STATE OF RHODE ISLAND
COMMISSIONER OF EDUCATION

STUDENT L. DOE,
By his mother,
Petitioner,

v.

KINGSTON HILL ACADEMY
Respondent.

RIDE No.: 25-045S

DECISION AND ORDER

Held: One-day out-of-school suspension of 5-year-old kindergarten student was unlawful under R.I. Gen. Laws §§ 16-2-17 and 16-2-17.1 as student was neither a "disruptive student" nor did he represent a "demonstrable threat." Student's right to due process was also violated in that he did not receive adequate notice or an opportunity to be heard prior to decision to impose suspension. School is ordered to expunge the suspension from the student's records. Petitioner otherwise lacked standing to compel revision of school policy where Petitioner's children no longer attend the school and are no longer subject to the policy.

Date: December 2, 2025

I. INTRODUCTION

On or about May 23, 2025, Petitioner, Ms. L. Doe, on behalf of her minor son, Student L. Doe, filed a petition with the Commissioner of the Department of Elementary and Secondary Education (the "Commissioner" and "RIDE," respectively) appealing the decision of the Kingston Hill Academy ("KHA") Board of Trustees ("Board") upholding the KHA administration's imposition of a one-day out-of-school suspension on Student L. Doe for certain comments made by Student L. Doe to another student in the classroom (the "Classmate") pertaining to "guns" and which comments were deemed by the KHA administration to be a "threat" and therefore a violation of the KHA Code of Conduct. Petitioner seeks an order from the Commissioner finding that the disciplinary action imposed was unlawful and in violation of Student L. Doe's due process rights and requests that the out-of-school suspension be expunged from Student L. Doe's school records. Petitioner also seeks a further order finding that the language of the KHA Code of Conduct pertaining to suspensions is overly broad and contrary to state law and requests that KHA be compelled to revise the same.

II. JURISDICTION, STANDARD OF REVIEW, AND BURDEN OF PROOF

The Petitioners have standing as aggrieved parties, and the Commissioner has jurisdiction to hear this matter, pursuant to R.I. Gen. Laws § 16-39-1. In addition, it is well-established that the applicable standard of review is *de novo*. *See, e.g., Alba v. Cranston School Committee*, 90 A.3d 174, 184-85 (R.I. 2014); *A. Doe v. East Greenwich Sch. Comm.*, RIDE No. 18-063A (Sept. 4, 2018). Petitioners have the burden of proof by a fair preponderance of the evidence. *See Larue v. Registrar of Motor Vehicles, Dept. of Transp.*, 568 A.2d 755, 758-59 (R.I. 1990), citing *Gorman v. Univ. of Rhode Island*, 837 F.2d 7, 15 (1st Cir. 1988).

III. FACTS

The following facts were found following an evidentiary hearing before the undersigned Hearing Officer on June 23, 2025, and are based on the numerous materials that were introduced into evidence by the parties as well as the testimony of: (1) Ms. Gwendolyn "Wendy" Gariglio, LICSW, the school social worker at KHA, (2) Mr. Drew Peter Virbila, the Principal of KHA, (3) Ms. Marcella Clark, the Chief Administrator of KHA, and (4) Ms. L. Doe, Student L. Doe's mother.

1. At all times pertinent hereto, Student L. Doe was a 5-year-old kindergarten student at KHA. June 23, 2025 Hr'g Tr., at 5:19-6:10.
2. Prior to the incident, which is the subject of this matter, Student L. Doe had no prior disciplinary history. *Id.* at 12:7-9.
3. At approximately 9:00 P.M. on the evening of March 31, 2025, the school administration received notice of a written correspondence transmitted from another kindergarten parent (the "Informant Parent") to the classroom teacher which stated as follows:

   > Hi Ms. Bauch.
   >
   > At dinner tonight, [our child, the Classmate,] told us that [Student L. Doe] was telling her "my brother has 22 guns. 22 guns because there are 22 kids in our class. That's enough to shoot everyone in the class." And she also told us that he said he was going to shoot her dogs.
   >
   > We are very uncomfortable and disturbed by this. Please advise.

