**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**PROVIDENCE, SC.** **SUPERIOR COURT**

**(Filed: September 28, 2012)**

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| **BERNARD MCCRINK** | : | |
| | : | |
| **V.** | : | **C.A. No. PC 10-4304** |
| | : | |
| **CITY OF PROVIDENCE, and** | : | |
| **STEPHEN NAPOLITANO, in his capacity** | : | |
| **as the City of Providence Treasurer;** | : | |
| **PROVIDENCE SCHOOL BOARD;** | : | |
| **THOMAS M. BRADY, in his capacity as** | : | |
| **Superintendent of Schools for the City of** | : | |
| **Providence; ROBERT WISE, in his capacity** | : | |
| **As President of the PROVIDENCE SCHOOL** | : | |
| **BOARD; PHILIP GOULD, BRIAN LALLI,** | : | |
| **MAILA TOURAY, MAGALY SANCHEZ,** | : | |
| **MELISSA MALONE, KATHLEEN CRAIN,** | : | |
| **NINA PANDE, JULIAN DASH, in their** | : | |
| **capacity as members of the PROVIDENCE** | : | |
| **SCHOOL BOARD; and THE BOARD OF** | : | |
| **REGENTS FOR ELEMENTARY AND** | : | |
| **SECONDARY EDUCATION** | : | |

## DECISION

**MCGUIRL, J.** Before this Court is Petitioner Bernard McCrink's ("McCrink" or "Petitioner") appeal from a decision of the Rhode Island Board of Regents for Elementary and Secondary Education ("Board of Regents"), affirming the decisions of the Commissioner of Education ("Commissioner") and the Providence School Board ("School Board") to terminate McCrink. The Board of Regents found that the teacher tenure provision of G.L. 1956 § 16-13-3 was inapplicable to the instant case and that the School Board had good and just cause to support the termination of McCrink from his

position as a teacher in the Providence School Department. Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

## I

## Facts and Travel

McCrink assumed a full-time teaching position to teach mathematics at Mount Pleasant High School in the Providence school system in January of 1993. McCrink v. Providence School Board, Decision of Commissioner of Education at 2 (hereinafter "Commissioner Decision"). In this capacity, McCrink taught at Mount Pleasant until January of 1995, when he was placed on a paid suspension, returning to his teaching position in September of 1997. See id.

Again, on May 19, 2006, McCrink was placed on a paid suspension prior to his termination by the Providence School Board on September 25, 2006. See id. at 3. The School Board based the termination on its finding that Petitioner was absent from work without leaving a lesson plan on May 16 and 17, 2006; that Petitioner had failed to provide adequate supervision of the students; and that Petitioner had allegedly solicited bribes and favors from students. See Termination Letter from Providence School Board, September 28, 2006.

It is undisputed that throughout McCrink's time at Mount Pleasant High School, he was a teacher covered by the Providence Teachers Collective Bargaining Agreement ("CBA"). In relevant part, the CBA requires that every teacher provide a written lesson plan for substitute teachers in case of absence. When the absence is unexpected, the teacher is expected to call in the necessary information "before classes begin except for obviating circumstances." CBA Art. 8-23. The CBA also provides that a teacher may be

disciplined only for “good and just cause” and must be provided with due process. CBA Art. 8-25. The principle of progressive discipline is to be applied “where appropriate,” with disciplinary actions including a reprimand, either oral or written, suspension, and termination.

**A**

**Petitioner’s Prior Disciplinary History**

In 2002, McCrink was suspended without pay for his failure to leave adequate class work for the substitute teacher when he was out sick and for making inappropriate remarks to his pre-calculus class. The suspension was reduced through the arbitration process to three days suspension and a written reprimand.

At the time, then-principal Nancy Mullen testified that McCrink had a history of calling in sick frequently without leaving an adequate lesson plan for the substitute. From 1997 to 2001, Mullen sent McCrink a number of memos regarding the requirement to leave lesson plans when absent. On December 4, 2001, Mullen sent McCrink the last of these memos regarding his failure to leave an adequate lesson plan, noting that he had called in an inadequate assignment an hour after it should have been submitted and that the lesson plan was inadequate because “the students were the only ones in possession of [the assignment].” See Arbitration Decision, May 19, 2004, at 12. In contrast, McCrink insisted that he left adequate assignments and, on the few occasions when he conceded he did not, his omission was due to “obviating circumstance” such as when he had been hospitalized overnight. See id. at 12-13. The arbitrator found that McCrink’s denials of leaving inadequate lesson plans were “facile and completely unconvincing.” See id. at 36.

