



Eva-Marie Mancuso, Esq.
Chair

Enclosure 8a
December 9, 2013

Antonio Barajas, M.D.

Michael Bernstein

December 9, 2013

Colleen A. Callahan, Ed.D.

TO: Members of the RI Board of Education

Karin Forbes

FROM: Karin Forbes, Appeals Committee Chair

Jo Eva Gaines

Michael Grande, CPA

RE: Appeals Committee Recommendations

Patrick Guida, Esq.

William Maaia, Esq.

The Appeals Committee of the Rhode Island Board of Education met on November 5, 2013 to hear oral argument on the appeal of the following Commissioner's decisions:

Lawrence Purtill

Mathies Santos

Peter Pinkhover v. Chariho Regional School Committee

RECOMMENDATION: THAT, in the matter of Peter Pinkhover v. Chariho Regional School Committee, the Decision of the Commissioner is affirmed, as presented.

Kingston Hill Academy v. Chariho Regional School Committee

RECOMMENDATION: THAT, in the matter of Kingston Hill Academy v. Chariho Regional School Committee, the Decision of the Commissioner is affirmed, as presented.

G. Doe v. Cumberland School District

RECOMMENDATION: THAT, in the matter of G. Doe v. Cumberland School District, the Decision of the Commissioner is remanded to the Commissioner, as presented.

Harmony Hill School and the Department of Children, Youth and Families v. Foster School Department

RECOMMENDATION: THAT, in the matter of Harmony Hill School and the Department of Children, Youth and Families v. Foster School Department, the Decision of the Commissioner is affirmed, as presented.

S. Doe v. Bristol Warren Regional School District

RECOMMENDATION: THAT, in the matter of S. Doe v. Bristol Warren Regional School District, the Decision of the Commissioner is affirmed, as presented.

STATE OF RHODE ISLAND

BOARD OF EDUCATION

PETER PINKHOVER

vs.

**CHARIHO REGIONAL SCHOOL
DISTRICT COMMITTEE**

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DECISION

This is an appeal by Peter Pinkhover (Petitioner) from the decision of the Commissioner, dated May 9, 2013, whereby the Commissioner denied and dismissed the Petitioner’s appeal because it is time barred and must be sent through the arbitration process.

On February 2, 2011 the Petitioner was notified that the Superintendent of Schools for the Chariho Regional School District (“Chariho”) would recommend that his teaching contract not be renewed. On February 9, 2011 the School Committee voted not to renew Petitioner’s contract based on less than proficient performance. NEARI- Chariho filed a grievance on February 28, 2011 and on June 11, 2011 the three parties, the Petitioner, Chariho, and NEARI- Chariho entered into a last chance agreement. On May 2, 2012 Petitioner was issued an evaluation that found his performance to be less than proficient. On May 9, 2012 his resignation was accepted pursuant to the terms of the last chance agreement. The Petitioner filed a petition with the Commissioner on October 31, 2012 wherein he claimed that (a) he was terminated without notice or good cause and (b) he was denied a hearing pursuant to Rhode Island General Laws §16-39-1 and §16-39-2. In reply Chariho filed a Motion to Dismiss alleging that the appeal was time-barred.

In a written decision dated May 9, 2013 the Hearing Officer issued findings of fact and conclusions of law ultimately determining that the Petitioner’s appeal to the Commissioner was time-barred under Rhode Island law. Further, the Hearing Officer determined that a last chance agreement is not a matter for appeal to the Commissioner and must be adjudicated through the arbitration process. The Petitioner’s appeal was denied and dismissed.

The Board reviewed the briefs and considered the well-presented arguments of both parties at oral argument. We find that the decision of the Hearing Officer as adopted by the Commissioner is consistent with Rhode Island Law. The decision is in no way “patently arbitrary, discriminatory, or unfair” which is the standard of review for Appeals brought to the Board of Education. Altman v. School Committee of the Town of Scituate, 115 R.I. 399, 405 (1975).

For the reasons stated herein, the decision of the Commissioner is affirmed.

The above is the decision recommended by the Appeals Committee after due consideration of the record, memoranda filed on behalf of the parties and oral arguments made at the hearing of the appeal on November 5, 2013.

Rhode Island Board of Education

Eva-Marie Mancuso, Chair

_____, 2013

Karin Forbes, Appeals Committee Chair

_____, 2013

STATE OF RHODE ISLAND

BOARD OF EDUCATION

KINGSTON HILL ACADEMY

vs.

