

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC.

SUPERIOR COURT

(Filed: March 29, 2012)

TOWN OF NORTH KINGSTOWN; :  
MICHAEL E. EMBURY, in his capacity :  
as Town Manager; and PATRICIA A. :  
SUNDERLAND, in her capacity as :  
Finance Director of the Town of North :  
Kingstown :

v. :

C.A. No. WC 11-0805

NORTH KINGSTOWN SCHOOL :  
COMMITTEE; KIMBERLY PAGE, in her :  
Capacity as Chair and Member of the North :  
Kingstown School Committee; RICHARD :  
WELCH, in his capacity as Vice Chair and :  
Member of the North Kingstown School :  
Committee; LYNDA AVANZATO, in her :  
Capacity as Member of the North Kingstown :  
School Committee; MELVOID BENSON, :  
in her capacity as Member of the North :  
Kingstown School Committee; LAWRENCE :  
CERESI, in his capacity as Member of the :  
North Kingstown School Committee; :  
WILLIAM MUDGE, in his capacity as :  
Member of the North Kingstown School :  
Committee; JOSEPH THOMPSON, in his :  
capacity as Member of the North Kingstown :  
School Committee; PHILIP G. AUGER, in :  
his capacity as Superintendent of the North :  
Kingstown School Department; and :  
EDWARD DRAPER, in his capacity as :  
Director of Administrative Services for the :  
North Kingstown School Department :

**DECISION**

**STERN, J.** Before this Court is the Plaintiff Town of North Kingstown’s (“Town”) Motion for a Preliminary Injunction and a Writ of Mandamus to require the Defendants—North Kingstown

School Committee (“School Committee”), its Members, School Superintendent Philip G. Auger, Ph.D. (“School Superintendent”), and School Director of Administrative Services Edward Draper—to comply with certain provisions of Title 16 of the Rhode Island General Laws which the Town alleges that the School Committee has violated. After a hearing and subsequent briefings, this Court issues the following decision.

## I

### Facts and Travel

In January of 2011, the School Committee delivered to the Town estimates of revenues and expenditures associated with operating the North Kingstown School Department (“School Department”) for the next fiscal year, beginning July 1, 2011 (“fiscal year 2012 budget”). Hr’g Tr. at 8-9, Jan. 24-25, 2012. In mid-February, the School Superintendent delivered his recommended budget to the Town through the Town Manager, Michael Embury (“Town Manager”), who thereafter presented the budget to the Town Council (“Town Council”). The Town Council adopted its Town budget on May 4, 2011, including revenues allocated for the “School Fund.” Pl. Ex. 1, Town of North Kingstown 2011-2012 Budget (“Town Budget”), at 7-8. The Department’s budget included numerous line items such as revenue anticipated from current years’ taxes, tuition from individuals, tuitions from other local education authorities (“LEAS”), Medicaid, State Aid Unrestricted and the Re-appropriation of Fund Balance.<sup>1</sup> See Pl.’s Ex. 1, Town Budget, at 7-8. For the fiscal year of 2012, the North Kingstown School Department’s budget, or the School Fund, consisted of a total appropriation of \$58,092,043. See id. at 8; Hr’g Tr. at 11. Although the Town Manager proposed an appropriation from the Town—indicated by the line item “Current Years’ Taxes” and representing the Town’s

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<sup>1</sup> There was much argument and testimony about the use of the re-appropriation of fund balance.

contribution to the School Fund—of \$44,134,255, the Town Council approved only \$43,420,838 in accordance with R.I. Gen. Laws § 16-7-23.<sup>2</sup> See Hr’g Tr. at 11; Pl.’s Ex. 1, Town Budget, at 7.

In April of 2011, the School Committee advised the Town Manager that state aid could come in lower than expected, but noted that the School Department would realize savings in healthcare to offset the difference. See Hr’g Tr. at 15. On June 29, 2011, the General Assembly enacted, and the Governor subsequently signed into law, the 2012 State Budget,<sup>3</sup> which included an appropriation of state aid to the Town in an amount of \$10,188,035, lower than the anticipated \$10,364,514. Thus, as of the passage of the State Budget, the School Committee and the Town were aware that it would receive approximately \$186,000 less than anticipated.<sup>4</sup>

For each month during the fiscal year, the School Department submits an estimated monthly budget report which is signed jointly with the Town. See Hr’g Tr. at 56-57, 74-77 (discussion of monthly submission of budget). In fact, the School Department produces a written report of its financial status, which is then combined with the Town’s report of the same and submitted to the state. See Hr’g Tr. at 75. The monthly budgets<sup>5</sup> for the periods ending July 31, 2011 and August 31, 2011 showed a projection that the School Department would end the year without a deficit based upon the School Fund appropriation. See Hr’g Tr. at 75-77; Pl.’s Ex. 7,

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<sup>2</sup> Section 16-7-23 of the Rhode Island General Laws provides that the Town must “contribute local funds in an amount not less than its local contribution for schools in the previous fiscal year.”

