



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

Eva-Marie Mancuso, Esq.
Chair

Enclosure 8c
April 14, 2014

Antonio Barajas, M.D.

April 14, 2014

Michael Bernstein

Colleen A. Callahan, Ed.D.

TO: Members of the RI Board of Education

Dennis Duffy, Esq.

FROM: Karin Forbes, Appeals Committee Chair

Karin Forbes

RE: Appeals Committee Recommendations

Jo Eva Gaines

Patrick Guida, Esq.

William Maaia, Esq.

The Appeals Committee of the Rhode Island Board of Education met on April 4, 2014 to hear oral argument on the appeal of the following Commissioner's decisions:

Lawrence Purtill

Mathies Santos

John Johnson v. Providence School Board

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

Kelly McKenney v. Barrington School Committee

RECOMMENDATION: THAT, in the matter of Kelly McKenney v. Barrington School Committee, the Decision of the Commissioner is affirmed, as presented.

Victoria Bierenday v. the Rhode Island Department of Elementary and Secondary Education

RECOMMENDATION: THAT, in the matter of Victoria Bierenday v. Rhode Island Department of Elementary and Secondary Education, the Decision of the Commissioner is affirmed, as presented.

STATE OF RHODE ISLAND

BOARD OF EDUCATION

JOHN JOHNSON

vs.

PROVIDENCE SCHOOL BOARD

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DECISION

This is an appeal by John Johnson (Petitioner) from the decision of the Commissioner, dated October 23, 2012, whereby the Commissioner denied and dismissed the Petitioner’s appeal because he was properly dismissed for cause from his position as a probationary teacher.

Petitioner was appointed as a probationary teacher effective November 12, 2008. The Petitioner was placed on administrative leave on January 31, 2011 while the Providence School Department investigated an incident in which the Petitioner was alleged to have grabbed a student by the neck, choked the student, and then forcibly removed the student from the classroom. The Providence School Board voted to uphold a termination recommendation of the Superintendent on June 13, 2011 on the basis of inappropriate physical contact with a student. The Petitioner requested a full evidentiary hearing before the School Board. The evidentiary hearing was held on November 7, 2011 and at the conclusion the School Board voted to uphold its previous decision to suspend and then terminate the Petitioner.

The Petitioner filed a petition with the Commissioner wherein he sought to overturn the dismissal. In a written decision dated October 23, 2012, the Hearing Officer issued findings of fact and conclusions of law ultimately determining that the Petitioner was not a tenured teacher and was dismissed for sufficient cause during the term of his annual contract as a probationary teacher. However, the decision further noted that the inappropriate physical contact would have allowed the School Board to dismiss Petitioner under the “good and just” cause standard of even a tenured teacher. The Petitioner’s appeal was denied and dismissed.

The Petitioner filed an appeal of the Commissioner’s decision requesting review of (1) whether the Commissioner erred by ruling that the Petitioner did not have tenure; and (2) whether the Commissioner erred by allowing evidence of prior intentional acts of the Petitioner to prove intent; and (3) whether the Commissioner erred in ruling that a single act of misconduct is sufficient cause for dismissal.

The Board reviewed the briefs and considered the well-presented arguments of both parties at oral argument. We find that the decision of the Hearing Officer as adopted by the Commissioner is consistent with Rhode Island Law. The Commissioner’s decision, including the finding that the Petitioner had not achieved tenure, the decision allowing evidence of prior bad acts to prove intent, and the ruling that the Providence School Board dismissed the Petitioner with sufficient cause all meet 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 April 4, 2014.

Rhode Island Board of Education

Eva-Marie Mancuso, Chair

_____, 2014

Karin Forbes, Appeals Committee Chair

_____, 2014

STATE OF RHODE ISLAND

BOARD OF EDUCATION

KELLY MCKENNEY

vs.

**BARRINGTON SCHOOL
COMMITTEE**

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DECISION

This is an appeal by Kelly McKenney (Petitioner) from the decision of the Commissioner, dated August 28, 2013, whereby the Commissioner denied and dismissed the Petitioner’s appeal because she was properly dismissed for good and just cause from her position as a teacher in the Barrington School System.

Petitioner became employed as a teacher by the Barrington School Committee in September of 2002. In January of 2011 the Petitioner posted a study guide for an upcoming examination on the school’s website. The study guide contained materials that other Social Studies Department members at Barrington High School felt were too specific and pointed out answers that were on the upcoming examination. On June 17, 2011, the Appellant was present while two students were taking a social studies makeup examination. During the examination, she guided the students to the correct answers and undermined the academic integrity of the examination. Barrington School Committee voted to terminate the Petitioner based upon these two incidents.