   Id. at 37:24-38-4; 55:6-20; 103:12-19; Petitioner's Exh. 2.
4. Principal Virbila responded and assured the Informant Parent that the school would follow up the next morning. June 23, 2025 Hr'g Tr., at 103:9-21.
5. When Ms. L. Doe dropped off Student L. Doe at school the next morning, April 1, 2025, Mr. Virbila took him from the car and walked him into the school to commence an

investigation into the incident. At the time, Mr. Virbila did not inform Ms. L. Doe of the Informant Parent's correspondence from the night before nor of the commencement of an investigation into Student L. Doe' s purported statements to the Classmate. *Id.* at 36:4-37:1; 115:24-116:8.

6. Prior to contacting Ms. L. Doe, Mr. Virbila convened a risk assessment team consisting of himself and Ms. Gariglio, and later Ms. Clark, to address the incident. *Id.* at 103:22-104:4.
7. Ms. Gariglio testified that, in her capacity as a school social worker at KHA, she had experience with Student L. Doe throughout the school year. *Id.* at 10:20-22; 11:2-4.
8. She testified further that, Student L. Doe had been placed in a Response to Intervention ("RTI") program in which Ms. Gariglio worked with him on identifying emotions and using self-regulation strategies to prevent physical aggression with peers. She stated that while Student L. Doe previously had situations in class where a staff member had to walk him to her room to use a fidget tray to calm his body before returning to class, this use of a fidget tray to calm down is a typical thing for a kindergarten student, and that Student L. Doe was responding well to RTI and was not in the next round of intervention. *Id.* at 11:20-12:2; 13:8-14:8.
9. Ms. Gariglio and Mr. Virbila both testified that they did not consider Student L. Doe to be a "disruptive student." *Id.* at 14:9-10; 100:10-14.
10. Mr. Virbila conducted a search of Student L. Doe's backpack and found no threatening items. *Id.* at 37:17-23.
11. Mr. Virbila also asked Student L. Doe if he said anything about guns to the Classmate, if it involved his brother, and if he had seen the guns before, to which Student L. Doe

responded in the affirmative to all three questions. *Id.* at 53:12-16. However, Mr. Virbila did not show the Informant Parent's written correspondence to Student L. Doe, nor did he read the alleged statements therein to Student L. Doe. *Id.* at 56:1-6.

12. While Student L. Doe stated they were his brother's guns and that he had seen them before, he did not describe the guns. *Id.* at 107:6-16.
13. Ms. Clark was aware that Student L. Doe's brother is a 10-year-old child. *Id.* at 122:9-20.
14. Ms. Clark thereafter told Student L. Doe of the Informant Parent's correspondence, read it to Student L. Doe, and asked him if he made the statements referenced therein, to which Student L. Doe responded in the affirmative. *Id.* at 130:12-131:7.
15. Student L. Doe was not asked about the conversation that was being had with the Classmate or otherwise about the context of the statements. *Id.* at 105:23-106:5.
16. The statements were only made to the Classmate and the Classmate was not interviewed in connection with the incident. *Id.* at 106:9-19.
17. Based on Ms. Clark's questioning of Student L. Doe, Mr. Virbila was satisfied that a threatening statement had been made. *Id.* at 82:13-18.
18. Mr. Virbila admitted that, due to his very young age, Student L. Doe was never informed of the misconduct charges against him or otherwise that he might face discipline as a result thereof. *Id.* at 111:8-112:6.
19. Ms. Gariglio initiated a Suicidal Ideation Homicidal Ideation ("SIHI") Risk Assessment for Student L. Doe. *Id.* at 16:9-21. When Student L. Doe responded "no' to the first question – "have you thought to hurt yourself or anyone else?" – Ms. Gariglio ended the inquiry in accordance with the SIHI assessment protocol. *Id.* at 16:17-17:13; *see also* Petitioner's Exh. 5.

