



Enclosure 7a
September 8, 2014

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September 8, 2014

TO: Council on Elementary and Secondary Education

FROM: Karin Forbes, Appeals Committee Chair

RE: Appeals Committee Recommendations

The Appeals Committee of the Council on Elementary and Secondary Education met on July 22, 2014 to hear oral argument on the appeal of the following Commissioner's decisions:

- **Fermin Ciprian v Providence School Board**

RECOMMENDATION: THAT, in the matter of Fermin Ciprian v. Providence School Board, the Decision of the Commissioner is affirmed, as presented.

- **G. Doe v. Cumberland School District**

RECOMMENDATION: THAT, in the matter of G. Doe v. Cumberland School District, the Decision of the Commissioner is affirmed, as presented.

STATE OF RHODE ISLAND

**COUNCIL ON ELEMENTARY
AND SECONDARY EDUCATION**

FERMIN CIPRIAN

vs.

PROVIDENCE SCHOOL BOARD

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DECISION

This is an appeal by Fermin Ciprian (Petitioner) from the decision of the Commissioner, dated August 28, 2013, whereby the Commissioner denied and dismissed the Petitioner’s appeal because he was properly suspended and terminated for good and just cause from his position as a physical education teacher.

The findings of fact by the Commissioner supported by the record in evidence before the Board show the following. Petitioner was employed by the Providence School Board (“PSB”) for nearly fourteen (14) years at the beginning of the 2007-2008 school year. On October 15, 2007 Petitioner was placed on paid administrative leave while the PSB investigated allegations that he had exhibited disruptive behavior and been threatening and hostile to other employees. On or about October 25, 2007 the Petitioner filed a complaint with the Rhode Island Office of the Attorney General. The complaint included a letter from the Petitioner asserting, among other things, that the Federal Bureau of Investigations was conspiring against him by using mind control devices to gather information on his thoughts, causing people to act in a harassing or annoying manner toward him, and causing people to serve his family unhealthy food. The letter was forwarded to the PSB. On April 2, 2008, the PSB notified the Petitioner that based on testimony from witnesses along with the letter to the Attorney General, the PSB believed he was

a potential danger to the school community and could not return to work unless he received a fitness for duty evaluation. After the further exchange of correspondence, both parties agreed that the Petitioner would have an evaluation with a specific clinical services network, would be paid for professional time he had missed during his administrative leave, and upon clearance would return to work at a different high school.

At the fitness for duty evaluation, the Petitioner refused to discuss the letter to the Attorney General. The physician determined that the refusal to answer questions about the letter could indicate a psychiatric disorder and that he could not recommend a return to duty without a full evaluation where the Petitioner was willing to discuss the letter. In correspondence dated August 14, 2008, the PSB notified the Petitioner that failure to schedule a fitness for duty evaluation by 2:00 PM on August 28, 2008 would result in further discipline, up to and including termination. The Petitioner failed to follow up with the evaluator for the purpose of scheduling another meeting with the physician. On September 8, 2008 the PSB voted to terminate the Petitioner, citing four grounds including the letter to the Attorney General and his subsequent refusal to follow the directive to complete a fitness for duty evaluation. On October 14, 2008 the PSB rescinded its September 8th termination, and on October 27, 2008 voted to suspend him without pay for the remainder of the year and terminate him effective the beginning of the 2008-2009 school year, based on the same four grounds. On September 21, 2009, the Petitioner was given a full hearing before the PSB. The PSB, continuing to rely on the same four grounds, voted to affirm its decision to terminate.