The Petitioner filed an appeal with the Commissioner wherein she sought to overturn the termination. In a written decision dated August 28, 2013, the Hearing Officer issued findings of fact and conclusions of law determining that one of the two incidents, the study guide, did not

provide good and just cause for termination. However, the decision further found that the June 17, 2011 behavior during the examination undermined the academic integrity of a significant student evaluation. Therefore, the Commissioner determined that this behavior alone met the “good and just” cause standard for termination of a teacher. The Petitioner’s appeal was denied and dismissed.

The Petitioner filed an appeal of the Commissioner’s decision alleging that the representation of the Barrington School Committee by an attorney from the same law firm representing the Rhode Island Department of Education in an unrelated matter requires a reversal of this decision. Further, the Petitioner alleges that there was insufficient evidence to support a finding that she inappropriately guided students to the correct answers during an examination. Conversely, the Appellee, the Barrington School Committee, asks the Board of Education to reverse the finding that the study guide incident did not provide good and just cause for termination.

The Board reviewed the briefs and considered the well-presented arguments of both parties at oral argument. We find that the decision of the Hearing Officer as adopted by the Commissioner is consistent with Rhode Island Law. First, the Commissioner’s decision not to recuse on this appeal was in no way “patently arbitrary, discriminatory, or unfair” which is the standard for Appeals before the Board of Education. Altman v. School Committee of the Town of Scituate, 115 R.I. 399, 405 (1975). The Commissioner did not violate any rules, regulations, ethical guidelines, or any other principal in reviewing and approving this decision. Next, the Commissioner’s decision that the study guide did not provide just cause for termination, and that guiding students to answers on an examination is independently sufficient behavior to meet the

“good and just cause” standard for termination of a teacher is in no way “patently arbitrary, discriminatory, or unfair”. Id.

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 April 4, 2014.

Rhode Island Board of Education

Eva-Marie Mancuso, Chair

_____, 2014

Karin Forbes, Appeals Committee Chair

_____, 2014

STATE OF RHODE ISLAND

BOARD OF EDUCATION

VICTORIA BIERENDAY

vs.

**RHODE ISLAND DEPARTMENT
OF EDUCATION**

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DECISION

This is an appeal by Victoria Bierenday (Petitioner) from the decision of the Commissioner dated February 4, 2013, whereby the Commissioner affirmed and granted the Rhode Island Office of Educator Quality and Certification’s request that the Commissioner deny renewal of the Petitioner’s early childhood education certificate and to suspend her elementary life teaching certificate.

Petitioner received a letter of notice on September 7, 2012 from the Rhode Island Office of Educator Quality and Certification (“Office of Certification”) informing her of the suspension of her elementary certificate and the need to re-apply for her early childhood certificate. The basis for the letter of notice was the failure to disclose an August 17, 2010, *nolo contendere* plea for reckless driving, a March 27, 2012 refusal to submit to a chemical test resulting in a suspended driver’s license, and a May 25, 2012 conviction for driving with a suspended license on April 23, 2012.

In a written decision dated February 4, 2013, the Hearing Officer issued findings of fact and conclusions of law determining that the Office of Certification’s requested denial and requested suspension were granted and affirmed. On March 4, 2013 the Petitioner filed a notice of Appeal to the Board of Education. On March 12, 2013 the record of the proceeding was

transmitted to the Board of Education. In late March of 2013 the Petitioner requested and received a thirty (30) day extension to submit a brief in support of the notice of appeal. On October 15, 2013, over five (5) months after the expiration of the extension, no brief had been received by the Board of Education. On that same date, RIDE filed a motion to dismiss for failure to submit a timely brief as required by the Regulations of the Board of Education. Regulations of the Board of Education, Title A, §A-5-4.

Counsel for the Petitioner was notified that the Board of Education would hear RIDE's Motion to Dismiss and provided Petitioner's counsel with the date, time, and location of the hearing. RIDE appeared before the Board of Education to argue for the Motion to Dismiss. No one was present for the Petitioner. The Appeal was dismissed with prejudice for failure to comply with the Regulations of the Board of Education and failure to prosecute the Appeal.

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 April 4, 2014.

Rhode Island Board of Education

Eva-Marie Mancuso, Chair

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Karin Forbes, Appeals Committee Chair

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