The 2002 suspension was also based on the allegation made by several students that McCrink had made inappropriate remarks in class, such as using the word, "nigger." See Arbitration Decision at 40. The Arbitrator noted that the testimony from students supported a finding that McCrink encouraged a casual atmosphere in the classroom and engaged in "friendly bantering." See id. at 41. The Arbitrator found, however, that there was not sufficient evidence to corroborate the allegations of any other inappropriate racial remarks made by McCrink, and he reduced the suspension accordingly.

In July 2005, McCrink was disciplined again for failing to leave a lesson plan for a substitute when he was absent. See Commissioner Decision at 3. He received a "Final Written Warning" from Dennis Sidoti, Employee Relations Administrator of the Providence School Department, notifying him that if he continued to fail to leave a lesson plan as required by the CBA, he would face further disciplinary action "up to and including termination." See id.

**B**

**Petitioner's Termination**

There is some uncertainty regarding the facts immediately preceding Petitioner's termination. McCrink has a serious health condition known as a dissection of the aorta and as a result, is required to be on a serious medical regimen, which can cause fainting or lightheadedness, if his medication gets out of balance. Hearing Tr., November 24, 2008, at 68. In the afternoon of May 15, 2006, McCrink experienced an episode of dizziness as a result of picking items up from the floor, resulting in the nurse being called. Hearing Tr., December 1, 2008, at 22. After he returned home that afternoon, McCrink fell asleep around 4 p.m., woke up again around 10 p.m., and fell asleep again

around 2 or 3 a.m., whereupon he did not wake up until 9 a.m. the next morning, May 16, 2006. See id. at 23. By that hour of the morning, the automated system for teachers to report unscheduled absences had stopped running, resulting in what is called a "no show, no pay" day.[1] See id. at 24. McCrink then testified that he called the school directly and spoke to one of the clerks, in the absence of Ms. Crisafulli, the principal, to report his absence and give an assignment for the substitute teacher. See id. McCrink stated that he was not aware that he could have called human resources in order to report his absence. See id.

Ms. Crisafulli, in contrast, testified that she does not recall speaking with any of the secretaries concerning McCrink's absence on May 16. Hearing Tr., March 11, 2008, at 113. She further testified that she and McCrink had previously agreed that if he were out, he could email her assignments for his students. See id. at 90-91.

McCrink was also absent from work on May 17, 2006, allegedly without leaving a lesson plan for the substitute teacher. A copy of an email dated May 17 and sent to Ms. Crisafulli's email address was admitted into evidence. The email was addressed to Ms. Crisafulli and signed "Bernie" and listed an assignment for the students to work on, as well as apologizing for "yesterday's confusion." See Joint Exhibit E, Email from bem401@aim.com to Maureen.crisafulli@ppsd.org, May 17, 2006. Ms. Crisafulli,

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[1] Mr. Sidoti, the Employee Relations Administrator, testified at length about the automated attendance system that permits employees to record absences for a sick or personal day, either through the Internet or using a telephone system. See Hearing Tr., March 11, 2008, at 30. The system automatically shuts down at 6:30 a.m., after which time, employees would need to contact human resources, who would then be responsible for finding a substitute teacher. See id. at 30-32. Mr. Sidoti further testified that all school employees were given a memo outlining the procedures for using the automated attendance system and listing the telephone numbers for human resources to call after the automated system was shut down. See id. at 32.

however, testified that she did not recognize the email address from which the email had been sent, noting that most emails from Petitioner had been from the email address bem401@aol.com. Hearing Tr., March 11, 2008, at 104. Ms. Crisafulli asserted that, because of the situation with McCrink's absences, she was careful about the emails she received from him but does not have any recollection of ever receiving any emails from the email address bem401@aim.com. See id. at 110. Petitioner identified the May 17, 2006 email as the one he had sent to Ms. Crisafulli and explained that his email address had changed as of that date to bem401@aim.com. Hearing Tr., November 24, 2008, at 114-15. Petitioner further acknowledged that there had been problems in the past with assignments he had left for and were not properly received by the substitute. See id. at 96-97. McCrink testified that it was as a result of these incidents that he had begun emailing in his assignments for days when he was absent from school. See id. at 97.

