

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF ELEMENTARY
AND SECONDARY EDUCATION

NARRAGANSETT SCHOOL COMMITTEE

V.

TOWN OF NARRAGANSETT

DECISION

Held: School Committee has a projected deficit of \$553,739.80 for fiscal year 1996 which is attributable to contractual requirements, mandated programs and services which must be funded by the Town through additional appropriation.

Date: April 11, 1996

Travel of the Case

On June 29, 1995 the Chairperson of the Narragansett School Committee notified Commissioner Peter McWalters of a budgetary dispute for the upcoming fiscal year. The matter was immediately assigned to a hearing officer, but hearing was deferred while the parties litigated the issue of jurisdiction. The Town filed a complaint for declaratory judgment in the Superior Court for a determination of whether the Caruolo Act, so called, P.L. 1995 Chapter 173 placed jurisdiction of the dispute in the Superior Court. A decision by Justice Rodgers held that the Caruolo Act did not apply since the School Committee's appeal was filed before the effective date of the law, July 3, 1995. Counsel for the School Committee notified the hearing officer of the ruling on October 12, 1995 and requested that the matter be set down for immediate hearing.

The matter then proceeded for hearing on the dates of November 21, December 18, 1995 and January 5, 25, February 1 and February 12, 1996. The parties by agreement have supplemented the record with additional information, including excerpts from the record compiled in the hearing held with regard to last year's school appropriation. The last piece of supplementary information provided in this record was received on March 26, 1996.

The School Committee has filed a written request for an expedited decision so that it might have sufficient time to respond with any necessary program and/or personnel changes.

The matter has been expedited, and our discussion in this decision on the various issues will be curtailed to a minimum consistent with sound administrative procedures.

Issues:

- (1) Is the current appropriation for Narragansett schools for 1995-1996 sufficient for the school committee to operate a school program which complies with federal and state mandates, and permits the School Committee to meet its contractual obligations?
- (2) Is a surplus from school operations generated in fiscal year 1994-1995
a) available to the Town to offset any deficit projected for this year or b) available to the school committee to fund any non-mandated programs it has chosen to retain this year?

Background

This dispute involves resolution of the issue of whether the educational program in Narragansett schools currently operates above a minimum mandated level. It follows directly upon a similar budgetary dispute for educational funding for fiscal year 1995, and the Commissioner's June 5, 1995 decision that an additional appropriation of \$343,209.50 was necessary to enable the school committee to operate mandated educational programs and services. The programs and services which are at issue this year were not addressed in that decision either because they were put in place just this year, were previously funded by restricted poverty fund monies, or were expenditures the Town did not challenge last year.

Also at issue this year is a surplus fund which was created by unexpended monies appropriated to the school committee in fiscal year 1995. Because the Commissioner's decision directing additional monies for school operations was issued toward the end of the fiscal year, at its close the school committee still had an unexpended balance of \$87,385.50. The school committee seeks to use this fund to compensate students for the underfunded program provided to them in fiscal year 1995. The Committee views the surplus fund as part of the "award" resulting from the Commissioner's June 1995 decision, and argues it should be made available to fund such non-mandated items as fourth-year foreign language courses. These courses were maintained this year despite the school committee's ability to accomplish the teacher layoffs involved in eliminating these courses,¹ because members of the school committee received parental objections that without these programs their children would be unable to compete for entrance into certain highly competitive colleges.

Although we ordinarily include separate findings of facts and summarize the arguments of the parties, given the expedited nature of this decision, we will include such findings and note such arguments in the discussion of each

¹Which they were unable to do in the prior school year because of the March 1st deadline and lack of any prior notice of the community's unwillingness to fund these programs. See the June 5, 1995 decision of the Commissioner at pp. 11-13.

of the disputed areas of the school committee's 1995-1996 budget.

