

STATE OF RHODE ISLAND
COMMISSIONER OF EDUCATION

G. DOE,

Petitioner,

v.

RIDE No.: 23-005K

PROVIDENCE SCHOOL DEPARTMENT,

Respondent.

**DECISION AND ORDER ON RESPONDENT’S MOTION TO DISMISS
PETITIONER’S REQUEST FOR AN INTERIM ORDER HEARING**

On January 30, 2023, following a pre-hearing conference concerning Petitioner’s request for an Interim Order hearing, Respondent filed a Motion to Dismiss Petitioner’s request and Petitioner filed an Objection thereto.

I. FACTS and TRAVEL

1. On January 24, 2023, Petitioner filed a request for an Interim Order hearing pursuant to R.I. Gen. Laws § 16-39-3.2 “concerning the failure of the Rhode Island Department of Education/Providence School Department¹ to provide [Student G. Doe] with a student safety plan as required by his individualized education programs” (the “January 24 Interim Order Hearing Request”).

2. Respondent filed a response to Petitioner’s request that same day and asserted that there was a safety plan in place, as well as a revised safety plan in process, and attached a copy of the Safety Plan (the “Safety Plan”) and IEP meeting notes dated May 5, 2022.

3. On January 25, 2023, Petitioner withdrew his January 24 Interim Order Hearing Request, without prejudice and filed a revised Interim Order request “concerning the failure

¹ The Petitioner’s request alleges no facts concerning the Rhode Island Department of Education (“RIDE”) in this matter. The Hearing Officer presumes the Petitioner identified RIDE erroneously in reference to the Commissioner of Education’s authority under the Crowley Act.

of the “Rhode Island Department of Education/Providence School Department² to disclose and implement the student safety plan developed for [Student G. Doe] at his May 5, 2022 IEP meeting” (the “January 25 Interim Order Hearing Request”).³

4. Respondent also submitted a letter dated January 25, 2023, from Emily Garcia, M.Ed., Special Education Director, Ocean State Academy Learning Center, in response to Petitioner’s January 25 Interim Order Hearing Request, which refuted Petitioner’s allegations.

5. On January 27, 2023, the undersigned Hearing Officer⁴ held a pre-hearing telephone conference with counsel.

6. Petitioner claims to have previously requested a copy of the Safety Plan which was not provided prior to the response to the January 24 Interim Order Hearing Request.

7. Respondent asserted that: (a) the Safety Plan was, in fact, being implemented; (b) a new Safety Plan had been written; and (c) the parties already had a meeting scheduled to review the same.

8. In addition, Respondent argued that Petitioner failed to allege any specific facts to support the allegation that the Safety Plan was not being implemented and accordingly, no interim order hearing was necessary, and the petition should be dismissed.

9. The Hearing Officer requested that the parties provide the Hearing Officer with short briefs, within 1 day of the pre-hearing telephone conference, in support of their

² *Id.*

³ On January 25, 2023, Petitioner also concurrently filed a State Administrative Complaint requesting a due process hearing on this matter.

⁴ The Commissioner of Education designated the undersigned Hearing Officer to hear and decide the request.

respective positions on the aforementioned issues and concerning whether the January 25 Interim Order Hearing Request should be dismissed or proceed to a hearing.⁵

II. DECISION

Section 16-39-3.2 of the Rhode Island General Laws provides, in pertinent part, that “[i]n all cases concerning children, other than cases arising solely under § 16-2-17, 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.” R.I. Gen. Laws § 16-39-3.2.

A motion to dismiss “is properly granted when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff’s claim.” Goodrow v. Bank of Am., N.A., 184 A.3d 1121, 1125 (R.I. 2018) (internal quotations omitted). In reviewing a motion to dismiss, the Hearing Officer should “assume[] the allegations contained in the complaint to be true and view [] the facts in the light most favorable to the plaintiffs.” *Id.* (internal quotations omitted).

“[A] case is moot if the original complaint raised a justiciable controversy, but events occurring after the filing have deprived the litigant of a continuing stake in the controversy.” Associated Builders & Contractors of Rhode Island, Inc. v. City of Providence, 754 A.2d 89, 90 (R.I. 2000) (internal citations omitted).

Here, Petitioner’s Interim Order hearing request makes two allegations, namely that Respondent failed both to disclose, and then to implement, the Safety Plan.

The Alleged Failure to Disclose

⁵ The Hearing Officer also informed the parties that, notwithstanding the foregoing, a date and time would be held for a hearing on the Petitioner’s request, subject to a decision on Respondent’s Motion to Dismiss.

On January 24, 2023, Respondent provided Petitioner with a copy of the Safety Plan, together with the notes from the IEP meeting dated May 5, 2022. In fact, upon receipt of the copy of the Safety Plan and IEP meeting notes from Respondent, Petitioner withdrew his original request for an Interim Order hearing which had alleged that there was no safety plan in place. Therefore, Petitioner's first claim regarding disclosure of the Safety Plan is moot.

The Alleged Failure to Implement

As noted, the Respondent submitted a letter from the Special Education Director of the Ocean State Academy Learning Center stating that the Safety Plan was, in fact, being implemented. Although the document appears to have been issued directly in response to Petitioner's request, it is an unsworn statement by a possibly-material witness merely refuting the truth of Petitioner's allegation.

Admittedly, Petitioner's January 25 Interim Order Hearing Request fails to allege any specific facts with respect to which, or how, or to what degree, any one or more component(s) of the Safety Plan are not being implemented. Nonetheless, the Respondent's letter likewise fails to address the Petitioner's allegation with any degree of specificity, but rather merely states, in pertinent part, that "the Ocean State Academy Learning Center has been following [sic] Behavioral Safety Plan for this student." Letter from Emily Garcia, M.Ed. dated 01/25/2023.

The Petitioner bears the burden of making a *prima facie* case showing that the Safety Plan is not being implemented. Such a case must necessarily include facts as to which, or how, or to what degree, any one or more component(s) of the Safety Plan are not being implemented. However, for purposes of Respondent's Motion to Dismiss, the general allegation contained in Petitioner's request must be assumed to be true and should be viewed in the light most favorable to the Petitioner.

Thus, assuming the truth of Petitioner's general allegation that Respondent has failed to implement the Safety Plan (at least for present purposes), it is apparent that there are factual issues remaining as to implementation, the letter from Ms. Garcia notwithstanding. Accordingly, that portion of Respondent's Motion to Dismiss concerning Petitioner's allegation that the Safety Plan was not implemented is denied.

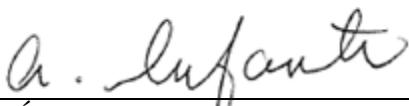
III. ORDER

Therefore, for all of the above reasons, it is hereby ORDERED that:

1. Respondent's Motion to Dismiss Petitioner's Request for an Interim Hearing is granted in part and denied in part;
2. That portion of Petitioner's January 25 Interim Order Hearing Request concerning the school district's alleged failure to disclose the Safety Plan is dismissed as moot; and
3. That portion of Petitioner's January 25 Interim Order Hearing Request concerning the school district's alleged failure to implement the Safety Plan will proceed to a hearing on Wednesday, February 1, 2023, at 9:00 AM.



SERGIO A. SPAZIANO, ESQ.
Hearing Officer for the Commissioner



ANGÉLICA INFANTE-GREEN,
Commissioner

Dated: January 31, 2023