McCrink's termination letter also alleged that McCrink had failed to provide appropriate supervision for students and had made inappropriate comments concerning exotic dancers. See Termination Letter from Providence School Board, September 28, 2006. A former student, Reginald Davis, testified as to McCrink's "laid-back" teaching style, saying that he told "funny stories," but asserted that he never used the classroom computer to access pornography at any time while McCrink was in the classroom. Hearing Tr., March 11, 2008, at 10, 12. Another former student, Aires Raposo, testified that McCrink was a "good teacher" and a "cool dude," who would joke around with students. Hearing Tr., July 16, 2008, at 190, 193. Raposo confirmed that McCrink used to joke about students being able to pay him for a grade but said that the statements were "obviously . . . a joke." See id. at 193. McCrink denied ever soliciting bribes of any kind

from students. See Hearing Tr., November 24, 2008, at 121. With regard to the allegation that he had made inappropriate remarks about exotic dancers, McCrink testified that the conversation about exotic dancers occurred in answer to a question from a student who said she was considering becoming an exotic dancer. See Hearing Tr., December 1, 2008, at 67. Petitioner said that he had merely "responded to the question [he] was asked" and that he had only referred specifically to a friend who was an exotic dancer to explain why becoming an exotic dancer was "a bad idea." See id. at 69-70.

Thomas Galligan, who was hired by the Providence School Department to do forensic computer analysis of the computer in McCrink's classroom, testified as to his findings. See Hearing Tr., March 28, 2008, at 148-50. An Internet history of the classroom computer showed at least ninety-three inappropriate images in the temporary Internet files folder that had been accessed under the username for B. McCrink. See id. Dr. Victor Fay Wolfe of the University of Rhode Island, an expert in computer science and technology, however, testified that the inappropriate images had actually been accessed an hour later than the time marked due to Daylight Savings Time, so that they had been accessed during the lunch hour. See Hearing Tr., November 24, 2008, at 29-32. Dr. Wolfe further noted that there was nothing unique in the Internet history, such as an email address, to identify who had used the computer during that time to look up the inappropriate images. See id. at 47. McCrink confirmed that he never remained in the classroom during the lunch hour after the bell rang at 12:24 p.m. See id. at 73-74.

McCrink was terminated by the School Board on September 28, 2006 for his failure to leave assignments for the substitute teacher on May 16 and 17, 2006 and for failing to prove adequate supervision of the students and for engaging in inappropriate

conversations with students. See Termination Letter from Providence School Board, September 28, 2006. McCrink first appealed his termination to the School Board, which affirmed his termination in June 2007. Thereafter, McCrink appealed the decision of the School Board to the Commissioner of Education. See Commissioner Decision at 2. Hearings on Petitioner's appeal were held before Hearing Officer Kathleen Murray over a number of days, when extensive testimonial and documentary evidence were submitted by both parties. In October of 2009, Murray issued a 15-page written decision, approved by Commissioner Deborah A. Gist, denying McCrink's appeal and affirming the decision of the School Board. See Commissioner Decision at 15.

McCrink filed a third appeal with the Board of Regents, which issued a written decision on July 1, 2010, affirming the Commissioner's decision, finding that it was not arbitrary or capricious and was supported by the evidence in the record. See Board of Regents Decision, July 1, 2010. Pursuant to G.L. § 16-3-4, Petitioner is appealing the decision of the Board of Regents, upholding his termination.

### C

### Parties' Arguments

Before this Court, the Petitioner argues first, that the School Board lacked just cause to support his termination because the sole reason for the termination was a single incident of an alleged failure to report his absence and provide a lesson plan. McCrink further contends that the School Board failed to follow the procedures required by § 16-3-3, the Teacher Tenure Act, which requires that a notice of dismissal must be provided to a tenured teacher "on or before March 1st of the school year immediately preceding the school year in which the dismissal is to become effective." Sec. 16-3-4. McCrink asserts

that in holding the March 1st notice requirement to be inapplicable to the instant case, the Commissioner disregarded the plain and unambiguous language of the statute.

