STATE OF RHODE ISLAND
COMMISSIONER OF EDUCATION

Ms. Doe, on behalf of her child, STUDENT G. DOE, *Petitioner*,	
v.	RIDE No.: 23-010S
RHODE ISLAND DEPARTMENT OF EDUCATION and the PROVIDENCE PUBLIC SCHOOL DEPARTMENT, *Respondents.*	

DECISION AND ORDER
GRANTING, IN PART, PETITIONER'S REQUEST FOR AN INTERIM ORDER

Held: Petitioner's request for an interim order seeking to enjoin private school from unilaterally terminating public school student's enrollment mid-year is granted due to school's failure to comply with mandatory procedural protections.

March 6, 2023

I. INTRODUCTION AND PROCEDURAL HISTORY

On January 25, 2023, Petitioner, Ms. Doe, on behalf of her son, G. Doe, filed a request with the Commissioner for an interim order pursuant to R.I. Gen. Laws § 16-39-3.2 in connection with a due process complaint (the "Due Process Complaint") which Petitioner had filed contemporaneously against Respondent, Rhode Island Department of Education ("RIDE") and the Providence Public School Department ("PPSD" or the "District") under the federal Individuals with Disabilities Education Act (the "IDEA"). In the Due Process Complaint, Ms. Doe alleged that the PPSD had failed to provide G. Doe with the free, appropriate, public education (the "FAPE") mandated under the IDEA by failing to disclose and implement the student safety plan developed for G. Doe at the May 5, 2022 meeting concerning G. Doe Individualized Education Program (the "IEP").

A hearing was held on Petitioner's January 25th interim order request on February 1, 2023. A mere two days later, on February 3, 2023, before issuance of a decision and order on the January 25th interim order request, Petitioner filed another request with the Commissioner for an interim order against RIDE,[1] PPSD and Ocean State Academy Learning Center ("Ocean State") seeking to enjoin Ocean State from unilaterally disenrolling G. Doe.[2]

On February 14, 2023, Ocean State filed a Motion to Dismiss the February 3rd interim order request, and Petitioner thereupon requested a one-week continuance to respond to Ocean State's motion. A second pre-hearing conference was then held on February 15, 2023, at PPSD's

[1] Presumably, the Petitioner named RIDE as a party due to its Commissioner's delegated authority over PPSD under the Crowley Act. However, Petitioner alleges no facts concerning RIDE's involvement in the relevant issues and RIDE did not appear in this matter. Therefore, Respondents will be referred to collectively as "PPSD." See note 8, *infra*.

[2] The parties agreed to extend the time period for a hearing to February 15, 2023 and Ocean State agreed to refrain from disenrollment of G. Doe until issuance of a decision and order on Petitioner's February 3rd interim order request.

request, to address Petitioner's alleged refusal to cooperate with the District's efforts to explore the possibility of equivalent alternative placement options for G. Doe

The hearing on Petitioner's February 3rd interim order request was continued to February 27, 2023, by agreement of the parties.

II. JURISDICTION AND BURDEN OF PROOF

1. THE COMMISSIONER'S JURISDICTION

The Commissioner's jurisdiction is clear under R.I. Gen. Laws § 16-39-3.2, which is entitled "[i]nterim protective orders," and provides 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.*** Hearings on these interim orders shall be conducted within five (5) working days of a request for relief and the decision shall be issued within five (5) working days of the completion of the hearing. These interim orders shall be enforceable in the superior court at the request of any interested party.

Id. (emphasis added). Since this is a "case involving children" and it did not arise under § 16-2-17 (which has been repealed), the Commissioner has jurisdiction.[3] In addition, 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."

2. THE BURDEN OF PROOF

As in most proceedings before the Commissioner, the Petitioner has the burden of proof. *See Larue v. Registrar of Motor Vehicles, Dept. of Transp.*, 568 A.2d 755, 758-59 (R.I. 1990),

[3] The Commissioner's jurisdiction is addressed further in Section V. A., *infra*, in connection with the discussion concerning Ocean State's Motion to Dismiss.

