STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
COMMISSIONER OF EDUCATION

STUDENT E. DOE, by his parents, *Petitioner*	:	
v.	:	No. 18-051 A
BARRINGTON SCHOOL DEPARTMENT, *Respondent*	:	

DECISION AND ORDER

Held: Decision of administrative panel affirming the three-day, out-of-school suspension of a middle school student who discussed a school shooting with other students at his school cafeteria lunch table is reversed, and any record of the suspension removed from the student's record as no evidence suggested that the student was a "disruptive student" under RIGL § 16-2- 17(a), which prohibits the imposition of out-of-school suspensions for non-disruptive students.

January 4, 2019

On May 9, 2018, the parents of the Petitioner, Student E. Doe – now a ninth-grader at Barrington High School ("BHS") – wrote the Commissioner on their son's behalf and requested a hearing to appeal the May 3, 2018 decision of an administrative team assembled by the Superintendent of the Barrington School Department (the "Superintendent" and "Barrington," respectively) to affirm the three-day, out-of-school suspension that had been imposed while E. Doe was in the eighth grade at the Barrington Middle School ("BMS").

I. JURISDICTION AND STANDARD OF REVIEW

When the General Assembly declared in 1998 that students have "a right to attend . . . a school which is safe and secure, and which is conducive to learning, and which is free from the threat, actual or implied, of physical harm by a disruptive student," *see* P.L. 1998, ch. 30, § 2, it also provided that:

> [a] student suspended under this section may appeal the action of the school committee, *or a school principal as designee*, to the commissioner of elementary and secondary education who, after notice to the parties interested of the time and place of hearing, shall examine and decide the appeal without cost to the parties involved.

See RIGL § 16-2-17(c) (emphasis added); *see also Basic Education Program Regulations* at § G-14-2.1.2 (affirming "that each student and staff member has a right to attend or work at a school that is safe and secure, that is conducive to learning, and that is free from the threat, actual or implied, of physical harm"). Thus, it is clear that the Commissioner has jurisdiction to hear the case.[1]

[1] The fact that the May 3, 2018 decision was not appealed to the Barrington School Committee does not deprive the Commissioner of jurisdiction under the exhaustion of remedies doctrine since the language of § 16-2-17(c) italicized above contemplates direct appeals in cases involving suspensions under the section. *See also* the Superintendent's May 3, 2018 letter to E. Doe's parents, Petitioner's Ex. 6 (stating that Barrington "would not object if you seek to present this matter directly to the Commissioner").

In addition, it is equally clear that the applicable standard of review is *de novo*.[2] *See Pawtucket School Committee v. Board of Regents for Elementary and Secondary Educ.*, 513 A.2d 13, 16 (1986) (*de novo* review is not limited to cases under the Teachers Tenure Act, but extends to "other educational matters" reviewed by the Commissioner).[3]

II. FACTS

The following facts were found following an evidentiary hearing before the undersigned Hearing Officer on October 29, 2018,[4] and are based upon documents that were introduced into evidence as well as the sworn testimony of: (1) E. Doe; E. Doe's (2) mother ("Ms. Doe") and (3) father ("Mr. Doe"); (4) the Superintendent; as well as BMS's (5) Principal; (6) Assistant Principal; and (7) full-time Resource Officer. Both parties were represented by counsel at the hearing.

1. On February 28, 2018, E. Doe sat with six (6) other students at a table in the BMS cafeteria during the lunch period. The conversation at the table turned to the recent school shooting in Parkland, Florida, which had occurred just two weeks prior.[5]

2. Initially, the conversation concerned what the students would do in the event there was a shooter at BMS. However, at some point in the conversation, four (4) of the seven (7) students at the table began discussing what they would do if they were the shooter.