<sup>3</sup> The 2012 State Budget covers the period of July 1, 2011 until June 30, 2012.

<sup>4</sup> There is no evidence before this Court that the Town Budget was subsequently amended to reflect this decrease in anticipated state aid, although an amendment to the School budget was mentioned by the Town on the final day of the preliminary injunction hearing.

<sup>5</sup> These reports also included a continuing projection of receipt of state aid in the original amount of \$10,364,514 instead of the actual amount of \$10,188,035. See Pl.’s Ex. 7, Budget Report Summary for Period Ending July 31, 2011; Pl.’s Ex. 8, Budget Report Summary for Period Ending Aug. 31, 2011.

Budget Report Summary for Period Ending July 31, 2011; Pl.'s Ex. 8, Budget Report Summary for Period Ending Aug. 31, 2011. The budget summary for the period ending October 31, 2011 projected a surplus or, at a minimum, breaking even for the fiscal year. See Hr'g Tr. at 79; Pl.'s Ex. 10, Budget Report Summary for Period Ending Oct. 31, 2011. For the period ending November 30, 2011, however, the budget report shows a projected deficit.<sup>6</sup> See Hr'g Tr. at 81; Pl.'s Ex. 11, Budget Report Summary for Period Ending Nov. 30, 2011. The School Department, as of December 31, 2011, projected a deficit of \$618,546. See Hr'g Tr. at 90; Pl.'s Ex. 12, Budget Report Summary for Period Ending Dec. 31, 2011.

This projected deficit included, in part, deficiencies stemming from the School Committee not being successful during collective bargaining negotiations with the North Kingstown Education Support Professionals ("NKESP"), its support services union, to achieve the contractual savings that were projected in the fiscal year 2012 Budget. See Hr'g Tr. at 43-44. In December of 2010, the Committee began negotiations with the NKESP because the collective bargaining agreement ("CBA") was set to expire on August 30, 2011. See Hr'g Tr. at 45. In its budget projections for the 2012 fiscal year, the Committee included an assumption that the NKESP would agree to concessions amounting to an approximate savings of \$690,000. See Hr'g Tr. at 126, 157. These savings included increasing employees' contributions to the cost of health insurance, a reduction in compensation afforded to employees for not using the provided health care coverage and, finally, an elimination of health insurance for employees who worked fewer than six hours per day. See Hr'g Tr. at 42-50, 53. As of September 1, 2011, after the agreement expired, the parties had not agreed upon a new CBA.

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<sup>6</sup> Even assuming that the Town has a responsibility to fund the entire School Fund budget, irrespective of actual revenue, the School Committee was still anticipating a deficit going forward.

In addition to the lack of realized savings from the NKESP contract, the School Committee hired five employees to fill 4.7 full-time equivalent (“FTE”) positions using funds that were not in the current budget in an amount of approximately \$257,000. See Hr’g Tr. at 26, 33-34. Additional receipts that were less than budgeted projections also affected the ability to achieve a balanced budget. The School Fund budget included a category for reimbursements from Medicaid for special education needs students and Jamestown tuition payments. The anticipated revenue for outside tuition, such as from Jamestown, was estimated to be \$2,440,400. See Pl.’s Ex. 1, Town Budget, at 7 (Tuitions from Other LEAS); Hr’g Tr. at 12-13. The anticipated revenue from Medicaid was \$600,000. See Pl.’s Ex. 1, Town Budget, at 8. In the budget report for the period ending November 30, 2011, the School Committee reported a projected shortfall in Medicaid revenue of \$125,000 and reported other projected revenues at \$2,112,005, instead of the budgeted \$2,506,900. See Pl.’s Ex. 11, Budget Report Summary for Period Ending Nov. 30, 2011.

On December 13, 2011, the School Committee prepared a Draft Deficit Reduction Plan (“Draft Plan”) for the fiscal year of 2012 in anticipation of a deficit. See Pl.’s Ex. 3, North Kingstown School Committee Draft Deficit Reduction Plan FY12, Dec. 13, 2011. In the Draft Plan, the School Committee discussed how the fiscal year was impacted both by revenues less than expected as well as an excess in expenditures over the budget. See id. The plan to reduce the deficit showed a revenue shortfall of \$712,000 and expenses above appropriation of \$1,100,000. See id. The School Department reported a \$500,000 net expenditure deficit in the report. The School Department arrived at the \$500,000 deficit by offsetting savings that the Department believed could be achieved during the current fiscal year in other budget lines such as pay, FICA, dental insurance, tuitions and fuels in the amount of \$510,000. See id.