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").[4]

III. FACTS

The following relevant facts were gleaned from the testimony of Ms. Doe and Anthony Clancy, Executive Director of Ocean State at the February 27, 2023 hearing on Petitioner's February 3rd interim order request before the undersigned Hearing Officer, as well as from the documents that were admitted into evidence at the hearing.

1. G. Doe is a student enrolled in the PPSD with an IEP dated May 20, 2022 (as noted, the "IEP"). Although a PPSD student, G. Doe attends school at Ocean State, a private school, which provided educational and supplemental services, supports, and aids to G. Doe on behalf of the PPSD.

2. On February 1, 2023, the Petitioner and Respondents attended a hearing on Petitioner's January 25th interim order request. At the conclusion of the hearing, after the hearing officer exited the room and as the parties were preparing to leave, Ms. Doe was informed that G. Doe's enrollment at Ocean State would be terminated. *See* Transcript dated February 27, 2023, at 18. 3. Mr. Anthony Clancy, the Executive Director of Ocean State, acknowledged that the decision to disenroll G. Doe was based upon what he perceived to be a breakdown of the relationship and lack of trust between Ocean State and G. Doe's family. *Id.* at 123. Mr. Clancy indicated that the breakdown of the relationship began after the return from winter break and

[4] The United States Supreme Court has also noted that "[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." *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 57 (2005).

continued to erode until reaching a peak at the February 1st interim order hearing. *Id.* at 123, 156-160.

4. When asked to describe the events which precipitated the breakdown of the relationship, Mr. Clancy explained that it began when Ms. Doe expressed concern following Ocean State's filing of a police report in connection with an incident involving G. Doe and a tablet device, and escalated through subsequent meetings and correspondences between Ocean State staff and Ms. Doe's counsel, including Ms. Doe's counsel's examination of an Ocean State employee witness at the February 1st interim order hearing. *Id.* at 157-160.

5. Mr. Clancy testified that the primary cause of the relationship breakdown was the conduct of Ms. Doe's counsel and counsel's allegations of lying and bad faith aimed at Ocean State staff. *Id.* at 160-166.

6. When asked to describe the process by which a student is terminated from enrollment at Ocean State, Mr. Clancy admitted, "there isn't one, per se. It depends on the individual circumstances of the student. Our students, we have rolling enrollment. Students come and go on a fairly regular basis." *Id.* at 120. Mr. Clancy further acknowledged that G. Doe's termination of enrollment was neither an emergency nor pre-planned. *Id.*

7. Notwithstanding the foregoing, Mr. Clancy stated that the decision is not an early termination because Ocean State does not have set periods of enrollment. *Id.* at 122.

IV. POSITION OF THE PARTIES

1. PETITIONER

Petitioner argues that Ocean State's unilateral decision to terminate G. Doe's enrollment was made in retaliation for Ms. Doe's inquiries into whether the school was properly implementing G. Doe's IEP and for filing the Due Process Claim. Petitioner further asserts that the decision

constitutes a violation of the requirements and procedures set forth in the Council on Elementary and Secondary Education's (the "Council") *Regulations Governing the Education of Children with Disabilities*, 200 R.I. Code R. 20-30-6.10.4.

Finally, in response to Ocean State's Motion to Dismiss, Petitioner contends that Petitioner's request for an interim order is not a "stay put" case brought under the IDEA, but rather an action seeking to enjoin Ocean State's termination of enrollment undertaken without regard to the mandatory procedures set forth in the Council's regulations to ensure the orderly transition of responsibility back to the District, as well as a discrimination case over which the Commissioner has jurisdiction pursuant to R.I. Gen. Laws § 42-87-5(c). Petitioner specifically asks that disenrollment be enjoined only until the PPSD has identified a suitable alternative service provider for G. Doe

2. RESPONDENT, OCEAN STATE

In its Motion to Dismiss, Ocean State essentially argues that the Commissioner lacks jurisdiction to grant interim order relief in a special education case against a private school. In support of its position, Ocean State relies on the general proposition that federal and state law preclude the Commissioner from appointing a state employee from hearing a special education case.