[2] A hearing *de novo* is one which is heard as if for the first time, i.e., as an entity with original, as opposed to appellate, jurisdiction, would hear it. *See Black's Law Dictionary* at 649 (West, 2014).
[3] *See, e.g., Jason R. v. East Greenwich School Committee*, RIDE (June 6, 2001); *The Parents of a Suspended Student v. The School Committee of the Town of Bristol*, RIDE (February 1, 1983) (applying *de novo* standard in student disciplinary case).
[4] The hearing date was postponed several times due to the parties' scheduling difficulties. Hereinafter, references to the transcript of the October 29 hearing will be preceded by the abbreviation "Tr.".
[5] As we all no doubt recall, on February 14, 2018, a gunman opened fire at Marjory Stoneman Douglas High School in Parkland, Florida, killing seventeen students and staff members and injuring seventeen others. The topic of conversation in the BMS cafeteria on February 28 evidently was the result of a rumor that a school lockdown drill had been scheduled for that day at the school. *See* Tr. at 16.

3. The four (4) students who discussed a hypothetical shooter's tactics often played a video game together called *Fortnite,* which E. Doe explained was "a game where you collect materials and build forts and try to eliminate other opponents." *See id*. at 47, 50. *Fortnite* players use pistols and machine guns, as well as grenades, and E. Doe testified that one of the students at his lunch table said he would use grenades like the ones used in *Fortnite* if he was the shooter. *See id.* at 50, 235-236.

4. E. Doe was consistent in reporting that after the topic of the conversation changed to what one would do if one were actually the shooter, he "didn't present any new ideas or directly state anything" other than to "agree with everyone else" that if he were the shooter, he "would come in through the front door." *See id*. at 19. E. Doe then claimed that he "stopped speaking after that on the topic." *See id*. at 51, 56-57.

5. When asked what he thought was the meaning of the conversation, E. Doe said:

> I don't know. It was not to be taken literally. It was just a conversation they brought up, and it probably wasn't the best thing to have been talking about considering the events; but it wasn't as though they were planning a literal shooting to come into the school and hurt people.

Id. at 54. He said he considered it "sort of a joke." *Id.*

6. A student located elsewhere in the cafeteria evidently overhead all or some portion of the conversation, told his or her parent, and the parent then made an anonymous tip to the Barrington Police Department, reporting that "a group of boys" at BMS had been talking at lunch "about bombs and shooting up the school." One of the boys was identified by name. *See* Barrington Police Department Incident Report # 18-235-OF, Respondent's Ex. 1, at 3. The Barrington Police informed the Superintendent of the report, and sometime that evening the Superintendent contacted the BMS Principal, who confirmed that the students were enrolled at BMS.

7. The Barrington Police then made a visit to the home of the boy who had been identified, and he then identified the other six students at the cafeteria table and identified E. Doe as one of the "three main talkers." *See id*. The police visited E. Doe's home at approximately 10:45 p.m. and interviewed E. Doe and his parents. *See* Tr. at 21, 111-113. According to the Police, "[a]ll the boys offered similar versions of the conversation that took place . . . and assured us that nothing that was said was to be taken literally." *See* Police Department Incident Report, Respondent's Ex. 1, at 3. No criminal charges were made or contemplated.

8. The Barrington Police briefed the Superintendent the next morning, and he then briefed the BMS Principal and informed the Principal as to the conclusion reached by the Police. *See* Tr. at 128. The Principal had to deal with an issue at home the following morning (February 29, 2018) and was slightly delayed arriving at BMS, and so he briefed the Assistant Principal, who was at the school, by phone. *See id*. at 129.

9. Ms. Doe called BMS at approximately 6:45 a.m. on February 29th and somewhere between 7:00 a.m. and 7:35 a.m., the BMS Assistant Principal called her back. According to Ms. Doe, she recounted what had happened the night before, after which the Assistant Principal informed her that the students' lockers and backpacks would be searched. And Ms. Doe testified that the Assistant Principal also informed her that E. Doe would be questioned, but that the police "could not be present" during the questioning, that "it would be quick" and that Ms. Doe "should really have no concerns." *See id*. at 81.

10. The Assistant Principal, while recalling that she informed Ms. Doe that she need not be present during the search of her son's locker and backpack, *see id*. at 207, did not recall discussing the need for Ms. Doe to be present at any questioning of her son. *See id*.

11. The Barrington Police arrived at BMS just as the school was opening, advised the Assistant Principal of what had occurred the night before, and repeated their conclusion that the boys did not pose any threat. The Assistant Principal and the BMS Resource Officer searched the student's lockers and backpacks and nothing out of the ordinary was found.