On December 20, 2011, the School Department submitted a letter to the Acting Auditor

General which stated, in pertinent part, as follows:

“Please be advised that in accordance with Rhode Island General Laws 16-2-9, the North Kingstown School Committee hereby notifies you that it anticipates a deficit result in fiscal year 2012 based upon financial data prepared for this month. This anticipated deficit is due to two (2) key elements:

1) On May 4, 2011, the North Kingstown Town Council approved a School Department Budget for fiscal year 2012 in the amount of \$58,092,043.00. It now appears as though the revenue shortfall is due to: (a) fiscal year 2012 state aide being less than anticipated, in the amount of \$176,479.00; (b) Jamestown student numbers are lower than expected resulting in a tuition decrease in the amount of \$394,895.00; (c) a lower Medicaid reimbursement in the amount of \$125,000.00; and (d) a reduction in indirect costs in the amount of \$16,246.00.

2) The expenses in the District have exceeded the appropriation of \$58,092,043.00 due to: (a) new hires being needed to open the schools for the 2011-2012 school year; (b) an estimated cafeteria loss of approximately \$150,000.00; and (c) a loss due to difficulty in negotiating the contract with the North Kingstown Non-Certified Union, causing an expense of approximately \$500,000.00.”

Pl.’s Ex. 5, Letter to Dennis Hoyle from Superintendent Auger, Dec. 20, 2011. The School Superintendent then outlined the plans to correct the anticipated deficit in two ways: the first plan assumed that the Town would pay the funds to the School Committee to cover the revenue shortfall, apply a portion of the fund balance, institute an early retirement program, move certain expenses to bond funds and keep a position unfilled; and the second plan assumed that the Town would not fund the \$712,620 shortfall. See id. Under this scenario, the entire fund balance would be utilized, positions would be left unfilled, and unilateral changes would be made to collective bargaining agreements. Finally, the Superintendent expected that “these moves [will] conclude fiscal year 2012 with no deficit.” Id.

The budget report for the period ending December 31, 2011 showed a deficit of \$618,546, including a loss of \$150,000 from cafeteria operations and an infusion of monies from the Committee's fund balance of \$438,876. See Pl.'s Ex. 12, Budget Report Summary for Period Ending Dec. 31, 2011.

## A

### **The Instant Action**

On December 15, 2011, prior to the submission of the budget report for the period ending on December 31, 2011, the Town filed the instant action. In its Verified Complaint, the Town requests: declaratory judgment (Count I); a writ of mandamus (Count II); as well as a temporary restraining order, preliminary injunction, and permanent injunction (Count III). Although some of the requested relief overlaps among the three Counts, the Town in essence asks this Court to prevent the Committee from overspending and to require the Committee to balance the budget and prepare a statutorily sufficient corrective action plan.

After submission of a pre-hearing memorandum in support of the Town's petition, the parties appeared for a hearing on a temporary restraining order and instead entered into a Consent Order. See Consent Order, Dec. 21, 2011. The parties subsequently appeared for a preliminary hearing on January 24 and 25, 2011 to determine whether injunctive relief in the form of either a writ of mandamus and/or a preliminary injunction would issue. This Court heard extensive testimony from Edward Draper, then Director of Administrative Services for the North Kingstown School District, and heard testimony from Dr. Philip Auger, the Superintendent of the North Kingstown Schools. Following the hearing, each party submitted a post-hearing memorandum. This Court is well aware of the preliminary nature of this hearing and therefore notes that it is not making a final determination of the merits contained in the

underlying Verified Complaint—the merits of which contain a request for declaratory judgment on these same facts—and is making solely these preliminary findings of fact properly considered in a motion for a preliminary injunction and/or a writ of mandamus.

