

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

*In re the January 2, 2024 Request for an  
Advisory Opinion/Declaratory Order  
Pursuant to R.I. Gen. Laws § 42-35-8 by  
the North Kingstown School District.*

D.O. 24-001K

**1. The Request for the Declaratory Order**

On January 2, 2024, counsel for the North Kingstown School District (“NKSD”) wrote the Commissioner and asked whether “sixteen (16) year old students [can] serve as a bus monitor on a school bus, with compensation provided (i.e. employed by) by the District.” *See* Request for an Advisory Opinion/Declaratory Order at 1.

**2. 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 “[n]ot later than sixty (60) days after receipt of a petition under subsection (a), an agency shall issue a declaratory order in response to the petition, decline to issue the order, or schedule the matter for further consideration.” § 42-35-8(a), (c); *see generally* Regulations Governing Declaratory Order Petitions (the “D.O. Regs.”), 200-RICR-30-15-2, *et. seq.*

In addition, R.I. Gen. Laws § 42-35-8(d) provides that “[i]f an agency declines to issue a declaratory order requested under subsection (a), it shall notify, promptly, the petitioner of its decision. The decision must be in a record and must include a brief statement of the reasons for declining.”

**3. Discussion**

School committees are required to “provide suitable transportation . . . to and from school for pupils attending public and private schools of elementary and high school grades[.]” R.I. Gen. Laws § 16-21-1(a). As part of this duty, school committees must provide school bus monitors, with R.I. Gen. Laws § 16-21-1(b) stating:

For transportation provided to children enrolled in grades kindergarten through five (5), school bus monitors, other than the school bus driver, shall be required on all school-bound and home-bound routes. . . . *For purposes of this section a “school bus monitor” means any person sixteen (16) years or older.*

(emphasis added); *see also* 280-RICR-30-15-10.3(C)(1) (“Each school committee shall provide a bus monitor sixteen (16) years of age or older on all school-bound and home-bound bus routes for grades kindergarten through grade five (5), unless a variance has been obtained from the Department of Education.”).

However, as individuals hired and employed by a school department, all school bus monitors must comply with R.I. Gen. Laws § 16-2-18.1(a), which provides that “[a]ny person seeking employment with a private or public school department . . . shall undergo a national and state criminal background check to be initiated prior to, or within one week of, employment after receiving a conditional offer of employment.” *See* § 16-2-18.1(e)(2) (broadly defining employment to include all those “who may have direct or unmonitored contact with children or students”). There is no statutory exception for juvenile employees. *See* § 16-2-18.1. At the same time, R.I. Gen. Laws §§ 14-1-40 and 14-1-64 effectively preclude juvenile criminal background checks by mandating that the criminal records of juveniles remain confidential.<sup>1</sup> Thus, there is a conflict between the allowance of juvenile school bus monitors in § 16-21-1(b), the background check requirement applicable to all school department employees in § 16-2-18.1(a), and the effective preclusion of criminal background checks for juveniles in § 14-1-40 and § 14-1-64.

“A well-established tenet of statutory interpretation posits that the Legislature is ‘presumed to know the state of existing law when it enacts or amends a statute.’” *Simeone v. Charron*, 762 A.2d 442, 446 (R.I. 2000) (quoting *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1134 (R.I. 1998)). The definition of “school bus monitor” including juveniles at least sixteen (16) years of age in § 16-21-1(b) was first enacted in 1923<sup>2</sup>, well prior to the applicable criminal background check requirement in § 16-2-18.1, which was enacted in 1998<sup>3</sup>, and the mandate that juvenile records be kept confidential in § 14-1-40 and § 14-1-64, which were enacted in 1944<sup>4</sup> and 1977<sup>5</sup>, respectively. Thus, when the General Assembly mandated the relevant criminal background checks and provided for the confidentiality of juvenile criminal records it is presumed to have known that school bus monitors were defined as including juveniles who were at least sixteen (16) years of age.