12. At 8:39 a.m., the BMS Principal, responding to the concerns generated by the presence of police at the school, notified parents, teachers and administrators about the anonymous tip by email, emphasizing that "[i]t was quickly determined that there was no threat to our learning community or environment." *See* Petitioner's Ex. 3; Tr. at 237-238.

13. All seven (7) students at the relevant cafeteria table were then called to the Principal's office and were individually interviewed for twenty (20) to thirty (30) minutes by the Principal and the Assistant Principal in the presence of the BMS Resource Officer, who is also a Barrington Police Department Patrolman.[6] E. Doe's parents were not informed that the BMS Resource Officer would be present during the questioning of their son. *See* Tr. at 92-93, 115, 186.

14. E. Doe testified that the BMS Resource Officer was standing in front of the door while he was being questioned, which he found "intimidating." *See* Tr. at 25-26, 62-63. By contrast, the Resource Officer, Principal and Assistant Principal all testified that the Officer was seated at the table. *See id*. at 142, 184, 212, and 233.

15. The BMS Resource Officer's unrefuted testimony was that he did not participate in the actual questioning of any of the students and: (a) made clear at the outset that he was not there in his capacity as a police officer, but rather as a resource officer, and that no criminal charges were pending or were contemplated; and (b) emphasized to each student at the end of

[6] E. Doe claimed that the students were called to the Principal's office over the school's intercom, *see* Tr. at 23, whereas the Principal recalls that the students were asked individually to report to his office. *See id*. at 133.

their questioning that "everybody makes mistakes," and that they should learn from the mistake rather than let it have an unduly adverse impact. *See* Tr. at 234; 145-46 (Principal's corroborating testimony); and at 212-13 (Assistant Principal's corroborating testimony).

16. The Principal, Assistant Principal and Resource Officer all testified that the students' versions of what had occurred were consistent, and none were aware of any specific evidence contradicting E. Doe's claim that his contribution to the relevant conversation was limited to agreeing with the others that if he were the shooter, he would enter through the BMS front door. *See* Tr. at 142-43, 211-212, 228-29, 236.

17. E. Doe was then questioned by a licensed social worker at the school, who the next day completed a "Risk Screening Documentation Form." *See* Petitioner's Ex. 2. E. Doe's parents were not notified prior to this interview. *See* Tr. at 97, 117, 188.[7] Although the social worker for some reason checked the box on the form suggesting that the "At Risk Behavior that Warranted Initiation of Risk Screening Protocol" was "Homicidal Ideation/Behavior," *see id*. at 1, she concluded after interviewing E. Doe that he "does not appear to pose imminent danger to himself or to others." *Id*. at 2.

18. The Assistant Principal noted that E. Doe "seemed remorseful" and that, as noted, "all of [his] stories lined up with [his] friends from the table." *See* Tr. at 32. In addition, both the Assistant Principal and Principal were aware of the fact that E. Doe was a good student with no disciplinary record, and that the Barrington Police Department concluded that none of the four (4) students posed a threat.[8]

[7] Yet, it appears from the completed form that the school social worker believed that E. Doe's family had in fact been notified. *See id*. at 1.

[8] Indeed, the Principal volunteered that all four (4) students were "respectful boys," adding that "[t]hey are really great. They are great boys. They are -- students tend to look, you know, towards them." Tr. at 153; *see also id*. at 180 ("I think the boys are great boys, and they are respectful.").

19. Yet, the Principal imposed a three-day, out-of-school suspension upon E. Doe and the other three (3) students who had speculated about being a shooter, which was to commence immediately. And he imposed three (3) days of detention upon the other three (3) students who happened to be seated at the cafeteria table.

20. E. Doe was informed of his suspension following his session with the school social worker, and at approximately 1:30 p.m. Ms. Doe was notified and informed that she should pick up E. Doe from school. *See* Tr. at 99-100. Ms. Doe testified that she then asked the Assistant Principal whether the suspension was dictated by school policy, and when told that it was, she asked for a copy of the policy. E. Doe's parents claim that to date, they have not received a copy of any such policy. *See id*. at 102.

