



## **Travel of the Case**

On January 22, 2001 an attorney acting on behalf of Susanne Barrach filed an appeal with Commissioner Peter McWalters regarding the decision of the Cumberland School Committee to deny her request for salary credit for her prior teaching service at the Henry Barnard School. The matter was assigned to the undersigned for hearing and decision on January 30, 2001. The parties were asked to agree upon a hearing date, which they did, and hearing in this matter took place on April 5, 2001. At the request of the parties, the record was left open to permit time for review of additional documents and submission of briefs. The record closed on October 10, 2001 upon receipt of the brief filed on behalf of Ms. Barrach.

ISSUE: Is Susanne Barrach entitled to credit for purposes of determining her placement on the salary schedule for her six years of service as a teacher at the Henry Barnard School ?

## **Positions of the Parties**

### **The Appellant**

Since the date of her appointment as a resource teacher at the Garvin School in Cumberland in September of 1997, Susanne Barrach's placement on the salary schedule has not reflected the years of her service as a teacher at the Henry Barnard School. Ms. Barrach was employed at the Henry Barnard School from 1987 to 1993. She takes the position that her six years of employment there should be recognized because under decision of the Rhode Island Supreme Court<sup>1</sup>, teaching at public institutions within the state of Rhode Island must be counted in determining a teacher's placement on the salary schedule.

The basis of the appellant's position is that The Henry Barnard School is not a private school, as the Cumberland School Committee contends, but rather a public school, supported by state funds and functioning as a unit of Rhode Island College. There is no question, counsel submits, that Rhode Island College is a public, tax-supported institution of higher education, the powers and purposes of which are set forth in R.I.G.L. 16-33-1 et seq. In her capacity as a teacher at the Henry Barnard School, Ms. Barrach was employed in the position of Instructor at Rhode Island College, as a nonclassified state employee. During her six years at Henry Barnard, her salary was paid by the state of Rhode Island and she participated in the state employees' retirement system. All of the faculty and staff of the Henry Barnard School are employees of Rhode Island College, a fact which counsel for Ms. Barrach argues is indicative of Henry Barnard's status as a public institution. In addition, counsel points out that the building in which the Henry Barnard School is housed is owned by Rhode Island College and the cost of maintenance and repairs to the building

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<sup>1</sup> Howard Union of Teachers v. State of Rhode Island, 478 A2d 563 (R. I. 1984)

is included in the Rhode Island College budget. The school's personnel costs and other operating costs are included in the Rhode Island College budget, as part of the state's total budget for higher education. The total budgetary allocation for the Henry Barnard School was 2.7 million dollars during this year. The appellant's position is that even though a portion of the Henry Barnard School's revenue is generated by tuition, this does not change its character as a tax-funded public school.

From an administrative, as well as a financial, perspective, the Henry Barnard School operates as a unit of Rhode Island College, counsel argues. He points to the fact that as a laboratory school, Henry Barnard serves an integral function of the mission of the college and the Feinstein School of Education and Human Development. Henry Barnard teachers serve also as Instructors at Rhode Island College, undertaking research, serving as mentors and instructing college students in their clinical work when they are placed at Henry Barnard for their student teaching. Both the principal and assistant principal hold rank on the faculty at Rhode Island College. Dr. Tibbetts, the principal, reports to the dean of the School of Education. The president of the college annually approves the tuition rate charged at the Henry Barnard School. Although the school does not function within the structure of a public school system of a town or city in Rhode Island, and is not under the authority of a superintendent or overseen by a local school committee, the appellant's counsel argues that Henry Barnard School is nonetheless a public school. The determinative factors are the financial support from the state of Rhode Island and the school's function as a laboratory school for the Feinstein School of Education and Human Development at Rhode Island College.

Given that the Henry Barnard School is a "public school" and/or a "public institution" it is argued that application of the Rhode Island Supreme Court's ruling in the *Howard Union of Teachers* case requires salary credit for the years of the appellant's service there. Under the applicable statute, R.I.G.L. 16-7-29, communities must establish a salary schedule for all regularly-employed certified personnel and in determining their compensation according to that schedule, recognize "years of service, experience, and training". Thus, the appellant's attorney submits, her current placement on the salary schedule established for Cumberland's teachers fails to accord her the credit to which she is entitled under the statute.

