

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER  
OF  
EDUCATION

JOHN DOE

v.

EAST GREENWICH SCHOOL COMMITTEE

DECISION ON  
MOTION TO DISMISS

Held: This appeal is dismissed. It is evident from the documentation filed by the Appellant that he has an adequate remedy under the Educational Records Bill of Rights to address his claim that the East Greenwich School Committee maintains a false document in his son's educational records. The other issue he seeks to raise is moot.

DATE: April 10, 2013

## **Travel of the Case:**

On November 19, 2012 John F. Doe filed a request for a hearing with Commissioner Deborah A. Gist. His letter of appeal alleged that, in the past, East Greenwich had deliberately kept from him information on in-school behavior problems demonstrated by his son. His appeal letter also indicated that the district's decision to withhold information from him when his son was in fifth and sixth grade was "fortunately not currently operational". In addition, the Appellant asserted that the district had failed to correct a false statement made by its school psychologist and documented in his son's educational records. The Appellant had previously sought to have these issues resolved by the members of the East Greenwich School Committee, without success.

Attachments to Mr. Doe's letter of appeal indicate that on January 28, 2012 he emailed members of the School Committee regarding an allegedly false document authored by a school psychologist in the fall of 2008 and the alleged failure of staff at his son's school to keep him informed of problems his child was having at that time. The Appellant indicated that his current complaint was on the failure (of the district) to inform him of how the past decision to withhold this information was made. He also wrote that he sought an answer to the question "what justified the decision to keep a father uninformed?"

On January 17, 2013 the undersigned was designated by the Commissioner to hear and decide this appeal. The hearing officer wrote to the parties to acknowledge receipt of the appeal and requested that the Appellant provide a brief written statement of the relief or remedy that he was requesting. In response, the Appellant wrote that he sought to compel the East Greenwich School Department to provide him with all information due him as a parent and provide a full account of the process and justification for its prior decision to withhold information on his son's behavior problems in school. Secondly, the Appellant sought an order requiring the East Greenwich School Department to correct, or retract, statements made (by the school psychologist) in a letter he wrote in support of reinstating counseling services for the Appellant's son.

On March 1, 2013 counsel for the East Greenwich School Committee filed a Motion to dismiss this appeal on the grounds that the Commissioner lacks jurisdiction over this dispute. A memorandum in support of the Motion was also filed. On March 5, 2013 the Appellant responded, setting forth his arguments supporting the Commissioner's jurisdiction. A hearing date that had previously been set for March 14, 2013 was cancelled pending a ruling on the Motion to Dismiss.

## ISSUE

Does the Commissioner have jurisdiction to hear a parent's complaint that (a) in 2008 a school psychologist employed by the East Greenwich School Department wrote false statements in a letter supporting the reinstatement of counseling services to the Appellant's son and (b) the school district made a decision to withhold information from the Appellant concerning his son's behavior problems in school from the Fall of 2009 to the Spring of 2011?

### Positions of the Parties:

#### **East Greenwich School Committee:**

In its Motion to Dismiss, the School Committee characterizes this controversy as a grievance based on a letter written by a school psychologist who had worked with the Appellant's son. In a 2008 letter, a school psychologist advocated for the reinstatement of professional counseling to him and in so doing, set forth his professional opinion on the son's mental health needs. The Appellant tried to have alleged "falsities" contained in the letter corrected or retracted. When he was unsuccessful in compelling the school psychologist to change his opinion, the Appellant brought this issue to the administrators of the East Greenwich School Department and, eventually, to the members of the School Committee. According to counsel for the School Committee, the Appellant has perceived the lack of response from the School Committee as an effort to withhold information from him as a parent. Because he is unhappy with the clinical opinion of the school psychologist and upset that he has been unable to force the psychologist or the school district to retract or modify the opinion, the Appellant seeks relief by proceeding on appeal before the Commissioner.

According to counsel for the School Committee, this dispute does not involve the interpretation of a "law relating to schools or education". Furthermore, the Rhode Island Department of Education does not possess statutory authority to order a medical professional to retract or modify his opinion – even if the opinion concerns a minor student. Counsel cites Asadoorian v. Warwick School Committee<sup>1</sup>, 691 A.2d 573 (R.I. 1997) for the proposition that the Commissioner has authority to interpret or apply educational statutes and to enforce laws relating to schools or education. Controversies arising outside of school matters are beyond her jurisdiction. In exercising jurisdiction over disputes arising under laws related to schools or education, the

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<sup>1</sup> The School Committee cites other precedent on the issue of the Commissioner's jurisdiction as well.

Commissioner acts consistently with a well-established principle that she possesses a level of expertise which should be brought to bear in educational matters. Conversely, when a dispute does not involve an educational statute or regulation, the Commissioner lacks the requisite expertise and accompanying jurisdiction.