21. When asked at the October 29 hearing to explain the rationale for the out-of-school suspensions imposed upon four (4) of the students, the Principal testified that:

> . . . first and foremost, looking at what, what actually, what occurred. And then, you know, in this case, it was a conversation as if they were being active shooters and that, how it was brought to our attention was through the anonymous tip line, so someone in the community was pretty, you know, concerned that a conversation such as this -- so, we have to look at what was said and how does it impact our overall learning community, and we felt that those words and those actions, you know, did have an impact on our community. So, we felt that appropriate, the consequences would be appropriate. So, we, you know, use our handbook as our first and foremost guide as typical consequences.

Tr. at 148-49.

22. The Principal also explained that when considering the appropriate discipline, it was significant to him that:

> someone overheard it and was the potential of other folks overhearing the conversation as well. Just also, too, you're two weeks away from one of the greatest school shootings in the country where 17 students lost their lives, so the context is important.

Id. at 155.[9]

23. The Assistant Principal explained that:

> I think what it came down to, when [the Principal] and I talked about it, is that someone in our school overheard them talking about that; and it was brought to the police matter because that person was not feeling safe at her school. And we kind of went with the thing like that's our number one goal is to keep everyone safe at school; and if one student heard it in the cafeteria -- we have up to 250 kids, 260 kids in the cafeteria, so maybe other kids heard it, and you know, I feel like you can never be too cautious with that, and that we really needed to look at that because, unfortunately, in today's society, it's not uncommon.

Id. at 215-216.[10]

24. The Principal also referenced the BMS Student Handbook which, under the headline "Suggested Guidelines for Natural Consequences" contains a violation entitled "Safety," defined as "[]engaging in or threatening to engage in behavior which would cause physical or emotional harm; fighting, running, throwing articles, shoving, rowdyism and roughhousing, etc." *See id.* (Respondent's Ex. 2) at 27-28.[11]

25. At some point, E. Doe's parents received a letter from the Assistant Principal dated May 16, 2018 stating that it was the "official notification that on March 1, 2018, your son [E. Doe] was found to be in violation of the school policy: Threat/Intimidation" and "as a result

[9] The Principal also noted that he consulted administrators at Barrington High School who recommended imposing a five-day suspension. *See id*. at 157.

[10] And the Assistant Principal added that:

> I think it is just something that should never be brought up in school. You are there for your academics and to socialize with your friends, and school shootings or talking about how you would shoot up your school should never be brought up. It is just very inappropriate.

Id. at 217.

[11] As to the three (3) students who received detention, the Principal testified that it was the result of:
hearing and knowing that a conversation was going on about the, of a potential school shooting as students being in our school, active school shooters and not letting trusted adults know.
Id. at 154; *see also id*. at 223 (Assistant Principal's explanation that detention were issued due to the three students' failure to report).

of his behavior, [E. Doe] has been assigned External Suspension – 3 Days commencing on 03/01/2018." *See* Tr. at 103; Petitioner's Ex. 4.[12]

26. On March 19, 2018, E. Doe's attorney wrote the Barrington Superintendent to appeal the finding that E. Doe had violated school policy and to demand that any record of the discipline be removed from his school record. *See* Petitioner's Ex. 5. The appeal was heard by "an administrative team" represented by the Superintendent, Barrington's attorney, and the BMS Principal and Assistant Principal. *See* Petitioner's Ex. 6.[13]

27. On May 3, 2018, the Superintendent denied the appeal, emphasizing that E. Doe had admitted that "he had participated in the conversation about how the group of boys would conduct a school shooting in Barrington." *Id*. He also stated that the School Department "would not object if you seek to present this matter directly to the Commissioner."

III. POSITIONS OF THE PARTIES

1. E. Doe

E. Doe argued that:

(a) any information Barrington may have obtained about what he allegedly said was obtained illegally inasmuch as:

  (i) "[h]e and the other student witnesses were interrogated by a police officer who was standing by the exit door with his hand on his weapon without any attempt by the School Department to contact his parents for permission in violation of Rhode Island General Laws 16-21.5-2." See *Tr.* at 9, E. Doe's Post-Hearing Mem. at 7-11, or alternatively,

  (ii) the information was the product of a risk assessment given by a social worker "without prior written authorization by his parents in violation of federal law." *See* Tr. at 9-10, E. Doe's Post-Hearing Mem. at 11-13;

[12] Although it is not material, there is some question as to whether this "official notification" was actually sent sometime earlier than May 16, with the date having been erroneously provided when Barrington responded to E. Doe's parents request for a copy of his school record. *See* Barrington Post-Hearing Mem., note 4 at 6.
[13] Although the *de novo* hearing at RIDE effectively moots any due process violations here, it is not advisable to include either the school officials who imposed the discipline, or the school district's attorney, on any team created to decide a disciplinary appeal.

