

**STATE OF RHODE ISLAND  
PROVIDENCE, SC.**

**SUPERIOR COURT**

**HOWARD UNION OF TEACHERS, :  
LOCAL 1171, RHODE ISLAND :  
FEDERATION OF TEACHERS AND :  
HEALTH PROFESSIONALS, :  
AMERICAN FEDERATION OF :  
TEACHERS, AFT, AFL-CIO, :**

*Plaintiff* :

vs. :

**RHODE ISLAND DEPARTMENT OF :  
EDUCATION, ANGELICA INFANTE- :  
GREEN, in her official capacity as :  
Director of the Rhode Island Department :  
of Education, and :  
RHODE ISLAND COUNCIL ON :  
POSTSECONDARY EDUCATION, :  
RONALD CAVALLARO, in his capacity :  
as ACTING COMMISIONER of the :  
RHODE ISLAND COUNCIL ON :  
POSTSECONDARY EDUCATION; :  
BARBARA COTTOM, TIMOTHY :  
DELGUIDICE, DENNIS DUFFY, :  
RACHELLE R. GREENE, THOMAS :  
IZZO, MICHAEL MELLO, MARIANNE :  
F. MONTE, and DR. JEFFERY A. :  
WILLIAMS, in their capacities as :  
Council Members of the Rhode Island :  
Council on Postsecondary education :  
RHODE ISLAND COLLEGE; and :  
FRANK SÁNCHEZ, in his capacity :  
as President of RHODE ISLAND :  
COLLEGE, :  
RHODE ISLAND BOARD OF :  
EDUCATION, BARBARA S. COTTOM :  
MICHAEL ALMEIDA, AMY :  
BERRETTA, COLLEEN CALLAHAN, :  
KAREN DAVIS, TIMOTHY :  
DELGUIDICE, PATRICIA DICENSO :  
DENNIS J. DUFFY, JO EVAN GAINES, :  
RACHEL GREEN, THOMAS IZZO, :  
MARIA V. MARTINEZ, MARIANNE :**

**C.A. No.**

**MONTE, LAWRENCE PURTILL AND :**  
**JEFFREY A. WILLIAMS, in their :**  
**capacity as Members of the Rhode Island :**  
**Board of Education, :**

*Defendants.* :

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**COMPLAINT FOR DECLARATORY JUDGMENT  
AND  
MOTION FOR TEMPORARY RESTRAINING ORDER**

**Introduction**

Plaintiff Howard Union of Teachers, Local 1171, Rhode Island Federation of Teachers and Health Professionals, American Federation of Teachers, AFL-CIO [“HUT”] seeks a declaration that (1) defendants lack the authority to lay off certain vision teachers without first consulting the Rhode Island Vision Education Services Program Advisory Board; (2) state procurement regulations do not mandate outsourcing vision services; and (3) layoff notices issued to vision teachers were *ultra vires*, and injunctive relief in support thereof.

**Parties and Jurisdiction**

1. HUT is the exclusive collective bargaining agent for certain teachers and other professionals employed by the Rhode Island Department of Education [“RIDE”] (EE-1815); Department of Human Services (EE-1731) and Department of Health (EE-1731).

2. Defendant RIDE is an instrumentality of the State of Rhode Island charged with administration of public education for grades k-12. RIDE employs ten (10) teachers of the visually impaired [“TVI”] who are represented for collective bargaining by HUT.

3. Defendant Angelica Infante-Green is Commissioner of RIDE. She is named in her official capacity.

4. Defendant Rhode Island Council on Postsecondary Education [“CPE”] is an independent public corporation responsible for oversight for the system of public higher education in Rhode Island, including Rhode Island College [“RIC”].

5. Defendant Ronald Cavallaro is Acting Commissioner of CPE. He is named in his official capacity.

6. Defendants Barbara Cottam, Timothy DelGuidice, Dennis Duffy, Rachelle R. Green, Thomas Izzo, Michael Mello, Marianne F. Monte, and Dr. Jeffery A. Williams are members of CPE. They are named in their official capacities.