Decision

The school committee's projected budget deficit as of the date of the final hearing, stood at five hundred and ninety-nine thousand and ninety-six (\$599,096.00)² dollars. This amount was supplemented by additional transcript costs documented by the school committee prior to the closing of the record.³ Thus, the projected budget deficit as of the date of this decision is five hundred and ninety-nine thousand four hundred forty-nine dollars and eighty cents (\$599,449.80). As we understand the evidence presented in this case, the areas of dispute are included as projected expenditures in the present school committee budget and included in the projected deficit. Thus, it is the Town's position that the projected deficit should be reduced⁴ by elimination of the costs associated with programs which it argues are clearly not required by federal or state law, or contract.⁵

²School Committee Ex. 1C.

³Last year's decision established the school committee's entitlement to recover these legal costs. See pp. 10-11 of the Commissioner's June 5, 1995 decision.

⁴Several elements of the projected deficit include costs for programs and services which the Town conceded are required; they were unanticipated at the time the school committee adopted its budget and are not contested expenses for fiscal year 1996.

⁵Last year's ruling addressed several elements of the school budget and a determination was made that certain programs and expenditures were not required by contract, law or regulation and, therefore need not be funded by the Town under Exeter-West Greenwich Regional School District v. Exeter-West Greenwich Teachers' Association et al, 489 A2d at 1020.

A. Upper-level language courses

There is no factual dispute that the school committee voted to maintain upper level languages as course offerings this school year- Spanish IV, French IV, and Italian IV, despite the ability to effectuate the necessary teacher layoffs. Last year's ruling indicated that these courses were not required under the state's Basic Education Program for Rhode Island Public Schools,⁶ but maintained funding for the courses because the March 1st deadline for teacher lay off notices had passed before the school committee had notice of the Town's decision not to fund these course offerings. The level IV courses had historically received funding from the Town and traditionally formed part of the high school program. Since the school committee in fiscal year 1995-1996 had ample notice of the lack of support for these courses and opportunity to reduce teaching personnel accordingly, the personnel costs for these courses - \$18,000.00- cannot be recovered this year through additional appropriation from the Town of Narragansett.

B. Introduction to Psychology; Social And Abnormal Psychology

Consistent with the decision of the Commissioner of June 5, 1995, the school committee is not entitled to the \$9,000.00 associated with running "Introduction to Psychology" in the first semester of this school year. The

⁶Regulations promulgated by the Board of Regents for Elementary and Secondary Education under R.I.G.L. 16-7-24.

committee does seek to distinguish the related second semester offering entitled "Social And Abnormal Psychology", course number 945. The school committee argues that the subject matter of this course is not Psychology⁷ but rather Sociology, a subject which is required under the BEP. Weighing in favor of the school committee is the testimony of both the superintendent and the principal of Narragansett High School that in response to last year's decision, the instructor was directed to rework the year-long offering in Psychology to produce a two-semester offering in Sociology. This effort was not completed in time for the first semester.⁸ Both the superintendent and principal also testified that, in their opinion, the revised course emphasized the study of the individual in society, rather than focusing on individual psychological development. Weighing in favor of the Town's position that the second semester offering is actually a psychology course is a course outline which contains many elements of the study of psychology. Testimony in the record was conflicting as to whether the text from last year's psychology course would in fact be used as well.⁹

It is our opinion that the testimony of the Superintendent and the Principal is persuasive on the issue

⁷Which is not required under the BEP.

⁸The first-semester offering, entitled "Sociology Socialization And Psychology" was marked as Town Ex. C; testimony indicated that Exhibit C describes a psychology course which will be further reworked for school year 1996-1997. See Vol. II 12/18/95 p.14.

⁹Mr. Andrews indicated new textbooks had been purchased (Vol. I 11/21/95 p.110) while Superintendent Wedlock's testimony was that the same textbooks would be utilized. Tr. Vol. II 12/18/95 pp.9-10.

of whether course 945, "Social and Abnormal Psychology" is a sociology or a psychology course. We do recognize, however that the Town has raised a legitimate question as to how different this course will actually be in content from last year's Psychology course. Much will obviously depend on the yet-to-be developed curriculum guide for this course and on how the course is actually taught.¹⁰ Given the state of the present record, and the uncontradicted testimony of the school administrators, we must accept their opinion as to the focus of the new course. It's cost-\$9,000.00- is included in the projected deficit.