(b) he "never threatened anyone nor did he ever mention harming the school or anyone in it in any way," Tr. at 8, and thus this was "a case of guilt by association . . . guilt because of where E. Doe was sitting in the lunchroom." *See Tr.* at 6-7, E. Doe's Post-Hearing Mem. at 2-6; and

(c) "Barrington doesn't have a formal policy to measure these issues. And the kids have never been formally taught what they can and cannot, or should or should not, discuss in school about these matters." *See* Tr. at 121-22, E. Doe's Post-Hearing Mem. at 12.

2. Barrington

Barrington argued that the BMS "investigation was procedurally sound, the evidence of [E. Doe's] participation was clear and overwhelming, and the disciplinary consequence was proportionate to the conduct." *See* Barrington's Post-Hearing Mem. at 7. More specifically, Barrington claimed that:

(a) E. Doe's testimony at the October 29 hearing "varied materially" from the version of events he provided to school administrators, *see id*. at 9, and thus should not be accepted in the absence of corroborating evidence. *See id*. at 10-12;[14]

(b) E. Doe's speech was "violent" or "threatening" and thus school officials should be afforded discretion when imposing discipline. *See id*. at 13-15; and

(c) the investigation conducted by the school was procedurally correct since E. Doe's parents were provided with timely notification of his suspension, and:

(i) state law pertaining to the involvement of police with student interrogations is not applicable since the role of the BMS Resource Officer "was non-investigatory" and "unrelated to [E. Doe's] participation in the school shooting discussion." *See id*. at 16-17; and

(ii) the procedural notification requirements applicable to school threat assessments were "irrelevant to the validity of [E. Doe's] three-day suspension." *See id.* at 16-17.

[14] Citing *Student H. Doe v. Cranston School Committee*, RIDE No. 0012-11 (June 10, 2011); *In the Matter of A.L.*, RIDE No. 0026-99 (October 15, 1999); and *In the Matter of Student C.V. v. North Providence*, RIDE No. 0012-03 (May 30, 2003).

IV. DECISION

1. Suspensions under the Safe School Act

The resolution of this case hinges upon the plain language of what is commonly referred to as the state's Safe School Act. Although not mentioned by either party, the Act makes clear that:

> 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.

RIGL § 16-2-17.1. And RIGL § 16-2-17(a) provides in pertinent part that:

> A disruptive student is a person who is subject to compulsory school attendance, who exhibits persistent conduct which substantially impedes the ability of other students to learn, or otherwise substantially interferes with the rights stated above, and who has failed to respond to corrective and rehabilitative measures presented by staff, teachers, or administrators.

Id.

Here, the both BMS Principal and Assistant Principal testified that E. Doe was a good student with no disciplinary record. *See* ¶ 18 and note 8, *supra* at 7. In addition, before E. Doe was questioned by the school authorities, the Barrington Police had concluded that he posed no credible threat to school safety. Indeed, the BMS Principal reached the same conclusion and thus notified parents, teachers and administrators by email *before conducting his own investigation,* that "[i]t was quickly determined that there was no threat to our learning community or environment." *See* ¶¶ 11-12, *supra*, at 6.

The facts make clear that E. Doe was neither a "disruptive student" under § 16-2-17(a) nor posed a "demonstrable threat to students, teachers, or administrators" under § 16-2-17.1 and as a result, the imposition of an out-of-school suspension was in violation of an express statutory prohibition. Thus, E. Doe's appeal must be granted and any record of the three-day, out-of-

school suspension he served should be removed from his record.[15] That being said, other issues raised by the facts provide a separate basis for this holding and are worth considering so as to hopefully provide some guidance for school administrators who may face similar issues.

