STATE OF RHODE ISLAND
COMMISSIONER OF EDUCATION

Ms. and Mr. Doe, as parents and next friends of STUDENTS D. and C. DOE, *Petitioners*	:	
v.	:	RIDE No. 22-051A
SOUTH KINGSTOWN SCHOOL DEPARTMENT and Ms. Roe and Mr. Zoe, as parents and next friends of of STUDENT M. ROE, *Respondents*	:	
Ms. Roe and Mr. Zoe, as parents and next friends of STUDENT M. ROE, *Petitioners*	:	
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CONSOLIDATED INTERIM DECISION AND ORDER

Held: Petition for an interim protective order to overturn the decision of a school superintendent transferring a second grader to another school in the district who had allegedly engaged in inappropriate sexual behavior with two other students who were enrolled in the same school was denied; despite the Superintendent's inconsistent and/or contradictory testimony, the primary rationale for his decision, i.e., that the student to be transferred would be unable to avoid the stigma and related social isolation in the small school in which he was currently enrolled due to the publicity surrounding the allegations, was neither arbitrary nor capricious and was supported by additional evidence suggesting that his attendance in the same school as the other two students would likely cause them anxiety and emotional disturbance.

September 28, 2022

I. INTRODUCTION, PROCEDURAL HISTORY AND SOME PRELIMINARY MATTERS

This is a consolidation of two difficult and unusual cases involving allegations of inappropriate sexual behavior by a very young child. The Commissioner is being asked to evaluate competing but well-grounded parental concerns surrounding the welfare of three young children at the very start of their school experiences, and then to review the decision made by a local school official to transfer one of the three children, a second-grader, out of the elementary school to which he had just been assigned. At the same time, the Commissioner had to address the procedural complexities created when the parental petitioners and respondents effectively switched roles in the middle of an evidentiary hearing, which may be a first in the history of education cases in Rhode Island.

1. The Initial Petition and the Unsuccessful Mediation

On September 9, 2022, counsel for the original petitioners, Ms. and Mr. Doe, as parent and next friends of STUDENTS D. and C. DOE – a seven year-old second-grader and a five year-old kindergartner, respectively – wrote the Commissioner and alleged that the Respondent, SOUTH KINGSTOWN SCHOOL DEPARTMENT ("SKSD"), had violated their children's statutory right to a safe school by refusing their request to transfer STUDENT M. ROE, another second grader, to another elementary school after the District had been informed of allegations that M. Roe, who then lived next door to the Does, had engaged in inappropriate sexual behavior involving D. and C. Doe. Ms. and Mr. Doe requested an interim protective order pursuant to R.I. Gen Laws § 16-39-3.2 to compel the transfer of M. Roe.

A hearing with respect to the Doe's petition was commenced on September 16, 2022, but the parties agreed to continue the hearing and attempt to mediate their dispute, without the

presence of counsel.[1] They agreed that the Hearing Officer could act as mediator, and if the mediation was unsuccessful, he could thereafter reconvene the hearing and continue to act in the capacity of Hearing Officer. *See Stipulation Re Mediation* (Joint Exhibits 2, 3 and 4).

All parties then attempted in good faith to settle the dispute at a mediation conducted on September 19, 2022 at the SKSD administration building. However, the mediation was not successful, and thus the continued hearing resumed, in person, on September 21, 2022.[2]

2. The Superintendent's Surprise Announcement

It was the assumption of all parties at the hearing on September 16, 2022 and during the mediation on September 19 that the SKSD's approval of M. Roe's application to attend Matunuck Elementary School ("Matunuck") – despite the fact that he resided in a district whose children would normally be required to attend Peacedale Elementary School ("Peacedale") – coupled with the District's refusal to grant Ms. and Mr. Doe's request that M. Roe be transferred from Matunuck, was the result of a "final" decision by the Superintendent. However, when testifying on September 22, the Superintendent announced for the first time that he had actually not yet made a "final" decision, and then mentioned that two nights prior he had decided to grant Ms. and Mr. Doe's request and transfer M. Roe to another school in the District. For some unknown reason, he kept this most recent decision to himself.[3] At the same time, under further

[1] The parties agreed to the September 16 hearing date during a telephone conference on September 13. The original petition did not include M. Roe as a party, and thus notice was provided to M. Roe's parents, Ms. Roe and Mr. Zoe, and Ms. Roe's counsel entered his appearance at the initial hearing on the 16th. Ms. Roe and Mr. Zoe, who both participated in the mediation, were then added as necessary parties as the parents and next friends of M. Roe. The hearing on September 16 was conducted by Zoom at the request of the Does, and due to a shortage of court reporters, it was recorded and will be transcribed by a qualified court reporter as part of the record on appeal should that be necessary. *See Stipulation re the Recordation and Later Transcription of a Virtual Hearing* (Joint Exhibit 1).

[2] Once again, RIDE was unable to find an available court reporter and thus, the hearing, although in person, was recorded and will be transcribed.

[3] No explanation was provided as to why the Superintendent and/or his counsel did not clearly communicate to the parties that a final decision had not been made while the parties and the Hearing Officer were expending time and effort mediating, and then conducting an evidentiary hearing, under the obvious (but nonetheless apparently erroneous) assumption that a final decision had in fact been made. Indeed, in his opening remarks, counsel for the SKSD referred to the "good faith decision" that had been made by the Superintendent.

questioning, the Superintendent entertained the possibility that this most recent decision was subject to change if new information were to be provided.