C. Additional Music offerings at Narragansett High School

In school year 1995-1996 the music program at the high school was expanded to include offerings in guitar, Music Appreciation, Vocal and Instrumental. These courses, which entail a cost of \$3,000 each, supplement the already-existing two sections of band and chorus. Without the additional course offerings put in place this year, students at the high school who wanted to take music were not able to be scheduled into either chorus, band, or any other musical offering. (Tr. Vol. I pp. 89-90).¹¹ The additional offerings resulted in a full, 5/5th music curriculum, which met the scheduling needs of a population of 505 students.

¹⁰See Vol. I pp. 108-110.

¹¹We also note Mr. Andrews' testimony from last year's hearing, pp.68-71, January 23, 1995. The hearing officer was asked to take administrative notice of selected portions of the record from last year's appeal.

This instruction is part of the music education curriculum required under Section 17 of the BEP.

The principal of the high school described both the scheduling problems and staffing shortage which combined last year to produce what he assessed to be an inadequate program under standards imposed by the BEP. Although the superintendent did express a somewhat different opinion with regard to the adequacy of last year's music offerings, his testimony last year was equivocal on this point, and clearly this year he deferred to the building administrator, Mr. Andrews, as to the need to expand the music program to achieve compliance with BEP standards. We should note that, overall, testimony showed that course offerings at the high school were able to be reduced in school year 1995-1996. (Tr. Vol. I p. 96).

D. Enrichment Program at the Pier School

Superintendent Wedlock testified concerning this year's pilot enrichment program at the Pier School, which is a middle school housing grades 5-8 this year. Initially in his testimony the superintendent described the program as consisting of:

bringing in speakers, assembly programs,
...field trips, that would provide
enrichment for the students, especially
some of our gifted and talented
students. Tr. Vol. I p. 59.

Later in the proceedings he described the program, which is projected to cost seventeen thousand (\$17,000.00) dollars

this year, much differently, noting it was still in the formative stages. It will consist of an after-school foreign language program and an after-school drama program, as well as some in service training for Pier School teachers in higher order thinking skills. Tr. Vol. IV 1/25/96 pp. 33-35. He testified that an identification process will be utilized potentially both for eligibility purposes¹² and to ensure that the program services eligible students.

The Town's position is that the \$17,000.00 budgeted for the enrichment program this year should not be funded because a) it is not a mandated program and b) even if it were, the program as described is not likely to provide a direct benefit to gifted and talented students.

Placed on the record by the school committee in support of its position that an enrichment program is required by state regulation is Exhibit 12. This is a December 7, 1994 opinion letter from Commissioner Peter McWalters that such services are required under the BEP. The letter cites the Basic Education Program's requirement that a district's curriculum and instructional procedures:

- ...be designed to meet the varying needs of all children.
- be designed to meet the needs of all students, including those in limited English proficient, special education, compensatory education, and gifted and talented programs; ... (Standard C- Generic Standards).

¹²If the numbers of students participating in the programs must be limited, Superintendent Wedlock testified that the identification process would be used for screening. Tr. Vol. IV pp. 38-39.

The language cited from the BEP is repeated as a standard, or requirement, throughout each of the curriculum topics numbered 5 (Kindergarten) through 20 (Social Studies). We construe the cited language to require that appropriate instructional services be provided to gifted and talented students whether or not a formal program for these students exists in the school district. Some districts have chosen to provide the required services within the structure of a formal program. Other districts have found that more individualized instructional service models fit the needs of their students. Certainly the model chosen will vary with the level of financial support for these activities in an individual school district. The services must, however, be provided and we thus concur with the conclusion reached in the December 7, 1994 opinion letter on this issue.

John Wilkinson, Coordinator for Gifted and Talented Programs at the state Department of Elementary and Secondary Education testified that state funding for gifted and talented programs was phased out in 1992-1993. Since that time his role has changed from one of approving and monitoring gifted and talented programs previously operated under R.I.G.L. 16-42-1 "Education of Gifted Children" to a greatly-reduced function of providing in-service programs for teachers and districts. He noted that instructional services to gifted and talented students had actually expanded in some districts, even though they were supported exclusively with local funds. Mr. Wilkinson testified

extensively about the various instructional models and means of identifying gifted and talented students. His testimony confirmed the school committee's position that although school districts now need not develop a formal program or follow regulations which previously governed services to gifted and talented students, the district must provide these instructional services under the Basic Education Program.

