

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

**Kevin D. Quinn**

**v.**

**South Kingstown School Committee**

**DECISION**  
**ON**  
**MOTION TO DISMISS**

Held: The Appellant's claim is dismissed for lack of jurisdiction. The issue of whether Mr. Quinn's constitutional rights are violated by a provision of the collective bargaining agreement which provides a stipend for teachers who hold certification from the National Board for Professional Teaching Standards, but not for national board certification as a school guidance counselor, is not a claim over which the Commissioner has been granted, or should exercise, jurisdiction.

DATE: July 31, 2007

## **Travel of the Case**

On December 13, 2006 Mr. Kevin Quinn, a guidance counselor at South Kingstown High School, appealed to Commissioner Peter McWalters from a decision of the South Kingstown School Committee denying his request for payment of a stipend for “National Board Certification”. Payment of the stipend was provided for in the collective bargaining agreement between the South Kingstown School Committee and the NEASK. The undersigned was designated to hear and decide this appeal on January 9, 2007. An initial Motion to Dismiss for lack of jurisdiction was filed and decided in the School Committee’s favor on April 16, 2007. The issue of whether a second claim, that the contractual provision in dispute violated Mr. Quinn’s right to “equal protection under the General Laws of Rhode Island” was one over which the Commissioner exercised jurisdiction was deferred until the time of hearing<sup>1</sup>. However, on May 16, 2007 a second Motion To Dismiss was filed on behalf of the School Committee. Mr. Quinn’s written response to the Motion was received on May 24, 2007.

## **Issue**

Does the Commissioner have jurisdiction over Mr. Quinn’s appeal?

Has Mr. Quinn waived his right to assert an Equal Protection claim because he failed to raise this argument before the School Committee or in his appeal to the Commissioner?

## **Factual Background**

The facts in this matter are described in a decision on the initial Motion to Dismiss, issued on April 16, 2007. Mr. Quinn holds a certificate issued by the National Board for Certified Counselors, Inc. This certificate fails to qualify him for a stipend of three thousand (\$3,000) dollars per year as set forth in the collective bargaining agreement in effect in the district because the agreement limits payment of the stipend to teachers who earn National Board Certification. During school years 2005 and 2006 Mr. Quinn took the position that the certification he holds rendered him eligible for the stipend provided in Article 8-C-3(d) of the collective bargaining agreement. In the April 16, 2007 decision on the School Committee’s Motion to Dismiss, the Commissioner ruled that the dispute over the restrictive interpretation of the collective bargaining agreement that had been made by the South Kingstown School Committee<sup>2</sup> was a matter over which the Commissioner lacked jurisdiction. The dispute was one of contractual interpretation and the parties’ intent, not a dispute which “arises under” state education law.

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<sup>1</sup> Given that the issue involved the validity of a provision of the collective bargaining agreement, a request was made to NEASK to become a party to the appeal.

<sup>2</sup> An interpretation that had been shared by the NEA South Kingstown, Mr. Quinn’s union.

The January 25, 2007 letter Mr. Quinn had submitted in response to this initial motion to dismiss had indicated that he was seeking “equal protection under the General Laws of Rhode Island” and that he felt discriminated against because his “national certification” received different treatment from that accorded to certification by the National Board for Professional Teaching Standards. In light of these new claims, the hearing officer granted the Motion to Dismiss as to the contractual issue, but denied it with respect to the second claim which appeared to be constitutionally-based.

Thereafter, on May 16, 2007 the South Kingstown School Committee filed a second Motion to Dismiss, based on arguments that the Commissioner of Education lacked jurisdiction over constitutional claims when they did not arise in the context of deciding disputes arising under a law relating to schools or education and that the Appellant had waived his constitutional claim. Mr. Quinn, proceeding pro se, responded to the Motion to Dismiss in writing on May 22, 2007.

### **Positions of the Parties**

#### **South Kingstown School Committee:**

In the memorandum filed in support of its Motion to Dismiss, the School Committee argues that because Mr. Quinn failed to raise his Equal Protection claim at any time during proceedings before the School Committee, or in filing his appeal with Commissioner McWalters, he has waived the right to assert this claim. Mr. Quinn’s original, and consistent, argument was one of straight forward contractual interpretation—that the terms of the contract should be interpreted to recognize his certification from the National Board of Certified Counselors, Inc. and that he should be paid the stipend. In litigating this issue before the School Committee no mention was made of a violation of his constitutional rights. When he proceeded to take an appeal from the School Committee’s decision, again no mention of any claim, save for the allegation that the School Committee’s interpretation of the contract was erroneous.

The School Committee argues that it is well settled that an appellant cannot raise an argument in support of his or her position for the first time on appeal. The logic of this doctrine is that opposing counsel cannot respond adequately after evidence has been taken and initial rulings are made. Notions of judicial economy are also relevant in requiring a litigant to present each and every claim during his or her initial presentation of the case before the hearing tribunal. Although the Rhode Island Supreme Court has not expressly held that the “raise or waive” doctrine is applicable to administrative proceedings, the Superior Court has done so on two occasions. Citing the decision of Ms. Justice Savage in the case of Neuschatz v. Reitsma, 2004 WL 1351325 (May 24, 2004), counsel submits that the same sound reasons for invoking the waiver doctrine in that case are present in Mr. Quinn’s appeal. As a result, he should be barred from raising his constitutional argument at this late date and it should be summarily dismissed.

