

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

.....

**Jane Doe**

v.

**East Greenwich School Committee**

.....

**DECISION ON REQUEST**  
**For**  
**ISSUANCE OF AN INTERIM**  
**PROTECTIVE ORDER**

Held: The petitioner has established that the issuance of an interim order is needed to ensure that her child receives education in accordance with applicable state and federal laws and regulations. A former member of the Committee recently engaged in public discussions of ongoing litigation in which the petitioner seeks to secure educational benefits for her son under IDEA. Since that time, the East Greenwich School Committee has taken no position with respect to such discussions, creating an inference that it condones disclosure of such matters. Pending full hearing in this matter, an interim protective order will ensure that no public discussions of the fact of such litigation, or the details concerning it, will occur at meetings of the East Greenwich School Committee, or by Committee members outside of a closed meeting context.

DATE: December 22, 2006

## **Travel of the Case**

This request for issuance of an interim order was filed on December 8, 2006, along with an Appeal and Request for Injunctive Relief and a Request for An Expedited Hearing. The matter was assigned to the undersigned for hearing and decision on December 18, 2006 and a hearing took place on December 20, 2006. On December 19, 2006 counsel for the East Greenwich School Committee filed a Motion to Dismiss the Appeal and Request for Injunctive Relief. The parties agreed that a hearing on the merits of the Appeal would be scheduled for the afternoon of January 2, 2007.<sup>1</sup>

## **ISSUE**

Is Ms. Doe entitled to the issuance of an interim protective order pending hearing on the merits of this dispute?

## **Findings of Relevant Facts:<sup>2</sup>**

- Jane Doe is a resident of East Greenwich and a member of the East Greenwich School Committee.
- Ms. Doe is presently involved in a dispute with the East Greenwich School Committee with respect to the provision of educational services to her child under the Individuals With Disabilities Education Act, 20 USC 1400 et seq.
- As a result of this dispute there has been litigation pending between the parties and there is the prospect of continued litigation with respect to these matters.<sup>3</sup>
- The last meeting of the East Greenwich School Committee that Ms. Doe attended was on September 5, 2006.
- In early September of 2006 the former chair of the East Greenwich School Committee made public comment with respect to the fact of litigation filed by Jane Doe on behalf of her child and discussed implications he perceived such litigation had on Jane Doe's ability to continue to function as a member of the East Greenwich School Committee. A letter to the press published in the Providence Journal on September 13, 2006 was signed by "Vincent D. Bradley, Chairman, East Greenwich School Committee". (Petitioner's Ex.7)

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<sup>1</sup> Although it may not have been clear at the time of scheduling hearing on the merits, a ruling on the Motion to Dismiss will be consolidated with a ruling on the merits of this appeal.

<sup>2</sup> The factual assertions contained in the filings evidently are not in dispute. Only those facts relevant to the interim order request are summarized in this ruling.

<sup>3</sup> We take administrative notice of the June 13, 2006 decision of the Rhode Island Supreme Court in the case of John Doe v. East Greenwich School Department, et. al. which involved the petitioner. Among the defendants in that lawsuit was the Rhode Island Department of Elementary and Secondary Education. We infer from that decision that a due process hearing has been held, but are unaware of any final decision in that proceeding.

- Because of the disclosures made by the former chair of the School Committee, Ms. Doe has requested written confirmation from the Committee that it will not discuss the above-referenced pending litigation in open session, as it is her position that any such discussion violates her, and her child's, right to confidentiality under IDEA as well as other federal and state statutes protecting the confidentiality of a student's educational records and related information. She has also requested written confirmation that School Committee members have been advised and directed to refrain from engaging in any public discussions on the subject of Ms. Doe's pending litigation
- In correspondence from her attorney, as well as in a letter sent directly by Ms. Doe to four (4) newly-elected members of the School Committee on November 27, 2006<sup>4</sup>, she has requested such written confirmation and indicated that the failure to provide such written confirmation has resulted in her decision not to attend meetings of the School Committee.
- Ms. Doe has indicated that upon receipt of such written confirmation as requested by her attorney and by her directly, she will resume attendance at duly-scheduled meetings of the School Committee.
- The East Greenwich School Committee has not formally acted on Ms. Doe's request.

### **DECISION**

On the basis of this limited record, we cannot make a determination that the public disclosures of the former chairman of the East Greenwich School Committee with respect to Ms. Doe's pending IDEA litigation are attributable to the East Greenwich School Committee. Thus, we do not at this stage adopt the factual premise asserted as the basis for the issuance of the requested interim order as set forth at page 7 of the Petitioner's "Appeal and Request For Injunctive Relief". The Petitioner asserts that:

...members of the E.G. School Committee have violated the confidentiality/privacy provision of the applicable state and federal law by public discussion of the John Doe Litigation...(page 7)

However, since being made aware of the cited disclosures by the former chairman, there has evidently been no vote or formal position taken by the members of the current committee with respect to such occurrences. The Committee's general inaction, but not necessarily its failure to provide the requested "confidentiality confirmation" sought by the Petitioner, creates an inference that the School Committee sanctions the notion of public discussions of the John Doe litigation. Thus, Petitioner's argument that if she were to attend future scheduled meetings of the School Committee, as she should<sup>5</sup> she

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<sup>4</sup> We would note that Ms. Doe's correspondence requested confirmation that such discussions would not take place at open meetings and that, in addition, the School Committee confirm that no public discussion would be "condoned, sanctioned, or permitted". The November 27, 2006 letter indicates that a similar letter and request was made of the incumbent committee members.

<sup>5</sup> An obligation she accepted pursuant to R.I.G.L. 16-2-9.1

would do so at the risk of prompting a public discussion of such confidential matters<sup>6</sup> has been shown to have merit.

The request for issuance of an interim protective order to protect the confidentiality rights of students, rather than to secure their entitlement to educational programs and services, is a novel proposition. However, reading the statute liberally, as we must, invocation of the Commissioner's interim order authority to ensure that a student's right to confidentiality is preserved is consistent with both the language and intent of this law (R.I.G.L. 16-39-3.2). The interim order will ensure that *all* of the rights appertaining to this student's education are protected - a concept fairly implicated by the language of Section 16-39-3.2. Effective protection of confidentiality rights is difficult, if not impossible, after unwarranted disclosures have been made and in such cases the harm is irreparable. Given the preliminary showing that has been made that such confidentiality rights are in jeopardy, it would seem a derogation of the Commissioner's responsibility to decline to use his interim order authority as a method for ensuring both John Doe's confidentiality rights and statutory compliance.

Pending full hearing and decision in this matter, or until other resolution by voluntary agreement and action of the parties<sup>7</sup>, the members of the East Greenwich School Committee, individually and collectively, are ordered not to engage in and/or permit any public discussions of the John Doe litigation, including discussions at open meetings of the East Greenwich School Committee. The members of the School Committee are further ordered not to publicly disseminate any information regarding the John Doe litigation.

For the Commissioner,

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Kathleen S. Murray, Hearing Officer

APPROVED:

\_\_\_\_\_  
Peter McWalters, Commissioner

December 22, 2006  
\_\_\_\_\_  
Date

<sup>6</sup> the public discussion is alleged to be germane to the subject of "an evaluation of Ms. Doe's performance" as a member of the School Committee. The record is not clear why the East Greenwich School Committee determined such a subject was within its powers and duties, rather than a function of the electors of the town.

<sup>7</sup> We would hope that Ms. Doe's resumption of attendance at School Committee meetings will facilitate resolution of this appeal by agreement of the parties.