20. Ms. Gariglio determined the specificity of Student L. Doe's statements constituted a "plan" within the context of the SIHI Risk Assessment and assessed the risk level as "Medium Risk." June 23, 2025 Hr'g Tr., at 25:8-24. She then deferred to Principal Virbila and Ms. Clark for next steps. *Id.*
21. Although it was not required pursuant to KHA's Homicide Threat or Threat of Violence Protocol, Mr. Virbila thereupon contacted the Rhode Island Department of Children, Youth, and Families ("DCYF") in accordance with state mandatory reporting laws, because it had been determined that Student L. Doe had made a threat and there was concern about his safety, potentially due to access to guns in the home. *Id.* at 61:5-62:13.
22. DCYF recommended that Student L. Doe undergo a mental health assessment and that the police also be contacted. *Id.* at 41:10-12.
23. Ms. Clark thereupon contacted the police while Mr. Virbila called Ms. L. Doe. *Id.* at 104:10-12.
24. Police and Ms. L. Doe arrived at KHA at approximately the same time, at or around 9:21 A.M., whereupon, in the presence of all the parties, the police officer questioned Ms. L. Doe about unsecured firearms in the home to which she replied that the only guns in the family's home are Student L. Doe's brother's Nerf guns. *Id.* at 104:13-17, 43:14-21, 117:9-17; *see also* Petitioner's Exh. 3.
25. The police officer determined that there was no active threat to the school, that the incident was a misunderstanding, that Student L. Doe's statements to the Classmate the day before pertained to his brother's Nerf guns, and documented the incident in this manner in his police report. *Id.*; *see also* June 23, 2025 Hr'g Tr., at 104:13-17, 43:14-21,

117:9-17. The police officer thereafter contacted DCYF with this information and DCYF closed its case. *Id.*, at 45:17-46:1; *see also* Petitioner's Exh. 3.

26. No further questions were asked of Student L. Doe pertaining to his statements following the police assessment or the Nerf gun revelation. June 23, 2025 Hr'g Tr., at 144:1-4.
27. Ms. L. Doe was asked to remove Student L. Doe from school for a mental health evaluation, although KHA's Homicide Threat or Threat of Violence Protocol only recommends such action in the case of students assessed as "high risk." *Id.* at 87:10-11; 63:6-65:19; *see also* Petitioner's Exh. 4 and 5.
28. Ms. Clark and Mr. Virbila, also determined that a one-day out-of-school suspension was warranted as a disciplinary action for Student L. Doe's making of threatening statements. June 23, 2025 Hr'g Tr., at 86:7-23. Ms. Clark or Mr. Virbila also informed the police officer at the time of the investigation that Student L. Doe was suspended "by school policy." *Id.* at 44:16-45:14; see also *see also* Petitioner's Exh. 3.
29. Formal written notice of the suspension was later transmitted to Ms. L. Doe at or around 6:00 P.M. on April 1, 2025. June 23, 2025 Hr'g Tr., at 105:1-9; *see also* Petitioner's Exh. 1.
30. A revised formal written notice of suspension was transmitted to Ms. L. Doe on April 4, 2025 which included language pertaining to the appeal process. *See* Petitioner's Exh. 12.
31. Ms. L. Doe appealed the suspension decision to the KHA Board which held a hearing thereon on or about April 23, 2025. *See* Petitioner's Exh. 19.
32. On or about April 30, 2025, the KHA Board issued a decision denying the appeal. *Id.*

IV. POSITIONS OF THE PARTIES

A. Petitioner

The Petitioner contends that KHA's one-day suspension of her Kindergarten-aged son, Student L. Doe, was unlawful and violated his constitutional right to due process. She further contends that KHA's Code of Conduct is overly broad and was misapplied.

The Petitioner argues the suspension was issued in violation of R.I. Gen. Laws §§ 16-2-17 and 16-2-17.1 because the Student L. Doe did not meet the statutory requirements for suspension, in that he is not a "disruptive student," and nor did he present a "demonstrable threat." Petitioner points out that it was admitted by school staff (Mr. Virbila and Mrs. Gariglio) that Student L. Doe is not a "disruptive student" who exhibited persistent conduct substantially impeding learning or who otherwise failed to respond to prior corrective measures. Petitioner also claims that Student L. Doe did not pose a "demonstrable threat." Petitioner argues that the KHA administration failed to verify exactly what the 5-year-old Student L. Doe said or establish an intent to threaten. Petitioner further asserts that the police officer involved determined the event was a "misunderstanding" after Ms. L. Doe clarified that the only guns in the home were Nerf guns belonging to Student L. Doe's 10-year-old brother, and subsequently closed their case, noting there was "no active threat to the school" and that DCYF also closed their case based on this finding. Finally, the Petitioner noted that less than 48 hours later, the student and the classmate involved were observed playing happily together, which is not the behavior of a child who feels threatened.

