

**JANICE BLACK**

**v.**

**BARRINGTON SCHOOL DEPARTMENT**

**DECISION ON MOTION  
TO DISMISS**

HELD: The Barrington School Committee's Motion to dismiss is granted on grounds that the Commissioner lacks subject matter jurisdiction over the issues raised in this dispute relating to curriculum and instruction and teacher discipline.

DATE: March 21, 2014

## Travel of the Case

Janice Black (the Petitioner) filed an appeal with the Commissioner of Education against the Barrington School Department (Barrington) under RIGL 16-39-1 and 16-39-2, thereby outlining a series of grievances that are derivative of her opposition to curricular assignments issued in her daughter's seventh grade Social Studies class. Specifically, the Petitioner alleges that she is aggrieved in several areas embraced by this overriding dispute: 1) that she has been denied access to a local administrative process to address her complaints; 2) that the teacher, Mary Roberts (hereafter "the teacher"), violated the Barrington's zero tolerance weapons policy<sup>1</sup> by requesting students to bring certain household articles to class, including dinner knives, as part of a lesson plan dedicated to Edwardian customs and practices<sup>2</sup>; 3) that the teacher's design of other assignments were inappropriate<sup>3</sup>; 4) that the teacher had penalized her daughter with an unacceptable grade on an assignment relating to the topic of immigration allegedly as retaliation for the Petitioner's objections to certain simulation activities of the course curriculum.

On January 28, 2014, a prehearing conference was convened before the designated hearing officer for purposes of attempting a mediated settlement of this dispute. The Petitioner attended pro se<sup>4</sup> and Barrington's superintendent and legal counsel for

---

<sup>1</sup> See Petitioner's Exhibit 3.

<sup>2</sup> See Petitioner's Exhibit 9.

<sup>3</sup> Specifically, the Petitioner characterizes her child's assigned role to be that of a "drunken prostitute" (page 2, paragraph 2 of the Appeal).

<sup>4</sup> Petitioner's credentials indicate that she is a lawyer, but that her appearance before the Commissioner is not undertaken in a representative capacity.

Barrington, as well as the teacher and her legal representative. After engaging in joint and separate sessions with the hearing officer, the parties appeared to have reached an agreement that included a formal Memorandum of Agreement (MOA). An initial draft of the MOA was eventually prepared by Barrington and forwarded to the Petitioner, who responded by noting perceived nonconformity with terms that were mutually agreed upon during mediation. The Petitioner further responded by submitting a revised MOA.

Barrington categorically rejected the revisions proffered by the Petitioner and formally moved for dismissal of this appeal on grounds that the Commissioner lacked statutory jurisdiction over the issues in dispute.

### **Position of the Parties**

#### **The Petitioner**

The Petitioner reiterates the substance of her complaint with respect to the issues raised in her original appeal: namely, the denial of her right to air her complaints about the teacher and her teaching methods before the school committee; the teacher's breach of the school district's zero weapons policy; the impropriety of the teacher's lesson assignments and retaliatory grading of a specific assignment submitted by her daughter. The Petitioner argues that contrary to the position taken by Barrington in its motion to dismiss, the Commissioner does indeed have the authority to hear this matter as involving a "law

relating to schools or education” under the provisions of Chapter 16-39 of the General Laws.

### **Barrington School Department**

In its motion to dismiss, Barrington reduces the essence of the Petitioner’s complaint to two components: (1) disputing the superintendent’s decision to refrain from taking disciplinary action against the teacher based on the allegations of the Petitioner;<sup>5</sup> (2) the Petitioner’s criticism of matters relating to the curriculum employed in the Social Studies class.<sup>6</sup> As to both challenges, Barrington argues that the Commissioner lacks the legal authority to review the merits thereof.

Barrington states that under RIGL 16-2-11(14) superintendents are expressly responsible for system-wide discipline, thereby giving authority for the disciplinary decisions exclusive of suspension and termination. Moreover, Barrington presents the Teacher Tenure Act under Chapter 16-13 as governing matters relating to teacher suspension and termination, thereby preempting the more general application of RIGL 16-39-1 that establishes the jurisdiction of the Commissioner over matters “arising under any law relating to schools or education.”

