

STATE OF RHODE ISLAND  
AND PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

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Anne Marie Quattrucci

v.

East Providence School Committee

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**DECISION**

Held: The Commissioner has retained jurisdiction of a claim held in abeyance during prior proceedings and is authorized to determine damages due the Appellant based on his October 28, 2002 decision that the School Committee missed the statutory deadline in terminating her employment as a tenured teacher. The Appellant is entitled to damages as specified herein. Offsets for unemployment benefits she received during that year, and earnings from employment, are appropriate. The School Committee is not entitled to an offset for the cost of medical insurance benefits that it voluntarily provided to the Appellant after she was terminated.

DATE: October 17, 2007

## Travel of the Case

We will not reiterate the travel of this matter up to the point of the Commissioner's decision of October 28, 2002. That decision addressed two claims presented by Ms. Quattrucci. The parties had agreed to proceed on the issues of whether there was "just cause" for her termination and whether notice of her dismissal was timely under state law. The issue of whether the School Committee had provided Ms. Quattrucci with a timely post-termination hearing and decision was held in abeyance. The Commissioner's October 28, 2002 decision was appealed to the Board of Regents and thereafter to the Rhode Island Superior Court. At each level of review the Commissioner's decision was affirmed. The decision of the Superior Court was filed on May 30, 2006 and an order was entered on June 14, 2006.

In a letter dated July 17, 2006 the Appellant requested additional hearing before the Commissioner to address the outstanding issue of whether the East Providence School Committee had violated her rights to a timely post-termination hearing and to address the issue of remedy.<sup>1</sup> The matter was then scheduled and heard on November 16, 2006, at which time several exhibits were submitted into evidence. Memoranda were then submitted by counsel for both parties, a process which concluded on February 27, 2007. The record in this matter closed at that time.

## ISSUES

- ◆ Does the Commissioner have jurisdiction to determine the issue of whether the East Providence School Committee violated Ms. Quattrucci's right to a timely post-termination hearing and decision?
- ◆ Does the Commissioner have jurisdiction to determine the issue of remedy/damages to which Ms. Quattrucci may be entitled?
- ◆ If Ms. Quattrucci is entitled to unpaid salary or other damages, is the School Committee entitled to offsets for the amount of money she earned during this period, unemployment benefits she received, and the cost of health insurance the Committee purchased on her behalf after she was terminated?
- ◆ Is Ms. Quattrucci entitled to payment of pre-judgment interest on any damages she is owed by the East Providence School Committee?

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<sup>1</sup> The issues placed in abeyance at the time of initial hearings in this matter have also been raised informally during the course of subsequent proceedings. A clarification of the Commissioner's decision was requested by the parties just after the Board of Regents' October 28, 2004 decision. Clarification was provided by the hearing officer in a conference call on December 9, 2004. A follow up written request by the Appellant for further hearing to address outstanding issues of both remedy and the due process claim was submitted on January 18, 2005. After receipt of this request, and the School Committee's written response, the hearing officer responded in writing on February 11, 2005 again to clarify the decision, and to indicate that additional hearing could not be scheduled yet because an appeal from the Regents' decision had been taken and was pending in Superior Court. The hearing officer indicated at that time that she was without authority to schedule further hearing "until the matter is remanded to me, or is otherwise properly at the Commissioner's level". Appellant's Ex. 1.