Not surprisingly, upon hearing the Superintendent's testimony on September 22:

(a) counsel for Ms. Doe and Mr. Doe immediately moved to withdraw their pending request for an interim protective order, requested that the proceeding be terminated, and announced that D. and C. Doe, who had not been attending school, would be reporting to Matunuck the next morning with the expectation that M. Roe would be attending another school; and

(b) counsel for Ms. Roe immediately voiced an objection and requested that the Commissioner enter an interim protective order reversing the Superintendent's most recent decision.

The Hearing Officer denied Ms. and Mr. Doe's request to immediately terminate the proceeding, and at the conclusion of the hearing on September 22 entered an order providing that:

(a) the status quo would remain in effect, and M. Roe would remain enrolled and in attendance at Matunuck, pending the completion of the hearing in the above matter and a decision with respect to the need for interim protective relief; and

(b) counsel was to provide memoranda on an expedited basis concerning whether completing the hearing after M. Roe had replaced D. and C. Doe as the Petitioner would violate any parties' right to due process.

On September 23, 2022, counsel for M. Roe followed up on his oral request and submitted a written petition for an interim order reversing the Superintendent's most recent decision to transfer M. Roe out of Matunuck. M. Roe's counsel also submitted a legal memoranda arguing that hearing M. Roe's petition in the context of the proceeding started by the Does would not be a violation of due process.[4]

[4] No legal memoranda on the potential due process issue was submitted by counsel for either Ms. and Mr. Doe or for the SKSD.

The Hearing Officer ruled that M. Roe's petition could be heard in the context of the ongoing proceeding, and when the hearing resumed on September 27, 2022, he also:

(a) granted the Doe's motion to withdraw their original September 9 petition seeking interim protective relief;

(b) gave leave to Ms. Roe to proceed with her written petition for interim relief on behalf of M. Roe; and

(c) ruled that all parties would be provided with the opportunity to re-examine witnesses and/or offer any new evidence they would have presented had they known that the decision of the Superintendent was not what was assumed at the outset of the proceeding.

3. Jurisdiction, Burden of Proof and Standard of Review

The Commissioner has jurisdiction over this dispute under R.I. Gen. Laws § 16-39-1 as it arose under laws "relating to schools or education."[5] As in most proceedings before the Commissioner, the petitioner, now M. Roe, has the burden of proof. *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").[6]

As to the standard of review, M. Roe must prove by a preponderance of the evidence that the Superintendent's recent decision to transfer him out of Matunuck either violated statewide education policy or was "arbitrary and capricious." *See, e.g., Ms. Doe, as parent and next friend*

[5] The doctrine of administrative exhaustion normally would require that a petitioner first bring an appeal to a school committee before the Commissioner can hear it, but there was no time to bring the matter before the School Committee in this case as D. and C. Doe were not attending school, which had begun on September 6, 2022. *See Doe v. East Greenwich*, 899 A.2d 1258, 1266 (R.I. 2006) (doctrine inapplicable when the administrative process would be "futile or inadequate").

[6] *See also Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 57 (2005) ("[a]bsent some reason to believe that Congress intended otherwise . . . the burden of persuasion [in special education cases] lies where it usually falls, upon the party seeking relief.").

of Student A. Doe v. Foster-Glocester Regional School District, RIDE No. 22-045A (September 13, 2022), slip. op. at 2-3.

II. FACTS[7]

The facts set forth below were deduced from the documents introduced and testimony offered at the abbreviated evidentiary hearings on September 16, 21, 22, and 27, 2022.[8] All parties except for Mr. Zoe (M. Roe's Father) were represented by counsel; testimony was elicited from Ms. Doe, Matunuck Principal Elizabeth McGuire, SKSD Superintendent Mark Prince and Ms. Roe; and written opinions from Lori A. Duffy, LICSW and Psychologist Ruth Anderson were admitted into evidence.

The Alleged Offensive Sexual Conduct by M. Roe

1. During the summer of 2021, the Does lived next door to Ms. Roe and M. Roe in a neighborhood whose children were assigned to Wakefield Elementary School ("Wakefield").[9] Wakefield was one of four elementary schools operated by the SKSD before it was closed after the 2021-22 school year, the other schools being Matunuck, Peacedale and West Kingston Elementary School ("West Kingston").

2. According to Ms. Doe, who is a registered nurse, C. Doe, a girl who was then four years of age, was "sexually assaulted" by M. Roe, then a six year-old boy and rising first grader, in the Doe's backyard on June 26, 2021. According to the police report (dated August 31, 2022):

> [Ms. Doe] reported that their neighbor [M. Roe] (02/16/2015) sexually assaulted her son [D. Doe] (11/18/2014) and her daughter [C. Doe] (06/10/2017) between 08/01/2020 and 06/31/2021. [Ms. Doe] stated on June 26 2021, she was inside when both of her kids were in the backyard playing. [Ms. Doe] looked out of bedroom window and observed [D. Doe] and [C. Doe] in the far back corner by the fence. She observed [M. Roe] on the other side of the fence in his yard . .

[7] Unless specifically noted to the contrary, all Exhibits referred to herein were admitted into evidence.
[8] As noted, the September 16 hearing was conducted via Zoom, as was the hearing on September 27. The hearings on September 21 and 22, were conducted in person.
[9] Mr. Zoe did not reside with Ms. Roe and M. Roe.

> .[she] continued to observe due to it being a weird location for the kids to be playing. At that time, she observed [B. Doe] pull down her pants and underwear. [She] stated she observed [M. Roe] pull up her dress and lean through the fence. [She] stated at that time she yelled at her kids to come inside the house. [She] stated that both [D. Doe] and [C. Doe] old her that [M. Roe] told [C. Doe] to pull down her underwear so he could kiss her vagina. [She] stated that [M. Roe] told her to keep it a secret.