#### Cumberland School Committee

Prior to a change in its collective bargaining agreement with its certified staff, the Cumberland School Committee was required by contract to credit all prior service and experience of its newly-hired teachers. A 1997 contractual change aligned the requirement to credit prior service to that required under R.I.G.L. 16-7-29. Thus, the school department submits, it has no current obligation to recognize Ms. Barrach's six years of teaching service at the Henry Barnard School, which it contends is a private school located on the grounds of Rhode Island College. Despite its connections to Rhode Island College and the state of Rhode Island, the Henry Barnard School is "markedly different" from public schools, including those administered by municipalities and regional school

districts. As a “tuition-based laboratory school” Henry Barnard bears little resemblance to public schools in this state. Its students are selected for admission. Both a lottery and “date of application” process, coupled with a screening of applicants takes place before a student is admitted. All students except a small number attending the school under the “Providence/Barnard Compact”, pay tuition. Tuition is calculated on an annual basis under a formula which takes into account the school’s total operating costs, as well as cost savings generated to the College by the ability to place Rhode Island College students there for their student teaching. Additional cost savings are generated to the state by the fact that total state education aid is reduced because some of Henry Barnard students would otherwise attend public schools. Any resulting increased enrollment would<sup>2</sup> trigger increased state aid to the various districts in which these Henry Barnard students reside. The notion of tuition, the school department argues, is inconsistent with the concept of a “public” school, and it cites to rulings of the Commissioner which have affirmed that public school students may not be charged fees for any part of their school program.

As a result of the revenue the Henry Barnard School receives from tuition, the school is partially self-supporting. The fact that the school is not fully supported by public funds is argued to be another indication of its status as an independent, private school.

Although Henry Barnard is located on the grounds of a state college and operated by the college, the school itself operates as a private, not a public institution. For example, its faculty is comprised of teachers who hold not only a bachelor’s degree, but who for the most part also hold a master’s degree. The teachers negotiate their initial salary at the time they are hired, and thereafter receive increases negotiated by their collective bargaining agent. The faculty of Henry Barnard are not automatically tenured after three years of service, as is the case with teachers in the public school system in Rhode Island. Henry Barnard faculty are eligible for tenure only after five years of teaching. They may then apply for tenure and submit evidence of their excellence in teaching, research and service to the educational community. If they are not granted tenure, they may remain on staff for only one additional year.

Other examples of the school’s non-public classification are the fact that it is not required to demonstrate that its students are attaining state standards in the subjects in which the state department of education administers annual assessments. While it is generally thought that Barnard students are exceeding those standards, there is no requirement that it demonstrate that its students are actually attaining state education standards through state assessment. The school’s curriculum is set by the faculty, who simply agree on implementing any changes. This is quite a different process than that in the public schools, in which approval to changes in curriculum must be given by both the superintendent and school committee.

Students have no entitlement to attend Henry Barnard, and are subject to a competitive selection process. When they fail to maintain satisfactory behavior they can be excluded from the school without the formalities which accompany “due process,” afforded to their counterparts in the public schools. There is no recourse from the

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<sup>2</sup> until recent changes to the school aid distributions under R.I.G.L. 16-7.1-1 et seq.

Principal's decision such as the appeal process which exists for students dismissed from the public schools in Rhode Island. All of these factors make the school private and not public.

The School Committee advances a second argument, and this is that the word "service" as it appears in R.I.G.L. 16-7-29 means "prior teaching experience in a public school of a city or town" (emphasis added). Counsel cites to the Commissioner's decision in *Janet Ward, et al. v. Lincoln School Committee* (August 15, 1991) as support for this more restrictive interpretation of the word "service." Clearly, under a narrow interpretation of "service", the appellant's employment at an independent private school does not qualify for salary credit. Implicit is the argument that even if the Henry Barnard School is a "public" school, it is not a public school established by or even affiliated with a city or town in the state.

Finally, the School Committee raises the issue that this claim for salary credit is made some three years after the Appellant's appointment to her position at Step 1 of the salary schedule, and after what it views as a long period of time in which Cumberland administrators reasonably believed that the issue of her step placement<sup>3</sup> had been resolved. See footnote 2 at page 9 of the School Committee's brief. The School Committee submits that it is unfair for the Commissioner to even consider Ms. Barrach's claim at this point "despite Barrach's claim that the sole reason she delayed raising the issue was the fact that she was untenured". (footnote 2 p.9 of the School Committee's brief). Counsel notes testimony concerning the appellant's recent financial motivation in seeking higher step placement, arguing implicitly that her prior nontenured status may not have been the actual (or sole) reason for the delay in asserting her claim.