The City of Providence contends that the School Board had established just cause to support McCrink's termination because of his past disciplinary history of failing to leave adequate lesson plans culminating in the events of May 16 and 17. The City emphasizes that a preponderance of the evidence supported the allegations that McCrink had engaged in inappropriate conversations with students and failed to provide adequate supervision. The City also argues that the Commissioner of Education properly interpreted § 16-3-3 in connection with § 16-12-6 to avoid the "absurd result" of a school district being required to retain and continue to pay a teacher dismissed for serious misconduct for the entire ensuing school year in order to comply with the March 1st notice requirement.

**II**

**Standard of Review**

In the Controversies in School Matters Act, G.L. § 16-39-1 et seq., the Legislature created an express procedural route of review to be followed by "[a]ny person aggrieved by any decision or doings of any school committee . . . ." Ciccone v. Cranston School Committee, 513 A.2d 32, 36 (R.I. 1986) (quoting Section 16-39-2). "Specifically, the route of review is from the [S]chool [C]ommittee to the State Commissioner of Elementary and Secondary Education and then to the State Board of Regents for Elementary and Secondary Education." Id. This multi-step procedure has been likened to a funnel. Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 207-08 (R.I. 1993). The School Committee, at the first level of review, sits "as if at the mouth of the funnel"

and analyzes all of the evidence, opinions, and issues. Id. at 207. The Board of Regents, stationed at the "discharge end" of the funnel, does not receive the information considered by the School Committee firsthand. Id. at 207-08. Our Supreme Court has held, therefore, that the "further away from the mouth of the funnel that an administrative official is . . . the more deference should be owed to the fact finder." Id. at 208.

If, after all administrative appeals have been exhausted, a party is still aggrieved, "judicial review may be obtained . . . as provided in [the Rhode Island Administrative Procedures Act]." Section 16-39-4. This Court "sits as an appellate court with a limited scope of review" when reviewing the decisions of an administrative agency such as the Board of Regents. Mine Safety Appliances Co. v. Berry, 620 A.2d 1255, 1259 (R.I. 1993). The applicable standard of review, codified at § 42-35-15(g), provides:

> The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> (1) In violation of constitutional or statutory provisions;
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> (2) In excess of the statutory authority of the agency;
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> (3) Made upon unlawful procedure;
>
> (4) Affected by other error or law;
>
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
>
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Accordingly, in reviewing an agency decision, this Court is limited to an examination of the certified record in deciding whether the agency's decision is

supported by substantial evidence. Center for Behavioral Health, R.I., Inc., v. Barros, 710 A.2d 680, 684 (R.I. 1998) (citations omitted). Substantial evidence has been defined as "such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means more than a scintilla but less than a preponderance." Wayne Distrib. Co. v. R.I. Comm'n for Human Rights, 673 A.2d 457, 459 (R.I. 1996) (citing Newport Shipyard Inc. v. R.I. Comm'n for Human Rights, 484 A.2d 893, 896 (R.I. 1994)). Additionally, when examining the certified record, this Court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. Interstate Navigation Co. v. Div. of Pub. Utils. & Carriers of R.I., 824 A.2d 1282, 1286 (R.I. 2003) (citations omitted). Therefore, this Court will "reverse factual conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record." Baker v. Dept. of Employment & Training Bd. of Review, 637 A.2d 360, 363 (quoting Milardo v. Coastal Res. Mgmt. Council, 434 A.2d 266, 272 (R.I. 1981)). However, questions of law are not binding on a reviewing court and may be reviewed de novo. Arnold v. R.I. Dep't of Labor and Training Bd. of Review, 822 A.2d 164, 167 (R.I. 2003).

## III

## Analysis

### A

### "Good and Just Cause"

The Rhode Island Teacher Tenure Act provides, in pertinent part: "No tenured teacher in continuous service shall be dismissed except for good and just cause." Sec. 16-13-3(a). Controlling case law from our Supreme Court interpreting or applying the