## **Findings of Relevant Facts:<sup>2</sup>**

- ◆ On May 5, 1998 Anne Marie Quattrucci, through her attorney, requested that the East Providence School Committee provide her with a hearing on the issue of her termination as a tenured teacher in the school system.<sup>3</sup> Appellant's Ex.2.
- ◆ After Ms. Quattrucci requested a post-termination hearing by the East Providence School Committee, a period of time elapsed during which the parties attempted to resolve their dispute. Appellant's Ex.2.
- ◆ On November 19, 1998 Ms. Quattrucci's attorney advised the School Committee's attorney that settlement discussions had come to an end and requested that as soon as the newly-elected members of the School Committee took office in December, that the Committee proceed to schedule a hearing on her termination. Appellant's Ex. 2.
- ◆ On November 20, 1998 counsel for the School Committee wrote to Ms. Quattrucci's attorney to confirm that settlement discussions had been discontinued and that she had exercised her right to a hearing under R.I.G.L. 16-13-4. He indicated that he would be contacting Ms. Quattrucci's attorney regarding scheduling the hearing in the near future. Appellant's Ex.2.
- ◆ The first hearing on Ms. Quattrucci's termination was held on May 4, 1999; a second hearing was held on May 19, 1999. A third hearing was held on September 27, 1999 and was adjourned over Ms. Quattrucci's objection. When counsel for Ms. Quattrucci received notice of two additional dates, he elected to file an appeal with Commissioner McWalters on October 18, 1999. The appeal alleged that the delay in completion of the hearing deprived his client of her right to a hearing and decision within a reasonable time in violation of her statutory and due process rights. Appellant's Ex.2.
- ◆ At the Commissioner's level, this appeal was held in abeyance for over a year and a half at the request of the parties pending their ongoing efforts to reach an agreed-upon resolution of the issues. On June 1, 2001 counsel for Ms. Quattrucci notified the hearing officer that settlement discussions had not been successful and that a hearing would be necessary.<sup>4</sup>
- ◆ After hearing by the Commissioner's designee, a decision was issued on October 28, 2002. The Commissioner's decision deferred the effective date of Ms. Quattrucci's termination to the beginning of school year 1999-2000 because the School Committee had not terminated her by the March 1<sup>st</sup> deadline. Ms. Quattrucci would have earned \$48,290.82 from May 1,1998 through the end of the 1998-1999 school year, after deductions for income she earned during this period and unemployment compensation she received. Appellant's Ex.3C.

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<sup>2</sup> The findings of fact contained in the Commissioner's October 28, 2002 decision are hereby incorporated by reference.

<sup>3</sup> The School Committee had voted on April 23, 1998 to terminate Ms. Quattrucci, effective May 1, 1998.

<sup>4</sup> Hearings were then scheduled and concluded on October 4, 2001. Memoranda were submitted by the parties on February 22, 2002 and a decision issued on October 28, 2002.

- ♦ At the time of hearing on the issue of damages, interest of \$46,231.08 had accrued on the principal amount owed to Ms. Quattrucci by the East Providence School Committee, with additional interest accruing at a rate of \$16.10 per day from December 1, 2006. Appellant's Ex.3C.
- ♦ During the period May 1, 1998 (the initial date of her termination by the School Committee and October of 2004 (when the Board of Regents affirmed the Commissioner's decision that her termination was supported by just cause) the School Committee voluntarily continued to pay for Ms. Quattrucci's health insurance coverage. The cost of such health insurance was \$18,991.00. Joint Ex.1.

## **Positions of the Parties**

### The Appellant

Counsel for Ms. Quattrucci argues that the Commissioner has retained jurisdiction over this dispute, despite the position of the School Committee that he has not. Clearly, continued jurisdiction is in order so that the Commissioner can implement his October 28, 2002 decision. If that decision is not implemented, Ms. Quattrucci will be deprived of an appropriate remedy simply because she exercised her right to appeal the initial finding that there was good and just cause for her termination. After nine years of appeal, Ms. Quattrucci will be left without a remedy because she sought review of the Commissioner's initial decision. Full litigation of one issue (whether there was just cause for her termination) should not deprive her of a remedy for the claim on which she did prevail, i.e. the failure of the School Committee to notify her of her termination by the March 1<sup>st</sup> deadline.

Ms. Quattrucci's additional claim that she did not receive a timely post-termination hearing by the School Committee was held in abeyance during the period of time appeals were pending in this matter. The reason that this issue was not heard initially was that bifurcating the hearing made eminent sense in that a ruling on the first two claims may have made moot her due process claim (failure to receive a prompt post-termination hearing by the School Committee). For similar reasons of efficiency, hearing on damages was effectively deferred until the merits of her various claims could be determined. Such is the practice of the Commissioner in hearing wrongful termination cases and this case was no exception, submits the Appellant.

