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Enclosure 3i
June 12, 2014

June 12, 2014

TO: Members of the RI Board of Education

FROM: Eva-Marie Mancuso, Chair

RE: [redacted] **John Doe v. East Greenwich School Committee, KC13-1260**

In the enclosed Kent County Superior Court decision dated April 29, 2014, the Court vacated the decision of the Rhode Island Commissioner of Education and of the Board of Education in the [redacted] John Doe v. East Greenwich School Committee matter. In vacating the decision, the Court observed that the record contained no transcript of any hearing before the School Committee, no record of the proceedings before the School Committee, and no determination by the School Committee.

In its decision, the Court remanded the matter to the R.I. Board of Education with the instructions to remand the matter to the East Greenwich School Committee.

RECOMMENDATION: THAT, the Rhode Island Board of Education, remand the matter to the East Greenwich School Committee, as instructed by the Court.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. SUPERIOR COURT

(FILED: July 10, 2014)

JOHN DOE	:	
	:	
VS.	:	C.A. No. KC 13-1260
	:	
EAST GREENWICH SCHOOL COMMITTEE	:	

AMENDED DECISION

RUBINE, J. Pursuant to an Order entered by this Court on July 9, 2014, granting Plaintiff's Motion for Reconsideration and Other Relief, Plaintiff is allowed to file an Amended Complaint utilizing a "John Doe" caption; therefore, the following Amended Decision shall substitute for a previously filed form of said Decision.

This case arises from John Doe's request that the East Greenwich School Committee provide him with information from his son's school record and retract statements in the school record made by a school psychologist that were allegedly false.

Facts and Travel

Mr. Doe filed this administrative appeal, after a decision of the Rhode Island Board of Education[1] affirmed the decision of the Rhode Island Commissioner of Education (Commissioner), which ultimately resulted in the denial of Mr. Doe's request. The Commissioner, upon recommendation from the hearing officer, granted a motion to dismiss filed by the East Greenwich School Committee seeking dismissal of Mr. Doe's appeal to the Commissioner, after the School Committee denied Mr. Doe's request. In response to the hearing

[1] The Rhode Island Board of Education was established by G.L. 1956 § 16-97-1 on January 1, 2013. It was formerly the Board of Regents for Elementary and Secondary Education.

Mr. Doe further appealed to the Rhode Island Board of Education (formerly the Board of Regents for Elementary and Secondary Education), see n.1, supra. The Rhode Island Board of Education affirmed the decision of the Commissioner. In affirming the Commissioner's dismissal of the appeal, the Rhode Island Board of Education commented that the Commissioner's decision is consistent with Rhode Island law and not "patently arbitrary, discriminatory or unfair." Mr. Doe then filed his appeal of the Rhode Island Board of Education's decision to this Court. This Court's jurisdiction is pursuant to G.L. 1956 §§ 42-35-1 et seq.

Standard of Review

The Superior Court's jurisdiction to review the decisions of administrative agencies is governed by the Rhode Island Administrative Procedures Act, §§ 42-35-1 et seq. See Rossi v. Employees' Retirement Sys. of R.I., 895 A.2d 106, 109 (R.I. 2006). The standard of review is set forth in § 42-35-15, which provides, in pertinent part:

> "The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, interferences, conclusions, or decisions are:
>
> "(1) In violation of constitutional or statutory provisions;
> "(2) In excess of the statutory authority of the agency;
> "(3) Made upon unlawful procedure;
> "(4) Affected by other error or law;
> "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Sec. 42-35-15(g).

When reviewing an administrative decision, the Court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. Id. When more than one factual inference is possible, the Court may not substitute its judgment for that of the agency

It would be impossible for the Commissioner to hear and determine an appeal from the East Greenwich School Committee without any record of what this Committee heard or decided. Rather than dismiss the appeal, the proper disposition would have been to remand the matter to the School Committee to make a record and reach a decision on Mr. Doe's complaint and request for relief. When the Supreme Court was faced with a similar deficit in the record filed with the Commissioner, it noted that in the absence of any transcript made of the proceedings before the School Committee or evidence that the School Committee rendered a decision subsequent to a hearing, the Commissioner acted properly in remanding the matter to the local School Committee. McSally v. Bd. of Regents, 121 R.I. 532, 533-34, 401 A.2d 438, 439 (1979). In so ruling, the Court found that, absent a record from the School Committee, the Commissioner could neither rule on the adequacy of the hearing afforded to the appellant nor determine if there were sufficient facts on the record to uphold the Commissioner's finding that the doctrine of laches barred the appeal. Id. The Court found affirmatively that the Commissioner has the authority, express or implied, to remand a matter to a local school committee when an inadequate record from the School Committee rendered her appellate responsibilities difficult, if not impossible. Id. at 535, 440.

In the instant case, the Commissioner looked to the provisions of the Educational Records Bill of Rights as providing an adequate remedy to address the alleged inaccuracies in Mr. Doe's son's school records regarding his mental well-being. See § 16-71-3. In pertinent part, that statute allows certain remedies to a parent who believes their child's school records contain false or inaccurate information. For instance, the parent has the right to request an amendment and/or expungement if the parent believes that information contained in educational records are inaccurate, misleading, or in violation of the student's right to privacy. Sec. 16-71-3(a)(5). The

subject of the original claim. Therefore, this case is remanded to the Rhode Island Board of Education with instructions that this matter be remanded to the School Committee. The remand is without prejudice to subsequent appeal to the Commissioner pursuant to the provisions of § 16-39-2, brought by any party aggrieved by the subsequent decision of the School Committee.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: John Doe v. East Greenwich School Committee

CASE NO: C.A. No. KC 13-1260

COURT: Kent County Superior Court

DATE DECISION FILED: July 10, 2014

JUSTICE/MAGISTRATE: Rubine, J.

ATTORNEYS:

For Plaintiff: Michael D. Coleman, Esq.

For Defendant: Raymond A. Marcaccio, Esq.; Peter F. Spencer, Esq.

THE ONLY CHANGES IN THIS AMENDED DECISION IS TO CORRECT THE CAPTION TO REFLECT THE PSEUDONYM USED IN THE AMENDED COMPLAINT AND TO SUBSTITUTE REFERENCES TO THE FORMERLY NAMED PLAINTIFF AS SET FORTH IN THE ORIGINAL COMPLAINT TO REFLECT THE PSEUDONYM. NO SUBSTANTIVE CHANGES HAVE BEEN MADE TO THE ORIGINAL DECISION DATED APRIL 29, 2014. THIS DECISION SHALL BE SUBSTITUTED FOR THE ORIGINAL IN THE RECORDS OF THE COURT