



State of Rhode Island and Providence Plantations
DEPARTMENT OF EDUCATION
Shepard Building
255 Westminster Street
Providence, Rhode Island 02903-3400

Deborah A. Gist
Commissioner

March 5, 2013

Deborah Cylke, Superintendent
Pawtucket School Department
286 Main Street, P.O. Box 388
Pawtucket, Rhode Island 02860

**RE: Pawtucket School Committee/
Request for Advisory**

Dear Superintendent Cylke:

Please be advised that I am in receipt of your letter dated February 19, 2013, wherein you request an advisory opinion with respect to my Field Memo Alert dated January 31, 2013. Specifically, you request "advice with respect to how the language of this Field Memo Alert applies to [Pawtucket's] own situation with [its] teachers' contract currently set to expire on August 31, 2013." In fact, said expiration date of August 31, 2013 relates to an extension of the original 2009 – 2012 CBA which was agreed as between the Pawtucket School Committee and the teacher's union. Pertinent additional facts as you recite them or are implicitly understood include:

- That this particular contract and its extension provides for an annual "Job Pool" based strictly on seniority for teachers seeking transfers or who were not recalled;
- That this contract generally provided for seniority-based teacher layoffs;
- That contractual provisions relating to layoffs, transfers and layoffs are limited in application to the elementary and middle schools of the Pawtucket School District and only until August 31, 2013;
- That the School Committee's singular motive in conceding to the contract extension was for purposes of ameliorating serious financial conditions both within the operations of the Pawtucket School District as well as the City of Pawtucket.

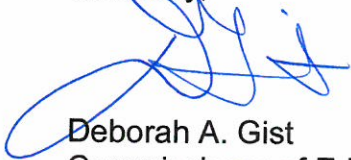
It appears that central to your request for an advisory opinion is a suggestion that the Pawtucket School District may accede to the terms of CBA as extended to August 31, 2013 relative to seniority-based hirings, terminations, retentions, recalls and other human capital decisions and, if such is the case, a concern about the potential risk in terms of sanctions imposed upon the district and its administrators for the countenance of such a breach of the required provisions of the Basic Education Program, RIGL 16-7-24, as it relates to the administration of an effective human capital management system.

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First, it is important to stress that the purpose behind the Basic Education Program's regulation of educational systems is in the achievement of quality instruction and instructional support systems. To that end, the most functional role for management is to maintain controls over the staffing of professional personnel in order to meet the primary objective of student learning and success. Clearly, the means towards achieving a student-centered policy is through the institution of policies and procedures for a human capital system that not only supports continuous improvement of teaching and learning, but also correlates all professional staff qualification determinations to the central goal of student learning and success. There exist limitations on the scope of permissible bargaining, and any human capital system predicated on seniority determination amounts to a disregard of the "essence of the educational mission" and the legal requirements of the Basic Education Program.

In conclusion, and in the context of the several advisories and memoranda that have been issued by RIDE since 2011, I need only restate the main terms of the Field Memo Alert, namely, that for those CBAs which are to expire upon or after July 1, 2010, or which have been ratified *or extended* after July 1, 2010, the requirements of the BEP relating to the management of human capital systems are operative as a matter of law, irrespective of negotiated terms to the contrary. Accordingly, the execution of any provisions that determine professional educational staff recruitment, placement or termination primarily on the basis of seniority are a clear violation of the law. Any sanctions that may be imposed for such violations are not susceptible of prejudgment and are otherwise subject to the hearing procedures under RIGL 16-39-1 and RIGL 16-39-2, as well as enforceable pursuant to the Commissioner's authority to withhold and/or divert state aid under RIGL 16-5-30.

Sincerely,



Deborah A. Gist
Commissioner of Education

DAG/crb