The School Committee's argument that Ms. Quattrucci was not terminated, but rather that she was constructively suspended (and therefore the March 1<sup>st</sup> deadline did not apply) is an argument that was not made during the initial hearings before the Commissioner. This argument has been waived. The issues of whether Ms. Quattrucci was (a) terminated on the basis of just cause and (b) whether she received timely notice of her termination have been conclusively determined and are res judicata. The decision that there was just cause for her termination, but that she was not provided with timely notice under the statute, has been affirmed in full by both the Regents and the Superior Court. To the extent that the School Committee raised the "constructive suspension" argument on appeal

before the Board of Regents and on subsequent review by the Superior Court, such arguments have been implicitly, if not explicitly, rejected.

It would appear that the “constructive suspension” argument is raised by the School Committee at this point more in the way of a defense to the payment of any damages to the Appellant. This argument lacks merit because it ignores the facts of what actually happened. The School Committee never acted to suspend Ms. Quattrucci, although it could have done so. The Committee took the more drastic and final action of terminating her as a district employee. The Committee was required to comply with the provisions of the teacher tenure law in doing so, and was required to provide her with notice of her termination by March 1<sup>st</sup> for a performance-based termination.

The record before the Commissioner now contains sufficient evidence on which a determination of damages can be made. The parties have submitted a joint exhibit which outlines the various elements of a damages computation. Ms. Quattrucci argues that she is entitled to a recovery which includes the salary she would have earned for the remainder of the 1997-1998 school year, together with the full salary for the subsequent year, minus the amounts she earned in attempting to mitigate her damages. Her counsel submits that an offset for unemployment compensation she received during this same period should not be taken. Even though the School Committee, in paying damages to the Appellant, would in effect be paying her salary for the same period of time in which it has already paid her unemployment compensation <sup>5</sup>, it would ultimately have had to pay her these same benefits at the point when her termination ultimately became effective at the end of the 1998-1999 school year.

The Appellant’s counsel argues that an offset for health insurance costs incurred by the School Committee is not appropriate. The School Committee’s claim that it is entitled to an offset for the cost of health insurance it paid for Ms. Quattrucci up to October of 2004 is under an “unjust enrichment” theory. The reason for the Committee’s payment of health insurance costs for Ms. Quattrucci after she was terminated is not explained on the record. In all likelihood, her counsel submits, keeping her health insurance in place was part of the Committee’s strategy to protect the school department from the risk of loss during the time when it was still quite possible that the Commissioner’s decision would be overturned. When a reversal of the decision became less likely (after the Regents’ 2004 decision), it was no longer necessary for the Committee to protect itself from an employee’s uncovered health care costs. In any event, if the School Committee had discussed the subject with Ms. Quattrucci or her counsel, they would have learned that she could have obtained coverage elsewhere at no cost. There is no merit to the theory of “unjust enrichment” as a basis on which to deduct these substantial amounts from the damages the Committee now owes to Ms. Quattrucci.

With respect to prejudgement interest on damages, the Appellant takes the position that she is entitled to statutory interest on her damages, citing the policy of the Commissioner to award interest under R.I.G.L. 9-21-10. To the extent that there may be precedent that statutory interest is not applicable to an award made as a form of equitable

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<sup>5</sup> Benefits which are of the type paid dollar for dollar by the School Committee

relief, counsel argues such precedent is inapplicable when damages are based on violations of statutory rights and predicated on breach of contract. A tenured teacher in Rhode Island is employed on the basis of a continuing contract. In the event a School Committee wishes to terminate this contract, R.I.G.L. 16-13-3 requires timely notice and good cause. Damages flowing from a violation of these statutory rights, and the resulting continuation of Ms. Quattrucci's contract into the 1998-1999 school year, are eligible for pre-judgment interest. In the event the Commissioner sees fit to reverse his long-standing policy on the award of pre-judgment interest, R.I.G.L. 9-21-8 would require the accrual of post-judgment interest at the same rate, calculated from the date of October 28, 2002 when the Commissioner's decision was issued. However, payment of pre-judgment interest is more appropriate and it should be calculated for the period May 1, 1998 until the judgment is paid. The interest calculations submitted by the Appellant are based on simple, not compound, interest accrued on a biweekly basis. They form a proper basis for a determination by the Commissioner of the total damages due Ms. Quattrucci.

