STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
COMMISSIONER OF EDUCATION

STUDENT C. DOE, by his parents *Petitioner,*	: :	
vs.	:	RIDE No. 19-057A
BRISTOL-WARREN REGIONAL SCHOOL DISTRICT, *Respondent*	: :	

DECISION AND ORDER

Held: Regional school district's motion to dismiss student's petition alleging that his removal from school violated his right to substantive and procedural due process was granted, as petition was rendered moot due to student's failure to describe the relevant facts, the requested relief, or respond in any way to the school district's motion to dismiss.

Date: August 13, 2019

On May 24, 2019, the parents of Petitioner, Student C. Doe ("C. Doe") submitted a letter to the Commissioner requesting an "expedited hearing" to consider the legality of C. Doe's removal from the Kickemuit Middle School (the "Middle School") in Warren, Rhode Island, pending an investigation by the Superintendent of the Respondent, Bristol-Warren Regional School District (the "BWRSD").

I. Jurisdiction and Burden of Proof

The Commissioner is required by statute "to interpret school law," RIGL §§ 16-1-5(10) and 16-60-6(9)(viii), and to "require the observance" and "enforce the provisions of all laws relating to elementary and secondary education." RIGL §§ 16-1-5(9) and 16-60-6(9)(vii). Thus, she has subject matter jurisdiction here under RIGL § 16-39-1, which covers disputes "arising under any law relating to schools or education." *Id.*

In addition, as in most proceedings before the Commissioner, the petitioner, in this case C. Doe, has the burden of proof by a fair preponderance of the evidence.[1] However, the burden of proving that a controversy is moot lies with the party asserting mootness,[2] which in this case is the BWRSD, as will be discussed.

II. Facts

1. C. Doe is a fourteen-year-old eighth grader who at all relevant times was enrolled in the Middle School.

2. On April 24, 2019, C. Doe was removed from school pending an investigation by BWRSD's Superintendent as the result of conduct which has not been described by either party.

[1] *See Larue v. Registrar of Motor Vehicles, Dept. of Transp*., 568 A.2d 755, 758-59 (R.I. 1990), citing *Gorman v. University of Rhode Island*, 837 F.2d 7, 15 (1st Cir.1988) (general presumption in administrative proceedings "favors the administrators" and places the burden of proof upon the party challenging the action "to produce evidence sufficient to rebut this presumption.").
[2] *See Friends of the Earth v. Laidlaw Envtl. Servs*., 528 U.S. 167, 190 (2000).

3. According to the BWRSD, after having been afforded notice as to the reasons for his removal and an opportunity to be heard, C. Doe "did not seek a hearing and acquiesced to the removal." *See* the June 17, 2019 Motion to Dismiss of the BWRSD ("BWRSD's Motion") at 2.

4. According to C. Doe, the Superintendent wrote a letter to his parents a week after his removal "explaining that C. Doe was not under suspension and was simply being removed from school" without "a hint of legal authority." *See* C. Doe's May 24 letter at ¶ 2.

5. On May 16, 2019, C. Doe's parents were interviewed by the Superintendent, and on May 21, 2019 the parties met, but despite the request of C. Doe's parents, C. Doe was not allowed to return to school before the end of the school year on June 12, 2019. *See id.*

6. However, according to the BWRSD, tutoring was provided to C. Doe, he was promoted, and he will be able to attend high school in the Fall. *See* BWRSD's Motion at 1.

7. In addition, the BWRSD has allegedly offered to vacate any reference of disciplinary action from C. Doe's school record and remove any "disparaging information." *See id*. at 2.

8. In his May 24 letter, C. Doe did not seek any specific relief, but alleged that he was "denied substantive and procedural due process" by the BWRSD.

III. Positions of the Parties

1. BWRSD

On June 17, 2019, the BWRSD moved to dismiss C. Doe's petition, arguing that C. Doe:

(a) was provided with notice and an opportunity to be heard, but rather than challenge the decision, acquiesced in his removal from school pending an investigation. *See* BWRSD Motion at 2, citing *Gorman v. University of Rhode Island,* 837 F.2d 7, 12 (1st Cir. 1988) and *R. Doe v. A Rhode Island Charter School*, RIDE No. 18-092 K (December 21, 2018);

(b) "has received tutoring, has successfully completed his eighth grade work, and will be admitted to the high school in the fall." *See id.* at 1; and

(c) has not made any specific claim for relief. *See id*., citing *E. Doe v. Barrington*, RIDE No. 18-015 A (January 4, 2019).

2. C. Doe

Although C. Doe's attorney requested and was granted additional time to respond to the BWRSD's Motion to Dismiss, no filing in response to the Motion was made.

IV. Decision

Historically, the Commissioner has adhered to traditional legal principles when considering mootness, as well as the related doctrine of standing, and has declined to hear cases that have been rendered moot. *See, e.g., John Doe v. East Greenwich School Committee,* RIDE No. 009-13 ("Commissioner's hearings are restricted to the necessary resolution of actual controversies"); *In re Residency of MW and AW*, RIDE No. 004-05 (January 28, 2005) (case dismissed as moot after parent admitted that she was a resident of Johnston and evidence established that students had been enrolled in public school in Johnston); and *John A.X. Doe v. Department of Children, Youth and Families and the Office of the Child Advocate*, RIDE No. 0015-94 (April 11, 1994) (appeal requesting interim protective relief with respect to change in placement dismissed as moot).

And as the Rhode Island Supreme Court has explained, "'[a] case is moot if it raised a justiciable controversy at the time the complaint was filed, but events occurring after the filing have deprived the litigant of an ongoing stake in the controversy.'" *City of Cranston v. Rhode Island Laborers' Dist. Council Local 1033*, 960 A.2d 529, 533 (R.I. 2008), quoting *Seibert v. Clark*, 619 A.2d 1108, 1110 (R.I.1993). The Court went on to note that, "[o]ne narrow exception to the mootness doctrine exists for those cases that are "of extreme public importance, which

[are] capable of repetition but which [evade] review." *Id.*, quoting *Morris v. D'Amario*, 416 A.2d 137, 139 (R.I.1980).

Moreover, while there are cases in which a valid claim for nominal damages avoids a finding of mootness, *see* 13C Charles A. Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice & Procedure* § 3533.3 n.47 (3d ed. 2008) (collecting cases), this is not such a case. *See, e.g., Soto v. City of Cambridge*, 193 F. Supp. 3d 61, 71 (D. Mass. 2016) (holding that a claim for nominal damages was insufficient to save the case from being dismissed as moot); *see also Freedom from Religion Found., Inc., v. Concord Cmty. Schs*., 207 F. Supp. 3d 862, 874 n.7 (N.D. Ind. 2016) (noting that multiple district courts have found nominal damages insufficient to save an otherwise moot constitutional claim), *aff'd*, 885 F.3d 1038 (7th Cir. 2018).

Here, in the absence of any adjudicated facts, "the award of nominal damages would accomplish nothing," to quote the Court noted in *Soto, supra,* 193 F. Supp. 3d at 72. And in the absence of relevant adjudicated facts, it cannot be said that this is a case which raises the "capable-of-repetition" exception to the mootness doctrine. *See Am. Civil Liberties Union of Mass. v. U.S. Conference of Catholic Bishops*, 705 F.3d 44, 56-57 (1st Cir.2013).

V. Order

For all of the above reasons:

1. C. Doe's petition is hereby denied and dismissed.

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Anthony F. Cottone, Esq.,
as Hearing Officer for the Commissioner

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Angelica Infante-Green,
Commissioner

Date: August 13, 2019