

State of Rhode Island  
and  
Providence Plantations

Commissioner of Education

Edwin B. Gordon

v.

Providence School Board

**DECISION ON MOTION  
TO DISMISS**

Held: The Providence School Board's Motion to Dismiss is hereby granted because the Commissioner lacks subject matter jurisdiction over this dispute. Mr. Gordon's appeal does not "arise under any law relating to schools or education." Issues with respect Mr. Gordon's entitlement to additional compensation for teachers of special education and his entitlement to other compensation during school year 2010-2011 are matters that arise exclusively under the collective bargaining agreement. As to his allegation that the School Board has failed to adopt procedures for resolving complaints and criticisms of school affairs as required by R.I.G.L. 16-2-9.1, Mr. Gordon lacks standing to raise this claim. He is not a person "aggrieved" by the Board's alleged failure to do so because the exclusive remedy for the complaints he asserts is available under the grievance procedure of the contract.

DATE: April 19, 2011

## **Travel of the Case**

On January 29, 2011, Edwin B. Gordon filed a letter of appeal with Commissioner Deborah A. Gist. His appeal outlined three primary areas of dispute: (1) reduction of his compensation by the amount of five hundred (\$500.00) dollars, previously paid to him based on his assignment as a special education teacher; (2) reduction in the number of required hours of participation in professional development training, with a commensurate reduction in his compensation; and (3) the failure of the School Board to adopt procedures for resolving complaints and criticisms of school affairs, namely, the two other issues he raises.. On February 24, 2011, counsel for the Providence School Board filed a Motion to Dismiss Petitioner's Request for Hearing together with a supporting memorandum. Mr. Gordon filed his response to the Motion on March 2, 2011, together with his supporting arguments and citations. Thereafter, both parties filed a series of additional documents in support of their positions on the issue of the Commissioner's jurisdiction over this dispute. An additional ground was advanced by counsel for the School Board based upon the doctrine of election of remedies. The final memorandum was filed by Mr. Gordon on March 16, 2011.

## **Positions of the Parties**

### **Providence School Board**

Counsel for the School Board requests that the Commissioner dismiss this appeal because, under the terms of the collective bargaining agreement in effect between the School Board and the Providence Teachers Union, the parties have expressly agreed that claims that the contract has been violated or that the contract has been misinterpreted will be resolved through the grievance and arbitration process. This is the sole and exclusive remedy for Mr. Gordon's salary reduction in September of this school year, as well as the decrease in his compensation associated with fewer hours of mandatory professional development training. The provisions of the Teacher Tenure Act that have been cited by the Petitioner as the basis for his appeal to the Commissioner are not applicable to either of these claims. Mr. Gordon has not been "dismissed" or "suspended" under R.I.G.L. 16-13-3 and 16-13-5 by virtue of the salary reductions that have occurred. Thus, his claims fall "outside the zone of interests of the laws he invokes" (School Board Memorandum of February 24, 2011). Mr. Gordon's contract-based claims are protected exclusively by the grievance and arbitration process. Since these claims do not "arise under" any law relating to schools or education, the Commissioner lacks jurisdiction to hear and decide these issues. Resolution of his complaints requires interpretation and application of the contract, not education laws or regulations.

The School Board further argues that on September 29, 2010, Mr. Gordon submitted Grievance # B8823 to the Providence Teachers Union. This grievance alleges that the district's failure to place him in a permanent position as a special education teacher in August of 2010 (an assignment to which Mr. Gordon claims he was entitled) resulted in a decrease in his compensation and in his access to fewer hours of district-compensated professional development training. These claims are identical to those he asserts in his January 29, 2011 appeal to Commissioner Gist. Therefore, under the doctrine of election of remedies, Mr. Gordon is equitably barred from asserting these same complaints in a second forum.

The grievance and arbitration process provides the Petitioner with the sole and exclusive remedy for his complaints, but Mr. Gordon seeks an alternate remedy because his past grievances

have not produced a prompt resolution of the issues he has raised. The School Board argues that he cannot submit letters outside the grievance process to Superintendent Brady and the Chair of the Providence School Board and expect that they will respond. The contract does not permit employees to circumvent the grievance process. Mr. Gordon cannot raise the failure of the School Board to comply with R.I.G.L. 16-2-9.1 (a)(9) that requires all school committees to “establish and maintain procedural steps for resolving complaints and criticisms of school affairs” because his complaints are not based on “school affairs.” His complaints relate to his rights as an employee. Mr. Gordon’s dissatisfaction with the grievance process does not permit him to replace it with a letter of complaint about the operation of “school affairs” or a subsequent claim to the Commissioner that the district does not have “procedural steps for resolving complaints” in place.

For the foregoing reasons, counsel for the School Board requests that Mr. Gordon’s appeal be dismissed.

### **Edwin B. Gordon**

In his memorandum, Mr. Gordon contests the notion that he brings a dispute under the collective bargaining agreement rather than issues arising under education law. He points to case law supporting his claim that a reduction in salary, unilateral and unaccompanied by any explanation by his employer, presents either a partial “dismissal” or a temporary “suspension” under the Teacher Tenure Act. Also, he asserts that his compensation is a protected property right under that Act and that he has properly invoked R.I.G.L. 16-13-3, 16-13-4 and 16-13-5, in appealing his decreased compensation resulting from his reassignment and reduced professional development training. He cites the case of Gorman v. Jamestown, decision of the Commissioner dated August 2, 2006, as a case in which the Commissioner ruled that the Teacher Tenure Act was implicated when a teacher’s schedule was reduced from full time to part time.

