

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

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**Claudia Gizzarelli**

v.

**Providence School Board**

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**DECISION**

Held: The appellant effectively resigned her position as Assistant Principal at the Asa Messer School and had no legal right to rescind her resignation on October 2, 2003. Under R.I.G.L. 16-13-3 (c) she did, however, have a right to return to the status as a tenured teacher within the system. Although she did not exercise this right formally at the time she resigned, she did communicate sufficient information in a timely manner to the School Department in order to assert rights to the next available position for which she is appropriately certified in school guidance.

DATE: July 9, 2004

## **Travel of the Case**

On October 16, 2003 Claudia Gizzarelli appealed to Commissioner Peter McWalters from a decision of the Providence School Board. At its meeting of October 14, 2003 the School Board had adopted a resolution approving Ms. Gizzarelli's resignation and effectively denying her request that she be allowed to rescind her resignation. She had requested that she be reinstated to her position as Assistant Principal at the Asa Messer School. The appeal was assigned to the undersigned for hearing and decision on October 27, 2003. Evidence in the case was taken on three separate hearing dates, following which briefs and reply briefs were submitted by the parties. The record in the case closed on March 18, 2004.

### **Issues Presented:**

- Does the Commissioner have jurisdiction to hear and decide this appeal ?
- Did Claudia Gizzarelli have the right to rescind the resignation she had submitted to the Providence school department on September 29, 2003 ?
- Is Ms. Gizzarelli legally entitled to return to a position in the Providence school system ?

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

- Claudia Gizzarelli was employed as a teacher, guidance counselor and then Assistant Principal in the Providence school system for a total period of eight years, during which time she attained the status of a tenured teacher. Tr.pp.16-17; Petitioner's Ex.1 and 4.
- In the summer of 2003 she was transferred from her position as Assistant Principal at the Kizirian Elementary School to Asa Messer Elementary School. Tr.p.17.
- On August 21, 2003 Ms. Gizzarelli was appointed as Principal of the Community School in Cumberland, Rhode Island, a position for which she had applied and been interviewed. Ms. Gizzarelli accepted this appointment in writing on August 22, 2003. Respondent's Ex.A and B;Tr.pp.59-63.
- On the same date, August 22, 2003, Ms. Gizzarelli hand delivered a letter to the Human Resources Office of the Providence school department, notifying the department of her new position in Cumberland and indicating that her last day in the Providence system would be August 22, 2003. In the same letter, she requested a one year leave of absence. Petitioner's Ex.1.
- At that time Ms. Gizzarelli saw Superintendent Melody Johnson on her way to a meeting, gave her a copy of her notice, and informed her of her new position as a principal with the Cumberland school department. Ms. Gizzarelli notified the Superintendent that she was requesting a leave of absence from her position in Providence.Tr.p.19.

- Superintendent Johnson replied “We don’t do that anymore”. Tr.p19;68;106-107.
- Nonetheless, on August 28, 2003 a senior administrator in the Office of Human Resources of the Providence school department, Stephen V. Provenzo, wrote to Ms. Gizzarelli that her request for a one year leave of absence from her position had been granted. Petitioner’s Ex.2.
- On September 2, 2003 Mr. Provenzo wrote to Ms. Gizzarelli again, this time notifying her that his prior decision to grant her a leave of absence was an error, and that according to the current contract between the Providence School Board and the school administrators’ union, a personal leave could not be granted for the purpose of allowing the administrator to take employment outside of the Providence system. Petitioner’s Ex.3.
- Mr. Provenzo’s September 2, 2003 letter concluded that “At this time you must either return to the Providence School Department or submit your resignation”. Petitioner’s Ex.3.
- Ms. Gizzarelli, who had been performing her duties in Cumberland since August 25, 2003, responded to Mr. Provenzo on September 29, 2003<sup>1</sup> that she was resigning from the Providence School Department “as of the end of the day on Friday, August 22, 2003”. Petitioner’s Ex.4;Respondent’s Ex.C.
- Subsequently, Ms. Gizzarelli changed her mind and decided that she did not want to resign her position with the Providence school department and on October 2, 2003 her mother hand delivered a notice to Mr. Provenzo’s office that she was rescinding her letter of resignation. Tr.pp.92-95. Petitioner’s Ex. 5
- Despite follow-up letters confirming her intent to rescind her resignation to Mr. Provenzo, Donald Zimmerman (Senior Executive Director of Human Resources) as well as the specific request of her attorney at the meeting of October 14, 2003, the School Board approved a resolution accepting Ms. Gizzarelli’s resignation. Petitioner’s Ex.6,12,13, and 14.
- A newspaper article describing Ms. Gizzarelli’s attempts to return to the Providence School Department resulted in a request by the Cumberland superintendent for her resignation. Ms. Gizzarelli submitted her resignation from that position on or about October 17, 2003. Tr. pp.57-58; 79-82.
- After conducting interviews and recruiting candidates who had successfully completed an “Aspiring Principals’ Program,” the school department selected a replacement for the position of Assistant Principal at Asa Messer School. That candidate was selected on an “acting” or trial basis on September 17, 2003<sup>2</sup> and began the duties of Assistant Principal on October 14, 2003, after a transition period. Tr.pp.186-212. Petitioner’s Ex.11;Respondent’s Ex.H.
- In a telephone conversation with Superintendent Johnson in late September or early October, Ms. Gizzarelli requested that she be reinstated to her position as an assistant principal or placed in a school guidance counselor position if one was available. At Superintendent Johnson’s direction, Ms. Gizzarelli followed up to make the same request of Sharon Glickman, an employee in the Human Resources office of the Providence School Department. Tr.pp. 84,86-88, 109-110, 149.