The Petitioner further contends that the KHA administration violated Student L. Doe's right to due process. Petitioner alleges that the decision to suspend Student L. Doe was made before Ms. L. Doe was given an opportunity to respond on his behalf on the morning of April 1st. Petitioner also alleges that Student L. Doe was not informed of the charges being brought

against him or the possible disciplinary consequences thereof and nor was he given an opportunity to present his side of the story. Petitioner also notes that KHA's initial written notice of suspension did not include the right to request an appeal hearing as required by their Code of Conduct, and a subsequent email response suggested a further meeting was “not warrant[ed].”

Finally, the Petitioner argues that KHA relied on “overly broad” language in its Code of Conduct, which allows suspension for conduct that interferes with or threatens the safe and orderly function of the school, citing the general clause “including but not limited to.” The Petitioner argues this grants KHA administrators “unfettered power” and fails to provide sufficient notice of behaviors warranting suspension, contradicting the intent of R.I. Gen. Laws §§ 16-2-17 and 16-2-17.1.

As a remedy, Petitioner requests that KHA be required to expunge the suspension from Student L. Doe’s records and that KHA be compelled to revise the “narrow the overly broad language” in its Code of Conduct to prevent future harm to students and families.

B. Respondent

The Respondent, KHA, maintains that the one-day suspension of Student L. Doe was warranted, legally justifiable, and implemented with adequate due process, and contends that the Petitioner lacks the legal standing to compel KHA to amend its Code of Conduct.

KHA maintains that the suspension was necessary to maintain school safety following a serious threat and that Student L. Doe was suspended for making a threat involving guns that specifically targeted the kindergarten class. KHA asserts that, although the threat was reported by the parents of a classmate, when questioned by administrators, Student L. Doe admitted making the reported statements and confirmed that his older brother had access to guns. KHA further claims the seriousness of the threat forced the student to whom the comments were directed to

stay home the following day and that KHA's Chief Administrator, Ms. Clark, determined that Student L. Doe's words were, in fact, threatening.

KHA relies on its student Code of Conduct which permits suspension for "conduct that interferes with or threatens the safe or orderly functioning of the school" and asserts that Student L . Doe's purported comments did, in fact, pose such an interference or threat. KHA argues that its Code, which includes but is not limited to specific actions like possessing weapons, covers Student L. Doe's behavior and maintains that his actions were inherently disruptive or threatening enough to warrant an out-of-school suspension, regardless of his past disciplinary history. KHA argues that this case is distinguishable from *Student E Doe v. E.P.S.D.* (RIDE No. 24-007K) noting that Student L. Doe's threat was addressed directly to a classmate and clearly referenced shooting people and property (dogs), while the prior case involved ambiguous, non-threatening graffiti. KHA also argues that Student L. Doe's age and lack of prior infractions were considered as mitigating factors leading to the decision for only a one-day suspension.

KHA claims it followed state mandates in response to the perceived threat, with first, Principal Virbila contacting DCYF pursuant to his mandatory reporting obligation due to the gun threat and concerns about the student's own safety if guns were accessible in the home, and second, following DCYF's recommendation to contact local law enforcement and require Student L. Doe to be cleared by a medical professional before returning to school. KHA stressed that the removal of Student L. Doe for a mental health assessment was the top priority and was separate from the punitive measure of suspension. The formal decision to label it a suspension was finalized later in the day, though the principal acknowledged telling Ms. L. Doe the suspension was "from that day" upon her arrival.