Ocean State further contends that Petitioner has failed to state a claim for which relief can be granted because the IDEA does not afford a cause of action by a student against a private school, but rather only against the local education agency. Ocean State argues that, accordingly, it should not be a party in this matter and that Petitioner's cause of action is properly against PPSD. Finally, Ocean State argues that disenrollment from Ocean State is not a change in G. Doe's educational

"placement" as contemplated by the IDEA but rather, is merely a change in "location" and therefore does not implicate the IDEA's "stay put" provision.

3. RESPONDENT, PPSD

PPSD argues that, notwithstanding its long-term referral relationship with Ocean State, it has no authority or ability to compel a private school to keep a child enrolled once the private school has made the decision to terminate the child's enrollment and that, therefore, PPSD should be dismissed from the case. At the same time, PPSD acknowledged that it is PPSD's responsibility to ensure G. Doe's placement in accordance with his IEP and that it is in the process of finding appropriate placement considering Ocean State's decision to terminate enrollment.

V. DECISION[5]

1. OCEAN STATE'S MOTION TO DISMISS

Ocean State's Motion to Dismiss asks us to dismiss the Petitioner's interim order request on the grounds that the Commissioner lacks subject matter jurisdiction over Petitioner's claims and that, even if the Commissioner has jurisdiction, the Petitioner fails to state a claim for which relief can be granted. The entirety of Ocean State's motion is premised upon the "stay put" provision of the IDEA and challenges the Commissioner's jurisdiction as well as G. Doe's rights thereunder as they pertain to Ocean State, a private school. However, without addressing the merits of Ocean State's arguments, and even assuming *arguendo* that Ocean State is correct as to one or more of its positions, Ocean State's motion fails to address Petitioner's allegations that Ocean State violated State law and regulations, or the Commissioner's jurisdiction over private schools in connection therewith.

[5] The parties have raised several interrelated, but separate, issues in this case, however, as will be discussed, the Hearing Officer need not reach the merits of each of the issues for present purposes.

In fact, as noted above, 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" and also under R.I. Gen. Laws § 16-39-3.2. Furthermore, R.I. Gen. Laws § 16-1-5(1) provides that "[i]t shall be the duty of the commissioner of elementary and secondary education[t]o carry out *the policies and program* formulated by the council on elementary and secondary education." *Id.*

Petitioner's interim order hearing request was submitted pursuant to R.I. Gen. Laws § 16-39-3.2 and alleges violations of Council regulations as well as federal and state laws prohibiting discrimination in the form of retaliation. Petitioner's Objection to Ocean State's Motion to Dismiss, at 2. However, Petitioner's counsel made clear that she does not object to G. Doe's disenrollment from Ocean State generally, but rather, only to the extent that G. Doe is not afforded the procedural due process set forth in the Council's regulations which provide for an orderly transition of responsibility back to the District's special education director. *See* Tr. at 177.

Additionally, Ocean State's motion simply fails to address Petitioner's retaliation claim. Taking the allegations in the Petition as true and viewing them in the light most favorable to Petitioner, we find that it is not clear beyond a reasonable doubt that the Petitioner would not be entitled to relief thereunder. Accordingly, Respondent, Ocean State's Motion to Dismiss is denied.

2. TERMINATION OF ENROLLMENT IN VIOLATION OF 200 R.I. CODE R. 20-30-6.10.4

RIDE's regulations governing children with disabilities in private schools placed or referred by public agencies expressly provide that a child placed in a private school "[h]as *all of the rights* of a child with a disability who is served by a public agency." 200 R.I. Code R. 20-30-6.5. Likewise, 34 C.F.R. § 300.146(c) provides that "[e]ach SEA *must ensure* that a child with a disability who is placed in or referred to a private school or facility by a public agency— . . . [h]as *all of the rights* of a child with a disability who is served by a public agency." *Id.* (emphasis added).

Accordingly, RIDE is expressly authorized and empowered to issue orders where necessary to ensure that a child with a disability who is placed in a private school by a local education agency is afforded all of the rights of a child enrolled in a public school – including, *inter alia*, the right to due process under State law.