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<sup>1</sup> in a letter dated September 18, 2003

<sup>2</sup> and notified in writing by an award letter dated September 17, 2003

- Superintendent Johnson also advised Ms. Gizzarelli during that conversation that she would have to submit a written application for a position, if that was her request; as of the date of hearing in this matter, Ms. Gizzarelli had not yet completed and submitted a written application to the school department. Her intent was to do so and to limit her application to the positions of assistant principal and guidance counselor. Tr.pp. 110, 149, 274-275.
- The contract between the Providence School Board and the Association of Providence School Administrators in effect at the time Ms. Gizzarelli submitted her request for a leave of absence provided that a personal leave without pay “shall not be granted” to an administrator for the purposes of taking a position outside the Providence school department. See Article X, Petitioner’s Ex.9.

### **Positions of the Parties**

#### **Claudia Gizzarelli**

Counsel for Ms. Gizzarelli argues that this is a dispute properly placed before the Commissioner for resolution, despite the contention of the School Board that the Commissioner lacks jurisdiction over the case. Although basic principles of law on contracts and resignation are raised by this dispute, the resolution of the case hinges on the application and construction of education laws. Among the provisions cited are R.I.G.L. 16-12.1- 2.1 (termination of administrator), 16-13-3(c) (teacher tenure) and various provisions of Title 16 which allocate authority between school committees and superintendents. The decision of the Providence School Board to approve Ms. Gizzarelli’s resignation, despite her attempts to withdraw it, and its ongoing failure to reinstate her to any vacant position for which she is certified, are argued to be violations of education laws designed to protect teachers and administrative staff in our public schools. The Commissioner is urged to assert his authority to intervene when a school board infringes on such basic and substantial rights of public school administrators as the Providence School Board is argued to have done in this case.

As for the merits, the Petitioner’s counsel submits that this dispute has been caused by a series of events “triggered” by the school department’s mistake, i.e. Mr. Provenzo’s incorrect<sup>3</sup> conclusion that Claudia Gizzarelli was entitled to a leave of absence from her position in the Providence School Department. Since he acted within his authority, Mr. Provenzo’s mistake is binding on the School Department. If one considers principles of equity and fairness, the burden of this mistake should be assumed by the school department. The Petitioner argues that she relied on this mistake in making the decision that she would accept the offer of employment she had received from the Cumberland school department. By the time the error was brought to light, and she had already made a commitment to Cumberland, the right thing for the Providence school department to do would have been to grant her a leave of absence anyway. In the alternative, the school department should have rectified its error by reinstating her to her

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<sup>3</sup> The petitioner does not argue that the applicable contract gave Ms. Gizzarelli a right to a leave of absence and we would not construe the contract to give her this prerogative.

position or an equivalent position within the system when she made that request. It had incurred no added cost in filling her position at Asa Messer<sup>4</sup>, and the person appointed to take her job as Assistant Principal was functioning in an “acting” capacity only, not as a permanent appointment. Given the sequence of events, Ms. Gizzarelli argues that the school department had ample time to recognize and act on the fact Ms. Gizzarelli had withdrawn her resignation. Again, this would have been fair in light of the school department’s mistake.