2. The Lack of Due Process

(a) Notice of the Alleged Violation

In *Mathews v. Eldridge*, 424 U.S. 319 (1976) – a case which the Rhode Island Supreme Court has cited with approval on any number of occasions[16] – the United States Supreme Court emphasized that "[t[he essence of due process is the requirement that " 'a person in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it.'" *Id*. at 348 (citation omitted). Yet here, even assuming that BMS timely informed E. Doe and/or his parents as to the specific provision of the BMS Student Handbook that E. Doe was alleged to have violated, the notices of the charge provided by BMS were both inconsistent and bore slight resemblance to the actual facts.

Thus, when asked to explain the rationale for the discipline, BMS's Principal explained that it was based upon the fact that E. Doe had engaged in conduct that had made at least some members of the school community – i.e., the student who overhead all or some portion of the conversation and his or her parent – feel unsafe. *See* ¶ 22 *supra*, at 8-9. And the Principal referred to the BMS Student Handbook's reference to violations under the heading "*Safety*." *See* ¶ 24, *supra*, at 9. Yet later in the "official notification" of the discipline provided to E. Doe's parents, BMS's Assistant Principal claimed that E. Doe "was found to be in violation of the

[15] And although the issue is not before the Commissioner and all the relevant facts may not have been presented, it at least appears that no discipline should have been imposed upon the other six (6) students. Hopefully, if there are no aggravating factors, the Superintendent will provide the same relief to these six (6) students as the Commissioner has ordered with respect to E. Doe.

[16] *See, e.g., City of Pawtucket v. Pimental*, 960 A.2d 981, 988-89 (R.I. 2008); *Gem Plumbing & Heating Co., Inc. v. Rossi*, 867 A.2d 796, 809 (R.I. 2005) and *John J. Orr & Sons, Inc. v. Waite*, 479 A.2d 721, 722-23 (R.I. 1984).

school policy: *Threat/Intimidation*." *See* ¶ 25, *supra*, at 9-10.[17] However, *Threat/Intimidation* is not referenced in the BMS Student Handbook.[18] The closest two entries in the Handbook refer to: (1) "Disruptive Behavior," which is defined as "[c]onduct that presents a danger to persons or property or interrupts the orderly educational procedure of the school." *See* BMS Student Handbook, Respondent's Ex. 2, at 28; and the aforementioned, (2) *Safety*, which, as noted, involves "[e]ngaging in or threatening to engage in behavior which would cause physical or emotional harm; fighting, running, throwing articles, shoving, rowdyism and roughhousing, etc." *See id*. at 27-28. Moreover, the fact that an unidentified parent of an unidentified BMS student decided, on the basis of unidentified hearsay report from his or her child, to make an anonymous report to the Barrington Police Department, is not evidence that E. Doe actually engaged, or threatened to engage, in either: (a) the defined "Disruptive Behavior"; or (b) other behavior which would cause "physical or emotional harm" and thus constitute a *Safety* violation.

In short, the prohibition of certain specific conduct described in the Student Handbook was converted by school officials into an open-ended prohibition against doing or saying anything that might make anyone in the school community – even someone who remained anonymous – feel unsafe, for whatever reason. And none of the factually dissimilar cases cited by Barrington – which all involved acts that were reasonably construed as precursors to violence

[17] Although Barrington argued in its Post-Hearing Memorandum that E. Doe's testimony at the October 29 hearing varied materially from the version of events he provided to school administrators, *see* Barrington's Post-Hearing Mem. at 9, it did not seem to be of much concern to either the Principal or Assistant Principal, neither of whom were focused upon, or could even remember, such details. More significantly, the evidence does not support Barrington's claim that there was in fact a material variance in E. Doe's testimony. *See* Tr. at 142-43, 211-212, 228-29, 236; *see also* Barrington Risk Screening Documentation Form, Petitioner's Ex. 2, at 2.

[18] RIGL § 16-21-21 provides, in pertinent part, that:

> [e]ach school committee shall make, maintain, and enforce a student discipline code . . . The school committee shall cause the school discipline code to be distributed to each student enrolled in the district. Each student and his or her parent, guardian, or custodian shall sign a statement verifying that they have been given a copy of the student discipline code of their respective school district.