Mr. Gordon argues that in four instances he sought to utilize procedural steps to resolve complaints about school affairs only to find that his complaints were not processed in a timely manner and in accordance with established procedures. He contends that this experience demonstrates that the School Board has not put in place procedural steps for resolving complaints required under R.I.G.L. 16-2-9.1 (a) (9). He submits that his complaints were reasonable, and were respectfully and lawfully presented by a Providence teacher. The School Board either repeatedly ignored or initially entertained his complaints, but then did not process them or provide him with a bona fide response.

The grievance process under the collective bargaining agreement is available for resolution of his complaints, but the Petitioner takes the position that he is not required to submit his complaints in the form of formal grievances under the contract. He contends that he has the option of seeking resolution of these issues under whatever procedural steps generally apply to “complaints and criticisms of school affairs.” In support of this position, he argues that the Providence School Board has not established, maintained or implemented procedural steps for resolving complaints with respect to “school affairs,” and he requests that the Commissioner order the School Board to comply with the statute.

## DECISION

Based on the documentation submitted by both the Petitioner and the Respondent School Board, it is clear that Mr. Gordon has a dispute with the School Department that he has, to date, been unable to resolve at the local level. However, it is also clear that the nature of this dispute puts it squarely within the scope of the definition of a grievance. According to the agreement between the Teachers' Union and the Providence School Board:

...a grievance shall mean a complaint or claim by a teacher or the Union filed with or by the Union that an event or condition exists which represents a violation, inequitable application, misinterpretation of this Agreement; or that the teacher or the Union has been treated inequitably or unfairly by reason of an act or condition which is contrary to established policy or practice governing or affecting teachers or the Union or contrary to established professional ethics and standards.

The issues of whether Mr. Gordon is entitled to five hundred (\$500.00) dollars of additional compensation payable to teachers of special education pursuant to Appendix B-6 of the contract and whether the district must provide him with thirty-nine (39) as opposed to twenty-six (26) hours of professional development training pursuant to Paragraph 8-34 are both controlled by the collective bargaining agreement. The sections of the Teacher Tenure Act cited by the Petitioner as being implicated in this dispute are not applicable because we find that Mr. Gordon has not been dismissed or suspended. No other provision of education law is applicable to this matter. Mr. Gordon has a salary dispute with his employer that stems from the fact that he was not assigned to a permanent "long term" position in special education for the 2010-2011 school year. Resort to the grievance process to resolve these issues is not optional (as Mr. Gordon has argued), but is mandatory because the parties to the collective bargaining agreement have agreed to resolve all grievances by the process described in Article 15, "Grievance Procedure."

When the subject matter of a dispute is based exclusively on the terms of the contract, and presents no questions of school law, a long line of Commissioner's decisions confirms that this office lacks jurisdiction.<sup>1</sup> Not only does the Commissioner lack subject matter jurisdiction over this dispute, but Mr. Gordon has already elected the (appropriate) remedy by submitting Grievance # B8823 to his union for processing. Both the five hundred (\$500.00) dollars of additional compensation and the additional hours of professional development training are intertwined with the grievance in which he claims that the School Department violated the contract by failing to place him in a permanent long-term assignment in special education. Although it is possible to envision disputes with respect to teaching assignments that could "arise under" a law or regulation relating to schools or education, the issues Mr. Gordon seeks to bring forward for hearing do not call for an interpretation or application of school law.

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<sup>1</sup> See Madden v. Warwick School Committee, decision of the Commissioner dated April 23, 1984; Hoag v. Providence School Board, decision of the Commissioner dated June 27, 1988; LaSalle v. Cranston School Committee, decision of the Commissioner dated November 12, 1991; and McGuinn v. East Providence School Committee, decision of the Commissioner dated November 6, 1997. The Commissioner does have jurisdiction when the dispute arises under both a provision of a collective bargaining agreement and an education law or regulation. But see Warwick Teachers Union on behalf of Mary Conway, Richard Dickson and Mary Phillips v. Warwick School Committee, decision of the Commissioner dated January 15, 1988 in which the Commissioner ruled that an issue of state education law controlled the crediting of years of experience for purposes of teachers' placement on the salary schedule, despite an inconsistent contractual provision.

Because the grievance process under the collective bargaining agreement is the required forum for Mr. Gordon's complaints, he is not "aggrieved" by any failure of the Providence School Board to adopt a separate process for "resolving complaints and criticisms of school affairs" as required by R.I.G.L. 16-2-9.1(a)(9). If, in fact, the School Board does not have such procedures in place, the School Board is directed to establish and maintain such procedures as required by this provision of Title 16.

The Motion to Dismiss is hereby Granted and the Petitioner's request for a hearing is dismissed with prejudice.

For the Commissioner,

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Kathleen S. Murray

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Deborah A. Gist, Commissioner

April 19, 2011  
Date