RIDE approval is required for all private schools to operate within the State. *See* R.I. Gen. Laws § 16-19-2. With respect to the provision of special education programs by private schools, the Council's regulations provide, in pertinent part, that,

> [t]o be eligible for approval by RIDE, special education programs conducted in private . . . schools in Rhode Island shall meet the regulations governing the approval of school programs. Private . . . school programs shall be evaluated in the same manner, on the same schedule and with the same criteria and procedures as utilized for public schools in Rhode Island . . . .

200 R.I. Code R. 20-30-6.10.4(A)(1). Additionally,

> [e]ach non-public day and residential school program *shall use* and have available for inspection *written administrative procedures* that encompass the following:
> a. *Provision for emergency and early termination of children* including *prior consultation with the special education director* in the school district of the child's residence in order *to provide for an orderly transfer of responsibility* back to this special education director[; and]
> b. Provision of *procedural safeguards* which cover the same areas required for public schools.

200 R.I. Code R. 20-30-6.10.4(A)(9)(a) and (b) (emphasis added). Thus, in order to ascertain whether Ocean State violated G. Doe's right to the termination process and procedural safeguards set forth in the Council's regulation above, it is necessary to determine whether Ocean State's decision to terminate G. Doe's enrollment constitutes an "emergency" or "early" termination.

Mr. Clancy testified that G. Doe's enrollment was not terminated on the basis of an emergency and there are no facts in the record which would lead us to believe otherwise. As for

early termination, Mr. Clancy testified that J.G's enrollment termination was not scheduled at the time of his enrollment, nor otherwise pre-planned in advance. Tr. at 118-120. Yet, Mr. Clancy also claimed that G. Doe's disenrollment was not an "early" termination because Ocean State does not have set periods of enrollment [but rather "rolling enrollment"]. *Id.* at 120-122. We do not find this position credible.

In the first place, it is undisputed that Ocean State seeks to disenroll G. Doe prior to the end of the school year and that such disenrollment is involuntary as Ms. Doe neither requested nor consented to the disenrollment. "Rolling enrollment" is not the same as "rolling termination of enrollment" and, in particular "rolling *involuntary* termination of enrollment." 200 R.I. Code R. § 20-30-6.10.4(A)(9)(a) specifically addresses *termination* of enrollment as a discrete event.

The term "early" is defined as "occurring before the usual or expected time." Miriam Webster Online.[6] Therefore, "early termination" means termination of enrollment occurring before the usual or expected time. If the termination date of G. Doe's enrollment falls within the academic year, prior to his graduation date, was not otherwise pre-determined at the time he was enrolled, nor the result of an emergency, then it is, by definition, an "early" termination and therefore implicates the Council's requirements that Ocean State shall use its written administrative procedures which provide for the early termination of students and which procedures must include prior consultation with the special education director in the school district of the student's residence in order to provide for an orderly transfer of responsibility back to the district. Accordingly, notwithstanding Mr. Clancy's testimony to the contrary, we find that Ocean State's decision to terminate G. Doe's enrollment is, in fact, an early termination within the meaning of 200 R.I. Code R. 20-30-6.10.4(A)(9)(a).

[6] Located at: https://www.merriam-webster.com/dictionary/early (last visited March 3, 2023).

As Ocean State is an approved public school in Rhode Island, it is required to have available *and to use* written administrative procedures which provide for emergency and early termination of students. Ms. Doe was informed for the first time on February 1, 2023, after the close of the hearing on her January 25 interim order request, that Ocean State was terminating G. Doe's enrollment on February 10. Mr. Clancy testified that he personally made the decision to terminate G. Doe's enrollment "based on what [he] perceived to be the breakdown in the relationship, the lack of trust, the continuous assertions that everyone at the school is lying about everything." Tr. at 123.

Whatever the reasons, it is beyond dispute that Ocean State failed to use its State-mandated written administrative procedures for "emergency" and "early" termination of students in arriving at the decision to disenroll G. Doe, and there is no evidence that Mr. Clancy, or his designee, engaged in prior consultation with the special education director at PPSD[7] in order to provide for the orderly transfer of responsibility back to the special education director. Whether they have is unclear.