See Exhibit D-4.[10]

3. Ms. Doe testified that she had been watching the children in the backyard from inside the house, and when she saw C. Doe pulling her pants down, immediately yelled at her to stop and called her children inside. She also testified that she immediately informed Ms. Roe of what had occurred, who allegedly stated "that is why M. Roe is not allowed to play with other children."

4. According to Ms. Roe, in her conversation with Ms. Doe immediately after the incident, she informed Ms. Doe that M. Roe might have gotten the idea to engage in such conduct from a YouTube video that M. Roe had mistakenly been exposed to.

5. D. Doe is a boy who, like M Roe, was six years of age in June of 2021 and then a rising first grader. Ms. Doe described D. Doe as a "sensitive child" and noted that he had been receiving counseling from Lori A. Duffy, LICSW ("Counselor Duffy"), to help him process, and communicate about, his feelings.

6. Ms. Doe testified that she took D. Doe to see Counselor Duffy soon after the June 26, 2021 incident involving M. Roe, who advised that they report the incident to the Department of Children, Youth and Families ("DCYF"), which they did that day. D. Doe allegedly informed

[10] The bracketed words were left blank in the copy of the report that was admitted into evidence. Ms. Doe's hearing testimony essentially repeated the allegations in the police report but for the fact that she alleged at the hearing, evidently for the first time, that M. Roe had actually made physical contact with C. Doe between the fence separating the two yards. Ms. Doe also testified that she and Mr. Doe never wanted to file a complaint with the police, and she reported the incident to the police over a year after the incident because she was led to believe by the Superintendent that such a report was required in support of her request to transfer M. Roe.

the Counselor that beginning on or about March of 2021, M. Roe had several times suggested to D. Doe that they view, and/or touch, and/or "put their mouths on," each other's private parts.

7. According to Ms. Roe, a DCYF investigator visited her home on June 25, 2021, and spoke, individually, with both Ms. Roe and M. Roe. According to Ms. Roe, the first time she was made aware of any allegations involving sexual conduct involving M. Roe and D. Doe was from the DCYF investigator, who informed her of Ms. Doe's allegations.

8. Ms. Roe also testified that she had explained to the DCYF investigator that in March of 2019 (when M. Roe was four years of age), she noticed that he was watching a YouTube video that seemed to contain sexual content. She explained that she had put on another, appropriate, YouTube video for M. Roe to watch while she made a work-related call, and when she came back to check on him, this other video with sexual content was playing, which she immediately turned off.

9. According to Ms. Roe, the DCYF investigator explained that he had run into other cases where YouTube's algorithm had been manipulated so that a sex video would automatically begin playing immediately after a children's video. In any event, according to Ms. Roe, the DCYF investigator concluded that no further investigation into the June, 2021 incident was needed.

The Closing of Wakefield Elementary School and the Redistricting Plan

10. In August of 2021, the Does moved to a home in a neighborhood whose children were assigned to Matunuck, and thus D. Doe attended first grade at Matunuck, and according to Ms. Doe, D. Doe had a very good first grade year at Matunuck, but for one incident when he and another younger child were "pushed around" by older children in a bathroom at the school.[11]

[11] According to Ms. Doe, Principal McGuire told her that there should have been adult supervision in the bathroom.

11. M. Roe, by contrast, attended first grade at Wakefield, and according to his psychologist (Ruth Anderson), he "performed very well" at Wakefield. *See* Exhibit N-4.

12. Ms. Doe testified that even after they moved, she and her husband made every effort to ensure that their children did not have to engage with M. Roe by, for example, ensuring that D. Doe and M. Roe were not on the same sports teams. She also testified that before the beginning of the 2021-22 school year, she spoke with Matunuck's Principal and was reassured that no child by the name of "M." was in attendance at the school.[12]

13. After speaking with Ms. Doe in August of 2021, Matunuck's Principal explained that she made a note to herself "DNP [M. Roe] Wakefield," her shorthand for "do not place M. Roe from Wakefield," *see* Exhibit D-14, and she placed her note in D. Doe's student file.

14. On January 20, 2022, the South Kingstown School Committee voted to close Wakefield at the end of the school year and adopted a redistricting plan to address the fact that Matunuck was under-utilized. Thus, students residing in neighborhoods served by other elementary schools in the District were offered the opportunity to apply to attend Matunuck.

15. Ms. Roe – who, as noted, resided with M. Roe in a neighborhood whose children had been assigned to Wakefield and after Wakefield's closing, were now assigned to Peacedale – applied for M. Roe to attend Matunuck. In her application, Ms. Roe stated as follows:

> There's not enough space on this form to accurately describe the difficulty my child and family have faced with his behavior and actively working every second of the day to correct it so he and our family can live peacefully and happily. He has been kicked out of several preschools and evaluated multiple times, including by the SKSD, who suggested he would find a good fit with a small, in-home daycare. Large school settings such as Peacedale, and uncontrolled environments such as the school bus, will put us at risk of undoing all the hard work we have put in during his entire life. He thrived at [Wakefield] and for the first time in 7 years I finally feel like we're not all being 'held hostage' by the behavioral

[12] According to Ms. Roe, she did not provide specific detail as to the incidents involving M. Roe to Principal McGuire at the time because she had no reason to believe that M. Roe would be attending Matunuck and thus was calling "just as a precaution."

> problems. I can provide a letter and documentation from the psychologist who has been treating him for over a year, as well as elementary and special ed teachers who know him personally and the struggles we have faced. The majority of my work is in the Matunuck area, allowing me to provide transportation and removing the problems that transportation via school bus may present. Our family would lose income if we had to figure out how to get him on the school bus to Peacedale. To be clear, my MAIN concern is his behavior and social-emotional wellness. I could go much further in depth.