In her Reply Memorandum, the Appellant submits an additional argument: if the Commissioner finds that he lacks jurisdiction over the issue of damages, the record now contains sufficient evidence on Ms. Quattrucci's other claim that her due process rights were violated by the failure of the School Committee to provide her with a timely post-termination hearing and decision. This claim was held in abeyance, is not moot<sup>6</sup> and was not raised earlier because appeals were pending on other issues. Although the Commissioner's initial decision directed that the due process claim be raised within thirty days, the Appellant's appeal to the Board of Regents automatically stayed the thirty-day period. If not automatically stayed, the thirty-day period for asserting this claim should be extended by the Commissioner in the exercise of his discretion. Especially if the Commissioner finds that he has lost jurisdiction to address the "deadline" remedy, he should now consider the additional claim she has asserted from the outset of this litigation, and award Ms. Quattrucci relief on this basis.

The Appellant's claim that her due process and statutory rights to a prompt post-termination hearing and decision were violated are clearly established in the record. The School Committee's course of conduct was in deliberate violation of her rights. Without excuse, and over Ms. Quattrucci's objection, the School Committee delayed and postponed hearings, prolonging the period of post-termination hearing for a period of almost one year<sup>7</sup> and still with no conclusion or decision. Since this period of delay is roughly equivalent to the period of time in which her termination was deferred, a fair and equitable remedy would be to award the Appellant the exact same damages that would have resulted from implementing the Commissioner's initial decision. To do otherwise would constitute a blatant injustice, she argues.

### **East Providence School Committee**

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<sup>6</sup> or would certainly not be moot if the Commissioner determines that he lacks jurisdiction to award damages on her other claim (noncompliance with statutory March 1<sup>st</sup> notice).

<sup>7</sup> From the date settlement negotiations broke down in November of 1998 until October of 1999.

Counsel for the School Committee submits that the dispute between Ms. Quattrucci and the School Committee has been finally adjudicated, and an entry of a final judgment in the matter occurred on June 14, 2006. The final judgment affirms the decision of the Board of Regents. The matter was not remanded to the Board of Regents or the Commissioner. There has been no award of damages to Ms. Quattrucci as a result of this extended litigation, and it has come to an end. Furthermore, none of the decisions issued in this matter-not the Commissioner's of October 28, 2002, the Board of Regents of October 28, 2004, or the Superior Court decision of May 30, 2006 mention damages to which Ms. Quattrucci might be entitled. In fact, the School Committee points out, the justice who considered this matter in the Superior Court implied that there was no recovery by Ms. Quattrucci under review:

Indeed, from the facts presented, a contrary decision by the Board of Regents in favor of the plaintiff would, in the Court's opinion, be erroneous, arbitrary, capricious and an absolute abuse of discretion. Opinion of Judge Rogers at Page 14.

The doctrine of res judicata prevents the Appellant from reopening this matter. The Commissioner is without jurisdiction to entertain her claim for damages or to hear other claims which have not previously been presented. The Commissioner cannot modify, amend, or supplement a decision which has become final.

The actuality of a final decision on all issues between the parties is supported by the fact that on appeal before the Regents and at the Superior Court level, counsel for the School Committee argued that if there was just cause to terminate Ms. Quattrucci, there also was just cause to suspend her without pay until her termination became effective. Although this argument may not have been specifically cited in either the Regents' or the Superior Court decision, it lends support to the proposition that further proceedings were not contemplated by either the Regents or Judge Rogers. Consistent with the notion that there were no outstanding issues, neither the Regents nor the Superior Court remanded this matter for further proceedings. The Commissioner therefore lacks jurisdiction to conduct further hearing, or to alter the final decision that has been rendered in this dispute.

Her due process claim has been finally adjudicated as well. It was raised and considered during the Superior Court review and decided in the School Committee's favor. In his decision Judge Rogers explicitly disagreed with the proposition that Ms. Quattrucci was denied due process and found that she had received her right to notice and a hearing "at a reasonable time and in a reasonable manner." The judge's conclusion in this regard is stated at page twelve of his decision. Again, because this claim has already been adjudicated, it would be inappropriate at this point for the Commissioner to consider Ms. Quattrucci's claim that the School Committee did not provide her with a timely post-termination hearing and decision.