3. PETITIONER'S ALLEGATIONS AS TO PPSD AND RIDE

Petitioner asserts no facts to support any allegations against PPSD or RIDE. Petitioner does not claim that the decision to terminate G. Doe's enrollment was made by, on behalf of, or in consultation with, PPSD or RIDE. Nor does Petitioner claim that PPSD has the authority to compel Ocean State to refrain from summarily disenrolling G. Doe Rather, Petitioner merely claims that, if Ocean State disenrolls G. Doe, such disenrollment will be in violation of, *inter alia*, IDEA and may give rise to a due process complaint and "stay put" request to maintain G. Doe's placement

[7] The undersigned Hearing Officer, having presided over the February 1st hearing, takes administrative notice of the fact that Mr. Clancy, as well as Ocean State's Special Education Director, Emily Garcia, were present in the room for the entire duration of the proceedings on February 1st.

under his IEP. PPSD acknowledges its responsibility under IDEA and, upon learning of Ocean State's decision to terminate enrollment, has commenced the process of identifying a new private school in which to place G. Doe In consideration thereof, and of the fact that Ocean State has agreed to stay G. Doe's disenrollment until issuance of a decision on Petitioner's February 3rd interim order request, Petitioner's allegations against PPSD are not ripe. Likewise, Petitioner has premised her allegations against RIDE solely on the Commissioner's general oversight authority over the PPSD under the Crowley Act and has not otherwise alleged any discrete facts to support a separate claim for relief against RIDE.[8] Accordingly, Petitioner's request for an interim order as against the PPSD and RIDE are denied and dismissed.

For the foregoing reasons, we must enjoin Ocean State's early termination of G. Doe's enrollment without affording G. Doe the process set forth in the mandatory written administrative procedures required by 200 R.I. Code R. 20-30-6.10.4(A)(9). In light of the foregoing, we need not consider the merits of other issues raised by the parties at this time.[9]

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[8] Petitioner's counsel has argued that RIDE is a necessary party here because of the role played by its Commissioner in connection with the state intervention in the PPSD under the Crowley Act. However, no evidence has been presented to suggest that RIDE was in any way involved, or even was timely informed, of any of the events leading up to the Petitioner's claim. The fact that the Council on Elementary and Secondary Education (the "Ed. Council") has delegated its authority under the Crowley Act to the Commissioner does not somehow convert RIDE into PPSD's insurer. Indeed, aside from the Crowley Act, RIDE is a mere department of the Ed. Council, see R.I. Gen. Laws § 16-60-4(a)(6), and it is the Ed. Council, not RIDE or its Commissioner, that has been statutorily empowered "to sue and be sued in its own name." See R.I. Gen. Laws § 16-60-1(a) (emphasis added). Moreover, even if one were to assume for argument's sake that RIDE could ever be a proper party, it is worth noting that RIDE is not a necessary party under Superior Court Rule of Civil Procedure 19 since: (a) "complete relief can[ ] be accorded among those already parties" in RIDE's absence, and (b) RIDE's absence will not "[a]s a practical matter impair or impede [Petitioner's] ability to protect [his] interests or "[l]eave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the person's claimed interest." *See id.* at (a).

[9] We note that the remaining issues raised by the Parties are either not ripe for review or may otherwise be rendered moot by the relief issued hereby. This Decision and Order is issued without prejudice to the Parties rights to raise such issues in the future.

VI. ORDER

For all of the above reasons:

1. Ocean State's Motion to Dismiss Petitioner's request for an interim order is denied;

2. Petitioner's requested relief is granted as to Ocean State and denied as to RIDE and PPSD; and

3. Ocean State is hereby enjoined from disenrollment of G. Doe without utilizing the mandatory written administrative procedures as required by 200 R.I. Code R. 20-30-6.10.4(A)(9).

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

ANGÉLICA INFANTE-GREEN,
Commissioner

Dated: March 6, 2023