Id.

– supports the disciplinary action taken here, *where the school officials knew from the outset that there was no safety threat and stated as much in an e-mail*.[19]

(b). The Student Interrogations

E. Doe also has argued that his due process rights were violated when he was questioned in the presence of a school resource officer who also was a police officer, as well as by a school social worker, without any advance notice having been provided to his parents. It is not necessary to decide here whether or not E. Doe was "in custody" when he was questioned by the BMS Principal and Assistant Principal in the presence of the school's Resource Officer, and thus entitled to certain rights under the federal constitution.[20] Yet, it should be noted that the General Assembly has emphasized that:

> (a) "it is . . . vitally important that parents be given meaningful opportunity to be active and informed participants in situations involving interaction with school resource officers or other members of the law enforcement community in the school setting." RIGL § 16-21.5-19 (c); and

[19] *See Cuff v. Valley Cent. Sch. Dist*., 677 F.3d 109, 111 (2d Cir. 2012) (student's written wish to "[b]low up the school with the teachers in it"); *Ponce v. Socorro Indep. Sch. Dist*., 508 F.3d 765, 771-72 (5th Cir. 2007) (notebook detailing "creation of a pseudo-Nazi group" at school which was ordered "to brutally injure two homosexuals and seven colored" people, and another in which the author describes punishing another student by setting his house on fire and "brutally murder[ing]" his dog, and details the group's plan to commit a "Columbine shooting attack" and in which the author expresses the feeling that his "anger has the best of [him]" and that "it will get to the point where [he] will no longer have control"); *Boim v. Fulton Cty. Sch. Dist*., 494 F.3d 978, 985 (11th Cir. 2007) (student's written "dream" to shot teacher "could reasonably be construed as a threat of physical violence against her sixth-period math teacher"); *Williams v. Cambridge Bd. of Educ*., 186 F. Supp.2d 808, 810-11 (S.D. Ohio 2002) discipline upheld for written statements of three female students made the day after a school shooting that both students had seriously discussed bringing guns or a bomb to school); *Stockton v. City of Freeport*, 147 F. Supp. 2d 642, 647 (S.D. Tex. 2001) (search justified by, inter alia, reasonable belief that student had left threatening letter on school property); and *LaVine v. Blaine Sch. Dist*., 257 F.3d 981, 989-90 (9th Cir. 2001) (school district did not violate high school student's First Amendment rights when it expelled him on an emergency basis after he showed his teacher a poem he had written which was filled with imagery of violent death and suicide and the shooting of fellow students since principal considered student's suicidal ideations, disciplinary history, family situation, recent break-up with his girlfriend and the report of stalking her).

[20] The one arguably relevant Rhode Island case, *In re Harold S.*, 731 A.2d 265 (1999), concerned the need to provide a *Miranda* warning to a student accused of assault and battery, and thus is not particularly helpful, and cases from other jurisdictions are not entirely consistent. *Compare In re R.H*., 791 A.2d 331 (Pa. 2002) (holding that a Miranda warning was required when school resource officers conduct custodial interrogations in school) and *In re* D.A.R., 73 S.W.3d 505 (Tex. App. 2002) (Miranda warning required as student was questioned by a school resource officer with his office door closed) with *In re Erik E.*, No. 1 CA-JV 08-0024, 2008 WL 4216544 (Ariz. Ct. App. Sept. 11, 2008) (students are not in custody when questioned by resource officers because school is not a threatening environment, like a police station, where coercion is likely to occur). *See generally* Wolf, *Assessing Students' Civil Rights Claims against Resource Officers*, 38 Pace L. Rev. 215 (2018).

> (b) "it is the intent of the legislature to increase the level of participation of parents when their minor children are being questioned by law enforcement in school . . ."

Id. at (d). Thus, RIGL § 16-21.5-2 provides that:

> [b]efore making an elementary school pupil available to a law enforcement officer for the purpose of being questioned, the principal of the elementary school, or his or her designee, shall take immediate steps to obtain the oral consent of the parent or guardian of the pupil to permit the questioning.