If the hearing officer nonetheless reaches the merits of Ms. Quattrucci's claim that she is entitled to damages for back pay based on the deferral of her termination to the close of the 1998-1999 school year, the analysis of the School Committee is that there was a constructive suspension from May 1, 1998 until the effective date of her termination approximately one year later. This suspension was without pay and fully supported by good

and just cause. After her constructive suspension Ms. Quattrucci was terminated. Under these circumstances, the School Committee has no financial obligations to Ms. Quattrucci for additional wages or any other payments.

Secondly, back pay is an equitable remedy. Under the facts of this case, Ms. Quattrucci was terminated for a number of very good reasons, including persistent professional inadequacies. Her supervisors tried without success to help her address the deficiencies in her performance and provided her with numerous “fresh starts”. Their efforts to help her were made over a number of years prior to the decision to terminate her. The notion that this constitutes a situation in which it is appropriate to fashion an equitable remedy for Anne Marie Quattrucci is not correct. Counsel for the School Committee points out that Ms. Quattrucci has not been “vindicated” in these proceedings. If anything, the Commissioner has confirmed that the School Committee’s termination decision was a correct one. On the basis of a mere procedural irregularity, it would be unjust and inappropriate to award Ms. Quattrucci the back pay she now seeks.<sup>8</sup> Counsel argues that if the equities of this situation are balanced, they weigh strongly against any payment of damages to the Appellant.

If, arguendo, Ms. Quattrucci is entitled to an award of back pay in this case there are two very strong arguments that she should not receive prejudgment interest on such an award and that the policy of the Commissioner to award such interest must be reexamined. A recent decision establishes that R.I.G.L. 9-21-10 (the statute on which pre-judgment interest is based) does not apply to an award made as a form of equitable relief. The case cited, Shoucair v. Brown University<sup>9</sup> stands for the proposition that Section 9-21-10 does not apply to back pay awards because they are not “pecuniary damages” as that word appears in the statute. An award to Ms. Quattrucci would similarly be back pay in the nature of an equitable remedy, and under the rationale of the Shoucair case, would not qualify for prejudgment interest.

The second argument supporting a denial of prejudgment interest is that it is barred under the doctrine of sovereign immunity. Statutes which waive sovereign immunity are narrowly construed. The statute providing for prejudgment interest, R.I.G.L. 9-21-10, does not contain an express waiver of the immunity enjoyed at common law by states and municipalities. Court rulings cited by the School Committee stand for the proposition that a waiver of immunity will not be inferred from the language of this statute. The School Committee, as a public entity, enjoys the same immunity as that of municipalities and the state. Neither the teacher tenure act, nor any other provision of education law, authorizes an award of prejudgment interest against a school committee. If the Commissioner were to award prejudgment interest in this case, he would do so without authority.

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<sup>8</sup> The School Committee cites Hobson v. Rhode Island Board of Regents for Elementary and Secondary Education, No. PC 91-7393, PC 91-8378, 1998 WL 72665 (R.I. Superior Court). The Hobson series of cases involved claims of procedural deficiencies which at the Commissioner’s level were not found as a proper basis for either reinstatement or back pay, absent a finding that the teacher’s termination was not supported by good and just cause.

<sup>9</sup> No. PC 96-2896, 2005 WL 372297 (R.I. Superior Court, January 27, 2005). The Superior Court did make a pre-judgment interest award in Shoucair, pursuant to Section 28-5 24, a provision of the R.I. Fair Employment Practices Act.

Finally, and again without conceding the point that Ms. Quattrucci should not receive any back pay, the School Committee submits that back pay should be offset by (1) outside earnings (2) unemployment compensation benefits and (3) the amount that the School Department paid for Ms. Quattrucci's medical insurance from the date of her dismissal up to October of 2004, when the insurance was discontinued. With respect to the payments made by the School Department to maintain Ms. Quattrucci's medical insurance after the effective date of her termination, she was not entitled to such coverage. It was a substantial benefit. She should reimburse the school department under the unjust enrichment theory<sup>10</sup>. Since the award of back pay is an equitable remedy, an offset for the total amount paid for the Appellant's medical insurance is warranted.