Apart from the equities of this situation, the legal argument advanced by Ms. Gizzarelli with respect to her resignation is that a valid resignation never occurred. First, Ms. Gizzarelli acted under duress of sorts in submitting the September 18, 2003 notice to the Superintendent because she had already committed to the new position in Cumberland and the new (and unexpected) information regarding her ineligibility to take a leave of absence left her with no choice but to tender her resignation. Once submitted, the resignation was not formally accepted by the Superintendent or anyone employed by the School Board with the requisite authority. She argues that at the time the School Board (the entity with proper authority) voted on her resignation, it had been withdrawn some twelve days earlier. In voting to accept her resignation on October 14, 2003, despite the fact that she had notified Mr. Provenzo, Mr. Zimmerman, Superintendent Johnson and the chair of the Providence School Board, Olga Noguera, that she had rescinded her resignation, the School Board effectively terminated her without good cause.

Even if Ms. Gizzarelli is found to have resigned her position as Assistant Principal with the Providence school department and that she did not have the right to rescind her resignation, her counsel submits that she retains the right to be employed as a tenured teacher in Providence. The letter of resignation received by the school department on September 29, 2003 gave no indication that she was surrendering her right to retain tenured status in Providence. In fact, shortly after it became clear that the School Board and Superintendent would not permit her to resume her former position as Assistant Principal at Asa Messer, or any other administrative position, Ms. Gizzarelli asserted her right to return to a tenured teaching position in the Providence school department. Her verbal communications broadened to include her willingness to accept *any* position for which she held appropriate certification. Despite the request to Superintendent Johnson, as well as staff of the office of Human Resources, that she be assigned to any position she is qualified for, this has not occurred. Counsel argues that the school department’s failure to comply with this request violates R.I.G.L. 16-13-3 (c), which clearly provides for an administrator to return to tenured teaching status “upon termination or resignation of the administrative position”.

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<sup>4</sup> The Providence School Department had already utilized a “generic” posting for vacancies in assistant principal positions in the school department and was already conducting common interviews for the two vacancies it was aware of prior to Ms. Gizzarelli’s notice of her intent to leave the district.

## Providence School Board

At the outset, counsel for the School Board submits that the Commissioner lacks jurisdiction to resolve this dispute, since the issues surrounding the resignation of an assistant principal implicate no education law, but merely general principles of contract/employment law. Specifically, the School Board frames the issue as whether a public employee may unilaterally revoke her resignation after acceptance of such resignation by the appropriate authority. In this posture, the dispute does not “arise under” a law relating to schools or education, a prerequisite to the Commissioner’s jurisdiction. Counsel for the School Board argues that Ms. Gizzarelli should have sought relief in the Superior Court, rather than from the Commissioner of Education.

The arguments of the School Board focus on a central fact - that on August 25, 2003, after communicating to her employer the fact that she had been appointed to the position of principal in the Cumberland school department, Claudia Gizzarelli left her position in Providence. The legal effect of her leaving Providence to assume the new position in Cumberland was to “extinguish” her employment in Providence. She in effect abandoned her position, the School Board argues.

The School Board rejects the contention that on the day she gave her notice in Providence Ms. Gizzarelli labored under the misimpression that she would be able to take a leave of absence from her position as Assistant Principal of Asa Messer. Counsel for the School Board argues that at the time Ms. Gizzarelli left her position as Assistant Principal<sup>5</sup> on August 22, 2003, she had on that very day been made aware that the provisions of the current contract prohibited a leave of absence for purposes of accepting employment outside the Providence school department. Both Stephen Kane, the Executive Secretary of the administrators’ union, and Superintendent Melody Johnson had explained this to her on August 22, 2003. Although there may have been some later confusion created by the letter from Stephen Provenzo of August 28, 2003 in which he mistakenly granted the request for a one year leave of absence, Ms. Gizzarelli should have known that she was not entitled to a leave of absence in order to try out the position in Cumberland. In any event, Mr. Provenzo quickly corrected his mistake and so notified Ms. Gizzarelli on September 2, 2003. There could not, and should not, have been any reliance on Mr. Provenzo’s August 28 letter. If in accepting the position in Cumberland on August 21, 2003, the Petitioner had erroneous information with respect to her entitlement to a leave of absence, this was not the fault of the Providence School Department.