## II

### **Preliminary Injunction**

Whether to issue a preliminary injunction is left to the “sound discretion” of the trial justice. Fund for Cmty. Progress v. United Way of Southeastern New England, 695 A.2d 517, 521 (R.I. 1997). When analyzing a petition for injunctive relief, the Court should consider “whether the moving party (1) has a reasonable likelihood of success on the merits, (2) will suffer irreparable harm without the requested injunctive relief, (3) has the balance of the equities, including the possible hardships to each party and to the public interest, tip in its favor, and (4) has shown that the issuance of a preliminary injunction will preserve the status quo.” Iggy’s Doughboys, Inc. v. Giroux, 729 A.2d 701, 705 (R.I. 1999) (citing Fund for Cmty. Progress, 695 A.2d at 521). Here, the School Committee asserts that Plaintiff seeks a mandatory injunction in that it requests that the Court command the School Committee to perform in a specific way by determining how to fund all Basic Education Plan (“BEP”) requirements without incurring debt. Defs.’ Post-Hr’g Mem. at 5 (citing Ver. Compl.). “When a preliminary injunction is mandatory in nature in that—it commands action from a party rather than preventing action—a stricter rule applies and such injunctions should be issued only upon a showing of a “very clear” right and “great urgency.”” King v. Grand Chapter of Rhode Island Order of Eastern Star, 919 A.2d 991, 995 (R.I. 2007) (quoting Giacomini v. Bevilacqua, 118 R.I. 63, 65, 372 A.2d 66, 67 (1977) (quoting Smart v. Boston Wire Stitcher Co., 50 R.I. 409, 415, 148 A. 803, 805 (1930))). Thus,

the School Committee contends that this Court should only issue an injunction in this case if there is evidence of a very clear right and great urgency. See King, 919 A.2d at 995.

Courts must “look to substance, not labels[,]” and this Court finds that the Town in this instance substantively seeks an Order enjoining the School Committee from spending beyond its budget. Sarni v. Meloccaro, 113 R.I. 630, 636, 324 A.2d 648, 651-52 (R.I. 1974). Therefore, the standard for a preliminary injunction as opposed to a mandatory injunction guides this Court’s analysis.

## A

### **Reasonable Likelihood of Success on the Merits**

In order to determine whether the moving party has met its burden to warrant the issuance of injunctive relief, the Court must first assess whether the moving party has shown a reasonable likelihood of success on the merits. See Iggy’s Doughboys, Inc., 729 A.2d at 705; Pawtucket Teachers Alliance Local No. 920, AFT, AFL-CIO v. Brady, 556 A.2d 556, 557 (R.I. 1989). This showing need not rise to the level of a certainty of success, but instead the moving party is only required to make out a prima facie case. See The Greater Westerly-Pawcatuck Area Chamber of Commerce v. South Kingstown Chamber of Commerce, Inc., 2011 WL 7072123, \* (R.I. Super. 2011) (citing Coolbeth v. Berberian, 112 R.I. 558, 566, 564, 313 A.2d 656, 660 (1974)).

Here, the analysis of the likelihood of success necessitates an examination of the statutes that delegate specific rights and responsibilities to School Committees in this State. The general powers, duties, and responsibilities of school committees include fiscal responsibilities, such as the duty to adopt and change a budget or approve expenditures in the absence of a budget. See G.L. § 16-2-9. More specifically, sections (d) through (f) of Section 16-2-9 set forth the

requirements of a school committee in terms of the budget. First, “[t]he school committee of each school district shall be responsible for maintaining a school budget which does not result in a debt.” § 16-2-9(d). Then, within thirty days after the first and second quarters of the fiscal year, the school committee must adopt a budget as may be necessary to enable it to operate without incurring a debt. See § 16-2-9(e). The statute further provides that

“[i]n the event that any obligation, encumbrance, or expenditure by a superintendent of schools or a school committee is in excess of the amount budgeted or that any revenue is less than the amount budgeted, the school committee shall within five (5) working days of its discovery of potential or actual over expenditure or revenue deficiency submit a written statement of the amount of and cause for the over obligation or over expenditure or revenue deficiency to the city or town council president and any other person who by local charter or statute serves as the city or town’s executive officer; the statement shall further include a statement of the school committee’s plan for corrective actions necessary to meet the requirements of subsection (d). The plan shall be approved by the auditor general and also submitted to the division of municipal finance.”

Sec. 16-2-9(f).

Here, § 16-2-9 clearly provides a time limit for notice to the Town in the event of any excess expenditures or revenue deficiencies. Although the School Committee was aware of the actual revenue deficiency from state aid in the amount of approximately \$186,000 when the State Budget was passed on June 29, 2011, nothing in the record indicates that notice was given to the Town pursuant to § 16-2-9(f) at that time. Instead, the monthly budget reports submitted to the Town continued to reflect the original amount contained in the Town Budget. Thus, when the revenue deficiency was finally noted in the monthly budget for the period ending November 30, 2011, the School Committee attempted to comply with this section in its letter of December 20, 2011 by including an explanation of the revenue deficiencies and the excess expenditures. It is

clear, however, that this Court cannot provide a remedy pursuant to this statute other than require the School Committee to do essentially what has already been done in the submission of a corrective action plan.<sup>7</sup>