See Exhibit D-13.[13]

16. Ms. Roe's application was supported by a letter from M. Roe's psychologist (Ruth Anderson), who, in a July 7, 2022 letter to Superintendent Prince, advised that:

> Because of [M. Roe's] history, his mother, [Ms. Roe], has been quite concerned about his transition from Wakefield Elementary to another school, fearing a regression on his part and an increase in behavior problems. Consequently, [M. Roe's] enrollment in a smaller school and classroom environment is strongly recommended in order to build on his progress and hopefully prevent a regression on his part.

See Exhibit N-4.[14]

17. Ms. Roe's application for M. Roe to attend Matunuck was granted (despite the note from Matunuck's Principal – "DNP [M.Roe] Wakefield," *see* Exhibit D-14), and thus unbeknownst to the Does, M. Roe was enrolled in second grade at Matunuck along with D. Doe, and also with C. Doe, who was enrolled in kindergarten at the school.[15]

The Doe's Request to Transfer M. Roe

18. On or about August 24, 2022, Ms. Doe inquired and was informed by Principal McGuire that a child named "M." was enrolled at Matunuck, but had been assigned to a different

[13] Counsel for the SKSD represented that there are presently a total of 215 students enrolled at Matunuck, 430 students in total at Peacedale, and a total of 310 students at West Kingston.
[14] M. Roe had been seeing Psychologist Anderson since April of 2021 "due to concerns about frustration, negative attention-seeking, and previous aggression in pre-school." *See* Exhibit N-4.
[15] According to Ms. Roe, Principal McGuire had informed her that "there was plenty of space at Matunuck" and most, if not all, requests to attend the school had been granted.

class than D. Doe.[16] Ms. Doe testified that she expressed her shock and concern and requested that M. Roe be transferred.

19. Ms. and Mr. Doe met with Superintendent Price and Principal McGuire on August 29 – a week before the start of school – expressed their concerns and provided several reasons why they believed a safety plan separating their children from M. Roe was not practicable in such a small school where the children have lunch and recess together. They had provided a letter from Counselor Duffy (dated August 26, 2022, *see* Exhibit D-2 at p. 3) to the Superintendent and Principal prior to the August 29 meeting, and made clear they did not believe it would be safe for their children to attend school and be forced into proximity with M. Roe.

20. Ms. Doe testified that at the August 29 meeting she and her husband expressed what "a huge physical, emotional and psychological effect" that the June 26, 2021 incident and M. Roe's behavior towards D. Doe had had on the "entire family." According to Ms. Doe, they also explained that they now lived near Matunuck and emphasized that the couple and D. Doe had made friends in the school community. In addition, Ms. Doe testified that they advised the Superintendent that they would not be sending either of their children to school on September 6 (and D. and C. Doe have, to date, not been attending school). *See* Exhibit D-2.

21. In the August 26, 2022 letter from Counselor Duffy that was provided to school officials prior to their August 29 meeting with Ms. and Mr. Doe, the Counselor opined that:

> I was very concerned about the incidents and made a report to DCYF that same day. I also encouraged the parents to call and they contacted DCYF. When [D. Doe's] mother went to [M. Roe's] mother to confront her about what happened, it was reported to me that the mother expressed that her son should not play with children unsupervised, leading us to think that this is not the first time something like this has happened.

[16] Ms. Doe testified that on a number of occasions, both the Superintendent and Principal had informed her that due to student privacy concerns, they were not at liberty to inform her that Ms. Roe had applied to allow M. Roe to attend Matunuck.

> When there is sexual abuse it is standard practice to not have the victim be exposed to the person who was abusive. [D. Doe's] parents took all the necessary steps to eliminate contact with the family and have since moved away. I would ask that the school ensure a safe environment where [D. Doe] and [C. Doe] will not be exposed to this child in any way. As we know, abuse like this can happen in just minutes, on school buses, in bathrooms, behind trees, etc.

See Exhibit D-2 at p. 3.[17]

22. In an August 29, 2022 email to Superintendent Prince, Ms. and Mr. Doe also stated that:

> We are writing to recap our discussion today, where we expressed our grievous concerns to you regarding [M. Roe's] history of predatory sexual abuse toward both of our children, [D. Doe and C., Doe], based on (but is not limited to) the attached professional advised letter and inappropriate behaviors personally witnessed by us.
>
> Our discussion today included a detailed account of a disturbing incident witnessed by [Ms. Doe], past experiences of interaction with [M. Doe] and his mother [Ms. Roe], and we also provided a hardcopy of the letter written by a Licensed Independent Clinical Social Worker Lori A. Duffy (copy attached).

Id.

23. On August 30, the Superintendent sent an email to Ms. Doe stating:

> I am wondering, did you apply for a juvenile restraining order? If you were successful in obtaining that, the court order would guide how the school responds. Do you have a copy of the judge's order?

See Exhibit D-3.

24. Ms. Doe testified that she interpreted this as a suggestion that she obtain a restraining order, and so on that same day (August 30, 2022) she filed, *pro se*, an *ex parte* motion for a temporary restraining order ("TRO") in Family Court seeking an order that, *inter alia*, M. Roe "not be permitted to attend the same school as [D. or C. Doe]." *See* Exhibit N-1 at p 9. The

[17] As will be seen, M. Roe's psychologist had a different take on the issue. *See* ¶ 34, *infra*, at pp. 15-16.

ex parte TRO motion was denied that same day without a hearing, and the parties were directed to return for an actual hearing on September 20. *See id*. at 3.

