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

In re the May 1, 2023 Request for a Declaratory Order Concerning a Local School District's Obligation to Pay Charter and State Schools for Resident Students over Eighteen Years of Age and the Student Information to be Provided by Charter and State Schools when Billing the Sending District

D.O. 23-001

I. Declaratory Orders and Appeals

R.I. Gen. Laws § 42-35-8 provides that "[a] person may petition an agency for a declaratory order that interprets or applies a statute administered by the agency or states whether, or in what manner, a rule, guidance document, or order issued by the agency applies to the petitioner," and not later than sixty (60) days after receipt of such a petition, the agency "shall issue a declaratory order in response to the petition, decline to issue the order, or schedule the matter for further consideration." R.I. Gen. Laws § 42-35-8(a), (c); *see generally Regulations Governing Declaratory Order Petitions,* 200-RICR-30-15-2, *et. seq*. Such a declaratory order has "the same status and binding effects as an order issued in a contested case and is subject to judicial review under § 42-35-15." *Id*. at (e).

II. The Consent Order Requesting the Declaratory Order

On April 20, 2022, the Pawtucket School Department ("Pawtucket") filed a Petition for Determination of Fiscal Responsibility with the Commissioner seeking the return of certain payments it had made to the Sheila "Skip" Nowell Leadership Academy ("Nowell") pursuant to, *inter alia*, R.I. Gen. Laws §§ 16-7.2-5(d) and 16-77.1-2(e), which mandate that local school districts make quarterly payments to charter schools like Nowell – as well as to the state-operated William M. Davies, Jr. Career and Technical High School ("Davies") and the Metropolitan Regional Career and Technical Center (the "Met") – to cover a portion of the cost of educating students who reside in their local districts. *See Pawtucket School Department v. Sheila "Skip" Nowell Leadership Academy*, RIDE No. 22-013A.

Pawtucket alleged that it was entitled to the requested relief since: (1) it was not financially responsible to Nowell "for any general education student residing in Pawtucket and attending [Nowell] "who is over the age of eighteen (18) years old and who has not been continuously enrolled in school," or "who has aged-out of the State's public schools in practice if not by law;" and (2) Nowell had not provided it with "documents confirming residency; date of birth; current grade; whether the students have been continuously enrolled in school and whether any of the students are special education students entitled to protection in accordance with the Individuals with Disabilities Education Act [(the "IDEA")]."

This was not the first time that a local school district had challenged a charter or state school's right to payment on similar grounds.[1] As a result, Pawtucket and Nowell agreed to the entry of a Consent Order to convert Pawtucket's petition into a request for a declaratory order pursuant to R.I. Gen. Laws § 42-35-8 to clarify: (1) whether local school districts and other local education agencies ("LEAs") had any obligation to pay for general education students who were over eighteen years of age; and (2) what specific student information charter and state schools were required to provide to local school districts and other LEAs when seeking payment for resident students.

On May 5, 2023, written notice of the request for a declaratory order and an opportunity to make written submissions to the Commissioner with respect to the issues raised was provided to: (1) the Rhode Island School Superintendent's Association ("RISSA"); (2) the Rhode Island League of Charter Schools (the "League"); (3) all charter public schools, as defined in chapter 77 of Title 16; (4) Davies; (5) the Met; (6) YouthBuild Preparatory Academy; (7) the UCAP School; and (8) the list of education attorneys maintained by the Department of Elementary and Secondary Education ("RIDE").

III. The Positions of the Interested Parties

1. Pawtucket, RISSA and Davies

a. Students over Eighteen Years of Age

In its June 30, 2023 Memorandum (the "Pawtucket Mem."), Pawtucket took the position that "[l]ocal school districts do not have any obligation to pay for general education students [i] who are over eighteen (18) years of age and who have not been continuously enrolled in school or [ii] who have aged-out of the state's public schools in practice if not by law." *Id.* at 12. Pawtucket argued that "[a]ttendance is not compulsory after age 18 pursuant to §16-19-1(a)[,]" and "[w]hile Pawtucket acknowledges that the students have a right to adult education under §16-63¬2(a)(1), it is not a local school district's obligation to provide such education . . . to accommodate this right, Rhode Island funds a network of community-based organizations ('CBOs') to deliver adult education to students who have aged-out of—in practice if not by law—the state's public schools." *Id.*; *see also id.* at 13, quoting *K.L. v. Rhode Island Council on Elementary and Secondary Education,* 907 F.3d 639, 648 (1st. Cir. 2018) ("the sixty-six Local