A second basis on which to dismiss this matter is the Commissioner's lack of jurisdiction over constitutional claims. The laws establishing the Commissioner's authority to adjudicate disputes does not extend that authority to constitutional matters. Even presuming that the Commissioner's jurisdiction over constitutional issues can or should be exercised in disputes which also raise issues arising under a law relating to schools or education<sup>3</sup>, in this case the constitutional issue stands alone. Thus no argument that pendent jurisdiction or administrative efficiency should enlarge the customary scope of the Commissioner's adjudicative authority can be made.

The general mandate of the Commissioner's office, in the context of adjudications, is to interpret, administer and enforce state education law. This arguably creates a level of expertise in such matters from which litigants, and the public at large, can benefit. There is no reason to anticipate that there is any expertise that an education agency can draw upon in resolving a purely constitutional dispute. Exercising jurisdiction in such a case would not be consistent with the objectives of the Commissioner's office.

Finally, the School Committee asserts that if the Commissioner were to adjudicate this dispute pursuant to the usual administrative procedures, the Committee would be deprived of its constitutional right to a jury trial, guaranteed by the Rhode Island Constitution, Article 1 Section 15. Since the Appellant is seeking to recover monetary damages (the annual payment of a \$3,000 stipend), this case sounds in law, rather than equity, and it is the prospect of a legal remedy which entitles the School Committee to a jury trial. Based on this additional reason, the Commissioner should dismiss Mr. Quinn's appeal.

### Kevin Quinn

According to Mr. Quinn's written response to the Motion to Dismiss, the School Committee's motion lacks merit. He contends that he has consistently raised the issue of the unequal application of the law with respect to his National Board certification. This is not an argument that he has presented for the first time on appeal. In addition, he continues to rely on a South Kingstown School Committee policy (Administrative Organization Policy #2140) which entitles any employee (of the district) to appeal to the next higher authority, the Commissioner, if he or she disagrees with a decision of the School Committee. Mr. Quinn also notes that R.I.G.L. 16-1-5 (Subsection 10) confers general appellate authority on the Commissioner, i.e. "to decide such controversies as may be appealed to the Commissioner from decisions of local school committees". He insists that the Commissioner hear the facts in this case and ensure compliance with laws prohibiting discrimination in the public school districts.

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<sup>3</sup> Such as a due process issue raised in the context of a teacher termination appeal, or a First Amendment issue in a student discipline case, or as most recently raised, in a case involving restrictions in the type of photograph a student could submit for his yearbook. See H. Doe v. Portsmouth School Committee, decision of the Commissioner dated January 19, 2007.

**DECISION**

There is clear merit in the School Committee’s argument that the Commissioner is precluded from exercising jurisdiction over constitutional claims apart from an education law context. The Equal Protection claim rather obliquely raised by Mr. Quinn stands in isolation from the interpretation or enforcement of any education law. The claim is premised upon a provision in the collective bargaining agreement negotiated by the School Committee and the NEA of South Kingstown. The validity of the provisions of such agreement, and the implications of a claim that a particular provision operates to violate the constitutional rights of a member or members of a collective bargaining unit is not within the jurisdiction of the Commissioner. The arguments made and cases cited by counsel for the School Committee are persuasive. Mr. Quinn’s argument that the Commissioner must and/or should exercise jurisdiction over this claim lack merit.<sup>4</sup>

With respect to the additional ground for dismissal under the doctrine of waiver, the arguments are strong and precedent cited is supportive, but we decline to rule that Mr. Quinn has waived his rights due to his failure to articulate his constitutional claim in proceedings before the School Committee. The reason is that such a ruling could have significant implications for those who appeal to the Commissioner for relief or for enforcement of education laws and regulations. The arguments against imposing a “raise or waive” rule in administrative proceedings before the Commissioner have not been presented because the Appellant, Kevin Quinn, appears pro se. It would be more appropriate to rule on this important issue after both sides of the argument have been presented, as would be the case when both sides are represented by legal counsel. Given that the Motion to Dismiss filed by the School Committee is supported by another ground, the School Committee is not disadvantaged by deferral of this issue to another case.

For the foregoing reasons, the Motion to Dismiss of the South Kingstown School Committee is granted, and this appeal is dismissed.

For the Commissioner,

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Kathleen S. Murray, Hearing Officer

APPROVED:

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Peter McWalters, Commissioner

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Date July 31, 2007

<sup>4</sup> Especially his claim that R.I.G.L. 16-1-5 confers general appellate authority on the Commissioner, without the limitation that the appeal involve a law related to schools or education. The decision of the Board of Regents in LaPierre v. Cranston School Committee, May 11, 1989 affirmed that the jurisdiction of the Commissioner over appeals from decisions of local school committees did not extend to noneducational matters. Although the LaPierre case involved the appellate authority granted to the Commissioner under R.I.G.L. 16-39-2, the same principles apply to R.I.G.L. 16-1-5. The Regents noted in LaPierre that “To deal with noneducational matters brings no special insight to the subject and adds a distracting burden to the Commissioner’s office. In our view there is no good reason to allow the Commissioner’s office to become embroiled in every conceivable dispute involving a school committee’s actions” (decision at page 2).