With respect to the Petitioner's request to compel amendment of the school's Code of Conduct, KHA argues that the Petitioner lacks the necessary legal standing because Student L. Doe no longer attends KHA, nor does the family have any other children enrolled there, and thus Petitioner cannot demonstrate an "injury in fact" to challenge the school's prospective policy. KHA also dismisses the Petitioner's argument that standing exists merely because the Petitioner is a Rhode Island taxpayer paying for litigation which might arise from complaints pertaining to KHA's policy, stating that a taxpayer must show a "personal stake beyond that shared by all other members of the public at large."

KHA maintains that it satisfied the legal requirements for due process required for a short-term suspension. For suspensions of ten days or less, KHA's policy aligns with state law, requiring investigation, notice, and an opportunity for the student to respond. The KHA team conducted an investigation appropriate to the circumstances. KHA claims that Student L. Doe was informed orally of the statements attributed to him and given an opportunity to present his side of the story. The conference occurred prior to Student L. Doe's removal from school and his parent, Ms. L. Doe, was first notified by phone on the morning of April 1st and received the formal written suspension letter later that evening. KHA admits that the initial written notice did not include the right to appeal as required by its policy. However, this information was included in a subsequent notice sent on April 4th, which KHA admits was "admittedly a day late." KHA asserts that despite the delay, the Petitioners were ultimately granted a full opportunity to appeal the suspension to the KHA Board of Trustees, and the appeal was allowed to proceed. KHA concludes by asking the Hearing Officer to deny the Petitioner's appeal and uphold the one-day suspension of Student L. Doe.

V. DECISION

A. Student L. Doe's out-of-school suspension was not warranted under either R.I. Gen. Laws §§ 16-2-17 or 16-2-17.1 because Student L. Doe was neither a "disruptive student" nor represented a "demonstrable threat."

Recently, the Rhode Island General Assembly amended § 16-2-17.1 to limit the reasons for which districts may properly impose out of school suspensions. In full, this statute provides:

> Suspensions issued shall not be served out of school unless the student's conduct meets the standards set forth in § 16-2-17(a) or the student represents a demonstrable threat to students, teachers, or administrators.

In turn, § 16-2-17(a) provides, in pertinent part: "Each student, staff member, teacher, and administrator has a right to attend and/or work at a school . . . which is free from the threat, actual or implied, of physical harm by a disruptive student." The Commissioner has repeatedly found that, in reading these two statutes together, a school district may properly impose an out of school suspension only after finding that the student: (1) is a "disruptive student" as defined in § 16-2-17(a); or (2) represents a "demonstrable threat" as provided for in § 16-2-17.1. *See, e.g. Student E. Doe v. East Providence School Department*, RIDE No. 24-007K (May 15, 2024), *Student N. Doe v. Bristol-Warren Regional School District*, RIDE No. 21-044J (July 7, 2022); *Student E. Doe v. North Kingstown School Dept.*, RIDE No. 19-93K (Dec. 10, 2021).

Here, KHA admits that Student L. Doe was not a "disruptive student" as defined in § 16-2-17(a) and, therefore, the sole issue is whether Student L. Doe represented a "demonstrable threat" under § 16-2-17.1.[1] For the reasons detailed *infra*, Student L. Doe's conduct fails to meet the standards set forth in § 16-2-17.1 such that KHA's decision to impose an out-of-school suspension for one day was not proper, regardless of whether such disciplinary action was imposed pursuant to school policy.

[1] *See* June 23, 2025 Hr'g Tr., at 14:9-10; 100:10-14.

B. Student L. Doe's conduct was not threatening as contemplated in § 16-2-17.1.

While R.I. Gen. Laws § 16-2-17.1 does not define "demonstrable threat," the Commissioner has noted:

> [T]he word 'threat' is defined as: '[a] communicated intent to inflict harm or loss on another or on another's property, esp. one that might diminish a person's freedom to act voluntarily or with lawful consent; a declaration, express or implied, of an intent to inflict loss or pain on another.