### **DECISION**

It has been several years since the initial hearings in this dispute were conducted. The parties have evidently been productively engaged in the process of appellate review of the Commissioner's October 28, 2002 decision. Neither the passage of time nor the subsequent decisions of the Board of Regents and the Superior Court preclude the Commissioner from determining claims the Appellant pursues at this time. The initial hearings before the undersigned hearing officer, and the resulting decision, were confined by agreement of the parties to two issues (1) whether there was just cause for the April 23, 1998 decision of the East Providence School Committee to terminate Anne Marie Quattrucci and (2) whether the notice of her termination<sup>11</sup> was timely under the teacher tenure law. The hearing was bifurcated to separate the issue of the alleged denial of a right to a prompt post-termination hearing and decision. If the decision on the first two issues made the third claim moot, the taking of evidence on this claim would be avoided. Implicit in this agreement to defer hearing on the third claim was the notion that a hearing on damages would not be held until the Commissioner's decision on the underlying claims was made. The scope of the hearing on damages would undoubtedly be affected by the rulings on the merits of the claims presented on Ms. Quattrucci's behalf.

It is in this context, then, that the Commissioner's October 28, 2002 decision was issued. Consistent with the agreement of the parties<sup>12</sup> and the bifurcation of the issues, the decision ruled on the claims which had been adjudicated and sought to determine the status of the claim which had been held in abeyance. The language of the final paragraph of the decision requested the parties to notify the hearing officer of whether the decision (that Ms. Quattrucci's termination could not be effective under the statute until the beginning of the 1999-2000 school year) rendered the due process claim moot<sup>13</sup>. Absent from that paragraph

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<sup>10</sup> See transcript at page 40-50.

<sup>11</sup> By the governing board

<sup>12</sup> Which was expressly noted in the discussion of "travel of the case" contained in the October 28, 2002 decision.

<sup>13</sup> i.e. if the period of alleged delay by East Providence in according Ms. Quattrucci a post-termination hearing was not longer than a year, a fact on which no evidence had yet been taken, then the likelihood was that that claim was rendered moot.

was the customary directive to the parties<sup>14</sup> to confer on a remedy to attempt to resolve that issue. A discussion of remedy was premature until a final determination on the Appellant's underlying claims was made. In retrospect, a statement to this effect in the decision would have been helpful.

The final judgment entered by the Superior Court does not render the Appellant's due process claim and her entitlement to damages "res judicata", as the School Committee has argued. These matters have simply never been adjudicated and certainly were not waived. Rather, as described above, they were held in abeyance by the agreement of the parties to permit an administrative hearing to proceed in an efficient and logical manner. Thus, we do not agree with the argument that the Commissioner lacks jurisdiction to proceed to hear and decide the remaining issues in this case. Although there has been no remand from either the Regents or the Superior Court (since the decision of the Commissioner was not reversed or modified) the matter is now properly at the Commissioner's level<sup>15</sup> for further adjudication.

The School Committee advances two arguments to support the claim that Ms. Quattrucci has no entitlement to damages, even though the effective date of her termination was deferred for a period of one year. The Committee argues that she should be deemed to be on a "constructive suspension" during 1998-1999. Since there was ample "good and just cause" to support her termination at the time the Committee acted in April of the 1998, the argument is that it could have suspended her without pay as an alternative at that time<sup>16</sup> and, consistent with the teacher tenure law, terminated her at the conclusion of the subsequent school year. Although the School Committee may have had the option of suspending Ms. Quattrucci without pay on April 23, 1998<sup>17</sup> and thereby avoided the impediment of a March 1<sup>st</sup> deadline, this is not the action it took. The Committee considered a recommendation to terminate based on the substantial reasons advanced by its Superintendent, and approved that recommendation. There is no legal basis on which to convert the School Committee's action to a suspension.