[1] *See, e.g., Metropolitan Regional Career and Technical Center v. Cranston Public Schools, Pawtucket School Department and Tiverton School Department,* RIDE Nos. 18-002A, 18-004A and 18-014A (Consolidated) (September 19, 2018) ("the plain language of § 16-45-10 evidences the General Assembly's intent to essentially allocate risks by ensuring that tuition payments of the type sought here are paid by school districts prior to litigating factual or legal issues concerning the right to payment."); *Kingston Hill Academy v. North Kingstown School Department,* RIDE No. 17-004 (December 12, 2017 ("[S]chool district may request and receive limited information about its resident students to verify their enrollment in the charter school but must pay invoices on a timely basis"); and *Newport Community School v. Tiverton School Committee,* RIDE No. 006-16 (August 4, 2016) (involving local district's refusal to pay for alternative learning plan services that had been provided to six (6) students).

Education Agencies in Rhode Island *have discretion* in determining whether to admit older students"). Moreover, Pawtucket argued that:

> . . . the local school district's fiscal responsibility to charter public schools, pursuant to §16-7.2-5, is first subject to the local school district's educational and fiscal responsibility of a resident student before a charter public school may impose its authority under §§ 16-77-6.1 and 16-7.2-5 to provide adult education to that local school district resident student and require payment by that local school district. In fact, Section 4 under chapter 63 entitled, 'Adult Education' states, "nothing in this chapter shall be construed as a mandate to any city or town to provide any compulsory [adult] educational program." § 16¬63-4. Thus, even though a charter public school may impose its own student enrollment procedures, a local school district is not fiscally responsible for resident students enrolled in the charter public school that are not the educational responsibility of the local school district.

Id.

Additionally, Pawtucket made the point that the Commissioner "has held that [i] 'the existence of an adult education system does not preclude *ongoing attendance* in high school by those students who attain age eighteen in the course of their *continuing enrollment*[,]' and [ii] 'the exclusion of a student continuously enrolled in high school because he/she attains eighteen years of age is not supported by state law or regulation.'" *Id.* at 14, citing *Student Doe v. Bristol/Warren Regional School District*, RIDE No. 0001-97 at 7 (January 6, 1997) (emphasis added). Thus, according to Pawtucket, "when a student is in fact over 18 years of age and is not continuously enrolled, the existence of an adult education system precludes student enrollment in schools funded by the LEAs." *Id.*

b. The Information to be Provided to Local School Districts

Pawtucket argued that when seeking payment for resident students, charter schools, Davies and the Met should provide local school districts with:

> (1) [proof of] residency; (2) date of birth; (3) current grade; (4) whether the students have been continuously enrolled in school; and (5) whether any of the students are special education students entitled to protection in accordance with the individuals with disabilities education act [(the "IDEA")].

Pawtucket Mem. at 9-10. In support, Pawtucket cited *Kingston Hill Academy, supra* (discussed *infra*), as well as a December 21, 2011 Memorandum from former RIDE Commissioner Deborah Gist entitled " 'Procedures for confirming residency of students in charter public schools," which stated that "[t]he school will [] submit a certified list of students to the district of residence; if the district of residence questions a student's residency, it may request a copy of the residency documentation.' " *Id.* at 10 (quoting the 2011 Memorandum). In addition, Pawtucket argued

that "local school districts are not only entitled to receive such information, but also should not have to affirmatively request every quarter for residency confirmation because the charter school[s] are to be required to provide outright such information when seeking payments for resident students." *Id.*

RISSA wrote the Commissioner on June 26, 2023, and urged her to mandate that the following information be provided to the sending school district, and that the information be verified on a quarterly basis:

- Full name and dob of the student.
- SASID number (unless it is readily available to Districts from RIDE solely based on the student's name and dob).
- Address(es) of student.
- Name and address(es) of custodial guardian/parents.
- Parent(s)/guardian(s) marital status.
- Student grade and name of program student is attending.
- Verification of residency with an attestation from the entity (indicating when residency was last verified), in the Chariho region include the 'locator card' issued by town of residence.
- Verification that a student is attending an eligible reimbursable program (for instance: excluding pre-k attendance and post age 19 attendance).
- Student attendance and confirmation that student presently attends the school for the time invoiced.
- Disenrollment and truancy information.
- Indication as to whether the student has an IEP or 504.
- Free and reduced lunch designation (only if RIDE believes this information may be shared and not in violation of applicable federal regulation).
- The number of years the student was enrolled with the entity.