25. Ms. Doe also notified the South Kingstown Police Department of the incident on August 30, 2022, and the Department issued a report. *See* Exhibit D-4 (quoted at ¶ 2, *supra* at pp. 6-7). (As noted, DCYF had been contacted soon after the incident in June of 2021).

26. The Does spoke with Superintendent Prince by phone on September 4, and on September 5, they wrote an email to the Superintendent reiterating that the two options offered by the SKSD – i.e., transferring D. and C. Doe to another elementary school or implementing a safety plan at Matunuck – were not acceptable. *See* Exhibit D-5.

27. The Superintendent wrote back by email on September 5, and stated that "[a]s of right now, with the Court and the Police taking minimal action and unconfirmed DCYF involvement, the School Crisis Team will create a school-wide safety plan, and we can reassign your children to a different elementary school. We can talk about both of these items on Tuesday [September 6]." *See* Exhibit D-6.

28. As for Ms. Roe, she testified that she was first informed of the Doe's request that M. Roe be transferred out of Matunuck in a phone call with the Superintendent the evening of September 5, 2022, the day before school was scheduled to start.[18] She testified that she was surprised as she had not heard anything about the June, 2021 incident involving C. Doe since the day it had occurred. She also testified that she told the Superintendent that M. Roe had been treating with a psychologist for a year, and that he had a good first grade year at Wakefield.

[18] The Superintendent explained that he had left several phone messages for Ms. Roe over several days, with no reply. Ms. Roe explained that she did not return the Superintendent's messages because she had just been the subject of prank calls intended to discourage her from becoming a member of the Town's Planning Board, and she thought the messages from the Superintendent were more of the same.

29. Prior to their meeting on September 6, the Superintendent sent Ms. and Mr. Doe an email requesting that they bring documentation with them evidencing that there was a Family Court hearing scheduled for later that month, and informing them that:

> . . . we have yet to confirm a filing with DCYF. Also, suppose you told the police not to pursue certain avenues of recourse? In that case, you cannot expect or assume, for that matter, that the district will use that decision as justification to provide punitive action(s) toward someone else's child. Lastly, and most importantly, please be mindful that I can only speak to you and your wife about your children and their matters. With that said, I will share that we continue to engage with your family and the other family. I look forward to meeting with you at 10:00 AM.

See Exhibit D-8.

30. At the September 6 meeting, which included Principal McGuire, the District outlined a possible safety plan, *see* Exhibit D-9, but Ms. and Mr. Doe again reiterated why they did not believed such a plan was feasible.

31. Ms. Roe testified that on September 7, 2022, she was served with the complaint for a restraining order that Ms. and Mr. Doe had filed in Family Court.

32. On September 8, Superintendent Prince sent an email to Ms. and Mr. Doe stating as follows:

> I am writing to provide an update. After you signed the release of information form, permitting me to speak with Lori Duffy, the social worker providing counseling services to your children. I contacted her; according to Lori, you and your wife gave her strict verbal instructions on what she could discuss with me. As a result, my conversation with Lori was a summary of her written statement and her sharing her thoughts about the draft safety plan created by the team.
>
> The Department of Children, Youth, and Families shared the preliminary facts of the case. I am waiting to speak to the Supervisor of the Investigator. The findings and intervention from the Investigator will help guide our next steps. In addition, detective Natale of the SK Police Department has shared that DCYF reported that two calls regarding this matter came into their hotline in June 2021.
>
> I spoke with the family of the other student. They explained their perspective of the incident, what happened after the incident, and what's happened since. I

> communicated your family's desire not to pursue this matter in Family Court. The family wanted me to share that they have no plans to move their child to another school. The other student's father offered to meet with the two of you and a mediator in hopes of coming to a better place.
>
> My hope is to complete this inquiry no later than Monday, September 12th, 202[2], and provide both families and the Matunuck Principal with a final notice.

See Exhibit D-10.

33. The following day (September 9), the Doe's attorney sent their request to the Commissioner for an interim protective order. *See* Exhibit D-12 (for identification purposes only).

34. M. Roe's psychologist (Ruth Anderson) wrote in a September 16, 2022 letter to school officials that:

> [M. Roe] entered in person schooling at Wakefield Elementary in the first grade. Fortunately, [M. Roe] loved school, interacted well with peers, and did not exhibit any aggression. He performed very well academically and was a strong, early reader. However, [M. Roe] needed to be kept busy and required attentive teaching and supervision. He continued to be very active, impulsive, easily bored, attention-seeking, and exhibited a low tolerance for frustration.
>
> The DCYF social worker interviewed [M. Roe], who stated that he had seen a video that was directed at children while scrolling on YouTube. In the video, it instructed children to ask other children to see their parents' private parts, and to be sneaky and not tell anyone. [M. Roe] acknowledge that he had asked to see the girl's private parts, and that his mother had told him never to do this again.
>
> As part of the investigation, the DCYF social worker spoke with this writer as well. He indicated that DCYF has been seeing a lot of similar incidents involving the internet and social media. The social worker indicated that [M. Roe's] parents responded appropriately. He determined that there was no abuse or neglect involved in this incident and the case was subsequently closed. Since the aforementioned situation, there have been no other incidents of a sexual nature involving [M. Roe].
>
> While it is understandable that parents would be concerned about the aforementioned incident, it is important to note that children are naturally curious, including being curious about their bodies and the differences between them. Looking at others' genitals within the realm of normal exploratory play in young children throughout the world. It is very inappropriate to overact and act as if a

> young child expressing curiosity is sexually abusive and/or a sexual predator. Further, there is no logical reason why the above children cannot attend the same school.