A second reason Ms. Quattrucci should not receive damages, argues the Committee, is that a back pay award to her would be an equitable remedy, and the equities in this case do not weigh in favor of paying her any sums whatsoever. The School Committee submits that this is a case in which there was a defect in procedure only (a missed deadline) and a finding that the Committee had ample just cause for termination. Although not expressly stated, the argument of the Committee is that a teacher terminated for good cause receives a "windfall" if she receives a monetary award based on procedural defect. Although from the Committee's perspective a monetary award is unwarranted, it is the necessary consequence

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<sup>14</sup> Traditionally the Commissioner requests that the parties attempt to resolve the issue of damages prior to scheduling additional hearing on the issue.

<sup>15</sup> As indicated in the February 11, 2005 letter to the parties, there was no authority of the hearing officer to schedule continued hearing in this matter while an appeal was pending in the Superior Court until the matter was remanded or "otherwise properly at the Commissioner's level". See Appellant's Ex. 1.

<sup>16</sup> Without the constraint of the March 1<sup>st</sup> deadline applicable to terminations of this type.

<sup>17</sup> Had it done so, it is quite likely that her counsel would have ultimately argued that her "suspension" was a "constructive termination" and that the process was designed to undermine the deadlines imposed by the teacher tenure act.

of deferring the effective date of termination by a period of one year. In determining that a deferral of the termination date resulted from noncompliance with the statutory deadline, rather than rescinding the termination and reinstating the Appellant<sup>18</sup> the Commissioner has already taken into account the “equities of the case” – the factors pointed out by the School Committee. At this point in the proceedings, the task at hand is determining the amount of damages, not a “re-balancing” of the equities to shield the School Committee from the effect of the Commissioner’s prior decision. It was the decision deferring the effective date of termination which was affirmed by the Board of Regents and the Superior Court<sup>19</sup>, not a decision which found that noncompliance with the March 1<sup>st</sup> deadline had no legal consequence. It is this decision which must now be implemented.

The parties are in agreement on the amount of salary Ms. Quattrucci would have earned up to the reformed effective date of her termination and have summarized these amounts in Joint Ex.1. We find that Ms. Quattrucci is entitled to unpaid salary in the amounts indicated on Joint Exhibit 1, with an offset for the amount of unemployment compensation she received<sup>20</sup> and an offset for the earnings she had from other employment during the period May 1, 1998 through the end of the 1998-1999 school year. Since the reformed effective date of Ms. Quattrucci’s termination provides her with unpaid salary for 1998-1999, it would be logical to require the School Committee’s payment of retirement contributions on her behalf for that year, together with interest owed<sup>21</sup> on those amounts.

We decline to offset the unpaid salary owed to Ms. Quattrucci by the amounts paid by the district for medical insurance coverage for a five-year period after her termination. There is no evidence that the medical coverage was provided to Ms. Quattrucci by mistake. The school department knowingly and voluntarily extended this benefit to her during this entire time. Had the School Committee wanted to secure Ms. Quattrucci’s agreement to repay the cost of this ongoing medical coverage at any time during this period, it could have done so. Litigation between the parties was ongoing during this time. The “unjust enrichment” theory, on which the Committee’s request for offset is based, is a theory of implied contract, requiring reimbursement of the value of the benefit conferred by the person who received it. The facts here do not warrant the creation of an implied contract when an express contract could have been agreed upon at any time during this period of ongoing litigation.

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<sup>18</sup> Ms. Quattrucci argued that noncompliance with the statutory deadline required that her termination be rescinded and that she be reinstated to her position.

<sup>19</sup> Judge Rodgers’ comments notwithstanding. See his May 30, 2006 decision at page 14. A ruling “in favor of the Appellant” was a proposition with which he disagreed. This could be interpreted as a ruling which overturned her termination by the School Committee. This is the interpretation of his decision that we have made.

<sup>20</sup> Unemployment benefits are paid “dollar for dollar” by the East Providence School Committee to eligible employees. The School Committee cannot be required to pay Ms. Quattrucci both salary and unemployment benefits for the same time period. Although her counsel’s point is well-taken, that she would have become unemployed again in June of 1999, it is not clearly established on this record that she would again have been eligible for and paid unemployment benefits at that time. It cannot be determined that her eligibility for, and the obligation of the School Committee to pay, such benefits would have been unchanged.