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<sup>1</sup> The inaccessibility of juvenile criminal background checks is further supported by the practices of the Office of the Rhode Island Attorney General and Rhode Island Family Court. While there is no statutory provision expressly limiting or preventing juveniles from undergoing a national and state criminal background check, according to the Office of the Rhode Island Attorney General, Bureau of Criminal Identification and Investigation (“BCI”) website: “The Office of Attorney General of Rhode Island **does not have** access to Juvenile Records. We can only process background checks for anyone who is 18 years of age or older. If you have any questions regarding juvenile records, please refer to Rhode Island Family Court.” *See* <https://riag.ri.gov/i-want/get-background-check> (emphasis in original). In turn, the Rhode Island Family Court, which maintains exclusive jurisdiction over matters involving juveniles, similarly does not perform any juvenile criminal background checks but, instead, upon request will issue a “No Records Letter” indicating that the Court does not maintain any juvenile criminal records. *See* R.I. Gen. Laws § 14-1-5. While potentially useful, this letter is insufficient to satisfy the criminal background check requirements set forth in § 16-2-18.1 because the applicant did not undergo a national and state background check by the “(BCI), department of attorney general, state police, or local police department where they reside” nor was any fingerprinting required. *See* § 16-2-18.1(b).

<sup>2</sup> *See* G.L. 1923, ch. 70, § 31.

<sup>3</sup> *See* P.L. 1998, ch. 315, § 1.

<sup>4</sup> *See* P.L. 1944, ch. 1441, § 21.

<sup>5</sup> *See* P.L. 1977, ch. 70, § 1.

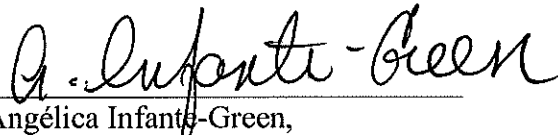
At the same time, the Court has made clear that “[i]t is well settled that repeals by implication are not favored by the law” and “[o]nly when the two statutory provisions are irreconcilably repugnant will a repeal be implied and the last-enacted statute be preferred.” *Berthiaume v. School Committee of City of Woonsocket*, 397 A.2d 889, 893 (R.I. 1979) (citing *Providence Electric Co. v. Donatelli Building Co.*, 356 A.2d 483, 486 (R.I. 1976)); *see also* Sutherland, *Statutes and Statutory Construction*, § 23.10, at 230-31 (C. Sands 4th ed. 1972); *Surber v. Pearce*, 195 A.2d 541, 543 (R.I. 1963); *Opinion to the Governor*, 80 A.2d 165, 168 (R.I. 1951). Here, the apparent impossibility of obtaining a criminal background check represents only a *de facto* repeal by implication of § 16-21-1(b)’s allowance of juvenile bus monitors.

Moreover, when there is an apparent conflict or inconsistency between statutory provisions that are *in pari materia*, the Rhode Island Supreme Court applies the equally settled principle that “[s]tatutes which relate to the same subject matter should be considered together so that they will harmonize with each other and be consistent with their general objective scope, even if the statutes in question contain no reference to each other and are passed at different times.” *Folan v. State/Department of Child., Youth, & Families.*, 723 A.2d 287, 289-90 (R.I. 1999) (internal quotation marks omitted). The obvious and paramount purpose of the relevant statutes here is to keep students safe. When balancing the possible effect of either eliminating juvenile school bus monitors on the one hand or hiring juveniles without the requisite criminal background checks on the other hand, it would appear that ignoring the background check requirement poses the greater risk to student safety, a conclusion which is confirmed by the fact that the relevant statutory language regarding juvenile school bus monitors in § 16-21-1(b) is permissive whereas the relevant language in § 16-2-18.1(a), § 14-1-40, and 14-1-64 regarding the background checks and confidentiality of juvenile records is mandatory.

Thus, in conclusion, under the current state of the law, the Commissioner finds that school departments can only hire and employ juvenile school bus monitors if they can successfully undergo the requisite national and state criminal background checks.<sup>6</sup>

Please be advised R.I. Gen. Laws § 42-35-8(d) provides that this decision “is subject to judicial review for abuse of discretion.”

Entered as a final agency Order this 20<sup>th</sup> day of February, 2024.

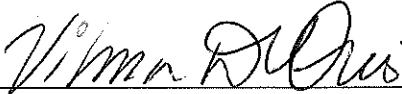
  
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Angélica Infante-Green,  
Commissioner

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<sup>6</sup> Whether or not the background check requirements could be satisfied by parental waiver of the statutory confidentiality provisions, or some other alternative, is beyond the authority or expertise of the Commissioner, who expresses no opinion here as to that possibility.

**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 and to be served by email on this 20<sup>th</sup> day of February, 2024 upon Andrew Henneous at [ahenneous@hcllawri.com](mailto:ahenneous@hcllawri.com).

  
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