See Student N. Doe v. Bristol-Warren R.S.D., RIDE No. 21-044J at 14; *Student E. Doe v. N. Kingstown S.D.*, RIDE No. 19-93K at 19 (internal citations omitted). In addition, the Commissioner has relied on the language in the Safe Schools Act when determining whether actions by a student constituted a "demonstrable threat." *See id.* However, mechanical application of the foregoing definition alone, without consideration of other relevant factors, is insufficient to support a determination that a student represents a "demonstrable threat" under the statute. Additional relevant factors for consideration may include the intent of the student who made the allegedly threatening statements, the objective impact of the student's actions, whether any aggravating factors exist to support the conclusion that the statements constituted a threat, and the age and capacity of the student who made the statements.

1. Student L. Doe's Intent

We have held previously that "[s]tudent discipline does not necessarily rest on the elements of a crime or the need to establish specific intent to commit a disciplinary infraction." *M. Doe v. Chariho Regional School Committee*, RIDE No. 020-16, at 11 (August 15, 2016). In *M. Doe*, we found that a school district did not need to establish that a student had the specific intent to instigate a fight in violation of the school's code of conduct but rather, that it was sufficient to establish that the student "had the *general intent to do the act* which produced

retaliation on Student A's part." *Id.* at 11 (emphasis added). Thus, while KHA need not establish that Student L. Doe possessed the *specific* intent to threaten his classmate, KHA must be able to demonstrate that the 5-year-old Student L. Doe possessed the *general* intent to make a statement which he understood to be threatening.

Here, there is no indication that Student L. Doe had any understanding that the statements made to his classmate could be perceived as threatening and, in fact, as will be discussed *infra*, it was determined that the matter was a *mis*understanding and it is likely that Student L. Doe understood his statements to be in relation to play. The Classmate to whom Student L. Doe made the purported threatening statements did not report the exchange to KHA staff or administration during the school day. Rather, the statements were reported later that night, via electronic message to the students' teacher by the classmate's parent. Thus, the statements, as reported, constitute "double hearsay." While receipt of this initial report certainly justified the commencement of an investigation by the KHA administration, the investigation fell short of determining that Student L. Doe represented a "demonstrable threat" under R.I. Gen. Laws § 16-2-17.1. Notably, neither Principal Virbila nor Ms. Clark ever questioned the classmate about the statements or the exchange between the students. Student L. Doe was asked *if* he made the statements about guns but was never asked *why* he made the statements, *what he meant* by the statements, or otherwise about the *context* of the conversation. Importantly, it was determined shortly afterwards by police that Student L. Doe was very likely referring to his 10-year-old brother's toy Nerf guns. Notwithstanding this revelation, neither Mr. Virbila nor Ms. Clark posed any further questions to Student L. Doe in order to clarify his understanding of the statements which he made and whether the statements referred to play or were otherwise intended to appear

menacing in some way. Thus, KHA failed to establish whether Student L. Doe had any general intent to make a threatening statement.

2. The Classmate's Subjective Perception of the Statements

It is clear that the Classmate's parents found the substance of the statements to be sufficiently concerning to report them to KHA. However, as noted above, the Classmate did not report the statements directly to KHA staff during the school day and KHA administration did not question the classmate about the incident at all. Thus, KHA failed to determine whether the Classmate perceived the statements to be menacing or hostile and, therefore, whether the objective impact of Student L. Doe's statements was threatening. KHA decided to suspend Student L. Doe because it claimed he threatened his classmate but it failed to support that position with any actual testimony from the Classmate – the only eyewitness to the exchange – about the event and the context of the statements, including whether the Classmate felt threatened or otherwise perceived the statements as threatening. *Cf, Student O. Doe. V. The Hope Academy*, RIDE No. 25-009AL (June 6, 2025).

3. Aggravating factors, age, and capacity

The evidence on the record establishes that Student L. Doe was not violent or threatening prior to the incident. He has no prior history of aggressive or violent behavior and has no disciplinary history. On the morning of April 1, as the administration was conducting the investigation, Student L. Doe was seen to be calmly seated at a table coloring when Ms. Gariglio walked into the office. Ms. Gariglio's SIHI Risk Assessment confirmed that Student L. Doe had not thought to hurt himself or anyone else and she assessed him as "medium" risk. Mr. Virbila conducted a search of his backpack which revealed no threatening items whatsoever. Student L. Doe did not exhibit any violent or threatening behavior during the questioning on April 1st and, in fact, appeared to be nervous when he was being questioned about his statements. While the

