrolling in a career and technical program. Next, the District asserts that the Council's interpretation erroneously substitutes the word "program" with "location." Additionally, the District contends that the Council ignored the requirement of § 16-60-4(a)(14) that the Board of Regents adopt regulations to promote efficiency in the delivery of elementary and secondary education services. Lastly, the District avers that the Council's interpretation contradicts its own previous interpretation provided in the Career and Educational Technical Regulations Guide issued in December 2012. In response, the Met School contends that the Council correctly interpreted § 5.1 of the Career and Technical Regulations to allow students residing in the District to attend the Met School, regardless of whether the students obtained the District's approval.

This Court gives deference to an agency's interpretation of its governing statute. *Pawtucket Power Assocs. Ltd. P'ship v. City of Pawtucket*, 622 A.2d 452, 456 (R.I. 1993). However, the interpretation of a statute is a question of law for this Court to decide. *Iselin*, 943 A.2d at 1049. During the 2012-2013 school year, Section 5.1 of the Career and Technical Regulations provided:

> "All students shall have the right to request, from their resident LEA[4], access to a RIDE-approved career preparation program of

[4] Under the Career and Technical Regulations, an LEA is a "local education agency." R.I. Admin. Code 20-10-3 § 3.1(19). An LEA is defined as "a public board of education/school committee or other public authority legally constituted within the State for either administrative

> their choice. This right of access shall be limited only by the following three conditions:
>
> > "(1) *Availability of enrollment seats*: In the event that a student requests access to a RIDE-approved career preparation program that is fully enrolled, the resident LEA shall make every effort to identify and enroll the student in another RIDE-approved preparation program of the student's choice.
> >
> > "(2) *Geographic location*: Students are guaranteed access to RIDE-approved career preparation programs. Students requesting access to RIDE-approved career preparation programs outside their established school transportation region may enroll in such programs, but the resident LEA shall not be responsible for the costs of the transportation. Students enrolled in career preparation programs between March 1, 2009 and September 1, 2012 shall maintain the transportation rights set forth under the 1991 Regulations of the Rhode Island Board of Regents Governing Career and Technical Education for the duration of their continuous enrollment in the career preparation program.
> >
> > "(3) *Fair, equitable, and reasonable admission standards*: LEAs operating RIDE-approved career preparation programs are authorized to set reasonable, fair, equitable, and program-appropriate admission standards in accordance with section 5.3 of these regulations.
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> "Any student denied access to a career preparation program shall reserve the right of appeal through the policies and procedures managed by the LEA responsible for the denial of access." R.I. Admin. Code 21-2-60 § 5.1 (2013).

The Council found, and this Court affirms, that the language of § 5.1 is clear and unambiguous. Accordingly, this Court will interpret the regulation to give effect to its plain and ordinary meaning. *See Town of Smithfield*, 924 A.2d at 802. Section 5.1 provides students with the right to attend any career and technical program in the state subject only to the three conditions listed in the regulation. Although the first sentence provides that "[a]ll students shall

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control or direction of one or more Rhode Island public elementary schools or secondary schools." *Id.*

have the right to request" access to their chosen RIDE-approved career preparation program, the very next sentence explicitly states that "[t]his right of access shall be limited *only* by the following three conditions . . . ." *See id.* (emphasis added). Thus, a student cannot be denied access to a program for any reason other than those listed in the section, including failure to obtain approval from his or her school district of residence.

Here, the Council found that none of the conditions listed applied to the Chariho students who attended the Met School for the 2012-2013 school year. Based on this finding, the Council concluded that the students were entitled to attend the IVS program at the Met School. As the Council interpreted § 5.1 of the Career and Technical Regulation in accordance with its clear language, this Court finds that the Council's interpretation was not clearly erroneous. *See Power Test Realty Co. Ltd. P'ship*, 134 A.3d at 1220 (finding the agency's interpretation of an unambiguous statutory provision was not clearly erroneous because it conformed to the clear meaning of the statute).

The District also asserts that the Council should have considered the fact that the District provides its own career and technical program in deciding whether the District was required to reimburse the Met School for the Chariho residents enrolled in the IVS program. To do otherwise, the District contends, would effectively substitute the word "program" in § 5.1 of the Career and Technical Regulations with the word "location." However, to interpret the regulation to include such a requirement would be contrary to the clear language of the regulation. *See Sauro v. Lombardi*, 178 A.3d 297, 304 (R.I. 2018) ("[U]nder no circumstances will this Court construe a statute to reach an absurd result."). As discussed above, § 5.1 states that a student's right to attend the career and technical program of his or her choice is limited only to three

considerations, none of which includes the requirement that no program of that kind be offered in-district.

Additionally, the Council's interpretation does not ignore § 16-60-4(a)(14), which provides that the Council shall have the power "[t]o promote maximum efficiency and economy in the delivery of elementary and secondary educational services in the state." First, § 16-60-4(a) provides a list of powers and duties of the Council, not mandates. Also, even if the Council's interpretation does conflict with § 16-60-4(a)(14), the general call to maximize efficiency contained in § 16-60-4(a)(14) must yield to the specific language of § 5.1 of the Career and Technical Regulations addressing the students' rights to attend career and technical education programs. *See generally* G.L. 1956 § 43-3-26; *S. Cty. Post & Beam, Inc. v. McMahon*, 116 A.3d 204, 215 (R.I. 2015) ("When a specific statute conflicts with a general statute, our law dictates that precedence must be given to the specific statute.").

This Court determines that the Council's decision affirming the Commissioner's decision and finding that the District is required to reimburse the Met School for the Chariho students who were enrolled at the Met School's IVS program during the 2012-2013 school year is not clearly erroneous. Additionally, the Council's order requiring the District to reimburse the Met School for the local share of funding for the Chariho residents who enrolled in the Met School for the 2012-2013 school year is not arbitrary or capricious or in violation of statutory provisions. If such payments are not made, the General Treasurer shall deduct the amount owed from the District's state aid pursuant to § 16-7-31.

IV

Conclusion

After reviewing the entire record, this Court finds that the Council's decision is supported by substantial evidence and is not clearly erroneous, in violation of statutory provisions or

arbitrary and capricious. Substantial rights of the District have not been prejudiced. Accordingly, this Court affirms the Council's decision ordering the District to reimburse the Met School for the Chariho students who were enrolled at the Met School for the 2012-2013 school year.

Counsel shall prepare an appropriate Order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Chariho Regional School District v. Rhode Island Council on Elementary and Secondary Education, et al.
CASE NO:	PC-2017-1866
COURT:	Providence County Superior Court
DATE DECISION FILED:	February 26, 2019
JUSTICE/MAGISTRATE:	Carnes, J.
ATTORNEYS:	
For Plaintiff:	John Mason Anderson, Esq.
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