<sup>21</sup> Ms. Quattrucci requests that the Commissioner also accord her credit for a year of “service” for that year, but this determination is up to Retirement Board, and the application of any rules or regulations it may have that cover this unusual situation.

There is some precedent for the proposition, advanced by the School Committee, that prejudgment interest should not be included on a “back pay” award to Ms. Quattrucci because it is equitable in nature. The Committee also presents case law indicating that the statute governing the award of prejudgment interest, R.I.G.L. 9-21-10, does not apply to judgments against the state or municipalities (or other governmental entities such as school committees). The argument is that the doctrine of sovereign immunity precludes an award of prejudgment interest in this case. We have reexamined the policy of the Commissioner to include prejudgment interest in back pay awards in light of the arguments made and cases cited by the School Committee. We have also referred to the precedent cited by the Appellant in support of her position that she is entitled to prejudgment interest on the unpaid salary to which she has been found entitled<sup>22</sup>. Upon reexamination, we decline to depart from the policy of including prejudgment interest on back pay<sup>23</sup> because we find the analysis in the two cases cited by the Appellant to be persuasive.

Administrative hearings before the Commissioner pursuant to R.I.G.L. 16-39-1 and 16-39-2 and, as in this case 16-13-4, many times involve not only the adjudication of individual rights but also the enforcement of education laws. The Commissioner has traditionally exercised considerable latitude in fashioning an appropriate remedy for these reasons. Such factors are not necessarily present in the civil actions adjudicated in court proceedings to which the precedent cited by the School Committee applies. For these reasons, we find that prejudgment interest, traditionally included in “back pay” awards in administrative proceedings here, should be paid to Ms. Quattrucci in this case. The method of calculating the amount of prejudgment interest is not in dispute and therefore, the amount of interest indicated in Appellants Ex. 3C must be paid to the Appellant.

This decision renders moot Ms. Quattrucci’s claim that the School Committee unreasonably delayed in conducting post-termination hearings and in providing her a decision which complied with her due process rights. The period of delay<sup>24</sup>, up to the point at which the matter was appealed to the Commissioner was approximately seventeen (17) months, but during the first five (5) months of this period, Ms. Quattrucci’s appeal to the School Committee was held in abeyance during settlement discussions. Thus, even if a delay of approximately twelve (12) months was entirely attributable to the fault of the School Committee and it constituted a violation of the Appellant’s right to a timely post-termination hearing and decision<sup>25</sup> Ms. Quattrucci would not be entitled to the payment of any additional damages. This is so even if the remedy for a due process violation was to pay her entire salary during the period of delay, a remedy which would not necessarily be in order. See Hobson v. South Kingstown School Committee, decisions of the Commissioner dated April 4, 1988 and May 17, 1989. The deferral of the effective date of her termination has provided her with salary payments for the same length of time she claims the Committee delayed in completing hearings on her termination. She has also since received a full and

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<sup>22</sup> Specifically Jolicoeur Furniture Co., Inc. et al. v. Charles C. Baldelli, 653 A.2d 740 (R.I.1995) and North Smithfield Teachers Association v. North Smithfield School Committee, 461 A.2d 930 (R.I. 1983).

<sup>23</sup> Or more accurately in this case “unpaid salary”- Ms. Quattrucci was not reinstated and so in our view the monies to which she is entitled constitute “unpaid salary” for the school year 1998-1999.

<sup>24</sup> Up to the point at which she appealed to the Commissioner on October 18, 1999

<sup>25</sup> findings which are specifically not made because the claim is moot

fair hearing at the Commissioner's level on the issue of whether her termination was valid. For all these reasons, her due process claim is moot.

In summary, pursuant to the Commissioner's October 28, 2002 decision in this matter, the East Providence School Committee is directed to pay Ms. Quattrucci the damages set forth in this decision, and specifically described in Appellant's Ex. 3C. Her claim with respect to due process violations is denied and dismissed as moot.

For the Commissioner,

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Kathleen S. Murray, Hearing Officer

APPROVED:

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Peter McWalters, Commissioner

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October 17, 2007  
Date