Id. at (a). And RIGL § 16-21.5-5 makes clear that:

> [f]or the purposes of this chapter, 'elementary school pupils' are the pupils who are enrolled in kindergarten or any grades 1 to 8, inclusive. 'High school pupils' are the pupils who are enrolled in any grades 9 to 12, inclusive.

Id. At the time he was questioned, E. Doe was in eighth grade, and thus was an ""elementary school pupil" under RIGL § 16-21.5-2, and none of the exceptions to the statute were applicable.[21] Moreover, even if E. Doe was not actually questioned by the BHS Resource Officer, it is undisputed that the Officer was present and participated to some degree in the questioning. *See* ¶ 15, *supra* at 6-7.

Thus, since the General Assembly has emphasized that it is "vitally important that parents be given meaningful opportunity to be active and informed participants in situations involving *interaction* with school resource officers," RIGL § 16-21.5-19 (c) (emphasis added), it would have been the better practice for the Principal to have obtained the consent of E. Doe's parents before allowing him to be questioned in the presence of the BHS Resource Officer.

Finally, the questioning of E. Doe by the school social worker and her completion of a risk screening documentation form without first informing E. Doe's parents does not appear to

[21] For example, the delay associated with obtaining parental consent would not have "significantly impede[d] the timely apprehension of a suspect," § 16-21.5-4 (a), nor was there "a substantial risk of immediate personal injury or substantial property damage." *Id*. at (b).

have been a violation of federal law. The *Hatch Amendment* to the *No Child Left Behind Act* provides that:

> [n]o student shall be required, *as part of an applicable program*, to submit to a survey, analysis, or evaluation that reveals information concerning--
>
> * * *
>
> (2) mental or psychological problems of the student or the student's family;
>
> * * *
>
> (4) illegal, anti-social, self-incriminating, or demeaning behavior;
>
> * * *
>
> without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of an unemancipated minor, without the prior written consent of the parent.

See 20 U.S.C.A. § 1232h (emphasis added). Even if one were to assume, for argument's sake, that the quoted subsections were applicable to the facts here, the questioning by the social worker does not appear to have been part of an "applicable program."[22]

In any event, as a practical matter, there was no evidence suggesting that there was any need to have E. Doe engage in the risk screening process because there was no evidence that he posed "any potential risk of safety to a student or the school." *See* the completed Risk Screening Documentation Form, Petitioner's Ex. 2 at 2. And there certainly is no reason to maintain a document in E. Doe's record suggesting that he was "At Risk" for "Homicidal Ideation/Behavior." *See id*. at 1. Thus, the request to remove the completed Risk Screening Documentation Form from E. Doe's record should be granted. *See* RIGL § 16-71-3(5) (parents

[22] As defined by the General Education Provisions Act, 20 U.S.C. § 1221 *et seq*. ("GEPA"), an "applicable program" is:

> any program for which the Secretary or the Department has administrative responsibility as provided by law or by delegation of authority pursuant to law. The term includes each program for which the Secretary or the Department has administrative responsibility under the Department of Education Organization Act [20 U.S.C. § 3401 et seq.] or under Federal law effective after May 4, 1980.

20 U.S.C. § 1221(c)(1). Thus, "the text of the statute and the regulations implementing it indicate that Section 1232h was meant to apply only to programs administered by the Secretary of Education." *See Herbert v. Reinstein*, 976 F.Supp. 331, 340 (E.D.Pa.1997).

have right to expunge school record if information contained therein is "inaccurate" or "misleading").

V. Order

For all of the above reasons:

1. E. Doe's appeal from the May 3, 2018 decision of the administrative team assembled by Barrington's Superintendent affirming the decision of the BMS Principal that E. Doe had violated school policy and imposing a three-day out-of-school suspension, is hereby granted;

2. The three-day suspension imposed upon E. Doe is hereby vacated; and

3. Any and all documents referring or relating to E. Doe's suspension – including the March 1, 2018 Risk Screening Documentation Form, Petitioner's Ex. 2 – shall forthwith be removed from E. Doe's school record.

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ANTHONY F. COTTONE, ESQ.,
as Hearing Officer for the Commissioner

Date: January 4, 2019

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KEN WAGNER, Ph.D.,
Commissioner