The Town takes issue with the instructional model adopted this year for the pilot program, i.e. the after-school model. We would agree with the Town that testimony confirms that the model selected by the Narragansett School Committee was not the most efficient available in terms of its ability to demonstrate a direct benefit to all gifted and talented students. However, based on the record, it has been shown to be a reasonable method of delivering the required services. Superintendent Wedlock testified that the reason the other instructional models were rejected this year was because of their increased cost, and the budgetary constraints imposed on the district during this fiscal year. Although the school committee would have preferred to adopt the "UConn Model", it did not do so for budgetary reasons (T. Vol. IV pp. 32-34). While the testimony indicated that the University of Connecticut model would more easily demonstrate a direct benefit to the student population required to be served, the model chosen has been shown to be

reasonably calculated to meet the instructional needs of these students. Funding for this program must be provided.

E. Projected Library Expenditures

School Committee Exhibit 11A details expenditures contained in this year's budget for library books. In the case of each of the Town's three schools, expenditures for library books, as proposed, exceeds the minimum amounts required by Section 26 of the Basic Education Plan. The amount by which the total annual expenditures for books exceeds BEP requirements is \$14,748.00. Superintendent Wedlock testified that the proposed expenditures are the minimum amounts necessary to maintain a viable library for each of the schools. (Tr. Vol. III p. 21). The Basic Education Program has not undergone a comprehensive revision, and the committee contends that the amounts specified for library expenditures have not kept pace with inflation and the present cost of library books. Thus, what was a minimum expenditure in 1986 cannot be used as a basic program requirement in 1996. Also, counsel for the school committee argues that in the review process last year, the Town did not seek to challenge the appropriateness of expenditures for library books which exceeded BEP requirements at that time as well. (Tr. Vol. VI p. 84).

Although the Town may not have challenged expenditures for library books last year (Tr. Vol. III p. 23) it has directly challenged the amounts which exceed BEP requirements in this year's budget (Tr. Vol. VI pp. 43-44).

To the extent that school officials, relying on the nature of last year's budget review, assumed that the amounts proposed for library books would not be challenged this year their reliance was misplaced and unreasonable. There is no evidence of an express or implied agreement on the part of the Town officials or affirmative action of any kind on the Town's part. It is such affirmative action which would make such reliance reasonable and arguably result in a legal waiver by the Town of the right to challenge this item in the budget. The Town has retained its right to challenge the proposed expenditures.

While we would agree that the amounts provided as per-pupil expenditures for library books have probably become outdated over the passage of time, it is not a function of the hearing officer to modify the BEP, even if both parties were in agreement, which is clearly not the case here. Until the BEP is amended, which is within the prerogative of the Board of Regents the school committee is not entitled to additional sums for library expenditures.

F. Literacy Program

The budget adopted by the school committee for the fiscal year includes the projected costs of operating a system-wide literacy program.¹³ Exhibit 5 submitted by the

¹³The precise cost associated with operation of this year's literacy program is not clear on this record. Exhibit 3A lists some, but not all, of the literacy positions referenced in the 1995-96 literacy program description (S.C. Ex. 5) Exhibit 3A omits the cost of a 1.0 Reading teacher at the Pier School and does not include the 1.0 reading teacher at the high school. The record does show that many of the literacy program positions were funded last year through the Poverty Fund, and the cost of retaining Poverty Fund positions is listed as an

school committee outlines the activities comprising the program, and identifies the professional staff positions in place to provide the remedial reading, mathematics and guidance services. Part of the cost for this program is reflected in school committee Exhibit 3A which shows the cost of new programs and last year's Poverty fund positions. Most of the literacy program positions were funded last year by a restricted fund designated by the General Assembly as a restricted "Poverty Fund" during fiscal year 1994-1995. The Poverty fund was replaced by an unrestricted equity fund by R.I.G.L. 16-7-20.6 during the 1995 legislative session. Effectively, this means that these positions will have to be supported by local funding for the current school year. The school committee argues that these positions are mandated by R.I.G.L. 16-67-1 et seq¹⁴ BEP Standard 14F. The Town argues that there is no state requirement for a literacy program beyond Grade 3, and that remedial services provided after the third grade are discretionary and , therefore, need not be funded by the Town.