---

<sup>5</sup> In fact, it is verified by Barrington’s superintendent that the teacher was counseled relative to the nature of the characters incorporated in the simulations and the use of props that may be perceived as in violation of the district’s weapons policy.

<sup>6</sup> From the submissions and the discussions undertaken at the prehearing conference, it is unclear to the hearing officer whether the course at issue is History or Social Studies. In either case, the dispute and grounds for any ruling on the issues raised herein remain unaltered.

As to the Petitioner's objections to the teacher's implementation of the tools and methods of instruction, Barrington argues that state law and regulations are silent with respect to any such specific means of instruction. Rather, the law and regulations reflect overriding policies and standards and do not infringe upon a local educational agency's policy choices relating to the use of instructional resources.

Accordingly, this area of the Petitioner's complaint is outside the scope of the Commissioner's authority.

### **DECISION**

The Petitioner has sought to raise issues as set forth above, and the Commissioner's jurisdiction as to each has been contested by Barrington. To the extent that the Petitioner complains about matters relating to curriculum and instructional issues and teacher discipline, this appeal is dismissed.

It is not within the authority of the Commissioner to review the ways and means of classroom instruction. The General Assembly has mandated the instruction of certain subjects with defined content requirements under diverse sections of RIGL Chapter 16-22 , and the Board of Education has promulgated regulations governing instruction, curriculum and programs of study under *the Basic Education Program*, Title G, Chapter 13, as well as the Common Core Standards. However, the sum of the Petitioner's complaint about teaching the subject matter does not allege deviation from such state and

regulatory standards; rather, the hue and cry of the Petitioner echoes against methods employed in the teaching of subjects that properly fall within those standards. Nor is there present any discernible gulf between the details of the Petitioner's concerns about the teacher's approaches to delivering the content and the policies outlined in Barrington's *Selection Policy for Instructional Resources*.<sup>7</sup> Despite the Petitioner's arguments to the contrary, it is determined that this is an issue over which the Commissioner has no authority.<sup>8</sup>

With regard to the Petitioner's attempt to vindicate her view of the inadequacy of the "mild counseling"<sup>9</sup> imposed upon the teacher by the superintendent as a form of discipline, we similarly find that the Commissioner is without authority to review such an administrative personnel action. Discipline that is less than the suspension or termination of a tenured teacher belongs entirely to the judgment of the superintendent. It is neither for a school committee nor the Commissioner to review such limited personnel decisions that evade the coverage of law and regulation.<sup>10</sup> We also note that based on argument of the parties and the exhibits filed in this matter, there exist avenues for obtaining for a

---

<sup>7</sup> See Exhibit C of Barrington's Memorandum of Law. In addition, it is noted that under RIGL 16-2-11(2), the responsibility to "recommend educational plans, policies, and programs" is delegated to the superintendent.

<sup>8</sup> Noted is in Section IX (1) of the *Selection Policy for Instructional Resources*, Exhibit C of Petitioner's Memorandum of Law, that "[i]f the complainant disputes the decision [regarding "challenged instructional resources"] the complainant may appeal to the School Committee within two weeks following the rendering of the Superintendent's decision."

<sup>9</sup> See Barrington's Memorandum of Law, page 5.

<sup>10</sup> We are mindful that, though not governed by the Teacher Tenure Act, RIGL Chapter 16-13, the imposition of disciplinary action not elevated to the more severe levels of suspension or termination may be actionable under the terms of a collective bargaining agreement in providing a remedy for an aggrieved teacher.

remedy that adequately responds to complaints advanced by the Petitioner and that have yet to be administratively exhausted at the local level. Accordingly, the motion to dismiss is granted and the Petitioner's request for a hearing is dismissed with prejudice.<sup>11</sup>

---

George M. Muksian  
Hearing Officer

Approved:

---

Deborah A. Gist  
Commissioner of Education

Date: March 21, 2014

---

<sup>11</sup> Notwithstanding the Commissioner's lack of jurisdiction under RIGL 16-39-1 and 16-39-2 relating to teacher discipline, it is to be noted recourse may exist under the provisions of RIGL 16-11-4 and the Commissioner's *Rules Governing Annulment of Certificates* (May 1, 1985) that provide for the investigation of alleged misconduct and revocation of certificates by the Department of Education through its Office of Educator Quality and Certification.