"good and just cause" standard delineated in § 16-13-3 is sparse. Other authorities have noted that the phrase, "good and just cause," does not lend itself to a fixed standard. See New Mexico State Bd. of Ed. v. Stoudt, 571 P.2d 1186, 1189 (N.M. 1977) ("The words 'for any other good and just cause' have no reasonably defined meaning in the law."). It has been said that the phrase includes "any ground that is put forth by the school board in good faith and which is not arbitrary, irrational, unreasonable or irrelevant to the task of building and maintaining an efficient school system." 78 C.J.S., Schools and School Districts, § 395 (citing School Committee of Foxborough v. Koski, 8 Mass. App. Ct. 870, 391 N.E.2d 708 (1979)); see also Board of Educ. of West Yuma School Dist. RJ-1 v. Flaming, 938 P.2d 151, 159 (Colo. 1997) ("[G]ood and just cause includes any cause bearing a reasonable relationship to the teacher's fitness to discharge her duties or which materially and substantially affects performance."). Accordingly, "a decision to terminate a tenured teacher must be reached after a careful examination of all the pertinent factors relating to the situation, with due consideration of the effect the teacher's conduct will have on the school authorities as well as on the students." 78 C.J.S. at § 392 (citing Tucker v. Board of Ed. of Town of Norfolk, 177 Conn. 572, 418 A.2d 933 (1979)).

At the outset, the Court notes that the parties differ in their characterization of the grounds for Petitioner McCrink's termination. McCrink asserts that the sole reason for the termination was his alleged failure to report his absence and leave a lesson plan for a substitute teacher on May 16, 2006. In contrast, the City maintains that McCrink was also terminated for providing inadequate supervision of students' computer use, enabling at least one student to access pornography during class, as well as for having

inappropriate conversations with students concerning exotic dancers and jokes about bribery.

At this stage in the appeal process, the Court emphasizes the high level of deference to be given to the factfinder. See Environmental Scientific Corp., 621 A.2d at 208. According the Hearing Officer such deference, the Court, in reviewing the record, finds the Hearing Officer's conclusion—that "the [School] Board did not meet its burden of proving by a preponderance of the evidence the other grounds on which it had sustained Mr. McCrink's dismissal"—is not clearly erroneous. See Commissioner Decision at 13. Moreover, from its review of the record, the Court notes that the evidence from the hearings does not support the "other grounds" of inadequate supervision and inappropriate conversations with students. The evidence shows that the inappropriate images accessed on the computer in McCrink's classroom were, in fact, accessed during the lunch hour when McCrink was not in the room. See Hearing Tr., November 24, 2008, at 29-32. The testimony of some of Petitioner's former students confirms that the allegedly inappropriate comments made about bribery and exotic dancers were either jokes or only made in answer to a question from a student. See Hearing Tr., July 16, 2008, at 193; Hearing Tr., December 1, 2008, at 69-70. The Court will therefore focus its inquiry as to whether the unreported absences and failure to leave a lesson plan on May 16 and 17, 2006 constitute, on its own, a "good and just cause" for termination.

McCrink argues that the sole failure to report his absence and provide a lesson plan for the substitute on May 16 does not warrant discipline because it was due to a legitimate illness and that he "report[ed] his absence at the first moment that he was

physically capable of doing so." McCrink further emphasizes that for all of his previous absences, he had provided a lesson plan and that therefore, the "one isolated incident" of his failure to provide a lesson plan does not "[rise] to the level of termination."

It has been recognized both by this Court and by other courts that termination may be justifiable on the basis of a single incident. See Rogers v. Board of Educ. of City of New Haven, 749 A.2d 1173, 1184 (Conn. 2000) (upholding the termination of a teacher based on a single incident of failing to act to protect the privacy of a student); Pierre v. Smithfield Sch. Committee, 2009 WL 3328362 (R.I. Super. September 9, 2009) (a Superior Court case affirming the principle that a single incident can suffice as good cause to justify termination). This Court notes that a single incident of a teacher taking an unauthorized sick day after his request for a personal day was denied was found to be sufficient cause for termination. See Gaylord v. Board of Educ., Unified Sch. District No. 218, Morton Cty, Kansas, 794 P.2d 307 (Kan. App. 1990). Accordingly, the Court finds that the single incident of Petitioner's unreported absence on May 16 was sufficient to support Petitioner's termination.