See Exhibit N-5. Moreover, Psychologist Anderson opined that M. Roe had "made a successful transition to [Matunuck], where he has friends and has been very happy to date." *See id.*

35. On September 19, 2022, Ms. Roe wrote school officials and requested that M. Roe be evaluated for special education services, noting that she "fully expect[ed] that [M. Roe's] 'stay put' rights will be respected during the evaluation process," *see* Exhibit N-3, and on September 20, Ms. and Mr. Doe voluntarily dismissed their Family Court complaint. *See* Exhibit N-2.

36. On September 22, Principal McGuire testified that in her personal opinion, the children should be separated, although she also said it was not her role to make the decision which children should attend which school.

37. For his part, Superintendent Prince testified on September 22 that he had no reason not to believe Ms. Doe's account of the backyard incident involving C. Doe in June of 2021. In addition, as has been noted, the Superintendent testified that he had made the decision that prior Tuesday (September 20) to transfer M. Roe to another elementary school (but, as noted, he evidently kept this decision to himself).

38. At the hearing on September 22, the Superintendent also testified that his recent decision to transfer M. Roe was based primarily upon the following factors:

(a) his communication with two members of the School Committee that morning who advised that "Mom's talking to everybody," which led the Superintendent to conclude that it would be impossible to shield M. Roe from the associated stigma in an elementary school as small as Matunuck;[19]

[19] At the same time, the Superintendent later testified on September 27 that his decision to transfer M. Roe had been made the prior Tuesday (September 20), which would have been prior to these conversations with School Committee members.

(b) the fact that that M. Roe's inappropriate sexual conduct was not limited to the June, 2021 incident involving C. Doe, but also included a series of incidents involving D. Doe, which he was only made aware of at this hearing; and

(c) his conversations with:

(a) DCYF, informing him that there would be no investigation into M. Roe as the June, 2021 incident did not meet its' "child on child" criteria, and its finding of "unsubstantiated" after inquiring into the adequacy of M. Roe's supervision; and

(b) The South Kingstown Police Department, who advised that Ms. and Mr. Doe did not want to file a complaint as a result of the incident on June 26, 2021.

39. Counsel for Ms. Doe submitted a written petition for an interim protective order to reverse the Superintendent's decision to transfer M. Roe. *See* Exhibit N-6.

40. When the hearing resumed on September 27, 2022, the Superintendent testified that M. Roe would be transferred to West Kingston since Ms. Roe had made clear that she believed that Peacedale contains mold that would aggravate M. Roe's asthma.

41. Finally, the Superintendent testified on September 27 that M. Roe was being evaluated for special education services, and he acknowledged that certain specialized programs are made available exclusively at Peacedale. However, he also testified that based upon his review of M. Roe's performance to date at Wakefield – and now for a few weeks at Matunuck – he believed it probable that if M. Roe did qualify for special education services, the required services could be made available to him at either Matunuck or West Kingston.

III. POSITIONS OF THE PARTIES

1. Petitioner Ms. Roe on behalf of M. Roe[20]

Ms. Roe argued that her son had been unfairly and inappropriately labeled as a "sexual predator," whereas in reality, he posed absolutely no threat to D. or C. Doe. Although she regretted that the June 24, 2021 incident involving C. Doe had occurred, she emphasized that no similar conduct, which may well have been prompted by a sexual YouTube video M. Roe had viewed by accident, had been repeated since that time. As far as the alleged sexual overtures involving D. Doe, if they occurred, Ms. Roe did not believe they were instigated solely by M. Roe, and in any event, she agreed with Psychologist Anderson that such conduct was "within the realm of normal exploratory play in young children throughout the world." *See* Exhibit N-5 at p. 2.

Nonetheless, Ms. Roe argued that she had been considerate of the feelings of Ms. and Mr. Doe and purposefully avoided any contact with the Doe family outside of school and remained willing to cooperate with any safety plan school officials at Matunuck might devise so that Ms. and Mr. Doe would be assured that their children would be safe while at school. In addition, Ms. Roe argued that the Superintendent's decision to transfer M. Roe was arbitrary and capricious in the face of evidence that he was doing well at Matunuck, and likely would regress in the event of such an abrupt and unanticipated change of schools.

Finally, Ms. Roe argued that her request on September 19, 2022 that Doe be evaluated for special education services entitled him to "stay put" while the evaluation was conducted under the Individuals with Disabilities Education Act (the "IDEA").

2. Respondents Ms. and Mr. Doe on behalf of D. and C. Doe

[20] As noted, although Mr. Roe (M. Roe's father) participated in the mediation on September 19, 2022, he was not represented by counsel and made no appearance at any of the subsequent hearings.

Ms. and Mr. Doe emphasized that the June 24, 2021 incident involving C. Doe and subsequent revelations concerning M. Roe's sexual overtures towards D. Doe exacted a heavy "physical, emotional and psychological toll on the entire family." They argued that no safety plan could ensure the safety of their children if they were forced to attend a school as small as Matunuck with M. Roe, which would cause their children unnecessary anxiety and emotional anguish.

Ms. and Mr. Doe pointed to the opinion of Counselor Duffy, who opined that "[w]hen there is sexual abuse it is standard practice to not have the victim be exposed to the person who was abusive." *See* Exhibit D-2 at p. 3. In addition, they argued that rather than receiving empathy from school officials, they were victimized again by the failure of the school officials to inform them that M. Roe had applied and been accepted for admission at Matunuck. The Does argued that the SKSD then failed to promptly make the obvious decision to transfer M. Doe, who did not even reside in a neighborhood whose children were entitled to attend Matunuck under the District's redistricting plan following the closing of Wakefield, a failure which prevented their children from attending school.