In this case the issue centers on the truth or falsity of a school psychologist's opinion- an issue that involves a child's mental health or psychological welfare. The Commissioner of Education lacks expertise in the area of mental health. If there were an issue with this child's educational wellbeing rather than his psychological needs, then the Commissioner's hearing of this dispute would be appropriate.

Administrators of the district and members of the School Committee have not complied with the Appellant's request to retract the contested letter. Implicitly, the School Committee argues that this is because the East Greenwich School Committee did not find any merit in the Appellant's claims that the school psychologist's statements were false or that his professional recommendation was without a proper basis. The Appellant is obviously frustrated with what he perceives as a lack of responsiveness. However, such dissatisfaction does not provide the Commissioner with jurisdiction over the matter. To date, the School Committee has not responded to or taken action with respect to the Appellant's requests. Given that there has been no "decision" or "doing" by the East Greenwich School Committee, no appeal to the Commissioner under R.I.G.L. 16-39-2 can be taken. There has been no response by which the Appellant has been aggrieved – the only response that the Appellant can point to is that various administrators of the district have willingly listened to the Appellant's concerns as he has raised them.

Accordingly, the dispute presented by the Appellant falls outside the Commissioner's jurisdiction pursuant to R.I.G.L. 16-39-1 and 16-39-2 and should therefore be dismissed.

## **The Appellant**

In objecting to the Motion to Dismiss, the Appellant argues that this dispute does indeed arise under a law relating to schools and education. Specifically he cites the Basic Education Program Regulations<sup>2</sup> and Section G-12-4.2 "Functions of the Local Education Agency" and particularly subsection (f) which requires each LEA to "foster safe and supportive environments for students and staff". The Regulation cited has been violated, he argues implicitly. The Appellant submits that

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<sup>2</sup> The Basic Education Program Regulations were promulgated by the Board of Regents for Elementary and Secondary Education on June 4, 2009 and took effect on July 1, 2010.

when a school psychologist knowingly makes false statements in substantial matters and those statements are meant for use against a parent in family court, this is an un-supportive act and predictably harmful to the child. In essence, the LEA has permitted the creation of an “unsupportive environment” in violation of the BEP’s provisions. This is a matter over which the Commissioner has jurisdiction.

With respect to the School Committee’s argument that the Department of Education lacks the statutory authority to require that a medical professional retract or modify his clinical opinion as it concerns a minor student, the Appellant submits that school psychologists are regulated by the Department of Education and not the state’s Board of Psychology. He notes that the regulation of school psychologists is carved out of the oversight and licensing authority of the State Board of Psychology pursuant to R.I.G.L. 5-44-23 “Persons and practices exempt”. The Appellant argues that this statute places the regulation of school psychologists squarely within the jurisdiction of the Department of Education. A school psychologist’s opinion can be simultaneously educational and psychological in nature and, the Appellant implicitly argues, thereby raise issues that are within the expertise of the Commissioner. In any event, several of the false statements of the school psychologist were not psychological opinions, but factual statements, e.g. whether the Appellant was or was not present at a particular meeting. Statements made that the Appellant was “unreasonable” fall into a gray area in which the Commissioner should have additional context before deciding if this is a clinical opinion or a factual assertion that could be disproved in the hearing process he seeks to utilize.

Contrary to the assertion of its counsel, there has been a “decision” or “doing” of the East Greenwich School Committee in that there has been a passive failure by the Committee to foster a supportive environment. The failure to perform a legally-mandated act must be appealable or there will be no effective enforcement of laws or regulations in the school setting. The Committee’s failure to act is, therefore, appealable and presents a matter in which the Commissioner must intervene.

Counsel for the School Committee has misunderstood the nature of his complaint regarding withholding information. It was not the Committee’s lack of response to the Appellant’s request to retract the 2008 letter of the school psychologist, but rather a subsequent decision by school staff to withhold information regarding his son’s behavioral issues from the Fall of 2009 to the Spring of 2011. It is this deliberate decision to withhold information about his son’s behavior in school that the Appellant seeks to examine. The Appellant wants an explanation for how such decision was made. The district’s Motion to Dismiss does not address this part of his appeal.

For these reasons, the Commissioner should proceed to hear this matter and rule on each of the Appellant's claims.

### **DECISION**

The Appellant seeks to raise two issues, as set forth specifically above. We will address the Commissioner's jurisdiction over each in turn.

I. An allegation that an East Greenwich school psychologist wrote a letter in 2008 containing false statements in support of reinstating counseling services to the Appellant's son.

To the extent the letter of which the Appellant complains is currently contained in his son's "education records"<sup>3</sup> as defined in 20 U.S.C. § 1232g, the request that the Commissioner order the East Greenwich School Department to correct or retract this letter arises under R.I.G.L. 16-71-1 et seq., the "Educational Records Bill of Rights Act". The Appellant's claim is that the letter contains false statements by the school psychologist. The allegedly false statements relate to facts (e.g. whether the Appellant was present at a particular meeting) as well as the psychologist's professional opinion of the Appellant's son's significant mental health needs. The relief he requests from the Commissioner is an order that the East Greenwich School Department "correct or retract" the letter so that it is "unambiguously clear that (the) statement is known to be substantially factually wrong". There is no request to alter this student's educational program to change counseling services in light of any correction or retraction that might ultimately be ordered by the Commissioner.