statement reported by the Classmate's parent was read to him and he responded in the affirmative when asked whether he said it, the record is silent as to whether Student L. Doe's admission pertained to the verbatim accuracy of the quotes reported by the parent or the general substance of the statements (*e.g.*, talk of guns, shooting, etc.). The administration failed to ask any further questions in order to ascertain the context of the statements or to what Student L. Doe was referring to in his reference to guns. As stated above, considering Student L. Doe's young age, the administration also failed to ascertain whether Student L. Doe understood the statement to be threatening.

Moreover, we have previously noted that a determination by police that a student posed no credible threat to school safety is relevant to a determination as to whether a student represents a "demonstrable threat" under R.I.G.L. § 16-2-17.1. *See Student E. Doe v. Barrington School Department*, RIDE No. 18-051A, at 12 (January 4, 2019). Here, questioning by police in the KHA office with all parties present revealed that Student L. Doe's family does not possess any firearms and that Student L. Doe was, in fact, referring to toy Nerf guns, and accordingly, police determined the incident to be a misunderstanding.[2] Notwithstanding this revelation, the administration failed to direct any follow-up questions to Student L. Doe about the incident or otherwise consider this police determination when it suspended him.[3] In consideration of Student L. Doe's very young age, the fact that he was likely referring to his 10-year-old brother's toy Nerf guns and KHA's failure to ascertain otherwise, the police determination that Student L. Doe did not pose a credible threat, the absence of any prior disciplinary history and any history of violence, aggression, or threatening behavior on the part of Student L. Doe, and the absence of any other aggravating factors, we find that the evidence on the record does not support a finding

[2] *See* Petitioner's Exh. 3.
[3] *See* June 23, 2025 Hr'g Tr., at 144:1-4.

that Student L. Doe represented a "demonstrable threat" under R.I. Gen. Laws § 16-2-17.1 and, thus, KHA's imposition of a one-day out of school suspension was unlawful, disproportionate, and unreasonable.

C. KHA violated Student L. Doe's Due Process Rights

The United States Supreme Court has ruled that the due process clause of the United States Constitution applies to school suspensions. *Goss v. Lopez*, 419 U.S. 565, 95 S. Ct. 729 (1975). In *Goss*, the Court recognized that,

> [t]he prospect of imposing elaborate hearing requirements in every suspension case is viewed with great concern, and many school authorities may well prefer the untrammeled power to act unilaterally, unhampered by rules about notice and hearing. But it would be a strange disciplinary system in an educational institution if no communication was sought by the disciplinarian with the student *in an effort to inform him of his dereliction and to let him tell his side of the story in order to make sure that an injustice is not done*.

Id., at 580. The Court thus held that,

> [s]tudents facing temporary suspension have interests qualifying for protection of the Due Process Clause, and due process requires, in connection with a suspension of 10 days or less, that the student *be given oral or written notice of the charges against him* and, if he denies them, an explanation of the evidence the authorities have *and an opportunity to present his side of the story*.

Id., at 581 (emphasis added). Here, KHA failed to adequately provide Student L. Doe with both notice of the charges against him and with an opportunity to present his side of the story.

Principal Virbila admitted that he did not advise Student L. Doe of the charges against him "because he was so young."[4] Ms. Clark testified that she read the purported statement to him and "asked him if he said it."[5] However, there is no indication that Student L. Doe was ever

[4] *See* June 23, 2025 Hr'g Tr., at 111:8-112:6.
[5] *Id.* at 130:12-131:7.

informed that the purported statements were deemed to be threatening nor that he was being charged with having made a threat by uttering them to his classmate. Nor is there any indication that Student L. Doe was informed that the making of such a threat constituted a violation of KHA's Code of Conduct nor of the possible disciplinary consequences for such a violation. Accordingly, the KHA administration failed to adequately inform Student L. Doe of the charges being brought against him and the possible disciplinary consequences thereof.