The Petitioner filed a petition with the Commissioner wherein he sought to overturn the suspension and dismissal. During the appeal to the Commissioner, the PSB reduced the stated reasons for the suspension and termination to the letter written to the Attorney General and the

subsequent refusal to submit to a full fitness for duty evaluation. In a written decision dated August 28, 2013, the Commissioner issued findings of fact and conclusions of law evaluating both the suspension and the termination. The Commissioner concluded that the alarming nature of the letter and the refusal to cooperate with the fitness for duty evaluation were good and just cause for the suspension without pay. Regarding the portion of the appeal related to his termination, the Commissioner determined that the Petitioner had failed to press his claim of legal defects in the evaluation process through the grievance process, among others. As a result, the Commissioner determined that he had waived those claims and could not reassert them at a hearing. However, the Commissioner also concluded that were those claims not waived then they were not substantial enough to excuse the continuing refusal to complete the fitness for duty evaluation and constituted good and just cause for termination. The Petitioner's appeal was denied and dismissed.

The Petitioner filed an appeal of the Commissioner's decision asking the Board to rescind the decision of the Commissioner and that he be reinstated with back pay. The basis for the appeal is that the Commissioner had insufficient evidence to determine that the Petitioner was insubordinate and that a termination was not supported by good and just cause.

The Board reviewed the briefs and considered the well-presented arguments of both parties at oral argument. The Commissioner's findings of fact were supported by evidence on the record, and the finding of good and just cause for termination meets the standard of review for Appeals to the Board of Education as the decision is in no way "patently arbitrary, discriminatory, or unfair". Altman v. School Committee of the Town of Scituate, 115 R.I. 399, 405 (1975).

For the reasons stated herein, the decision of the Commissioner is affirmed.

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 22, 2014.

Council on Elementary and Secondary Education

Patrick A. Guida, Chair

_____, 2014

Karin Forbes, Appeals Committee Chair

_____, 2014

STATE OF RHODE ISLAND

**COUNCIL ON ELEMENTARY
AND SECONDARY EDUCATION**

G. DOE

vs.

**CUMBERLAND SCHOOL
DISTRICT**

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DECISION

This is an appeal by G. Doe (“Doe”) from the decision of the Commissioner, dated March 18, 2014, whereby the Commissioner determined that the Cumberland School District may legally charge tuition fees for summer programs and courses in order to earn academic credits not accrued during the regular school year.

Doe appealed from the Cumberland School District’s imposition of tuition fees and charges for participating in summer school classes, seeking a determination that such fees are unauthorized for any public school student under Rhode Island law. After a hearing on January 17, 2013, in a written decision issued May 21, 2013 the Commissioner determined that the proper question was whether state and federal law require a free special education for students with an Individualized Education Program and therefore prohibit the imposition of summer school tuition and fees for Doe. A new hearing was ordered by the Commissioner to take evidence on the question of whether Doe was denied access to a free appropriate public education under state and federal special education laws. Petitioner appealed the Commissioner’s decision to order a new hearing to this Board. On appeal, this Board determined that the Commissioner’s decision to order a new hearing was in error and remanded to answer the

question of whether they could charge Doe for summer school courses irrespective of special education protections.

On remand both parties declined to appear before a hearing officer to offer additional evidence, instead resting on the submission of supplemental written arguments. In a written decision issued March 18, 2014, the Commissioner noted that there were no laws or regulations requiring summer programs or courses, along with no legal authority allowing a school district to compel attendance at summer school. Finding that the summer program is outside of the scope of the school year and not subject to the standards and requirements of the Basic Education Program, the Commissioner determined that the Cumberland School District may legally charge tuition fees for its summer programs and courses. The Commissioner noted that the decision is based strictly on the facts in this case.

The Board reviewed the briefs and considered the well-presented arguments of both parties at oral argument. We find that the Commissioner's decision, that the charging of a fee to a student for summer school programs and courses in order to earn academic credits not accrued during the regular school year by the Cumberland School District is lawful, is consistent with Rhode Island law. The decision is in no way "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).

For the reasons stated herein, the decision of the Commissioner is affirmed.

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 22, 2014.

Council on Elementary and Secondary Education

Patrick A. Guida, Chair

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Karin Forbes, Appeals Committee Chair

_____, 2014