As an additional measure of budgetary protection, however, § 16-9-1 of the Rhode Island General Laws states, in pertinent part, as follows:

“The town treasurer shall receive the money due the town from the state for public schools, and shall keep a separate accounting of all money appropriated by the state or town or otherwise for public schools in the town, and shall pay the money to the order of the school committee; provided, however, that school expenditures, encumbrances, and accruals shall not, in any fiscal year, exceed the total revenue appropriated for public schools in the town. Should the town treasurer, finance director, or other charter officer charged with general responsibility for town finances, or the school financial officer estimate that actual public school expenditures, encumbrances, and accruals may exceed the total revenue appropriated for the expenditures in any fiscal year, the school committee, the superintendent of schools, and the chief elected officials of the town shall be notified. Purchase orders or financial commitments shall not be authorized even on the order of the school committee unless it can be proven that there will not be an excess of expenditures, encumbrances, and accruals over revenues. Nothing contained in this section shall be construed to prohibit a school committee from negotiating and contracting with school employees and teachers for services to be rendered in the ensuing fiscal years pursuant to chapters 9.3 and 9.4 of title 28.”

Sec. 16-9-1. Thus, this Court must first determine whether the Town has shown that school expenditures, encumbrances, and accruals, in this fiscal year, exceed the total revenue appropriated for public schools in the Town. See id.

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<sup>7</sup> Pursuant to a Consent Order filed on December 21, 2011, the School Department was required to submit a Corrective Action Plan on or before December 20, 2011. See Consent Order, Dec. 21, 2011.

### **Total Revenue Appropriated for Public Schools**

The Town and the School Committee disagree as to the meaning of “total revenue appropriated for public schools.” It is the School Committee’s position that this term is broad and refers to the amount authorized by the Town in the budget for all school funds items, including town revenue, state funds, federal funds, and third-party receipts. Further, it is the position of the School Committee that the revenue appropriated can only be reduced by an action of the Town under its Charter; that is, to adopt an amended budget. In contrast, the Town asserts that the total revenue is limited to the municipal appropriation and the other items that are dependent on the actual receipts of those estimated funds.

When interpreting a statute, if “a statute expresses a clear and unambiguous meaning, the task of interpretation is at an end and [this Court] will apply the plain and ordinary meaning of the words set forth in the statute.” Ret. Bd. of the Employees’ Ret. Sys. v. DiPrete, 845 A.2d 270, 297 (R.I. 2004) (quoting State v. Bryant, 670 A.2d 776, 779 (R.I. 1996)). Moreover, “[i]f the language is clear on its face, then the plain meaning of the statute must be given effect.” Id. (quoting Henderson v. Henderson, 818 A.2d 669, 673 (R.I. 2003)) (other citation omitted). Finally, “when ‘a statutory provision is unambiguous, there is no room for statutory construction and we must apply the statute as written.’” Id. (quoting In re Denisewich, 643 A.2d 1194, 1197 (R.I. 1994)).

This Court finds that the meaning of the phrase “total revenue appropriated” is clear and unambiguous in this statute. It refers to the total budget for the schools as appropriated by the Town. This includes all line items in the School Fund unless expressly contingent in the budget

itself. In this case, none of the line items were contingent in the budget; therefore, this Court finds that the total revenue appropriated is \$58,092,043.

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**Actual School Expenditures, Encumbrances and Accruals  
Exceed the Total Revenue Appropriated**

The Town and the School Committee also disagree as to the meaning of the second portion of the statute insofar as determining when the language of § 16-9-1 is triggered. The School Committee takes the position that the actual expenditures, encumbrances, and accruals do not exceed the total revenue appropriated unless and until the School Committee actually spends more than all of the money in its budget, and that all of the obligations are paid and the account has a negative balance. The Town disagrees, instead arguing that the language is clear that the section is triggered when the School Committee “may exceed” the total revenue appropriated, or in the event that a town financial officer estimates that the School Committee may exceed the total revenue appropriated.

This Court finds that this portion of the statutory section is clear and unambiguous. The use of “may” and “estimate,” along with the use of the terms “expenditures” but also “encumbrances” and “accruals,” demonstrate the plain meaning that all of the money need not be spent before the brakes are put on the spending. Sec. 16-9-1. The School Committee’s interpretation would render this statutory section meaningless in the scheme of Title 16, and therefore must be rejected. See, e.g., Brennan v. Kirby, 529 A.2d 633, 637 (R.I. 1987) (“A statute or enactment may not be construed in a way that would attribute to the Legislature an intent that would result in absurdities or would defeat the underlying purpose of the enactment . . . nor may it be construed, if at all possible, to render sentences, clauses, or words surplusage.”) (internal citations omitted)).

