State of Rhode Island and Providence Plantations
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Shepard Building
255 Westminster Street
Providence, Rhode Island 02903-3400

Angélica Infante-Green
Commissioner

February 11, 2020

**By electronic mail**
(srapport@whelancorrente.com)

Sara A. Rapport, Esq.
Whelan Corrente & Flanders LLP
100 Westminster Street, Suite 710
Providence, R.I. 02903-2319

Re: Request for Advisory Opinion re *Student E. Doe v. Barrington School Dep't.*, RIDE No. 18-051A (January 4, 2019)

Dear Attorney Rapport:

The request for an advisory opinion in your letter of January 30 is premised upon a fundamental misreading of the referenced decision (the "Decision"). Thus, contrary to the suggestions in your letter, the Decision neither held, nor fairly read, implied, that the Barrington School Committee (the "BSC") was "foreclosed" from:

(1) "imposing any disciplinary consequence upon E. Doe, including an in-school suspension, once it had determined that he did not intend to carry out the shooting and/or that the comments were made as a 'kind of a joke.'" *Id.* at 5; or

(2) "conducting any risk assessment of E. Doe once the Barrington Police Department had determined that it would not issue criminal charges, and once the administration had interviewed E. Doe to assess disciplinary consequences." *Id.*

As Commissioner Wagner noted in the Decision, "[t]he resolution of th[e] case hinge[d] upon the plain language of what is commonly referred to as the state's Safe School Act," *see* Decision at 12, and held that:

> "[t]he 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."

*Id.* at 12. And Commissioner Wagner's conclusion that E. Doe was not such a "disruptive student" was supported, not only by the total and complete absence of any evidence even suggesting that E. Doe was such a "disruptive student," but also by ample and uncontested evidence to the contrary, including the fact that:

(1) The Barrington Police had visited E. Doe's home the night before, interviewed E. Doe and his parents, and assured school officials that "that nothing that was said was to be taken literally," and no criminal charges were made or contemplated. *See* Decision at 12;

(2) Both the Barrington Middle School ("BMS") Principal and Assistant Principal testified that E. Doe was a good student with no disciplinary record. *See id.*; and

(3) The BMS Principal 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 id.*

Thus, Commissioner Wagner correctly concluded that:

> 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.

*Id.* at 14.

The simple, and what should have been uncontroversial, holding of Commissioner Wagner in the Decision simply did not raise or even implicate the hypothetical distinctions you have raised in support of your request for an advisory opinion, and *in the absence of any specific facts*, attempting to answer your theoretical questions and commenting upon the abstract distinctions you have conjured – between, for example, the meaning of "demonstrable threat" in R.I. Gen. Laws § 16-2-17.1 and the meaning of a "threat, actual or implied of physical harm," as set forth in § 16-2-17(a) – would serve no useful purpose.

That being said, one of your questions should be answered specifically. You ask:

> "In implementing R.I. Gen. Laws § 16-21-23.2, are districts afforded the discretion to set the standard for determining whether an individual's 'behavior may pose a threat to the safety of school staff or students'"?

The answer to that question, of course, is yes, with the corollary that the exercise of such discretion is not immune from review, and will be reversed when abused, as was obviously the case with respect to E. Doe.

I hope this has been helpful, and please be advised that this is a "guidance document" under R.I. Gen. Laws § 42-35-2.12.

Sincerely,

A. Infante-Green

Angélica Infante-Green
Commissioner of Education