#### **Findings of Relevant Facts:**

- Susanne Barrach worked as a classroom teacher at The Henry Barnard School from 1987 to 1993. Her employment there was as a full-time certified teacher, first under the provisional certificate, and from 1990 on, under various life certificates issued by the R.I. Department of Elementary and Secondary Education. Tr. pp. 14,30-31; Respondent's Ex. A.
- In September of 1997 Ms. Barrach was appointed by the Superintendent to a full time position as a special education resource teacher at the Garvin School. Her appointment to the position with placement on Step One with a Masters degree was approved by the Cumberland School Committee on September 25, 1997. Tr. p.11-13; Respondent's Exhibit B.
- Ms. Barrach has been continuously employed by the Cumberland School Department since 1997 and her salary has reflected her advancement on the salary schedule during this time. Tr. pp. 11,13.
- At the time of her appointment, Ms. Barrach raised the issue of her entitlement to salary credit for her years of teaching at The Henry Barnard School, but she did not

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<sup>3</sup> which had been raised and discussed at the time the Appellant's appointment was recommended to the School Committee.

pursue a change in her salary schedule placement at that time, either by way of a grievance under the collective bargaining agreement or an appeal to the Commissioner. Tr. pp. 26,124,135,138-139.

- Ms. Barrach informed the Superintendent that she would be “seeking clarification” of the issue of her placement on the salary schedule in late November or early December of 2000 because she now had tenure and the family’s financial circumstances had changed. Tr. pp.140-141.
- At the time of Ms. Barrach’s appointment, and continuing to date, the Cumberland School Committee has rarely approved the appointment of a new teacher who is eligible for placement above step 3 of the salary schedule, because it considers the cost factor associated with filling vacancies and new positions and working within a fixed budget. Tr. pp. 120-121, 131.
- Based on the guidance the School Committee had given Superintendent Nasif on the issue of cost factors associated with the salaries of newly-hired teachers, he would not have recommended Ms. Barrach’s appointment in September of 1997 if it were required that she be placed on the seventh step of the salary schedule. Tr. pp.122-123.
- Just prior to Ms. Barrach’s appointment in the Cumberland school system, the collective bargaining agreement was changed to eliminate the requirement that all prior teaching experience, including that in private, as well as out of state, schools, be credited in determining a teacher’s placement on the salary schedule.Tr. pp.111-112; Respondent’s Ex. C1 and C2.
- Based on this contractual change and the fact that he considered Ms. Barrach’s experience at The Henry Barnard School ineligible for credit under the applicable statute, Cumberland’s administrator for human resources decided to recommend her to the Superintendent for appointment to a special education vacancy in September of 1997. Tr. pp. 112-113. He had already received “very good feedback” as to the quality of Ms. Barrach’s teaching skills as a long-term substitute in the Cumberland school system. Tr. p.109.
- The Henry Barnard School is a laboratory school operated by Rhode Island College and located on campus in one of the buildings owned by the College. It has approximately three hundred and fifteen students in Pre-K through sixth grade. Appellant’s Ex. 23, Tr.p.34.
- The Henry Barnard School is a department within the Feinstein School of Education and Human Development at Rhode Island College. Appellant’s Ex.23.
- The school has a dual function: to educate elementary students and to assist in the preparation of future teachers. Appellant’s Ex.23.
- The faculty, administrators and non-certified support staff are employees of Rhode Island College and therefore employees of the state of Rhode Island. Tr. p.46,51.
- The budget for The Henry Barnard School is included in the higher education budget for the state of Rhode Island, as is the revenue of the school, which consists of student tuition and fees. The most recent budget allocation for Henry Barnard was 2.7 million dollars. Tr. p. 36.

- Most students<sup>4</sup> who attend Henry Barnard School pay tuition. The annual tuition is fixed by deducting from the school's budgeted operating costs amounts calculated as "cost avoidance", i. e. cost savings realized by the college and the state of Rhode Island. The College saves the costs it would otherwise expend in placing its students in student teaching assignments with teachers in various school districts and the state saves by reduced state education aid for those students who attend Henry Barnard but who would otherwise attend school in a local public school system. Tr.pp.36-37, 61-62.
- The principal of the Henry Barnard School considers it a "private" school, despite its affiliations with the state of Rhode Island and Rhode Island College. His reasons for doing so include the following: it is not part of a local school district; it has the flexibility to change its school curriculum solely by agreement of the faculty; the school meets state standards voluntarily and is not subject to the state's accountability system through state assessment; its faculty are not automatically tenured after three years of employment and its students pay tuition and are selectively admitted.