Based upon the evidence presented, this Court finds that the monthly reports of November 30, 2011 and December 31, 2011 had a deficit. In addition, on December 13, 2011, Defendants prepared a Draft Deficit Reduction Plan for the fiscal year of 2012 in anticipation of a deficit. See Pl.'s Ex. 3, North Kingstown School Committee Draft Deficit Reduction Plan FY12, Dec. 13, 2011. In the draft, the School Committee discussed how the fiscal year was impacted both by return of revenues less than expected, as well as by an excess in expenditures over the budget. See id. Furthermore, on December 20, 2011, the School Department submitted a letter to the Acting Auditor General which stated that the Committee anticipated a deficit for the 2012 fiscal year, including lower revenues and expenditures over the original appropriations. Under § 16-9-1, the Court is concerned only with whether there is an anticipated deficit based upon expenditures.<sup>8</sup> The Town has shown that there was indeed an estimated deficit over the appropriated School Fund budget for fiscal year 2012.

### 3

#### **Town Shall Be Notified**

There is no dispute in this case as to whether the Town must be or was notified. It is clear on the face of the statute that in the event an excess of the total revenue appropriated is estimated, the Town must be notified. See § 16-9-1. Here, this Court finds that the Town was, in fact, notified of the estimated overspending both in the monthly budget reports and by written notification and meetings to discuss a corrective action plan.

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<sup>8</sup> Section 16-9-1 requires notification to the Town along with other protective measures only upon estimation that expenditures will exceed appropriations, as compared with § 16-9-2(f), which contains language requiring notification if “any revenue is less than the amount budgeted.”

### **Purchase Orders or Financial Commitments Shall Not Be Authorized**

Section 16-9-1 also provides, if the prior provisions of the statute are satisfied, that “purchase orders or financial commitments shall not be authorized even on the order of the school committee unless it can be proven that there will not be an excess of expenditures, encumbrances, and accruals over revenues.” Id. This portion of the statute does not specifically identify to whom it must be proven that there will not be an excess over revenues. It is clear, however, that it is not the School Committee, as its authority to order approval of purchase orders or financial commitments has been revoked unless there is compliance with this statute. As the statute is designed to give the Town protection from overspending, this Court finds this section to vest the determination to the Town as to whether the School Committee has proven that the approval of purchase orders or financial commitments will not be in excess of expenditures, encumbrances and accruals over revenues. See, e.g., Liberty Mut. Ins. Co. v. Kaya, 947 A.2d 869, 872 (R.I. 2008) (discussing the ability of the Court to examine the entire statute to “discern the legislative intent and purpose behind the provision” only when faced with ambiguity) (quoting State v. LaRoche, 925 A.2d 885, 888 (R.I. 2007)).

Based upon the testimony and evidence presented at the hearing, it is clear that the Town has, at a minimum, shown that the expenditures were estimated to be more than total revenues appropriated and the Town was notified, albeit late, in accordance with § 16-9-1, and thus has demonstrated a reasonable likelihood of success on the merits sufficient to trigger the remaining provisions of § 16-9-1.

## B

### **Irreparable Harm and Balancing of the Equities**

Here, Plaintiff asserts that, “[i]n the absence of a Court order to rein in the Committee’s unlawful spending, the Town will ultimately be liable for whatever debt the Committee incurs” in excess of the appropriated budget. Pl.’s Pre-Hr’g Mem. at 16. This Court finds that the Plaintiff need not show that the operating budget would be in deficit by the end of the 2012 fiscal year, but instead that at any time, an anticipated deficit is sufficient to trigger the statutory protection requiring corrective action. This Court thus views the irreparable harm as further allowing any potential overspending by the School Committee in violation of the statutory scheme imposed by our General Assembly without proving to the Town that the expenditures will not exceed the total revenue appropriated.

The General Assembly enacted Title 16 to tightly control and constrain the budgets of school departments and has put in place a system by which even any potential overspending must be curbed under the statutory scheme. Our Supreme Court has stated that “[t]he General Assembly’s intent to encourage *expeditious* action in instances of potential school deficit spending is both practical as a matter of public policy and indisputable as a matter of statutory construction.” Sch. Comm. of City of Cranston v. Bergin-Andrews, 984 A.2d 629, 644 (R.I. 2009). Therefore, the Court cannot ignore what would, in essence, be tacit approval of a blatant and continuing statutory violation. In this case, it is clear that the School Committee should not be permitted to authorize purchase orders or financial commitments unless it can be proven to the Town that there will not be an excess of expenditures, encumbrances or accruals over revenues.