See June 26, 2023 letter from RISSA at 2.[2]

On June 1, 2023, counsel for Davies urged the Commissioner "to be as specific as possible" with respect to the student information the Met would be required to provide to a sending school district, and whether or not the Met would be required to provide proof-of-residency documents even if the sending school district already had such documents in its possession.

[2] RISSA also made the point that in addition to charter and state schools, local school districts operating a career and technical education/pathway program should provide local districts they are billing with "confirmation of the specific program the student was currently enrolled in and information regarding any change in programs within that school district." *Id.* However, that issue is not now before the Commissioner.

2. Nowell and the League

a. Students over Eighteen Years of Age

In its June 30, 2023 Memorandum (the "Nowell Mem.") Nowell argued that:

> Nowell's approved enrollment procedures permit enrollment of students who reside in any city or town with approved outreach and recruitment to individuals who identify as pregnant and/or parenting and/or underserved. Nowell's approved enrollment procedures expressly permit enrollment after an eighteenth birthday. In fact, in light of its target student population, such a restriction would likely diminish the reach and effectiveness of its approved program. Accordingly, so long as a Nowell student resides in Pawtucket and has been properly enrolled pursuant to Nowell's approved enrollment procedures, Pawtucket is obligated to make local share payments to Nowell for these students.

Id. at 8; *see also id.* at 8-9 citing *K.L., supra,* 907 F.3d at 648 and *John C. Q. Doe v. Middletown School Committee*, RIDE No. 0001-98 at p. 7 (January 7, 1998) ("adult enrollment in high school is encouraged, to the extent deemed appropriate by local school committees").

Moreover, Nowell argued that "[t]here is simply no link between an LEA's obligation under the IDEA to provide special education and related services, where warranted, until age twenty-two (22), and a district's obligations to make local share payments under Rhode Island's Fair Funding Formula." Further, Nowell claimed that "[t]here is no legal basis for [Pawtucket's] argument that a student must remain continuously enrolled in school for the district to fulfill their funding obligations." According to Nowell, "the term 'continuous enrollment' is found in neither the Fair funding Formula, the enrollment provisions of the Charter School Act, nor Nowell's approved enrollment policies and procedures." *Id.* at 12.

In its June 30, 2023 Memorandum (the "League Mem.") and August 14, 2023 supplement (the "League Supp. Mem."),[3] the League claimed that Pawtucket "bears fiscal responsibility for its general education resident-students over the age of 18, emphasizing that "public charter schools operate independently from school districts such as Pawtucket to accomplish, *inter alia,* an '[i]ncrease [in] learning opportunities for *all pupils*, with special emphasis on expanded learning experiences for pupils who are identified as *educationally disadvantaged and at-risk.*' League Mem. at 4, quoting R.I. Gen. Laws, § 16-77-3.1(c)(2) (emphasis supplied). According to the League, "allowing Pawtucket's Petition [would] eliminate[ ] learning opportunities for pupils over the age of 18 (whether continuously enrolled or having taken leave from school), many of

[3] On August 14, 2023, the League moved to supplement its June 30 Memorandum in order to include information it had received from Pawtucket pursuant to a June 8, 2023 request it had made to Pawtucket under the Access to Public Records Act concerning Pawtucket's enrollment of students over eighteen years of age and any related District policies. The information provided by the League on August 14, 2023 was relevant and will be included as part of the record, despite Pawtucket's objection to the League's motion to file out of time.

whom are educationally disadvantaged and at-risk[,] which would not "comport with the legislative intent behind the creation of charter schools." *Id.* at 4-5.