**CHARIHO REGIONAL SCHOOL
COMMITTEE**

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DECISION

This is an appeal by the Kingston Hill Academy (“Kingston Hill”) from the decision of the Commissioner, dated June 10, 2013, whereby the Commissioner dismissed the complaint brought by the Chariho Regional School District (“Chariho”) without prejudice to allow Chariho to file its complaint with the governing body of Kingston Hill.

The long and complex history of this decision is covered by the Rhode Island Supreme Court in Kingston Hill Academy and the Compass School v. Chariho Regional School District, 21 A.3d 264 (R.I.). After the Supreme Court decision Chariho continued to prosecute its claim of non-payment to Kingston Hill for alleged discrimination. In a lengthy decision on Kingston Hill’s Motion to Dismiss, issued on June 10, 2013, the Hearing Office evaluated the ability of Chariho to press this claim and its right to withhold payment to Kingston Hill. The Hearing Officer determined that Rhode Island General Laws (“RIGL”) §16-77-5.1 allows individuals or groups to submit complaints to the Commissioner regarding charter schools failure to comply with the authorizing statutes. However, they must first present that complaint to the governing body. Id. Therefore, the Hearing Office dismissed the complaint without prejudice. The Hearing Officer also determined that under RIGL 16-77-5.1 Chariho has no authority to withhold payment as a mechanism of self-help for alleged discrimination.

Kingston Hill appealed the decision of the Commissioner and asked for a decision on whether Chariho will ultimately have standing in the event that the claim is re-filed with the Commissioner. The Board reviewed the briefs and considered the well-presented arguments of both parties at oral argument. We find that the decision of the Hearing Officer as adopted by the Commissioner is consistent with Rhode Island Law. The decision is in no way “patently arbitrary, discriminatory, or unfair” which is the standard of review for Appeals brought to the Board of Education, Altman v. School Committee of the Town of Scituate, 115 (R.I.) 399, 405 (1975), and so we cannot answer a hypothetical of a claim properly dismissed by the Commissioner.

For the reasons stated herein, the decision of the Commissioner is affirmed.

The above is the decision recommended by the Appeals Committee after due consideration of the record, memoranda filed on behalf of the parties and oral arguments made at the hearing of the appeal on November 5, 2013.

Rhode Island Board of Education

Eva-Marie Mancuso, Chair

_____, 2013

Karin Forbes, Appeals Committee Chair

_____, 2013

G. DOE

vs.

**CUMBERLAND SCHOOL
DISTRICT**

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DECISION

This is an appeal by G. Doe (“Doe”) from the decision of the Commissioner, dated May 21, 2013, whereby the Commissioner scheduled a new hearing to take evidence on special education issues presented in the case.

Doe appealed from the Cumberland School District’s imposition of tuition fees and charges for participating in summer school classes. In the appeal Doe sought a determination that such fees are unauthorized for any public school student under Rhode Island Law and, as a result, that the Petitioner must be reimbursed summer school fees charged. A hearing was held before the Hearing Officer on January 17, 2013. At the hearing all parties agreed that testimony was unnecessary since material facts were not in dispute, and a briefing schedule was set.

In a written decision issued May 21, 2013 the Hearing Officer determined that the proper question is whether state and federal law require a free special education for students with an Individualized Education Program and therefore prohibit the imposition of summer school tuition and fees for Doe. A new hearing was ordered to take evidence on the question of whether Doe was denied access to a free appropriate public education under state and federal special education laws.

The Board reviewed the briefs and considered the well-presented arguments of both parties at oral argument. We note, however, that although the parties agreed that there were no facts in dispute at the hearing, a factual dispute between the parties appears to have surfaced in

the appellate briefs. Doe claims that summer school classes were required in order to pass to the 10th grade. The School District, on the other hand, classifies the summer courses as optional. The Board of Education does not sit as a fact finder on Appeals and cannot make such a determination. Further, we find that the decision of the Hearing Officer as adopted by the Commissioner did not address the question presented and instead attempts to rely on Doe's status as a child with a disability to determine the propriety of summer school tuition fees. We find that this rises to the level of "patently arbitrary, discriminatory, or unfair" which is the standard of review for Appeals brought to the Board of Education. Altman v. School Committee of the Town of Scituate, 115 R.I. 399, 405 (1975).

For the reasons stated herein, the decision of the Commissioner is remanded for a determination on the question presented of whether a school district may charge any public school student, irrespective of special education protections, for tuition for summer classes. We remind the Hearing Officer that any outstanding questions of fact must be determined by the Commissioner and cannot be determined on Appeal to the Board of Education.

The above is the decision recommended by the Appeals Committee after due consideration of the record, memoranda filed on behalf of the parties and oral arguments made at the hearing of the appeal on November 5, 2013.