This Court also rejects the School Committee’s argument that the Town has an available legal remedy of an appeal to the Commissioner of Education pursuant to Section 16-39-1. This Court finds that while the Town may want to pursue a parallel resolution of this dispute, there is no other relief available to the Town absent equitable relief to stop the overspending. Given the statutory analysis above in conjunction with the Town’s simultaneous request for the issuance of a writ of mandamus, in the exercise of its discretion, this Court does not find that a preliminary injunction is the appropriate remedy in this case. It therefore declines to grant such an injunction to the Town at this point.

### III

#### Writ of Mandamus

Plaintiff also requests that this Court issue a “writ of mandamus to compel Defendants to (1) adopt and maintain a balanced school budget; (2) prepare a corrective plan promptly that limits spending to the amounts actually appropriated for the current fiscal year and otherwise complies with all statutory requirements; (3) cease and desist from expending money at levels that will, or are anticipated to, result in debt for the current fiscal year; and (5) satisfy the requirements of the BEP without incurring debt in the present fiscal year.” Ver. Compl. at 14.

“A writ of mandamus may be issued when: ‘(1) the petitioner has a clear legal right to the relief sought, (2) the respondent has a ministerial duty to perform the requested act without discretion to refuse, and (3) the petitioner has no adequate remedy at law.’” Bergin-Andrews, 984 A.2d at 648 (quoting New England Development LLC v. Berg, 913 A.2d 363, 368 (R.I. 2007)).

As discussed above, the School Committee must maintain a budget that does not result in a debt. See § 16-2-9. Moreover, the statutory scheme provides the proper procedure to follow if

a debt is anticipated. Id. Based upon the testimony and evidence presented, this Court finds that it is clear that a budget deficit is anticipated. This deficit does not take into account any imposition of a corrective action plan, which is not before this Court at this time, but is relevant for the Town to consider when deliberating whether the School Committee has proven that it will not incur a deficit. Given the anticipatory deficit, § 16-9-1 certainly applies to prohibit additional spending until it can be proven to the Town that no deficit will result. See § 16-9-1. Given the testimony presented, this Court finds that the Town has a clear legal right to relief in the case at bar, and a writ will issue to the School Committee that it shall not approve purchase orders or financial commitments unless it can be proven to the Town that there will not be an excess of expenditures, encumbrance, and accruals over revenues. See Bergin-Andrews, 984 A.2d at 648 (affirming the issuance of a writ of mandamus when the writ “merely compelled the school committee to adhere to its preexisting statutory obligations.”). This Court declines at this stage to issue any additional writs as this remedy should afford the Town the tools necessary at this stage of the proceedings.

#### IV

#### **Public Policy and Practical Considerations**

Here, it is undeniable that the State and its communities are facing fiscal crisis. Revenue streams are drying up, unemployment is high, and financial difficulties abound. Two Rhode Island municipalities are currently under state supervision. Central Falls is currently in Receivership and has filed for protection under Chapter 9 of the Federal Bankruptcy Code. East Providence has a Budget Commission appointed by the State Department of Revenue because of its financial issues. Several other municipalities have been labeled distressed communities by the State, including Pawtucket, Providence, West Warwick, and Woonsocket.

In addition, as a result of the State's decreasing revenue during the past several years, it has not provided communities with increased financial assistance. In fact, municipal aid, school aid, and Payment In Lieu of Taxes ("PILOT payments") have been reduced or completely eliminated. Consequently, it has become increasingly difficult for municipalities, which are the only ones with the power to levy and collect additional taxes to support their budgets, which includes funding the local School Departments.

This problem is greatly exacerbated when School Committees that do not have the power to levy and collect taxes are not willing or able to adhere to their own budgets. This may be due to issues like unrealistic budget assumptions, expenditures that are not managed and controlled, or contracts that extend into future fiscal years. At the same time, even if revenues are not adequate, the School Department, and hence the municipality, still has the statutory obligation to provide an education to its residents that comports with the BEP.

The case at bar is a prime example of the strain between these governmental institutions, both elected and accountable to the residents of the Town. The Town Council members have overall responsibility for the Town and the sole ability to levy and collect taxes. The School Committee members are responsible for educating the children of the community under state statutes and regulations promulgated by the Board of Regents. Many times each of these elected bodies views the same problems from an entirely different perspective. It may appear to the Town that the School Committee is spending like an "out of control teenager with their parent's credit card without any regard for the reality that the bill must eventually be paid." From the School Committee's perspective, the Town does not appreciate its responsibility to teach to more stringent state standards under the BEP, to comply with state mandates, to negotiate concessions

in collective bargaining agreements, and to withstand pressures to increase student performance on NECAP testing.