The League also claimed that "Nowell (and all independent charter schools and statutory schools of choice) have always operated without input from sending school districts concerning their enrollment procedures," *id.* at 5, and argued that:

> RIDE is the sole arbiter of a charter school's enrollment procedures, which is a function that RIDE, alone, carries out first when it grants (or denies) the initial charter application for all independent charter schools and, then again (and again) during the charter renewal process. *See* R.I. Gen. Laws, § 16-77.3-2(a)(10) (enumerating enrollment procedures that must be approved). To the League's knowledge, RIDE has never denied a charter application or renewal due to the age of students a school intends to enroll. Such a denial would constitute discrimination and violate federal and state civil rights laws. In fact, 'Rhode Island law requires that charter schools be open to *any student regardless of background, characteristics*, ability, or prior performance.' *See* Rhode Island Charter Public Schools, Frequently Asked Questions, RIDE at p. 5 (attached hereto as Exhibit A) (emphasis supplied). A student's age unquestionably qualifies as a 'characteristic' of that student.

Id. at 5-6. According to the League, Pawtucket offered no legal basis to support its position that a student may "age out," and "did not attempt to explain the circumstances that may give rise to a student's 'aging out[,]' arguing that:

> [w]hile Rhode Island's compulsory attendance law (R.I. Gen. Laws, § 16-19-1) requires only children who have 'not completed ... (18) years of life' to regularly attend school, that statute, on its face, does not prohibit individuals over the age of 18 from receiving general education services in the public-school setting. [Footnote omitted]. Such a decision is left to LEAs, which include independent charter schools. Indeed, courts (and RIDE) have clearly established that no Rhode Island law 'expressly set[s] a maximum age for school attendance,' and the LEAs in Rhode Island "have discretion in determining whether to admit older students."

Id. at 7-8 citing *K.L., supra*, 907 F.3d at 648 and *John C. Q. Doe*, supra, RIDE No. 0001-98 at p. 7; *see also* League Mem. at 7 quoting R.I. Gen. Laws, § 16-38-1 ("[n]o person shall be excluded from any public school on account of...being over fifteen (15) years of age....").

Finally, the League made the point that "between the 2018-2019 school year (as of January 1, 2019) and the present, Pawtucket has enrolled hundreds of students over the age of 18," and it "does not maintain any policies regarding the 'aging out' of students or defining 'continuous enrollment.'" *See* League Supp. Mem. at 2 and attached Exhibit C.

b. The Information to be Provided to Local School Districts

Nowell argued that:

> [t]he plain language of the Fair Funding Formula does not predicate district payments to charter schools, Davies, and/or the Met on any of the following: [i] receipt of information from education records protected from disclosure pursuant to the federal Family Education Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g (4) (A). *See* R.I. Gen. Laws. § 16-7.2-5; [ii] age and disability requirements pursuant to the IDEA. *See* 33 U.S.C. § 1411(a)(2); or [iii] evidence of a student's continuous enrollment in school.

Id. at 5. Nowell cited the same December 21, 2011 Memorandum by former Commissioner Gist that had been relied upon by Pawtucket, emphasizing the former Commissioner's statement that, "[i]f a dispute as to the residency of a student exists, the district may request a residency hearing, under R.I.G.L 16-64-6." *Id.* at 6, quoting *the* December 21, 2011 Memorandum. In addition, Nowell opined that production of the requested student information is prohibited by the Family Educational Rights and Privacy Act ("FERPA"). *See id.* at 7, citing 20 U.S.C. § 1232g(b)(1).

The League argued that:

> Pawtucket must make 'local district payments to charter schools...for each [of its] students enrolled in these schools...on a quarterly basis.' *See* R.I. Gen. Laws, § 16-7.2-5(d). The governing statute allows for no contingencies or exceptions. *See Kingston Hill Academy v. North Kingstown School Department*, RIDE No. 17-004 at p. 1 (December 12, 2017) ('held: school district did not have the right to withhold partial payment of quarterly tuition invoices to charter school based on charter school's refusal to provide enrollment-related information requested by the district.').
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> Further, regarding independent charter school students, 'the verification of residency shall be made at the time of enrollment and annually thereafter *by the charter public school in which the student is enrolled.*' *See* [December 21, 2011 Memorandum by former Commissioner Gist] (emphasis supplied). Nowell has complied with its enrollment and residency verification obligations and, therefore, Pawtucket must now comply with its payment obligations pursuant to R.I. Gen. Laws, § 16-7.2-5(d).

Id. at 11-12.