Moreover, this Court notes that there is some evidence in the record to support a finding that McCrink also failed to report his absence on May 17. Principal Crisafulli testified that she was careful to note McCrink's emails given his frequent absences. However, Principal Crisafulli failed to recognize the email allegedly sent by McCrink explaining his absence and giving a substitute lesson plan. See Hearing Tr., March 11, 2008, at 104, 110. Principal Crisafulli's testimony provides some evidence to support a finding that the email allegedly sent by McCrink was not received. McCrink also stated that he was not aware that he could call human resources to report his absence. See

Hearing Tr., November 24, 2008, at 96-97. The Court notes that there is no explanation for Petitioner's ignorance of these procedures, in light of the testimony of Mr. Sidoti, the Employee Relations Administrator, that all school employees were sent a memo outlining these procedures and the fact that Petitioner's illness necessitated frequent absences. See Hearing, Tr., March 11, 2008, at 30-32. McCrink further admitted that there had been problems in the past when lesson plans he had left for the substitute had not been received. See Hearing Tr., December 1, 2008, at 24. Accordingly, the School Board's finding that McCrink failed to report his absence on May 17 is not clearly erroneous.

The record also evidences that McCrink has previously been disciplined for his failure to leave a lesson plan. In particular, in July 2005, McCrink received a Final Written Warning informing him that if he continued to fail to leave a lesson plan for his absences, he would be subject to disciplinary action "up to and including termination." See Commissioner Decision at 3. Consequently, the Written Warning is evidence that McCrink had notice that any future failure to provide a lesson plan for his absences could lead to his termination. See Barber v. Exeter-West Greenwich Sch. Comm., 418 A.2d 13 (R.I. 1980) (affirming that continuous warnings that certain behavior could lead to termination supported a finding of good and just cause). This Court may not substitute its own judgment as to the propriety or wisdom of the School Board's decision to terminate McCrink for the failure to provide a lesson plan. The School Board has discretion to determine what constitutes good cause to terminate a teacher, which includes any ground that is not irrational, unreasonable, or unrelated to maintaining an efficient school system. See School Committee of Foxborough v. Koski, 391 N.E.2d 708 (Mass. App. Ct. 1979). Accordingly, this Court finds that the Board of Regents' decision to affirm the decision

of the School Board to terminate McCrink was not arbitrary or capricious or unsupported by the evidence in the record.

**B**

**The Statutory Notice Period**

McCrink next argues that there were procedural defects with his termination because the School Board did not follow the Notice requirement set forth in the Teacher Tenure Act. The Teacher Tenure Act provides, in pertinent part, that "[w]henever a tenured teacher in continuous service is to be dismissed, the notice of the dismissal shall be given to the teacher, in writing, on or before March 1st of the school year immediately preceding the school year in which the dismissal is to become effective." Sec. 16-13-3. Section 16-3-4, which deals with the statement of cause for dismissal, provides: "The statement of cause for dismissal shall be given to the teacher, in writing, by the governing body of the schools at least one month prior to the close of the school year." Additionally, Section 16-12-6, dealing with dismissal of teachers generally, states that any teacher may be dismissed by the school committee "on reasonable notice and hearing . . . for refusal to conform to the regulations made by the committee or for other just cause."

It is undisputed that Petitioner was, at the time of his termination, a tenured teacher as defined in the statute. McCrink received notice of his termination effective for the 2006-2007 academic year on September 29, 2006, after the March 1st statutory deadline for providing notice. The Commissioner of Education decided that the Teacher Tenure Act was inapplicable to "cases in which the tenured teacher is being dismissed for

misconduct which justifies immediate termination of his or her otherwise continuous service." Commissioner Decision at 15.

To determine whether the Commissioner's ruling was correct is a question of statutory construction. "When construing a statute, [this Court's] ultimate goal is to give effect to the purpose of the act as intended by the Legislature."' Arnold, 822 A.2d at 168 (quoting Oliveira v. Lombardi, 794 A.2d 453, 457 (R.I. 2002)) (internal quotations omitted). To the extent the statutory language is clear and unambiguous, the Court will attribute the plain and ordinary meanings to its words and "apply the statute as written." Solas v. Emergency Hiring Council, 774 A.2d 820, 824 (R.I. 2001) (quoting State v. DiCicco, 707 A.2d 251, 253 (R.I. 1998)). When the language of the statute is unambiguous and expresses a clear and sensible meaning, such meaning is presumed to be intended by the legislature and the statute must be interpreted literally. See North Providence School Committee v. Rhode Island State Labor Relations Bd., 122 R.I. 415, 408 A.2d 928 (1979). On the other hand, in the event the statutory language is ambiguous, the Court will ascertain the Legislature's intentions by considering "the entire statute, keeping in mind its nature, object, language and arrangement." LaPlante v. Honda North Am., Inc., 697 A.2d 625, 628 (R.I. 1997) (quoting Algiere v. Fox, 122 R.I. 55, 58, 404 A.2d 72, 74 (1979)). Where the provisions of a statute are subject to more than one reasonable interpretation, the construction given by the agency charged with its enforcement is entitled to deference as long as that construction is not clearly erroneous or unauthorized. See Arnold v. Rhode Island Dept. of Labor and Training Bd. of Review, 822 A.2d 164 (R.I. 2003). However, when a statute is clear and unambiguous, a court is

not required to give deference to the agency's reading of the statute. See Unistrut Corp. v. State Dept. of Labor and Training, 922 A.2d 93 (R.I. 2007).