At the same time, this Court understands the Town's frustration with the independently elected School Committee when it hires additional personnel that are not accounted for in the budget or makes unrealistic assumptions about concessions in future collective bargaining agreements and then looks to the Town for more funding. This Court agrees that it is also fair for the Town to express its concern about the School Committee's decisions to deplete all or a significant amount of the fund balance in order to pay for the structural deficit. The use of non-recurring revenue will only result in continuing structural problems for the Town and the School Committee, when this one-time source of funding is depleted.

Fortunately, Title 16 provides mechanisms to deal with these issues, including a set of checks and balances for both the Town and the School Committee. The Town has been granted a "check" under § 16-9-1, in that the School Committee loses its ability to unilaterally authorize purchase orders and financial commitments when it is estimated that school expenditures, encumbrances, and accruals may exceed the total revenue appropriated for public schools, until it has been proven to the Town that there will not be an excess of expenditures, encumbrances, and accruals. This check is important because it stops the School Committee from spending without the approval of the Town, which is the only body with the authority to levy and collect municipal taxes.

The School Committee is also granted a check to ensure that it has adequate resources, through the statutory procedures outlined in § 16-2-21.4 (the "Caruolo Act"). A School Committee may file a Caruolo action in instances where the School Committee determines that its annual appropriated budget is not sufficient to meet state imposed educational mandates while

satisfying the School Committee's obligation to maintain a balanced budget. See Bergin-Andrews 984 A.2d at 648 (R.I. 2009) (citing Beil v. Chariho Sch. Comm., 667 A.2d 1259 (R.I. 1995)). As a prerequisite to filing a Caruolo action, the School Committee must adhere to the budget that the Town has appropriated. Second, the School Committee is required to petition the Commissioner of Education in writing to seek alternatives and/or waivers to state regulations that would allow the School Committee to operate with a balanced budget. Third, if the Commissioner denies the requested alternatives and/or request for waivers, the School Committee may request that the Town reconsider whether to increase the appropriation for the schools to meet expenditures. If the efforts outlined fail to increase the appropriation sought by the School Committee, the Committee may file an action in Superior Court. See id. (citing Sch. Comm. of Johnston v. Santilli, 912 A.2d 941 (R.I. 2007)).

This is consistent with the legislative intent that if a School Committee cannot comply with its appropriated budget, then it must bring a Caruolo action in a timely manner from when it discovers that it cannot operate in a non-deficit position while complying with its mandates and contracts. It is contrary to the intent of the legislature to allow a School Committee to knowingly incur an end of the year deficit where corrective action can no longer be taken, only to be appropriated additional funds under the Caruolo Act. See id.

There may be situations, however, where a Town does not believe a School Committee is required to expend additional funds in excess of the appropriated budget, and the School Committee believes that the funds are immediately required to meet its obligations under the statute. In fact, the School Committee may argue that the education system or the students will be irreparably harmed if immediate relief is not given to allow the expenditure of additional funds. This possibility is better resolved through discussions between the Town and the School

Committee, where both parties have a degree of control, and, if an agreement cannot be reached, then as a last resort, the parties can seek relief through the intervention of the Court on an emergent basis.

The Legislature, in enacting Title 16, has set up a series of checks and balances to maintain a unique system to provide education to our children with independently elected School Committees without taxing authority and Town Councils with taxing authority. In this instance, the Court would much prefer not to be like the Swallow and ask, “What did I tell you?” when the School Committee begins the steps to file a Caruolo Action in this case. Instead, this Court appeals to the parties to work out their differences and find an amicable solution to this issue while there is still time. Dire times such as these demand exceptional sacrifices from everyone involved, and it is inappropriate to allow institution pride to obstruct the needs of an entire community. This Court asks that the parties cross the divide and come together in the interest of the community that, by the inherent nature of their positions, they serve and lead.

## V

### **Conclusion**

Although the Town of North Kingstown moved for a preliminary injunction and/or a writ of mandamus, this Court finds that the Town has established only that it has a clear legal right to the requested relief pursuant to a writ, that the School Committee has a duty to comply with § 16-9-1 without the discretion to refuse, and that the Town has no other available remedy at this time. This Court, therefore, issues a writ of mandamus to the School Committee that it shall not authorize purchase orders or financial commitments unless it can be proven to the Town that there will not be an excess of expenditures, encumbrances, and accruals over revenues. The Town shall submit an appropriate Order for entry.