IV. Discussion

1. The Commissioner's Jurisdiction and Authority

The initial, and potentially dispositive, legal question that must be addressed concerns whether the Commissioner even has the requisite legal authority to either: (a) compel local school districts to reimburse charter and state schools for providing educational services to general education students who are over eighteen years of age; and/or (b) require that charter and state schools provide specific information to local school districts as a condition precedent to payment for resident students.

The Council on Elementary and Secondary Education (the "Council") has been vested with a broad array of powers with respect to elementary and secondary education in the State, *see* R.I. Gen. Laws § 16-60-4, and the General Assembly has made clear that the Council has the authority:

> To exercise all other powers with relation to the field of elementary and secondary education within this state not specifically granted to any other department, board, or agency, and not incompatible with law, which the council on elementary and secondary education may deem advisable . . .

Id. at (a)(12). At the same time, the Legislature has vested the "entire care, control, and management of all public-school interests of the several cities and towns . . . in the school committees of the several cities and towns." R.I. Gen. Laws § 16-2-9(a).

School attendance is compulsory in Rhode Island only up to age eighteen, *see* R.I. Gen. Laws § 16-19-1, and no Rhode Island law "expressly set[s] a maximum age for school attendance." *See K.L., supra*, 907 F.3d at 648; see also *John C. Q. Doe, supra*, RIDE No. 0001-98 at p. 7 ("there is no provision of state law which bars or mandates adult attendance in a regular high school program"); *Student Doe, supra*, RIDE No. 001-97 at 7 ("The existence of an adult education system does not preclude ongoing attendance in high school by those students who attain age eighteen in the course of their continuing enrollment.").[4]

Because the authority to admit older students is not one of the enumerated powers delegated to school committees under § 16-2-9(a) (or to any other entity), it arguably is within the authority of the Council pursuant to § 16-60-4(a)(12) (quoted *supra*), at least assuming that the Council's authority is not circumscribed by the fact that the State's compulsory education statute (§ 16-19-1) is not applicable to adult students. Thus, *if* the Council had acted in the area and had limited the discretion afforded local school committees and other LEAs with respect to

[4] The State's compulsory education age was raised to age eighteen in 2011 (P.L. 2011 Ch. 338 §1, codified at R.I. Gen. Laws § 16-19-1). Under R.I. Gen. Laws 16-67.1-3, sixteen and seventeen year old students must follow a prescribed protocol if, after implementation of an alternative learning plan, the student, the student's parent(s)/guardian and the school principal agree to his or her withdrawal from school prior to graduation, for documented reasons.

the admission of adult students, it might then be within the authority of the Commissioner – the Council's chief executive officer with jurisdiction over "any matter of dispute. . . arising under any law relating to schools or education," R.I. Gen. Laws §§ 16-60-6, 16-39-1 and 16-39-3.1 – to enforce such action.

However, *the Council has not acted to change the long-standing general rule that the admission of adult students is within the discretion of local school committees or other LEAs.* As noted by the First Circuit and the Commissioner, "the sixty-six Local Education Agencies in Rhode Island have discretion in determining whether to admit older students." *K.L., supra*, 907 F.3d at 648; *see also John C. Q. Doe, supra*, RIDE No. 0001-98 at p. 7. Thus, to date, local school districts act as gatekeepers in admitting and retaining students above the age of eighteen in their school systems. We need not determine here whether, as a general matter, the Council's authority in the area is limited by the compulsory attendance statute because even if the Council's authority was not limited, in the absence of any Council action, the Commissioner simply lacks the authority to compel local school districts or other LEAs to admit adult general education students, at least as a general matter (without reference to the legal mandates applicable to special education students and multi-lingual learners ("MLL's")).[5]

That being said, the Commissioner's limited authority over a local school district's policies concerning the enrollment of adult students in their own schools does not preclude her from providing guidance on the issue of adult student enrollment as a general matter (*see infra* at 12-13), or from interpreting, and then enforcing, a local district's obligations to make the quarterly payments to charter and state-operated schools mandated under, *inter alia*, R.I. Gen. Laws §§ 16-7.2-5(d) and 16-77.1-2(e); nor does it preclude her from delineating what specific student information charter and state schools are required to provide to local school districts when seeking payment for resident students. Indeed, the Commissioner is under a duty "to require the observance of all laws relating to elementary and secondary schools and education," R.I. Gen. Laws §§ 16-60-6(9)(vii), and "to interpret school law and to decide any controversies that may be appealed to him or her from decisions of local school committees[.]" *Id.* at (9)(viii).