3. Respondent SKSD

The SKSD presented no substantive argument other than to affirm the decision of its Superintendent and express its intention to abide by whatever was decided by the Commissioner.

IV. DECISION

1. M. Roe's Alleged "Stay Put" Rights

As noted, ten days after Ms. and Mr. Doe filed their petition seeking to transfer M. Roe, Ms. Roe requested that M. Roe be evaluated by the SKSD for special education services, and noted that she "fully expect[ed] that [M. Roe's] 'stay put' rights will be respected during the

evaluation process." *See* Exhibit N-3. She now argues that any transfer of M. Roe from Matunuck while he is being evaluated for services would be a violation of the IDEA's "stay - put" provision. However, as will be discussed, the stay put provision is not applicable here.

The IDEA provides, in pertinent part, that:

> . . . *during the pendency of any proceedings conducted pursuant to this section*, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

20 USC § 1415 (j) (emphasis added).[21] Thus, the plain language of the IDEA's stay put provision limits its applicability to "proceedings conducted pursuant to this section," *id*., and M. Roe's request for interim protective relief here does not constitute a proceeding conducted pursuant to Section 1415.

Admittedly, Section 1415 enumerates not only the IDEA's due process hearing provisions (§ 1415, (b)(2), (c), (d) and (e)), but also specifies certain pre-hearing rights of parents to examination of records, notice of change of placement, and participation in assessment and placement decisions (§ 1415(b)(1)). However, these enumerated pre-hearing rights all apply to children whose right to special education services have been established. *See Verhoeven v. Brunswick School Committee*, 207 F.3d 1, 5 (1st Cir. 1999) ("subsection 1415(j) provides for 'stay put' placement throughout both the administrative and judicial proceedings challenging a placement decision"); and *Doe v. Brookline School Committee*, 722 F.2d 910, 915 (1st Cir.1983)

[21] *See also* 34 C.F.R. § 300.518(a) ("during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under § 300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement"); *Rhode Island Regulations Governing the Education of Children with Disabilities* (the "R.I. Regs."), 200-RICR-20-30-6.8.1(S) (to same effect).

(" '[stay put provision] is designed to preserve the status quo pending resolution of administrative and judicial proceedings under the Act.' ").[22]

Here, although counsel hinted during oral argument that the SKSD should have identified M. Roe as in need of special education services last school year, no evidence was offered that supports the claim. Indeed, by all accounts, M. Roe had done well during first grade at Wakefield, and was doing well during the first few weeks of second grade at Mutunuck. *See* § II, ¶¶ 11, 34, *supra*, at pp. 9, 16. Moreover, M. Roe's psychologist (Ruth Anderson), who he had been treating with for over a year, *see* § II, note 14, *supra* at p. 10, and who was well versed in special education issues,[23] made no mention of M. Roe's need for an individualized education program (an "IEP") in her two letters to school officials that were admitted into evidence. *See* Exhibits N-4 and N-5.

Finally, an "educational placement" under the IDEA is not a place or location, but rather a "program of service from which the child can obtain some educational benefit." *See E. Doe v. West Warwick School Department*, RIDE No. 011-15 (September 11, 2015) (citing *Lunceford v. District of Columbia Board of Education*, 745 F.2d 1577 (D.C. Cir. 1984)) and *N.D., et al. v. State of Hawaii Department of Education*, 600 F.3d 1104 (9th Cir. 2010) ("We have interpreted 'current educational placement' to mean 'the placement set forth in the child's last implemented IEP'"). Thus, even if M. Roe does qualify for an IEP, he would not thereby have a right to demand a specific school placement under the IDEA, as long as the required special education services were being provided in the least restrictive environment.

[22] Quoting *Doe v. Anrig*, 692 F.2d 800, 810 (1st Cir.1982).
[23] According to Superintendent Prince, Ruth Anderson was previously employed by the Narraganset School Department and had worked with several students with IEPs in the SKSD.

2. The Decision to Transfer M. Roe

In Rhode Island, school superintendents are vested by statute with the "care and supervision of the public schools and shall be the chief administrative agent of the school committee." R.I. Gen. Laws § 16-2-11(a). As such, they have the authority to approve the transfer of students from and to schools within their district in compliance with whatever applicable polices may have been adopted by a school committee.[24] Yet, there is no applicable policy that would resolve the issue posed here, which is left to the discretion of school officials.[25] Unfortunately, although Superintendent Prince had the requisite authority to transfer M. Roe, his explanation of his decision-making process raised as many questions as it answered.

If, as recited by Superintendent Prince, he only made a "final" decision on the dispositive issue in the case on the evening of Tuesday, September 20, why didn't he explain to the parties, his own counsel, and the Hearing Officer that he had not made a final decision as soon as he read Ms. and Mr. Doe's September 9 petition to the Commissioner requesting a reversal of what they obviously believed was his final decision not to transfer M. Doe?[26] And after finally making a decision on September 20, why didn't he tell anyone until he was being questioned under oath on Thursday, September 22?

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[24] Of course, any decision to transfer a student must not be in violation of a student's statutory right to a safe school, i.e., "a school which is safe and secure, and which is conducive to learning, and which is free from the threat, actual or implied, of physical harm by a disruptive student." R.I. Gen. Laws § 16-2-17(a). However, there has been no suggestion that any of the children here is a "disruptive student" as defined under the Act, i.e., "a person who is subject to compulsory school attendance, who exhibits persistent conduct which substantially impedes the ability of other students to learn, or otherwise substantially interferes with the rights stated above, and who has failed to respond to corrective and rehabilitative measures presented by staff, teachers, or administrators." *Id*. Therefore, the Safe School Act simply does not apply.