### DECISION

It is clear from this record that the Henry Barnard School has many of the attributes of a private school. The school's characteristics, particularly the charging of tuition to its students, are unusual, but not unheard of in a public school setting.<sup>5</sup> What is equally clear from the record, however, is that the Henry Barnard School receives substantial monetary support indirectly from the state of Rhode Island and directly through the budget of Rhode Island College. Its employees are state employees and it is housed in a publicly-owned building. Its teachers are members of the faculty of Rhode Island College, which is undisputedly a public institution of higher education in our state. As a laboratory school which functions as a department within the Feinstein School of Education and Human Development, the Henry Barnard School helps to fulfill an integral part of the mission of Rhode Island College, i.e. the professional preparation of those of its students who wish to become teachers. The school's other stated mission is to provide a quality education to its three hundred elementary-level students.

From this record, summarized briefly above and with more particularity in our findings of fact, we conclude as a matter of law that the Henry Barnard School is a public school. Using both common understandings of the word "public",<sup>6</sup> together with the specific criteria set forth by the Rhode Island Supreme Court in *Price v. Retirement Board*, 298 A 2d 121, (R.I. 1972) and *Pizza Hut Of America, Inc. v. Pastore*, 519 A 2d 592 (R.I. 1987) we find this conclusion inescapable. Because of its fiscal and administrative ties to Rhode Island College and the state of Rhode Island, the Henry Barnard School is public.

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<sup>4</sup> approximately 57 Providence students do not pay tuition, but the Providence School Department pays a reduced tuition for them, pursuant to the Barnard/Providence Compact, the details and purpose of which are contained in the record.

<sup>5</sup> For example, some public school systems in Rhode Island permit non-resident students to attend the district's schools with the approval of the local school committee and upon the payment of tuition, usually in the amount of its per capita student cost.

<sup>6</sup> operated by a public entity or established and maintained at public expense

While it is true that the school differs substantially from most other public schools, and has no ties to a local municipal school system, these differences do not make the Henry Barnard School a private school, as has been argued.

We would note the recent establishment of several charter schools, authorized by the General Assembly under R.I.G.L. 16-77-3, enacted in 1995. One might argue that these schools have, or are anticipated to have, many of the attributes of private schools. However, the statute contains frequent references to the fact that charter schools shall be “deemed to be” public schools and its students are “deemed to be” public school students. Charter schools operate, for the most part, autonomously from the public school districts in which they are located. They are intended to provide diverse and innovative learning opportunities and exercise the type of organizational and program flexibility heretofore exercised only by private schools. Yet, charter schools remain public schools because of their public funding and oversight, as well as by explicit provision of the charter school law.

Although there is no specific statutory authorization for the creation of The Henry Barnard School, and it undoubtedly has many of the attributes of private schools, we conclude on the facts presented in the record that it is nonetheless a “public” school. The present extent of The Henry Barnard School’s freedom from supervision by the Board of Regents and Department of Elementary and Secondary Education may be affected by the perception of these entities that the school is “private”<sup>7</sup>. Our consideration of the appellant’s arguments and acceptance of the argument that The Henry Barnard School is a public school in the adjudicative context in which we make this ruling may cause a reassessment of the extent to which the school should continue to be exempt from the regulatory constraints imposed on other public schools. Important to this reassessment will undoubtedly be the school’s ability to maintain the flexibility it needs to maintain its undisputedly excellent academic program and to continue to fulfill its dual mission as a research-focused laboratory school of Rhode Island College. Our ruling as to its public character should not lead to hasty conclusions as to the applicability of other laws relating to public or publicly funded schools, or even public school teachers.<sup>8</sup>

Our finding that Henry Barnard is a public school does not end our discussion. Resolution of the second argument advanced by the Cumberland School Committee is more complex. As we understand it, the argument is that even if The Henry Barnard School is a public school, and Ms. Barrach was therefore employed as a teacher at a “public school” within the state, her six years there still do not qualify for salary schedule credit under R.I.G.L. 16-7-29. The School Committee would have us reexamine the Supreme Court’s conclusion that creditable “service” under 16-7-29 means “teaching experience and training in public schools within the state” and “teaching experience in public institutions in Rhode Island” to adopt a more limited definition of “service”. The School Committee takes the position that when the Rhode Island Supreme Court