2. Charter and State-Operated Schools are not Subject to the Enrollment Policies of a Local School District

There is a tension, if not a direct conflict, between, on the one hand, the discretion afforded local school districts in Rhode Island over whether to enroll adult students in their own schools, and on the other hand, Council-approved charters which seemingly call for the enrollment of selected adult students and statutory provisions mandating that local districts

[5] Students with disabilities have the right to receive special education services until their twenty-second birthday under the IDEA, 20 U.S.C.A. § 1415, *et seq.*; *see also K.L. supra*, 907 F.3d at 648-652; and MLLs require "age appropriate" opportunities to complete their secondary education and become proficient in English until age twenty-four. *See* Basic Education Program Regulations, 200 RICR 20-10-1.3(H)(1)(d).

reimburse charter or state-operated schools on a quarterly basis for resident students. *See* R.I. Gen. Laws §§ 16-7.2-5(d) and 16-77.1-2(e).[6]

In attempting to reconcile this tension, one must keep in mind that when statutes are *in pari materia*, i.e., "on the same subject; relating to the same matter," they should be construed ""in a manner that attempts to harmonize them and that is consistent with their general objective and scope.'" *Horn v. Southern Union Co.*, 927 A.2d 292, 294 n.5 (R.I. 2007), quoting *State v. Dearmas*, 841 A.2d 659, 666 (R.I. 2004) (internal citations omitted). The Court has emphasized that "[b]asic to the rules of statutory construction is the principle that where two apparently inconsistent provisions are contained in a statute, every effort should be made to construe and apply the provisions as consistent," (citation omitted), and "[w]here two provisions are irreconcilable, the inconsistency may be resolved by giving effect to the provision last enacted." *Id.*, citing *Davis v. Cranston Print Works Co.*, 86 R.I. 196, 199, 133 A.2d 784, 786 (1957).

According to Pawtucket, a local school district's financial obligation to a charter or state-operated school is limited by the local district's policy concerning adult enrollment. In other words, if a local district would not enroll an adult student, Pawtucket does not believe there is any legal basis to compel it to pay for that student to be enrolled in a charter or state-operated school. *See* Pawtucket Mem. at 13 (quoted *supra*). In support, Pawtucket cites R.I. Gen. Laws § 16-63-4, which provides, in pertinent part that:

> nothing in this chapter shall be construed as a mandate to any city or town to provide any compulsory educational program nor shall requirements contained in this chapter supplant requirements for the education of individuals with disabilities between the ages of eighteen (18) and twenty-one (21) years pursuant to §§ 16-24-1 and 16-24-2.

Id. (quoted in full, *supra*).

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[6] R.I. Gen. Laws § 16-77.1-2(a) provides that:

> The local share of the per pupil amount for each student attending the charter public school shall be paid to the charter public school by the district of residence of the student and shall be the per pupil cost for the district of residence of the student minus the state share of that per pupil cost as designated in this section.

Id. In addition, R.I. Gen, Laws § 16-77.1-2(b) provides that:

> In addition to all state aid to education paid to a local district pursuant to chapter 7.1 of this title, the state will pay an additional amount to the district for each student from this district who is attending a charter public school. The additional amount of state aid per pupil shall be five percent (5%) of the districts per pupil cost. The additional state aid shall be for the purpose of assisting local school districts to undertake the indirect costs borne by a district when its student attends a charter public school.

Id. Moreover, the Legislature provided that "[l]ocal school districts with student(s) enrolled in a charter public school shall continue to report these students in the total census of district public school students and will receive state aid for all these students pursuant to the provisions of chapter 7.1 of this title." R.I. Gen, Laws § 16-77.1-2(f).

However, chapter 64 of the General Laws applies exclusively to adult education services, which is separate and apart from the educational services offered in grades K-12, which, as noted, are largely the responsibility of the "school committees of the several cities and towns." R.I. Gen. Laws § 16-2-9(a). As noted by the First Circuit:

> Rhode Island funds approximately thirty-four CBOs to administer adult education services. These CBOs consist of different types of entities, including homeless shelters, stand-alone adult education centers, and community organizations run by local municipalities. The services the CBOs provide include basic education, secondary education, and education for English language learners. Some of the programs prepare students to take the GED test, a national standardized high school equivalency exam.