We disagree with the Town's position that school districts have the discretion not to provide services to children who are found to be in need of remedial reading and

unanticipated cost in S.C. Exhibit 1C in the amount of \$266,234. However, that figure does not establish the cost of the literacy program because it does not include the cost of the new reading recovery positions (1.5 or \$45,000) nor does it include the 1.0 Reading position at the high school which was not funded under the Poverty Fund last year. The \$266,234.00 also includes the local share for the cost of the student assistance counselor (\$10,300) whose services are not part of the district's literacy program.

¹⁴The Rhode Island Literacy and Dropout Prevention Act of 1987.

mathematics instruction. The notion of remedial or supplementary instruction in such basic program areas as reading and mathematics is probably implicit in the obligation to teach those areas of the basic school curriculum. It is an explicit requirement in the Basic Education Program as well.

The Generic Standards, Section C, appearing in each of the curriculum areas, including Language Arts/English (Topic 14) and Mathematics (Topic 16) include the requirement that the school district's curriculum and instructional procedures shall:

- ...provide for continuous sequential progress (where appropriate) for each student, including a system for ongoing assessment to ascertain that children have acquired essential skills, and, when necessary reteaching of such skills until attained;
- be designed to meet the varying needs of all children;
- be designed to meet the needs of students in limited English proficient, special education, compensatory education, and gifted and talented programs;... (emphasis added)

The above-cited language provides just part of the regulatory basis for districts' supplementary or remedial services. The responsibility to re-teach basic skills to those students who do not master such skills the first time is clearly stated. Additionally, the BEP requires that the instructional needs of students in "compensatory education

programs" be met. Just as we construe the reference to students in gifted and talented programs to mean gifted and talented students, we interpret the reference to students in compensatory education programs to mean students who need compensatory education, whether or not they participate in a formal program.

Topic 14 of the BEP notes in the introduction that the Language Arts/English program should be designed to meet both individual and group needs at every age and grade level. For secondary-level students BEP regulations specifically require that coursework include remedial reading (Subsection (f)).

As a separate term of art, "literacy" is also addressed independently in state statute and the BEP at Topic 4. The introduction to this section, as well as its components do not support the position taken by the Town that a district's supplementary literacy program can be confined to grades Kindergarten through 3, even when there are students beyond Grade 3 identified as lacking basic literacy skills. Literacy is defined as skills of "reading, writing, speaking, listening, and mathematics". (Topic 4). The introduction notes that the opportunity to acquire these skills is to be provided through programs designed to meet the varying needs of all students. All districts are required to have on file a plan to achieve and maintain the requirements of the Literacy and Dropout Prevention Act (R.I.G.L. 16-67-1 et seq).

Both the regulation, as well as the statute, reference the Commissioner's obligation to designate "for each school district the specific cut of points and grades for required service each year". The testimony of Dr. Marie DiBiasio, who oversees literacy activities and reviews all plans submitted to the state Department of Education for approval was that, in fact, the Commissioner does not designate cut off points or grades for supplementary literacy services. She went on to testify that, in terms of supplementary literacy services in grades Kindergarten-twelve, school districts make their own decision as to which grades will be serviced, and, at their option provide supplementary services beyond grade 3. (See Tr. Vol. V pp. 4-30).

Although Dr. DiBiasio was clear in her opinion that beyond grade 3 supplementary literacy instruction was not a "mandate" to districts, we find that her testimony is not definitive on this issue. Certainly educational experts whose focus is the educational effectiveness of programs they oversee cannot be expected to have the expertise to interpret state statutes. A district's decision on how and when to meet its identified literacy needs may be discretionary but the mandate exists to meet these needs. Perhaps the apparent absence of an annual directive from the Commissioner's office as to "cut of points and grades for required service" described by both the statute and regulations, has resulted in confusion as to the nature of the "option" of districts to address the needs of students

above grade 3. We find that the statute's use of the word "may" in 16-67-2 (3)¹⁵ refers to the possibility that in some districts, and some grades, such supplementary instruction may not be required if students in those classes have already attained these basic literacy skills. It is the timing and method of meeting these instructional needs which is at the option of school districts.