The Court notes that this particular provision has only been addressed in dicta in two other cases before this Court. In Quattrucci v. R.I. Board of Regents for Elementary and Secondary Education, 2006 WL 1628824 (R.I. Super. May 30, 2006), a tenured teacher was terminated for unsatisfactory performance; she received notice of her termination on April 27, 1998. She appealed her termination to the Commissioner of Education, who agreed that because she had not been given notice by March 1st, her termination could not be effective until the 1999-2000 school year. Judge Rogers of this Court stated that

> "[t]he deadline set forth in § 16-13-3 is explicit and unambiguous. In Rhode Island, school boards must give tenured teachers notice of an impending dismissal by March 1st if the dismissal is to be effectuated the following school year. Therefore, because Plaintiff was given notice on April 27, 1998, the Commissioner was correct in finding that her dismissal could not take place during the 1998-1999 school year." 2006 WL 1628824 at *5.

More recently, in Perrino v. R.I. Board of Regents for Elementary and Secondary Education (No. PC 10-4247), Judge Darigan was faced with the issue of the statutory notice requirement. However, because the Board of Regents had not addressed the March 1st notice issue, Judge Darigan remanded to the Board of Regents on that issue. In doing so, Judge Darigan noted that "[t]he March 1st deadline is plain and unambiguous," but acknowledged that Section 16-12-6 "seemingly conflicts with this deadline[.]"

This Court finds that the language of the subject statute is clear and unambiguous: when a tenured teacher is to be terminated, notice of the dismissal must be given by

March 1st of the school year immediately preceding the school year in which the dismissal is to be effective. It is only when Section 16-13-3 is viewed in conjunction with Section 16-12-6 that there appears to be a conflict. The City argues that they should be interpreted together, in pari materia, and that requiring compliance with the March 1st notice requirement would lead to the "absurd result" of requiring the School Board to retain—or at least to pay—McCrink for an extra school year. However, the City's argument ignores the fact that the so-called conflicting statute, Section 16-12-6, applies to all teachers. The School Board also is not without recourse in removing a teacher who is guilty of misconduct, justifying termination from the classroom. For example, after the incidents of May 16 and 17, when McCrink failed to report his absence and leave a lesson plan, McCrink was suspended from his teaching position on May 19, 2006 until his termination. See Commissioner Decision at 3. Moreover, the Court notes that it appears that the intent of the Legislature in the Teacher Tenure Act was to limit the authority of school committees when acting to dismiss teachers. See Royal v. Barry, 91 R.I. 24, 32, 160 A.2d 572, 576 (1960). Other states have more specifically defined the intent of similar teacher tenure statutes as being to provide substantive and procedural safeguards to tenured teachers when it comes to a question of dismissal. See Youngman v. Doerhoff, 890 S.W.2d 330, 341 (Mo. App. E.D. 1994); see also 67B Am. Jur. 2d Schools § 197 (2012).

It appears from the unambiguous language of both statutes that the Legislature determined to protect the rights of tenured and non-tenured teachers from dismissal differently by explicitly setting forth the timing requirement for dismissal. The Court contrasts the notice requirement in Section 16-3-3 with the general provisions of Section