K.L. supra, 907 F.2d at 648.

Thus, the language in § 16-63-4 relied upon by Pawtucket simply reflects the fact that local cities and towns are not required to provide the adult education services being offered by CBOs, and while the language reinforces the fact that local districts currently have discretion when determining whether to enroll older students in their own schools, it simply does not address whether local districts have any financial obligation to charter and state-operated schools that enroll such students. In addition, although local districts may adopt policies which require "continuous enrollment" as a factor in deciding whether to enroll an adult student, and also may, if properly defined, employ the concept of a student "aging out" of K-12, neither concept is recited in applicable law or regulation and thus may not be used to circumvent enrollment policies of a charter or state-operated school.

In short, the enrollment policies of charter and state-operated schools are defined with reference to either a Council-approved charter or statute, and thus are not subject to a sending-district's own enrollment policies or practices. To hold otherwise would potentially undercut a charter school's ability to "operate independently" and to be "vanguards" and "laboratories," and to "increase the educational opportunities of educationally disadvantaged and at-risk pupils." R.I. Gen. Laws §§ 16-77-3.1(a) and (c) and 16-77-6.1(c).

3. Guidance Concerning the Enrollment of Adult Students

The fact that the Commissioner may not have the legal authority to compel local districts to enroll adult students does not preclude her from providing the following guidance. Initially, it should be emphasized that every school committee or board should adopt a policy concerning the enrollment of students over eighteen years of age that is consistent with the statutory mandate that "all citizens, regardless of age, have a right to education," R.I. Gen. Laws § 16-63-2(a)(1), and further, that "[n]o person shall be excluded from any public school on account of race or color, or for being over fifteen (15) years of age, nor except by force of some general regulation applicable to all persons under the same circumstances." R.I. Gen. Laws, § 16-38-1.

Increasingly, students who are age eighteen or older are seeking to enroll (or re-enroll) in our high schools, which should not be surprising given the array of programming currently available to Rhode Island high school students and the fact that students make many important decisions at different ages. Local school district enrollment policies should be flexible in order to ensure that all age-appropriate students have a reasonable opportunity to meet proficiency-based graduation requirements, to undertake and complete rigorous career preparation programs and internships, to obtain career-enhancing credentials, and to participate in dual enrollment programs with institutions of higher education.

Students who have attained the age of eighteen (18) and who seek to enroll or re-enroll in high school should not be automatically referred to adult education or GED programming. Such students are included in the calculation of "district average daily membership"[7] and therefore are counted in the formula for determining each district's state aid. *See* R.I. Gen. Laws § 16-77.1-2(f).

Local school districts should be guided by the following general principles in making enrollment decisions regarding students who have reached eighteen years of age.

1. **Students already enrolled in high school** who reach age eighteen or above in the course of continuous attendance in high school or other public program of secondary education and who are otherwise eligible to continue in attendance, should not be prohibited from continuing to attend high school to complete the requirements for their high school diploma or certificate/credential in a career preparation program solely because they have attained the age of eighteen. Such students' continued eligibility to remain in attendance in high school should not be affected by their entitlement to attend a GED program or program of adult education or other program of postsecondary education.

2. **Students seeking to enroll in high school** who are age eighteen or above and who, at the time of their application for enrollment, have been in continuous attendance in a high school or an equivalent program of secondary education, whether in Rhode Island or in another state or country, should be permitted to enroll and be given an opportunity to meet the RI graduation by proficiency diploma requirements, provided they are otherwise eligible to attend school in the district.[8]

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[7] R.I. Gen. Laws 16-7.2-3 and 16-7-22.

[8] Students "otherwise eligible" to continue in attendance or to attend school in the district as described in numbers (1) and (2) above, refers to students who are not subject to disciplinary exclusion from school, who continue to maintain residency for school purposes within the district or who, although nonresidents, are permitted to complete the semester or school year under R.I. gen. Laws § 16-64-8 (completion of semester or senior year).