7. Defendant RIC is a regional comprehensive college with a statewide mission to educate students in a variety of undergraduate and graduate arts & sciences and professional programs.

8. Defendant Frank Sánchez is the President of RIC. He is named in his official capacity.

9. Defendant Rhode Island Board of Education [“BOE”] is an instrumentality of the State of Rhode Island charged with is the chief policy-setting body overseeing K-20 education in Rhode Island

10. Defendants Barbara S. Cottom, Michael Almeida, Amy Berretta, Colleen A. Callahan, Karen Davis, Timothy J. DelGuidice, Patricia Dicenso, Dennis J. Duffy, Jo Evan Gaines, Rachel Green, Thomas Izzo, Maria V. Martinez, Marianne Monte, Lawrence Purtill and Jeffrey A. Williams are members of BOE. They are named in their official capacities.

11. Jurisdiction is vested in the Superior Court pursuant to R.I.G.L. § 9-30-1 *et. seq.*

12. Venue is proper pursuant to R.I.G.L. § 9-4-3.

**Facts**

13. There are approximately one hundred and fifty-seven (157) blind or visually impaired students who receive teaching and consultation services from HUT TVI pursuant to the Rhode Island Vision Education Services Program [“RIVESP”]. The services include early intervention, orientation and mobility, and instruction of specific compensatory skills to children from birth through 21 years. Services are also provided to families and educational staff within the school environment.

14. RIVESP services are provided through the Paul V. Sherlock Center at RIC pursuant a “Contract Agreement” between RIDE and RIC dated April 14, 2015.

15. Rhode Island General Laws § 16.26.1-2 (b) provides that “the governance, funding, and programming of [RIVESP] shall be in accordance with the rules and regulations formulated by the board of regents for elementary and secondary education [now the BOE] pursuant to chapter 35 of title 42.”

16. Rhode Island General Laws § 16-26.1-5 provides that the state board of regents for elementary and secondary education [now the BOE] “shall have supervision, administration, and control of RIVESP.”

17. Rhode Island General Laws § 16.26.1-2 (b-h) provides that the board of governors of elementary and secondary education (now the BOE) “shall” appoint an Advisory Board which “shall” recommend:

- (1) The needs of the blind and visually impaired children in the state of Rhode Island;
- (2) The educational and service policies required to meet the needs of blind and visually impaired children served by the RIVESP;
- (3) Policy guidance and suggestions for budget development;
- (4) Methods which ensure that all students are taught by educators of the highest possible quality;

- (5) Appropriate committees and/or workgroups as needed, to provide guidance and feedback on the goals and outcomes of the RIVESP;
- (6) Make themselves available to the board of regents, departments of education, health, human services and to the RIVESP in order to provide a link between these agencies. The advisory board shall utilize as a guiding document to advise policy, and annually update, the “Special House Commission to Promote and Develop a Comprehensive System of Education for Visually Impaired Children, The Final Report, November 2005”; and
- (7) The educational policies to meet the needs of the blind and visually impaired children and to advise on implementation of policies established by the board of regents, and the RIVESP.

18. On or about February 11, 2021, RIDE (not BOE) notified RIC that it would not renew the Contract Agreement and would instead outsource RIVESP services.

19. On or about February 13, 2021, RIC (not BOE or RIDE) issued Layoff Notices to the HUT TVI.

20. Defendants, and each of them, failed and refused to consult the Advisory Board prior to terminating the Contract Agreement, deciding to outsource RIVESP services or issuing the Layoff Notices.

21. The Layoff Notices were issued by RIC pursuant to RIGL §16-59-22(a).

22. Rhode Island General Laws §16-59-22(a) vests exclusive authority over personnel decision with CPE – not RIC. That section provides:

The appointment, promotion, salaries, tenure, and dismissal of administrative, instructional, and research employees, and secretarial employees not exceeding ten (10) in number, and armed college police officers of the state colleges shall not be subject in any manner or degree to control by the personnel administrator or by any officer or board other than the council on postsecondary education.

