

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
COMMISSIONER OF EDUCATION

STUDENT H. Doe, by her parents	:
<i>Petitioner,</i>	:
	:
vs.	:
	:
CHARIHO REGIONAL SCHOOL	:
COMMITTEE,	:
<i>Respondent.</i>	:

SUPPLEMENTAL DECISION AND INTERIM ORDER

Held: Student was entitled to the entry of an interim protective order pending appeal under RIGL § 16-39-3.2 to enable the immediate enforcement of the Commissioner’s June 1 Decision affirming her right to attend an out-of-district career preparation program in agricultural science.

DATE: June 30, 2016

I. Introduction

On March 28, 2016, the parents of Petitioner, STUDENT H. DOE (“Student H.”), a resident of the Chariho Regional School District (“Chariho”), filed a petition on her behalf (the “Petition”), appealing the decision of Respondent, CHARIHO REGIONAL SCHOOL COMMITTEE (the “School Committee”), affirming its Superintendent’s decision refusing to sign and approve Student H.’s application to a career preparation program in agricultural science offered at Narragansett High School primarily due to the fact that Chariho offered an agricultural science career preparation program of its own.

On June 1, 2016, the Commissioner held that Student H. had the right to attend the career preparation program “of her choice” under Section 5.1 of the *Regulations Governing Career and Technical Education in Rhode Island* (the “C&T Regs.”), *see* June 1 Decision at 12. In his June 1 Decision, the Commissioner specifically provided that:

[a] hearing on the appropriateness of entering an interim order pursuant to RIGL § 16-39-3.2 so that this Order can go into effect pending any appeal shall be conducted at RIDE’s Offices, 275 Westminster Street, 4th Floor in Providence, on a date and at a time to be mutually agreed upon by the parties and the undersigned hearing officer, and if an agreement is not reached by the close of business on June 10, 2016, on a date and at a time to be assigned.

See id. at 14.

On or about June 17, 2016, the School Committee filed an appeal of the June 1 Decision with the Council on Elementary and Secondary Education (the “Council”). The hearing as to the entry of an interim order pending appeal was conducted by the undersigned hearing officer on June 28, 2016.

II. Positions of the Parties

1. Student H.

Student H.’s parents appeared at the June 28 hearing on Student H.’s behalf and argued,

pro se, that failing to give legal effect to the June 1 Decision pending appeal – an appeal which will not be decided prior to the commencement of school – would mean that Student H. would not be able to attend the career preparation program “of her choice,” i.e., the agricultural science career preparation program at Narragansett High School, during the 2016-17 school year.

Student H.’s parents argued that time was of the essence since their daughter needed to prepare for whichever program she was to attend by, among other things, completing the appropriate summer reading list. In addition, they suggested that leaving their daughter in limbo was creating unnecessary anxiety.

2. The School Committee

The School Committee, relying upon the very same arguments that had been addressed and specifically rejected by the Commissioner in his June 1 Decision, argued that the June 1 Decision would be reversed on appeal, and thus the equities argued against its enforcement pending appeal. In addition, the School Committee suggested that it was not necessarily in the best interests of students to know which school they will be attending prior to their actual enrollment date, citing to the fact that for various reasons, no such advance notice is possible in several school districts throughout the state.

In addition, the School Committee argued that the Commissioner lacked jurisdiction over the matter once the School Committee had filed its appeal of the June 1 Decision. When asked for legal authority in support of the position, the School Committee referenced the authority it had cited to the Commissioner in a recent, unrelated case, i.e., *Department of Children, Youth and Families v. Foster-Glocester Regional School Committee*, 021-15 (RIDE, December 15, 2015).

III. Discussion

RIGL § 16-39-3.1 provides that:

[a]ll final decisions made after a hearing by the commissioner of elementary and secondary education or the board of regents for elementary and secondary education, ***and which are not subject to further judicial or administrative review***, shall be enforceable by mandamus or any other suitable civil action in the superior court for Providence County at the request of any interested party. All these decisions of the commissioner and board ***shall become final if judicial or further administrative review is not properly sought within thirty (30) days of their issuance.***

Id. (emphasis added).

Here, as noted, the School Committee filed a Notice of Appeal on June 17, 2016. Thus, the June 1 decision is not a “final decision” under Section 16-39-3.1, nor, standing alone, is it “enforceable by mandamus or any other suitable civil action in the superior court for Providence County.” *Id.* However, the fact that the June 1 Decision is not “final” for certain purposes does not mean the Commissioner is powerless to prevent the frustration of its very purpose.

RIGL § 16-39-3.2, entitled “Interim Protective Orders,” provides in pertinent part that:

[i]n all cases concerning children, other than cases arising solely under § 16-2-17,¹ the commissioner of elementary and secondary education shall also have power to issue any interim orders ***pending a hearing as may be needed to ensure that a child receives education in accordance with applicable state and federal laws and regulations during the pendency of the matter.***

Id. And there is ample precedent for the use of Section 16-39-3.2 to ensure that a student is able to enroll in a career and technical program such as the agricultural science program at issue here. *See, e.g., In re Student D.S. Doe*, 013-14 (RIDE, September 15, 2014) (to ensure enrollment in program in Auto Collision Repair); *Student F.M. Doe v. Providence School Board*, (RIDE, October 3, 2008) (regarding enrollment in a Business & Entrepreneurial Technology program); and *Student C. Doe v. West Warwick School Committee*, (RIDE, September 4, 2008) (student

¹ RIGL § 16-2-17 concerns the right to a safe school and thus is inapplicable.

entitled to interim protective order directing immediate enrollment in cosmetology program).

In short, the interim order statute was intended to prevent the very sort of frustration of purpose which would result here in the event that the June 1 Decision was not enforceable, and Student H. was thereby effectively prevented from exercising her right to attend the career preparation program “of her choice.”

In *Department of Children, Youth and Families, supra*, the Respondent School Committee – relying upon cases concerning appeals from the Superior Court – argued that the Commissioner has no jurisdiction over a case once an appeal has been filed with the Council, much as the Superior Court lacks jurisdiction over a case once an appeal has been docketed by the Supreme Court. Yet, unlike here, Superior Court decisions are, in the usual course, enforceable pending appeal, unless the appealing party has successfully moved for a stay pending appeal under Superior Court Rule of Civil Procedure 62 or Supreme Court Rule of Appellate Procedure 8.

Finally, it is apparent that the equities favor the entry of an interim order. Indeed, as noted, the School Committee’s argument to the contrary is for the most part based upon legal arguments that were made in opposition to Student H.’s petition, which, as noted, have been addressed and specifically rejected.

IV. Conclusion

For all the above reasons:

1. The June 1 Decision is hereby amended and shall be entered as a Decision and Interim Order pursuant to RIGL § 16-39-3.2; and
2. Pending appeal, the June 1 Decision together with this Supplemental Decision and Interim Oder shall be immediately enforceable in the Superior Court.

For the Commissioner,

Anthony F. Cottone, Esq.,
Hearing Officer

Ken Wagner, Ph.D.,
Commissioner

Dated: June 30, 2016