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<sup>7</sup> e.g., the inclusion of the Henry Barnard School in the Department of Education Directory listing of “Independent Private Schools”

<sup>8</sup> For instance, the applicability of the teacher tenure law to the faculty of The Henry Barnard School. We would note that Henry Barnard teachers act in a dual capacity, as certified teachers and as college faculty.

interpreted Section 16-7-29 in *Howard Union of Teachers v. State*, supra, it made reference to the definitions of “service” and “teacher” contained in R.I.G.L. 16-16-1(9) and, at that time, subsection (11).<sup>9</sup> A close reading of the language in these sections indicates that service is defined as service as a teacher:

in the public schools of any city or town in the state, or any formalized, commissioner approved, cooperative service arrangement... (emphasis added) R.I.G.L. 16-16-1(a)(12)

The more precise statutory definition of service is, the Committee argues, teaching experience in a public school “of a city or town” since this language is found in the statutory provision interpreted by the Court. This more limited definition of creditable service has also been that used by the Commissioner, the School Committee notes. In *Ward v. Lincoln School Committee*<sup>10</sup> the Commissioner stated:

The language of the Rhode Island Supreme Court in interpreting 16-7-29 is limited to institutions established by communities to serve children up to the completion of Grade 12 and/or to age 21 for certain other qualified students, i.e., exceptional or handicapped students. Teaching, for this statute, can only be construed to be experience obtained in such institutions.

We are constrained to point out that the language of the Rhode Island Supreme Court in *Howard Union of Teachers v. State of Rhode Island* is not as described in *Ward v. Lincoln School Committee*, quoted above. The language used by the Court is broader, i.e. “public schools within the state” and “public institutions in Rhode Island”. The interpretation of R.I.G.L. 16-7-29 made by the Court in the *Howard* case does not limit creditable service to that in public schools “of a city or town”. This is so despite the fact that the Court made reference to R.I.G.L. 16-16-1 (9) and (11) in construing the statute. Section 16-16-1 (11) defined teacher as “... a person...regularly employed as a teacher in the public schools of any city or town in the state, or any formalized, commissioner approved, cooperative service arrangement”. Whether our Supreme Court intended to limit its interpretation of the word “service” or the phrase “service, experience and training” to the exact language of the definitions appearing in Section 16-16-1 is not clear.

The Court does indicate that it “looked to” the definition of terms provided in the chapter and that those terms “should provide” the meaning of the word “service”. (See the Court’s discussion at headnote four on page 566 of its decision.) Nonetheless, the Court moved beyond the language contained in 16-16-1(11) in stating its conclusions as to the meaning of “service” and “experience and training” in its decision. The Court does not distinguish<sup>11</sup> between in-state public school service in general and service in a public school “of any city or town in the state”. The creditable service is described as “teaching

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<sup>9</sup> The 2001 Reenactment resulted in the re-designation of Subsection 16-16-1(11) as Subsection (12).

<sup>10</sup> decision of the Commissioner dated August 15, 1991

<sup>11</sup> The June 19, 1981 decision of the Commissioner in the *Howard Union of Teachers* case described creditable experience as service in the public schools of any city or town in this state. See footnote 11 of the Commissioner’s decision.

experience and training in public schools within the state” (page 566 of the Court’s decision) and “prior teaching in public institutions in Rhode Island” (page 567). Since the petitioners represented on appeal were those whose experience was in public schools outside the state and/or private schools both in and outside Rhode Island, the Court’s statement of the issue was confined to the issue of credit for the experience of the petitioners. The Court frames its conclusions with respect to the petitioner’s experience, rather than providing a more general construction of R.I.G.L 16-7-29. It therefore becomes our task to resolve this ambiguity in the Court’s decision and determine if 16-7-29 provides credit only for public schools operated by a city or town, but not for other public schools such as those operated by the state or charter schools.