Rhode Island Board of Education

Eva-Marie Mancuso, Chair

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Karin Forbes, Appeals Committee Chair

_____, 2013

STATE OF RHODE ISLAND

BOARD OF EDUCATION

**HARMONY HILL SCHOOL AND
THE DEPARTMENT OF CHILDREN,
YOUTH AND FAMILIES**

vs.

**FOSTER SCHOOL
DEPARTMENT**

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DECISION

This is an appeal by the Rhode Island Department of Children, Youth, and Families (“DCYF”) from the decision of the Commissioner, dated February 27, 2013, whereby the Commissioner decided that DCYF is obligated to pay the Harmony Hill School for costs associated with educating a student placed at Harmony Hill by DCYF and that the Foster School Department (“Foster”) had previously met its financial obligation related to the student. Further, the Commissioner issued an interim order for DCYF to remit payment of \$63,618.90 immediately.

Harmony Hill School (“Harmony Hill”) filed an appeal requesting a hearing with the Commissioner for a determination of whether Foster had failed to pay its special education per pupil cost as required by Rhode Island Law. Harmony Hill, Foster, and DCYF agreed to an initial hearing on October 31, 2012. The matter was continued to December 5, 2012 to allow time to subpoena witnesses and documents. On December 5, 2012 the designated hearing officer held a full evidentiary hearing. The parties stipulated that DCYF would be joined as a party. Briefs and written closing arguments were submitted and an expedited decision was requested. In a written decision issued February 27, 2013 the Hearing Officer determined that Foster was required to remit to Harmony Hill a per pupil rate equal to the state average special education per

pupil cost in accordance with an exemption granted by the Rhode Island Department of Education. DCYF was therefore ordered to remit the balance of the actual costs associated with educating a student placed at Harmony Hill by DCYF totaling \$63,618.90.

DCYF appealed the decision of the Commissioner claiming that (1) the exemption granted to Foster by RIDE related to per pupil rate is invalid and unenforceable due to a failure to follow rulemaking procedures under the APA; (2) The decision of the Commissioner did not answer the questions raised; and (3) the Foster exemption is against public policy. The Board reviewed the briefs and considered the well-presented arguments of both parties at oral argument. We find that the decision of the Hearing Officer as adopted by the Commissioner is consistent with Rhode Island Law. The decision is in no way “patently arbitrary, discriminatory, or unfair” which is the standard of review for Appeals brought to the Board of Education.

Altman v. School Committee of the Town of Scituate, 115 R.I. 399, 405 (1975).

For the reasons stated herein, the decision of the Commissioner is affirmed.

The above is the decision recommended by the Appeals Committee after due consideration of the record, memoranda filed on behalf of the parties and oral arguments made at the hearing of the appeal on November 5, 2013.

Rhode Island Board of Education

Eva-Marie Mancuso, Chair

_____, 2013

Karin Forbes, Appeals Committee Chair

_____, 2013

STATE OF RHODE ISLAND

BOARD OF EDUCATION

S. DOE

vs.

**BRISTOL WARREN REGIONAL SCHOOL
DISTRICT**

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DECISION

This is an appeal by the Step-Grandparent of student S.Doe (“Doe”) from the decision of the Commissioner, dated May 8, 2013, whereby the Commissioner dismissed the appeal as moot.

Doe appealed a decision of the Bristol Warren Regional School District (“BWRSD”) denying re-enrollment in high school. On February 20, 2013 Doe filed an appeal with the Commissioner. The designated hearing officer held a full evidentiary hearing on March 14, 2013. In a written decision issued May 8, 2013 the Hearing Officer determined that the matter was dismissed as moot due to Doe leaving the state and taking up residence in Connecticut. On May 10, 2013 Doe filed an appeal of the Commissioner’s decision claiming that the BWSD did not properly educate the student in accordance with Rhode Island Law.

The Board reviewed the briefs and considered the well-presented arguments of both parties at oral argument. We find that the decision of the Hearing Officer as adopted by the Commissioner is consistent with Rhode Island Law. The decision is in no way “patently arbitrary, discriminatory, or unfair” which is the standard of review for Appeals brought to the Board of Education. Altman v. School Committee of the Town of Scituate, 115 R.I. 399, 405 (1975).

For the reasons stated herein, the decision of the Commissioner is affirmed.

The above is the decision recommended by the Appeals Committee after due consideration of the record, memoranda filed on behalf of the parties and oral arguments made at the hearing of the appeal on November 5, 2013.

Rhode Island Board of Education

Eva-Marie Mancuso, Chair

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Karin Forbes, Appeals Committee Chair

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