23. Thus, neither RIC, RIDE, nor BOE has authority to issue the Layoff Notices.

24. Although CPE has exclusive authority to issue layoff notices, it had no role and was not consulted with regard to issuance of the Layoff Notices.

25. The stated reason for the Layoff Notices was that RIDE [sic] must open provision of RIVESP services to other providers pursuant to state procurement requirements.

26. Contrary to RIDE's assertion, no state procurement regulation requires RIDE [or BOE] to open RIVESP services to other providers. To the contrary, RIVESP services must be provided by BOE.

27. RIDE has acknowledged to students and families that outsourcing RIVESP services will disrupt education services. Specifically, RIDE wrote parents in March, 2021, to state that families are "personally connected" to TVI and outsourcing RIVESPO services would interfere with consistent delivery of the services to which families are accustomed. RIDE further admitted that families had not received "details" of its plan and that information had not been "shared in an accurate manner."

28. In the event the Layoff Notices are not enjoined, students and families would suffer irreparable harm by means of the disruption in education services. HUT TVI would suffer irreparable harm by means of the loss of employment, loss of benefits and loss of seniority rights and other employment opportunities.

**Claims for Relief**

**COUNT I: Uniform Declaratory Judgment Act, R.I.G.L. § 9-30-1 et. seq. (failure to consult the RIVESP Advisory Board).**

29. Plaintiff hereby incorporates by reference paragraphs 1 through 28 of the Complaint as though fully set forth herein.

30. Pursuant to R.I.G.L. § 9-30-1, this Court has the power to declare rights, statuses, and other legal relations whether or not further relief is or could be claimed.

31. HUT is entitled to a declaration that the defendants lack the authority to lay off certain teachers without first consulting the RIVESP Advisory Board.

WHEREFORE, Plaintiff requests relief as hereinafter set forth.

**COUNT II: Uniform Declaratory Judgment Act, R.I.G.L. § 9-30-1 et. seq. (state procurement regulations do not mandate outsourcing RIVESP services).**

32. Plaintiff hereby incorporates by reference paragraphs 1 through 28 of the Complaint as through fully set forth herein.

33. Pursuant to R.I.G.L. § 9-30-1, this Court has the power to declare rights, statuses, and other legal relations whether or not further relief is or could be claimed.

34. HUT is entitled to a declaration that state procurement regulations do not mandate outsourcing RIVESP services.

WHEREFORE, Plaintiff requests relief as hereinafter set forth.

**COUNT II: Uniform Declaratory Judgment Act, R.I.G.L. § 9-30-1 et. seq. (Layoff Notices were issued without legal authority).**

35. Plaintiff hereby incorporates by reference paragraphs 1 through 28 of the Complaint as through fully set forth herein.

36. Pursuant to R.I.G.L. § 9-30-1, this Court has the power to declare rights, statuses, and other legal relations whether or not further relief is or could be claimed.

37. HUT is entitled to a declaration that the Layoff Notices were issued without legal authority and are *ultra vires*.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that this Honorable Court:

- a. Issue a Declaratory Judgment that defendants lack the authority to terminate the Contract Agreement, outsource RIVESP services or issue the Layoff Notices without first consulting Advisory Board.

- b. Issue a Declaratory Judgment that state procurement regulations do not mandate outsourcing RIVESP services.
- c. Issue a Declaratory Judgment that the Layoff Notices were issued without legal authority and are *ultra vires*
- d. Issue a temporary restraining order and permanent injunction enjoining defendants, and each of them, from implementing the layoff notices until such time as they have consulted and complied with Advisory Board recommendations.
- e. Award HUT its costs and attorney's fees; and
- f. Order such other relief as the Court deems just and proper.

Plaintiff,  
By its attorney,

/s/ Marc Gursky  
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Dated: March 31, 2021