Counsel points to testimony establishing that leave restrictions were made a part of the administrators’ contract during the last round of negotiations for the specific purpose of discouraging last-minute exits from the Providence school system to accept employment elsewhere. Implicit in counsel’s arguments is the notion that any deviation from this provision in Ms. Gizzarelli’s case, or any other, would undermine the objective

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<sup>5</sup> even if she had previously been under the mistaken impression that she would be entitled to a leave of absence under the administrators’ contract with the Providence School Board.

of maintaining administrative stability in the Providence school department. Thus, in writing to Ms. Gizzarelli on September 2, 2003 to inform her that she must either return to her position at Asa Messer or submit her resignation, Mr. Provenzo was merely acting in accordance with the contractual agreement that governed Ms. Gizzarelli's employment with the school department. The information he had previously conveyed in error just a few days previously could not alter the contract's binding provisions.

The second focus of the School Board's argument is also factual – that despite the letter of September 2, 2003 indicating that her return to work or her resignation was expected “at this time” Ms. Gizzarelli did not return to the Asa Messer School and continued to work as a principal in Cumberland. Although she should have realized her response was required immediately so that the administration could take steps to fill her position, she failed to communicate at all with the Providence School Department until September 29, 2003, when she submitted her resignation. If she is not deemed to have abandoned her position on August 22, 2003, certainly her absence, coupled with her failure to return after September 2, 2003, constituted a resignation. By September 29, 2003 the Providence school department had assumed she would not be returning and had acted to replace her.

Although the facts of leaving on August 22, 2003, and not returning upon receipt of Mr. Provenzo's letter of September 2, 2003 are central to the argument that Ms. Gizzarelli implicitly resigned her position, the resignation was clearly effectuated on September 29, 2003, when she submitted a formal letter of resignation to the Office of Human Resources. Counsel for the School Board argues that the submission of the September 29, 2003 letter, and its receipt by Superintendent Johnson's designees in the Office of Human Resources constituted a complete and effective resignation. Clearly, the submission of a formal letter clarified any ambiguity which may have existed. The “acceptance” of the resignation which occurred at the October 14, 2003 meeting of the School Board was a formality, designed only to inform the Board of resignations and other personnel matters on which they were not required to act.

Finally, as to Ms. Gizzarelli's claim that she is at the very least entitled to be reinstated as a tenured teacher in the system, the School Board advances a position consistent with the testimony of its Superintendent, i.e. that she has completely severed her employment with the Providence School Department and there is no obligation to reemploy her.<sup>6</sup> The Board points to the September 29, 2003 letter as an explicit resignation not just of the position of assistant principal, but from her employment as a teacher and guidance counselor as well. Counsel argues that the September 29, 2003 letter is a resignation “en toto” from the system and not just from the specific position she held as assistant principal at Asa Messer. Therefore, the Petitioner has no entitlement to a position within the Providence school system.

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<sup>6</sup> See the testimony of Superintendent Melody Johnson at pages 110, 149-150.

## DECISION

Although there may be some cases involving the resignation of public school employees which fall outside of the Commissioner's jurisdiction, this case is not one of them.<sup>7</sup> The issues here are the validity and finality of Claudia Gizzarelli's resignation as Assistant Principal of the Asa Messer School and her entitlement to reinstatement to her position, or a position, within the Providence school department. We find that in this case resolution of the dispute in its entirety requires application of not only general principles of contract and employment law but also application of specific provisions of Title 16. The ultimate issue of Ms. Gizzarelli's claim to a position within the Providence school system can be resolved only by reference to 16-13-3 (c). Under such circumstances, we find that the case is properly before the Commissioner for resolution.<sup>8</sup>

We find on this record that Claudia Gizzarelli did not abandon her position as Assistant Principal of the Asa Messer School in Providence. Upon making the decision to take the opportunity to serve as a principal in the Cumberland school department, she notified her employer in writing of her plans to leave. Although the notice was extremely short, she clearly set forth her intent and indicated that she did not wish to sever her ties to the Providence school department. The record does not completely explain the cause of her confusion with respect to her entitlement to a leave of absence. She attributed it to her ignorance of the recent revisions to the contract and her knowledge of past practice. Ms. Gizzarelli's testimony with respect to her good faith mistake as to the contract's provisions was credible. In fact, school officials shared in her mistake when, for a brief period of time, they also thought that she was eligible to take a leave of absence and so notified her. Neither Ms. Gizzarelli's confusion nor Mr. Provenzo's error created an entitlement for Ms. Gizzarelli to be granted a leave of absence when the administrators' contract provided otherwise. Thus, when Mr. Provenzo notified her of his error and requested that Ms. Gizzarelli either return to her job or submit her resignation, she thereupon had an immediate duty to return to her position. Her failure to do so after Mr. Provenzo's September 2, 2003 had certain legal implications which we will go on to discuss.