Despite the arguments of the School Committee to the contrary, we find that this is an educational records issue over which the Commissioner has jurisdiction under the Educational Records Bill of Rights Act. However for reasons we will explain, we decline to grant the Appellant's request to conduct a hearing to allow him to prove the falsity of certain statements and obtain an order that the Committee make corrections to statements he may prove to be incorrect. The statute in question provides another remedy which adequately responds to his complaint without the necessity of conducting a full hearing on issues which may well have become moot. Conducting a hearing to determine the truth or falsity of statements made by a school psychologist back in 2008 is not an appropriate use of public resources when there is no claim that the allegedly

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<sup>3</sup> The Appellant mentions in his response to the Motion to Dismiss that the statements made in the contested letter were "meant for use against a parent in family court". See letter of the Appellant dated March 4, 2013. We assume, however, that it is the retention of this letter in his son's school records, rather than its inclusion in any Family Court record that is at issue in this case.

false statements negatively impacted his son or the educational services he received (or may continue to receive)<sup>4</sup> from the East Greenwich School Department.

The Appellant seeks to set the record straight four (4) years after the letter was placed in his son's education record. He provides no explanation for his delay in seeking a formal finding that statements in the letter are false. There is no specific time limit on the right to request an amendment or expungement of a record if the parent or eligible student believes that the information contained in an education record is inaccurate, misleading, or in violation of the student's right to privacy. However, subsection (b) of R.I.G.L. 16-71-3 provides that:

Any person aggrieved under this chapter shall have the right to appeal in accordance with the provisions of chapter 39 of this title.

Appeals to the Commissioner under R.I.G.L. 16-39-1 and 16-39-2 must be made within a "reasonable time". See Jennifer Kittredge v. The Compass School, decision of the Commissioner dated October 23, 2006 and Holly McDougal v. Coventry School Committee, decision dated June 6, 2006. Although the lapse of time or the doctrine of laches has not been raised along with the jurisdictional arguments, we find the lapse of four (4) years to be a troubling delay in asserting these claims for a time consuming and costly adjudication process. To move forward to a full hearing to provide the Appellant with an opportunity to prove his claim of factual inaccuracies and unfounded opinions is not warranted when he has another adequate remedy under this same statute – a remedy that does not require a hearing.

The Educational Records Bill of Rights Act gives the Appellant the right to place his own statement in the record commenting on "contested information," i.e. the school psychologist's letter. Absent an objection from the East Greenwich School Department<sup>5</sup> the Appellant may place a statement correcting inaccuracies he contends are contained in the letter of the district's school psychologist. In this way the Appellant can effectively contradict any false statements he contends are contained in the 2008 letter. The Appellant's statement must be maintained with the contested part of the record and disclosed when the portion of the record to which it relates is disclosed. See R.I.G.L. 16-71-3 (a)(6).

II. An allegation that the school district made a decision to withhold information from the

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<sup>4</sup> The record in this case thus far does not indicate whether the Appellant's son is still enrolled in the public schools of East Greenwich.

<sup>5</sup> In the event the School Department should deny the Appellant the right to place his statement commenting on the contested information in the record (the school psychologist's letter of October 2008), Mr. Doe will have the right to appeal to the Commissioner for relief.

Appellant concerning his son's behavior problems in school from the Fall of 2009 to the Spring of 2011.

East Greenwich's Memorandum in Support of its Motion to Dismiss incorrectly perceives the Appellant's complaint in this regard to refer to the district's lack of response to his request that the School Department correct or retract the letter of its school psychologist. According to the Appellant, he raises a completely different issue- the subsequent decision of school officials to withhold certain information about his son from him during a period of time ending in the Spring of 2011. In his November 19, 2012 letter of appeal, the Appellant states that this decision is not "currently operational". He seeks a hearing now so that he can "uncover" how and why this decision was made.

With a view to the Commissioner's obligation to adjudicate actual controversies and not theoretical issues, conducting a hearing to resolve disputes that have ceased to exist is beyond her statutory authority. As was the case with the first issue presented, conducting a hearing with respect to the Appellant's second claim would involve the unnecessary expenditure of scarce public resources. More importantly, Commissioner's hearings are restricted to the necessary resolution of actual controversies. It is clear that the controversy that previously existed with respect to withholding information from the Appellant has become moot. Should the East Greenwich School Department deprive the Appellant of access to information regarding any educational matter pertaining to his son going forward, he may appeal and we will address the issue at such time.

The appeal is dismissed for the reasons set forth in this decision.

For the Commissioner,

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Kathleen S. Murray, Hearing Officer

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Deborah A. Gist, Commissioner

DATE: April 10, 2013