The administration also failed to ask Student L. Doe about the context of the statements, what he meant by "guns," whether he made the statements with any intent to threaten, or – in consideration of his young age (the relevance of which was acknowledged by Mr. Virbila as stated above) and the revelation that he was very likely speaking about toy Nerf guns – whether he even understood the statements to be threatening. Thus, the administration limited its investigation to the singular question of *whether Student L. Doe uttered the reported words* but failed to provide Student L. Doe with an opportunity to present his side of the story in order to ascertain or otherwise consider any other facts which might have been relevant to a determination as to *whether Student L. Doe's expression of those words to his Classmate actually constituted a threat* and a violation of KHA's Code of Conduct.

Finally, Ms. L. Doe claimed that she was informed orally upon her arrival at the meeting at school that Student L. Doe would be suspended.[6] Mr. Virbila testified that the decision to suspend was not made until the evening of April 1.[7] However, Ms. L. Doe's assertion is corroborated by the fact that the police report, which records the conversation as having occurred on the morning of April 1 (police responded at approximately 9:21 AM), states that "[b]y school policy [Student L. Doe] was suspended for the day and it was determined that there was no

[6] *Id.* at 117:7-8.
[7] *Id.* at 42:19-23.

active threat to the school."[8] Mr. Virbila also acknowledged that either he or Ms. Clark informed the police officer in the office that morning that Student L. Doe was to be suspended pursuant to school policy.[9] Accordingly, the weight of the evidence on the record supports the finding that the decision to suspend Student L. Doe was made without providing Student L. Doe with adequate notice of the charges against him and, moreover, without affording him an opportunity to be heard thereby violating his right to due process.

D. Petitioners lack standing to compel KHA to revise its Code of Conduct

The Rhode Island Supreme Court has made clear that, "'injury in fact' for purposes of standing requires an invasion of a legally protected interest that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. *See Morse v. Minardi*, 208 A.3d 1151, *Diorio v. Hines Rd., LLC*, 226 A.3d 138, *Cruz v. Mortg. Elec. Registration Sys.*, 108 A.3d 992. Petitioners admit that Student L. Doe no longer attends KHA and nor do Petitioners have any other children in the school.[10] Thus, Student L. Doe and Petitioners are no longer subject to KHA's Code of Conduct or any actual or imminent invasion of a legally protected interest pursuant thereto. Petitioners assert, however, that "[c]omplaints resulting from the utilization of this overly broad language are highly likely to be repeated [and] *[a]s taxpayers we will continue to pay for such complaints to be heard until the language is brought into compliance with the law*."[11] Nonetheless, Petitioner's invocation of "taxpayer standing" is insufficient here. "For a taxpayer to have standing, they must demonstrate a 'personal stake beyond that shared by all other members of the public at large . . . .'" *See Cummings v. Shorey*, 761 A.2d 680, *Morse v. Minardi*, 208 A.3d 1151, *Weybosset Hill Invs., LLC v. Rossi*, 857 A.2d 231. This means Petitioner

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[8] *See* Petitioner's Exh. 3.
[9] *Id.* at 44:16-45:14.
[10] *See* Petitioner's Reply Brief, at 5.
[11] *Id.* (emphasis added).

must show an injury that affects them in a specific, personal way, rather than a broad complaint shared by the general public. *See Morse v. Minardi*, 208 A.3d 1151, *Weybosset Hill Invs., LLC v. Rossi*, 857 A.2d 231, *Ianero v. Johnston*, 477 A.2d 619. As Petitioner's past injury is remedied hereby and Petitioner is no longer subject to KHA's Code of Conduct, Petitioner lacks standing to compel KHA to amend its Code of Conduct.

VI. ORDER

For the foregoing reasons:

1. Petitioner's appeal is hereby granted, in part, and Kingston Hill Academy is ordered to expunge the one-day out-of-school suspension from Student L. Doe's student records; and

2. Petitioner's request to compel Kingston Hill Academy to amend its Code of Conduct is denied.

/s/ Sergio Spaziano
Sergio A. Spaziano, Esq.,
as Hearing Officer for the Commissioner

/s/ Angelica Infante-Green
Angélica Infante-Green,
Commissioner of Education

Date: December 2, 2025