The program as proposed in Narragansett puts emphasis on intensive remediation in the early grades, and contemplates a long-term reduction in the need for services in later years. The program is designed to avert more costly referrals and resulting special education services in later elementary years. The literacy program as it operates in Narragansett has been shown to be a reasonable and cost-effective way of providing the required services.

G. Position of Student Assistant Counselor

The student assistance counselor in Narragansett schools is a full time position which services grades 7-12. Although the position pays a salary of approximately \$44,000.00, the Town of Narragansett pays only a percentage of the cost of this position, i.e. \$10,300.00, with the remaining cost funded through a state drug prevention program. Not all school districts in the state employ such counselor because of limited state funding and there is a waiting list of districts for such funding. (See School Committee Ex. 15 and Town Exhibits K1 and K2).

¹⁵As opposed to "must" or "shall".

The student assistance counselor provides assessment, counseling and referrals to students in grades 7 through 12 as part of the Rhode Island Student Assistance Program. This program is a statewide alcohol and drug abuse prevention/early intervention program that operates in over forty (40) junior and senior high schools in Rhode Island. In Narragansett the services of a student assistance counselor have been part of the school guidance program since 1989. (S.C. Ex. 15). The Town's position is that the Basic Education Program does not require the services of a student assistance counselor, and that the funds budgeted for the local contribution for this position should be denied.

Our reference is to Topic 23 of the BEP -- Counseling and Guidance -- and its description of a required counseling and guidance program. A review of this section, coupled with the facts in the record here regarding the role of the student assistance counselor, causes us to conclude that the student assistance counselor is providing counseling services which are required under the BEP. They are not supplementary services. The student assistance counselor has obviously reduced the need for additional guidance personnel at both the Pier School and the High School. In coordinating such specialized counseling services with services provided by its certified guidance personnel, the school district fulfills its obligation to provide counseling services. The administration utilizes available

state funding. In doing so it reduces local funding needed to support the guidance program. While there is no specific requirement that districts have a student assistance counselor, this does not mean that a district should not provide required counseling services taking full advantage of available state resources. Section 23 speaks precisely to the issue of such resource coordination. The school committee's appropriation should include the \$10,300.00 needed to continue in the student assistance program.

H. Salary Increase to Principal of the High School and Special Education Director; Increase for Clerical Staff

For the current school year the school committee renegotiated the salaries of its high school principal and special education director. The committee entered into binding contracts which resulted in raises in excess of 2.5% over their salaries for the preceding year. Testimony of Superintendent Wedlock established that in each of these individual's cases he had a verified concern as to the competitiveness of their salaries, and their intentions to leave the employ of the Narragansett school system without these raises.¹⁶ The Superintendent testified that their departure would have exacerbated the problem of a high turnover rate in these crucial administrative positions.

¹⁶As we read the contracts with Mr. Andrews and Dr. DeFrances, each would have been able to terminate employment in Narragansett by giving ninety (90) days notice of such intention to the committee. See Town Ex. G and I.

In Rhode Island school committees have the statutory authority to employ all certified and non-certified school department personnel and fix their salaries. Given this statutory authority, and given the factual background of the need to retain these administrators and provide stability in these positions, we find that the school committee has reasonably exercised its authority in entering into these contracts. Our Supreme Court in the Exeter-West Greenwich case established the principle that contracts which are validly entered into by school committees must be funded. The record in this matter therefore supports the inclusion of such salary increases in the 1995-96 budget.