16-12-6 dealing with dismissal of all teachers which requires only "reasonable notice and hearing." The notice requirement for tenured teachers is in a separate section, which appears to reflect the intent of the Legislature to provide greater protection for teachers who have provided continuous service. See 2A Norman J. Singer, Sutherland Statutory Construction § 47:2 at 280 (2007) (stating that courts must pay attention to a statute's internal structure in interpreting it); see also Wood v. North Wamac School District, No. 186, 899 N.E.2d 578 (Ill. App. 5 Dist. 2008) (finding that the objective of a teacher tenure law was to "[ensure] for teachers of experience . . . a continuous service and a rehiring based on merit and not on . . . capricious reasoning[]"). Moreover, the language used in both sections indicates that they apply to different situations. Section 16-12-6 refers to "any teacher" whereas Section 16-13-3 refers specifically to "*tenured* teachers[s]." Sec. 16-12-6; 16-13-3 (emphasis added). It is a basic rule of statutory construction that when statutory provisions conflict, the specific terms are controlling and the Court will defer to the more precise language. See Felkner v. Chariho Regional Sch. Committee, 968 A.2d 865 (R.I. 2009). In fact, the Court notes that the Supreme Court has previously interpreted Section 16-12-6, implicitly contrasting it with Section 16-13-3 because the latter applied "only to teachers who have acquired tenure." See Town of North Kingstown v. Robinson, 99 R.I. 348, 350, 207 A.2d 389, 391 (1965).

There is nothing in the language of Section 16-13-3 to indicate that dismissals for a good and just cause were exempt from the notice requirement. Indeed, the statute specifically refers to the notice requirement for the "statement of cause for dismissal," which indicates that the timing requirement applied to all dismissals, regardless of the cause for the dismissal. The statute uses broadly inclusive language in stating that the

notice requirement applies "[w]henever a tenured teacher in continuous service is to be dismissed." Sec. 16-13-3. Broadly inclusive language in a statute is not ambiguous if the legislature's objective requires such language. See Sutherland Statutory Construction, § 46:7 at 263. The language does not indicate any exceptions to the applicability of the notice requirement but rather that the section applies to all dismissals of a tenured teacher. Furthermore, the Court notes that "whenever" is defined as "at any or every time" in the dictionary. MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1341 (10th ed. 2001). It is axiomatic that in statutory interpretation, ordinary words are to be given their usual and accepted meaning. See Sutherland Statutory Construction § 46:1 at 149-50.

While this Court is mindful of the deference to be afforded to the interpretation of the statute by the agency, the agency may not ignore the plain language of the statute because the statute's requirements may be inconvenient. See Barber v. Vose, 682 A.2d 908 (R.I. 1996) (holding that "those charged with the responsibility of implementing [a] statute [cannot] subvert [the statute's] directives by administrative interpretation because they find it inconvenient or difficult to comply with its provisions[]"). Moreover, the deference due to an agency's interpretation of its governing statute does not amount to "blind allegiance." See Citizens Sav. Bank v. Bell, 605 F. Supp. 1033, 1042 (D.R.I. 1985). Rather, the level of deference given to an agency's interpretation depends "on the persuasiveness of the interpretation, given all the attendant circumstances." See Unistrut Corp., 922 A.2d at 101. This is not a case in which the statute at issue is susceptible of multiple reasonable meanings. Section 16-13-3 is both clear and unambiguous in setting out the procedure by which a tenured teacher may be dismissed. The Court acknowledges the City's argument that the notice requirement raises difficulties when a

tenured teacher commits misconduct justifying immediate termination after the March 1st statutory deadline and puts an undue burden on the school system to be required to pay a teacher they believe should be dismissed. However, this Court may not "rewrite the statute by judicial interpretation." Barber, 682 A.2d at 917. It is the responsibility and role of the General Assembly to address these concerns. The Court, therefore, finds that the Commissioner's interpretation of the Teacher Tenure Act was clearly erroneous and ignored the plain language of the statute. Accordingly, the Court holds that McCrink's termination could not have been effective for the 2006-2007 school year and that McCrink's termination was effective for the 2007-2008 school year.

## IV

## Conclusion

After a review of the entire record, the Court finds that the Board of Regents' affirmation of the decisions of the Commissioner and the School Board, which found good and just cause to support the termination of McCrink from his position as a teacher in the Providence School Department, was not in violation of its statutory authority, or clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or an abuse of discretion. Substantial rights of the Petitioner have not been prejudiced. However, the Court also finds that the Board of Regents' affirmation of the decision of the Commissioner that the notice requirement of the Teacher Tenure Act was inapplicable was clearly erroneous. Accordingly, the Court holds that the termination of McCrink was effective as of the 2007-2008 school year. The Board of Regents' decision is therefore affirmed in part and reversed in part.

Counsel shall submit the appropriate Judgment for entry.