



State of Rhode Island and Providence Plantations  
RHODE ISLAND BOARD OF EDUCATION  
255 Westminster Street  
Providence, Rhode Island 02903-3400

Enclosure 6a1  
August 9, 2016

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August 9, 2016

**TO:** Members of the Council on Elementary and Secondary Education

**FROM:** Karin Forbes, Appeals Committee Chair

**RE:** Appeals Committee Recommendation on the matter of Newport  
Community School v. Middletown School Committee and  
Tiverton School Committee

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The Appeals Committee of the Council on Elementary and Secondary  
Education met on July 19, 2016, to hear oral argument on the appeal of  
the following Commissioner's decision:

**Newport Community School v. Middletown School Committee and  
Tiverton School Committee**

**RECOMMENDATION: THAT, in the matter of Newport Community  
School v. Middletown School Committee and Tiverton School  
Committee, the decision of the Commissioner is being remanded to  
the Commissioner, as presented.**



Decision and Order, adopted by the Commissioner, finding that the Commissioner has jurisdiction to hear the dispute under Rhode Island General Laws §16-39-2, and granting NCS's petition for reimbursement of ALP costs. The decision further ordered Tiverton and Middletown to pay the cost of ALP services provided for referred students in the future.

Tiverton and Middletown appealed the Decision and Order of the Commissioner and asked the Council on Secondary and Elementary Education for a decision on whether the Commissioner erred in the February 22, 2016 on a number of grounds. However, for purposes of this appeal we focus solely on the threshold question of whether the Commissioner should have provided the parties with a hearing prior to the issuance of a final Decision and Order in this instance. NCS argues that there exists no such requirement for a hearing prior to a final decision.

The Council reviewed the briefs and considered the well-presented arguments of both parties at oral argument. We find that the decision was in error. The decision determined that the Commissioner possessed jurisdiction to hear the dispute under RIGL §16-39-2 which states that the Commissioner shall make a determination "after notice to the parties interested of the time and place of hearing . . ." Additionally, we note that although it was discussed with the first hearing officer, the parties failed to agree on and submit a joint stipulation of relevant and material facts. As a result of failure to stipulate facts or hold a hearing, the Council is presented with an Appeal in which there are disputed facts. In this instance we find that the failure to hold a hearing prior to the issuance of a final Decision and Order was in error<sup>1</sup>, making this the rare case where the decision of the Commissioner is "patently arbitrary, discriminatory, or unfair" which is the standard of review for Appeals brought to the Board of Education, Altman v. School Committee of the Town of Scituate, 115 (R.I.) 399, 405 (1975). Given the procedural nature of this error, we need not reach the remaining questions in this case.

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<sup>1</sup> Nothing in this decision is intended to preclude the parties in an appeal from agreeing to stipulate facts and waive a hearing.

For the reasons stated herein, the Decision and Order of the Commissioner is reversed and remanded to either allow the parties to reach a stipulation of facts and waive a hearing, or to conduct a hearing.

The above is the decision recommended by the Appeals Committee after due consideration of the record, memoranda filed on behalf of the parties and oral arguments made at the hearing of the appeal on July 19, 2016.

Council on Elementary and Secondary Education

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Daniel P. McConaghy, Chair

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Karin Forbes, Appeals Committee Chair

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