The "increase" challenged for clerical staff presents a different issue. The hearing officer in the appeal of last year's school appropriation found that increases approved for clerical staff (totaling \$3,962 in school year 1994-95) were not required by the BEP or any contract, and reduced the school committee's funding request by that amount. There is little in the record of this year's dispute, except that such increases were nevertheless paid last year (Tr. Vol. II p. 116) and the increased salaries have continued to be paid in the current school year. Given the determination made by the hearing officer last year, coupled with the lack of any additional information in the record before us, it would be inappropriate to disturb last year's ruling on the issue of increased salaries to clerical personnel. We would encourage school and town officials to confer to determine

whether inequities result because of salaries paid to other municipal clerical employees. Certainly a permanent salary freeze for these particular individuals would seem inequitable if other clerical employees of the Town are receiving increases.

I. School Fund Balance

The Narragansett School Committee completed fiscal year 1995 with a fund balance in the amount of \$87,385.50. See School Committee Exhibits 16A and 16B. As we understand the testimony of Dr. Joseph Clark, Administrator for Operations and Business Services of the Narragansett School system, this fund balance has been identified upon review of the fiscal year 1994 compromise with the town, and the Commissioner's June 5, 1995 decision regarding the existence of a deficit of \$18,073 for fiscal year 1994 and the need for an additional appropriation for fiscal year 1995 in the amount of \$343,209.50. We understand the testimony of Dr. Clark to be that he has not yet been provided with a copy of the financial audit which would verify this amount. Tr. Vol. III pp. 80-84. Once verified by audit, any school fund balance has traditionally accrued to the credit of the school committee and been appropriated to meet school expenses in the fiscal year following verification. Tr. Vol. III p. 82.

The School Committee argues that the \$87,385.50 fund balance accruing in fiscal 1995 forms part of the "award" to the school committee by the Commissioner's decision of June

5, 1995. As such, it can be used to supplement any additional appropriation which may be required for this fiscal year, i.e. 1996. The Town argues that such monies are surplus funds which should be used to offset any additional amounts which may be legally required to support schools at a minimum level this year.

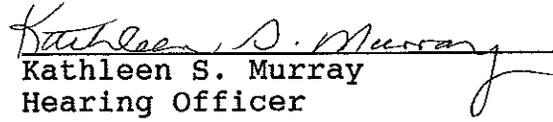
The Commissioner's June 5, 1995 decision required the Town to make an additional appropriation to fund mandated programs and services, and contractual obligations of the school committee in fiscal year 1995. The decision did not, as is argued by the school committee, constitute a compensatory "award". We know of no precedent or legal theory which would make the additional appropriation lose its character as an appropriation and cease to be subject to the routine accounting and fiscal controls. There is no evidence that the Town intentionally delayed the proceedings in order to reduce the ability of the school committee to expend the additional school funds prior to the end of the fiscal year. Even if we were to accept the committee's argument that such additional funds are needed to compensate students for a substandard program operated during school year 1994-95, there is no evidence on this record establishing which, if any, of the components of Narragansett's school program were deficient during that school year.

In point of fact, the type of compensatory programs proposed to be funded by the "surplus" are the fourth year

language courses. We fail to see how the operation of these courses would compensate for a substandard program in the prior year, even if this had been established in the record. While it is regrettable that the process took so long that the full school appropriation was not utilized, we are not persuaded by the school committee's argument as to its entitlement to the remainder of the prior year's appropriation, even though it was ruled a minimum appropriation for that year.

We must note, however, that R.I.G.L. 16-7-20 (f) may apply to this situation in that state education aid to the Town in 1994-95 may have supplanted local funds and generated the monies identified as a school fund balance. The exact amount of the fund balance had not been verified by audit at the time of the hearing, and the parties have not addressed this issue. We find it premature and the record here is inadequate to rule on this final issue. We direct school and town officials to confer to attempt resolution of the "surplus" issue. Should these efforts be unsuccessful, the parties may notify the Commissioner of the need for additional hearing.

While we hold only the issue of the \$87,385.50 in abeyance, we direct that of the total projected school deficit, of 599,449.80 only an additional appropriation of \$553,739.80 must be made by the town for fiscal year 1995-1996.


Kathleen S. Murray
Hearing Officer

Approved:


Peter McWalters
Commissioner

Date: April 11, 1996