

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

P.S., aka STUDENT, by and through
HIS PARENT, JOANNA S.

v.

SOUTH KINGSTOWN SCHOOL DEPARTMENT

**Ruling on Motion for Withdrawal Without Prejudice
and for Attorney Fees**

This matter relates to P.S.'s September 15, 2014 request for a Commissioner's hearing that was filed pursuant to R.I.G.L. §§16-24-1, 16-39-1, 16-39-3.2 "and/or" §300.129 of the Board of Education Regulations Governing the Education of Children with Disabilities. According to the request, a hearing was needed to resolve the issue of whether the South Kingstown School Department was required to convene an IEP¹ team meeting for the purpose of providing P.S., a parentally-placed private school student, with the same free appropriate education as it provides to children in its public schools.

By agreement of the parties, a telephone conference was conducted on September 24, 2014. During the conference, the parties agreed to schedule an IEP team meeting for P.S.

On February 23, 2015, counsel for P.S. submitted a Motion for Withdrawal Without Prejudice and for Attorney Fees. The Motion asserts that, following the telephone conference in this matter, the parties held IEP meetings for P.S. on October 24, 2014 and January 15, 2015. Citing R.I.G.L. 16-24-1 and §300.517(a)(1)(i) and (c)(ii) of the Board's Regulations Governing the Education of Children with Disabilities, counsel contends that the Commissioner has jurisdiction and authority to award attorney fees in this matter and that P.S. is a prevailing party entitled to an award of reasonable attorneys' fees.²

In its March 2, 2015 response to the Motion, the South Kingstown School Department argues that the request for attorneys' fees is frivolous because the requested hearing never occurred. The School Department also requests attorneys' fees under §300.517 of the Regulations on the grounds that the September 15, 2014 request was brought to harass the

¹ "IEP" is the acronym for "individualized education program."

² Supporting affidavits and a billing statement are attached to the Motion.

School Department and increase the cost of litigation.

Section 300.517(a) of the Regulations states as follows:

- (a) In general. (1) In any action or proceeding brought under § 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to —
- (i) The prevailing party who is the parent of a child with a disability;
 - (ii) To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
 - (iii) To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. (emphasis added).

As underscored above, §300.517(a)(1) of the Board's Regulations grants authority to "the court" to award attorneys' fees in cases brought under the Individuals with Disabilities Act.³ In Rhode Island, attorneys' fees under §300.517 cannot be awarded in a Commissioner's hearing.⁴ This principle applies to cases involving Rhode Island public and private school students, whether placed by school districts or parents. Because we do not have the authority to consider the attorneys' fees requests herein, we dismiss the Motion and the School Department's request without prejudice.

Paul E. Pontarelli
Hearing Officer

³ The Regulation mirrors the attorneys' fees provision of the Individuals with Disabilities Education Act (20 U.S.C. §1415(i)(3)(B)(i)). In addition, §§300.517(c)(4) and (5) of the Regulations and 20 U.S.C. §1415(i)(3)(F) and (G) refer to "the court" in addressing circumstances justifying a reduction of the amount of an attorneys' fees award. References to "the court" relate to §300.516 of the Regulations, pursuant to which an aggrieved party in a due process hearing or school removal case has the right to bring a civil action in any State court of competent jurisdiction or in a United States district court. See, also, 20 U.S.C. 1415(i)(2)(A).

⁴ The Equal Access to Justice for Small Businesses and Individuals Act, §§42-92-1, *et. seq.*, is applicable to "adjudicatory proceedings" before the Commissioner of Education. *Parent of Student P. Doe v. Providence School Board*, 0016-12, September 19, 2012; *Traci Rossi et al v. Johnston School Committee*, 0016-11, August 25, 2011; *Edward Charland v. Pawtucket School Committee*, November 26, 2001.

Approved:

Deborah A. Gist
Commissioner of Education

Date: April 15, 2015