Existing precedent in Rhode Island on the issue of when the resignation of a public employee is final and irrevocable would indicate that a resignation may be written, oral, or implied from conduct. See DeLuca v. Board of Elections, 119 R.I. 59, 376 A2d 326 (1977). We find that Claudia Gizzarelli implicitly resigned her position as Assistant Principal of the Asa Messer School when she did not return within a reasonable time after her receipt of Mr. Provenzo's September 2, 2003 letter. On September 29, 2003 when she submitted a written resignation she formalized and made explicit that which had been

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<sup>7</sup> See the discussion of the Commissioner's jurisdiction in school employment cases in Dennis Smith v. Tiverton School Committee, decision of the Commissioner dated June 26, 2000 and the general discussion of the limits of the Commissioner's jurisdiction in Laidlaw Transit Inc. v. South Kingstown School Committee, decision of the Commissioner dated April 6, 1992.

<sup>8</sup> See also Cocozza v. Providence School Board, decision of the Commissioner dated August 2, 1985, reversed by the Board of Regents in a decision dated January 9, 1986. The issue in Cocozza centered on whether Mr. Cocozza, a tenured teacher, had effectively resigned as a tenured teacher from the Providence school department.

implied by her conduct. At that point she clarified what may have been an ambiguous situation created by her absence from her position at Asa Messer and her ongoing employment by the Cumberland school department. Her written communication to the School Department dated September 18, 2003 and received in the Human Resources office on September 29, 2003 was a clear indication of her intent. The legal effect of her letter, coupled with her absence from her position at Asa Messer after September 2, 2003, was to make her resignation final and, absent the consent of her employer, irrevocable.

Thereafter, any decision to permit her to return to her position at Asa Messer was clearly discretionary on the part of the Providence school department. Since a candidate to fill the position of Assistant Principal at Asa Messer had already been selected and notified of her appointment<sup>9</sup> at the time Ms. Gizzarelli sought to return, the assessment of school officials that her request was too late was reasonable. The School Board's decision to affirm the Superintendent's position that Ms. Gizzarelli could not rescind her resignation was not, under the facts of this case, arbitrary or capricious. The School Board's vote to "approve" Ms. Gizzarelli's resignation on October 14, 2003 was not legally required because under current law such routine personnel functions do not require Board approval. See R.I.G.L. 16-2-11(a)(8). We also reject the Petitioner's argument that the School Board's approval of her resignation was tantamount to termination under R.I.G.L. 16-13-3 and 16-13-4. It was Ms. Gizzarelli's own decision to initiate the unfortunate chain of events that culminated in her resignation on September 29, 2003. The school department merely responded to the situation and at the point in time at which she sought to be reinstated, exercised the discretion it was entitled to exercise.

Ms. Gizzarelli has, however, retained a statutory right to resume tenured status within the Providence school department under the provisions of R.I.G.L. 16-3-3(c). This section entitles an assistant principal, such as Ms. Gizzarelli, to return to her former status as a tenured teacher within the system "upon termination or resignation of the administrative position". Even if one were to construe Ms. Gizzarelli's letter of resignation as a resignation from the Providence school department en toto, as argued by counsel for the school department, the Petitioner asserted a desire to be placed in a vacancy in guidance immediately after submitting her resignation. According to the testimony of both Ms. Gizzarelli and Superintendent Melody Johnson, in conversation in late September or early October Ms. Gizzarelli requested that she be considered for placement in any vacancy in guidance.<sup>10</sup> The Petitioner reaffirmed this request in discussions with staff at the Office of Human Resources. Although the record does not demonstrate the formal exercise of a right under the statute, nor did Ms. Gizzarelli reduce her request to writing until the submission of the brief in this appeal by her counsel, the school department has been on notice of her request since the time this dispute arose. Applying 16-13-3 (c) to these facts we must conclude that Ms. Gizzarelli has preserved her rights to return to tenured status in the Providence school system. She has to date

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<sup>9</sup> even though on an acting, or probationary, basis

<sup>10</sup> Even at the time of hearing, Ms. Gizzarelli limited her request to vacancies in guidance for which she was appropriately certified.

limited her request as one to fill the first available vacancy in guidance for which she is qualified. We agree that she has this entitlement under state law.

While her appeal is denied with respect to reinstatement to her position as Assistant Principal, it is sustained with respect to her resumption of tenured status in the Providence school system. She should be placed in the next available vacancy in guidance for which she holds appropriate certification.

For the Commissioner,

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Kathleen S. Murray, Hearing Officer

APPROVED:

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Peter McWalters, Commissioner

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July 9, 2004

Date