Our task thus becomes a determination of the Legislature’s intent in fashioning a law that requires communities to pay its teachers pursuant to a salary schedule which gives credit for prior service and experience. One would assume that creditable experience and service would be that which was substantially equivalent. The construction of the words “service, experience and training” to include experience in “public institutions in the state of Rhode Island” (the Supreme Court’s language in the *Howard* case) is consistent with this principle. The exclusion only of teaching experience in private schools and out of state public schools is also consistent with this principle. Such construction accomplishes an intent to give credit for substantially equivalent experience. It would not be presumed that teaching in a private school or out of state public school would provide substantially equivalent experience, since private school teachers need not be certified by the Board of Regents and both categories of schools are not subject to educational standards imposed by our Board of Regents. Teachers in public institutions in Rhode Island are required to hold the appropriate teaching certificate for the position in which they are employed.<sup>12</sup> and these institutions are required to meet the educational standards set by the Board of Regents. Conversely, there would be no rational basis for a distinction between the service and experience obtained as a teacher in district-operated schools, versus other in-state public schools. Again, the construction made by the Court in the *Howard* case accomplishes the presumed intent of the Legislature, while the construction argued by the School Committee effectuates no discernable legislative intent. In the context of a salary credit discussion, it would produce, in our opinion, an irrational result.

In addition to the above analysis, we would note that 16-16-1 provides definitions for a statute designed to extend and facilitate participation of teachers in the state employees’ retirement system. Rather than expand the definition of teachers contained in Chapter 16 on Teachers’ Retirement for the inclusion of teachers in state schools, the participation of this group was made the subject of a separate chapter of the General Laws, Chapter 17 of Title 16.<sup>13</sup> Hence, the more limited definition of “teacher” was retained in

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<sup>12</sup> The principal of the Henry Barnard School testified that all of its teachers hold appropriate teaching certificates issued by the Board of Regents although they are not required to do so (because it is considered a private school). Counsel for the School Committee did not argue that Ms. Barrach’s service was not entitled to credit based on the language of 16-16-1 (12) requiring that her service be that of a teacher “required to hold a certificate of qualification issued by or under the authority of the board of education...”

<sup>13</sup> Teachers in state schools are explicitly included in the state retirement system by R.I.G.L. 16-17-1 which provides “teachers in state universities, colleges, or schools shall be covered under the provisions of chapters 8, 9, and 10 of title 36 and chapters 16 and 17.1 of this title.”

Chapter 16, but teachers in state schools were included within this group and the retirement provisions of Chapter 16 by R.I.G.L. 16-17-1. The practical effect of 16-17-1 is thus to expand the definition of teacher as it appears in 16-16-1(a)(12). Application of the narrower definition for salary credit purposes illogically distinguishes between teachers employed by local school districts in Rhode Island and other in-state public school teachers. Common sense does not support such a distinction. Given the entire statutory context coupled with the broad language used by our own Supreme Court in the *Howard Union of Teachers* case, we decline to adopt the more restrictive definition advanced by the Cumberland School Committee. We therefore construe creditable “service, experience and training” as this language is used in R.I.G.L. 16-7-29 as service performed by teachers in public schools within our state. Stated another way, the definition of “teacher” contained in R.I.G.L. 16-16-1(a)(12) is deemed to include those teachers in state schools as set forth in 16-17-1. Using this construction, the appellant’s service as a teacher at The Henry Barnard School is eligible for salary credit.

The School Committee submits that it is “unfair” to consider the issue of Ms. Barrach’s placement on the salary schedule three years after her appointment, and after an initial discussion of credit for her Henry Barnard experience had taken place. The School Committee does not argue that the claim is barred under the doctrine of laches. It may be that the difficult issue of whether the appellant’s nonrenewal as a non-tenured teacher could be premised on her unanticipated entitlement to salary credit has been evaluated and rejected by the School Committee. To our knowledge this issue has not ever been presented for resolution by the Commissioner’s office. It is clear from this record that the appellant was motivated in part to delay asserting her claim until her status became that of a tenured teacher. In this context, then, it is our opinion that the delay in raising this claim does not bar its assertion at this time. The delay may, however, be relevant in determining her remedy, if it is Ms. Barrach’s position that she is entitled to back pay for the entire period in which her placement on the salary schedule was inconsistent with the requirements of 16-7-29. The parties have not addressed the issue of appropriate remedy, and we therefore direct that they confer with a view toward resolving this issue. If the parties are unsuccessful in resolving the issue of appropriate remedy, they should notify the hearing officer and additional hearing will be scheduled.

The appeal is sustained.

APPROVED:

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Peter McWalters, Commissioner

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Kathleen S. Murray, Hearing Officer

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January 11, 2002  
DATE