3. **Students who have not been in continuous attendance** in high school or an equivalent program of secondary education, either in Rhode Island or out of state, who are age eighteen or above and who request to enroll in high school, should not be automatically disqualified from enrollment because of their age, but should be considered for enrollment based on the following factors:
    - age
    - length of time out of school at the time of application and the reason for dropping out/reason for non-attendance
    - current grade level, number of credits, and age at projected date of graduation
    - anticipated entry into a program of post-secondary education or training, military service or other program for which the GED may not be acceptable
    - eligibility for educational services under another agency of government, e.g. Division of Vocational Rehabilitation.

4. In situations in which a student aged eighteen or above is refused enrollment in high school, they should be provided with information concerning: (a) alternative educational programs that are appropriate for their educational goals; and (b) their right to appeal to the local school committee or school board, and then if still aggrieved, to appeal to the Commissioner and request a hearing and decision at no cost to the parties pursuant to R.I. Gen. Laws § 16-39-2.[9]

4. The Information to be Provided to Local School Districts

In her December 21, 2011 Memorandum re "Procedures for confirming residency of students in charter public schools," former Commissioner Gist stated that "the verification of residency shall be made at the time of enrollment and annually thereafter by the charter public school in which the student is enrolled." This only makes sense as it is the charter or state-operated school that is doing the enrolling pursuant to their own enrollment policies.

Presumably, at the time of enrollment, the charter or state-operated school would be in the best position to obtain not only the name and relevant residence addresses, i.e., of the student and their parents, but also the student's date of birth and grade. Nowell's argument that it is

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[9] That section of the General Laws provides that:

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

Id.

precluded from providing such information under FERPA is not persuasive as the information is "directory information" that is exempt from FERPA's coverage. *See* 20 U.S.C. § 1232g(b)(1) (2013).

Moreover, aside from whether disclosure of the additional student information requested by RISSA would be prohibited by FERPA, RISSA has not made any showing that would justify requiring charter or state-operated schools to provide the thirteen (13) categories of information it suggests should be provided to local school districts. Local school districts should be able to quickly ascertain any needed additional information using the name, address, date of birth and grade to be provided.

Finally, although the Commissioner has held that payment of the quarterly invoice by the sending district is a condition precedent to challenging residency or any other pre-requisite to payment – *see, e.g., Kingston Hill Academy*, *supra*, RIDE No. 17-004 at 3-4 (school district may request and receive limited information about its resident students to verify their enrollment in the charter school but must pay invoices on a timely basis) and *Met v. Cranston Public Schools, et al.*, RIDE Nos. 18-002,18-004 and 18-014 at (September 19, 2018) (the plain language of § 16-45-10 mandates that Respondents pay the amounts allegedly owed to The Met prior to any hearing") – the Commissioner has never held or suggested that a sending district is not entitled to any student information.

V. Order

For all the above reasons, and pursuant to R.I. Gen. Laws § 42-35-8(d), Pawtucket's and Nowel's joint request for a declaratory order under R.I. Gen. Laws § 42-35-8 is granted, and it is hereby ordered that:

1. The enrollment policies of charter and state-operated schools with respect to students over eighteen years of age shall be defined with reference to either a Council-approved charter or statute, and thus are not subject to the enrollment policies or practices of the local school district where the enrolled student resides for school purposes; and

2. All charter or state-operated schools shall provide the name and residence address or addresses of the student and their parents, as well as the student's date of birth and grade, along with any invoice sent to a local school district or other LEA pursuant to R.I. Gen. Laws §§ 16-7.2-5(d) and 16-77.1-2(e).

Entered as a final agency Order this 16th day of October 2023.

A. Infante-Green

Angélica Infante-Green,
Commissioner

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of this Declaratory Order to be posted on RIDE's website, filed with the R.I. Secretary of State and served by email on this 16th day of October, 2023, upon counsel for Pawtucket (William J. Conley, Jr., Esq. at wconley@conleylawri.com); counsel for Nowell (Matthew R. Plain at mplain@bglaw.com); counsel for RISSA (Benjamin M. Scungio, Esq. at bscungio@brcsm.com); counsel for the League (Greg Vanden-Eykel, Esq. at sgvandeneykel@KSlegal.com); and counsel for Davies (Vincent Ragosta, Esq. at V.RAGOSTA@VFR-LAW.COM).