[25] The fact that DCYF concluded that no further investigation was warranted, while enabling school officials to exclude the worst case scenarios, is of limited utility in determining whether transferring M. Roe would be in the best interests of the children. Moreover, it appears that the belated report made to the South Kingstown Police Department and *ex parte* Family Court complaint were only initiated by Ms. and Mr. Doe at the suggestion of the Superintendent and were of limited relevance.

[26] The fact that the Superintendent informed Ms. and Mr. Doe that his investigation would be complete by September 12, 2022, *see* § II, ¶ 32, *supra* at p. 15, does not adequately explain why the Superintendent failed to promptly correct the obvious misimpression of the parties that a decision had been made.

Moreover, it seems apparent from the testimony of Superintendent Prince that although he believed Ms. Doe's account of the June 24, 2021 incident involving M. Roe and C. Doe, he did not believe that M. Roe posed a physical threat to either of the Doe children in the event they all were to attend Matunuck. Instead, he testified on September 22 that the main reason he decided to transfer M. Roe was that, according to two School Committee members, one of the "Moms" (who was not identified) was "talking to everybody," which led the Superintendent to conclude that it would be impossible to shield M. Roe from the stigma and related isolation which he believed would inevitably result in an elementary school as small as Matunuck.[27] Yet, on September 27, Superintendent Prince testified that he had had only spoken to the School Committee members that morning at an 8 a.m. meeting.

However confused his explanation, the evidence does not support the conclusion that the final decision reached by Superintendent Prince either violated statewide education policy or was "arbitrary and capricious." There obviously is a difference of opinion as to whether M. Roe's presence at Matunuck would pose any cognizable threat to the safety and well being of D. Doe and/or C. Doe. Indeed, the parties and witnesses seem equally divided on this point. It at least appears that Principal McGuire – who testified on September 21 (prior to the announcement on September 22 of the Superintendent's final decision to transfer M. Roe) that in her personal opinion, the children should be separated – agrees with Ms. and Mr. Doe and Counselor Duffy that M. Roe's presence would negatively impact D. and C. Doe. Whereas the Superintendent – who based his decision to transfer M. Roe primarily upon the threat to M. Roe, rather than any conclusion related to the safety or well being of D. and C. Doe – evidently agrees with Ms. Roe,

[27] *See* § II, note 13, *supra* at p. 10.

Mr. Zoe and Psychologist Anderson that the sexual behavior alleged was within the realm of "normal exploratory play," *see* Exhibit N-5 at p. 2, and M. Roe posed no threat.

This case is difficult in part because neither of the experts who submitted opposing written opinions had the benefit of interviewing the children or parents on the other side of the issue. Counselor Duffy did not speak with Ms. Roe, Mr. Zoe or M. Roe, and Psychologist Anderson did not speak with Ms. and Mr. Doe, D. Doe or C. Doe. Yet, the division of opinions on the dispositive issue in this case should not be surprising. The fact that people living in the same community who share many common socioeconomic traits have fundamental differences in the way they view issues touching upon their children's sexuality is evident from today's headlines. It is the role of public schools to respect such differences whenever possible while applying applicable school law and policy. And it is apparent that however confusing the Superintendent's decision-making process in this case, he had the best of intentions and refrained from judging the legitimate personal conclusions reached by the parents concerning what they sincerely believed would be in the best interest of their children, and he did his best to preserve their privacy.

It also appears that the Superintendent's final decision to transfer M. Roe is the best solution to a thorny problem, and was not based upon any belief that a six year-old boy should be referred to as a "sexual predator," which was not a term used either by Counselor Duffy or Psychologist Anderson. The Superintendent made evident his awareness that the best interests of M. Roe deserve as much consideration from school officials as those of D. and C. Doe, and that it is entirely inappropriate to refer to a six or seven year-old boy as a "sexual predator."

Whether one considers the "victim" here to be M. Roe (as the Superintendent opined), or D. and C. Doe, after balancing Ms. and Mr. Doe's concern over the anxiety and emotional

disturbance they believe their children would experience were they required to face M. Roe in school against the difficulties that Ms. Roe believes M. Roe would face if required to transfer to West Kingston after a mere two weeks of school at Matunuck, it is hard to conclude that the Superintendent's decision was "arbitrary and capricious." Moreover, the Superintendent is in the best position to evaluate the likelihood that the publicity surrounding this case would result in M. Roe's social isolation at Matunuck, and whether such isolation would be less likely to occur at a larger elementary school.

V. INTERIM ORDER

For all the above reasons, IT IS HEREBY ORDERED THAT:

1. Ms. and Mr. Doe's motion on behalf of Students D. and C. Doe to withdraw their September 9, 2022 petition seeking interim protective relief is granted, and RIDE C.A. No. 22-051A is hereby dismissed;

2. The petition for interim protective relief filed by Ms. Roe on behalf of Student M. Roe in RIDE C.A. No. 22-052A is hereby denied;

3. M. Roe shall be transferred to West Kingston Elementary School effective as of Monday, October 3, 2022; and

4. A hearing with respect to the entry of a final decision and order in RIDE C.A. No. 22-052A, or alternatively, the conversion of the Interim Decision and this Interim Order into a final decision and order shall be considered upon motion by any of the parties.

ANTHONY F. COTTONE, ESQ.,
Hearing Officer for the Commissioner

ANGÉLICA INFANTE-GREEN,
Commissioner