



This matter was heard on November 28, 1989 upon the appeal to the Commissioner of Education of Alexander J. Freda from a decision of the Johnston School Committee to terminate his employment as Supervisor of Instruction and Personnel, Secondary Guidance.

The Commissioner has jurisdiction to hear the appeal by virtue of the provision of §16-12.1-6, R.I. G. L., School Administrators' Rights, which references the right to review under the provision of Chapter 39 of Title 16, Section 2. The matter was heard by the undersigned Hearing Officer upon appointment by the Commissioner.

Due notice was given to the interested parties of the time and place of the hearing, both parties were represented by counsel, witnesses were sworn, testimony taken and a transcript made. Briefs were filed on December 22, 1989 and the Attorney General of Rhode Island filed his findings on the Open Meeting complaint in this case on January 16, 1990.<sup>1</sup> The record was closed by the transmission of that finding on February 6, 1990.

Upon the testimony taken and the evidence presented, we find the following:

- The appellant had been employed by the Johnston School Committee as Supervisor of Instruction and Personnel, Secondary Guidance for several years. On February 13, 1989 the Committee voted to

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1] The Attorney General filed on January 16, 1990 with the Johnston School Committee its findings on the Open Meeting complaint in this case. The Attorney General found a violation of the requirements of that Act, but decided not to pursue further action. The findings have been considered as part of this hearing and such consideration is encompassed in this decision.

terminate his employment in the position and return (terminology ours) Mr. Freda to his previous teaching position per the existing contract between the Teachers' Union and the School Committee.

- Mr. Freda was notified by letter of February 15, 1989 of the Committee's action taken on February 13, 1989.
- Mr. Freda appealed the action, a hearing before the Committee was held on June 27, and the Committee voted to affirm its decision on July 27, 1989.
- The Committee took its action against Mr. Freda's administrator's position as a result of a recommendation of the Superintendent of Schools, Dr. Ralph J. Jasparro, that a decline in enrollment justified the elimination of the position. We find a substantial decrease in enrollment over time.

#### DECISION

The plaintiff's argument that the standard of necessity, cited in §16-13-6 and numerous cases decided by the Commissioner of Education, does not prevail in the instant case. There has been a substantive decline in enrollment in the Johnston School System over time and §16-12.1-2.1 is the law which governs this case. §16-12.1-2.1 speaks to ". . . administrator shall only be terminated for just cause including but not limited to declining enrollment or consolidation."

The Legislature in its wisdom clearly intended that the law not be confused as it relates to the difference between teachers and administrators, created separate sections for each and restated the difference in §16-12.1-1.

§16-12.1-1. Legislative purpose.--The general assembly recognizes that administrators are not members of teacher collective bargaining units and, therefore, are not protected by the terms of teacher bargaining agreements. While clearly intending neither to interfere with the discretion of school committees to choose those who shall administer local schools nor to grant tenure to school administrators, the general assembly deems it necessary to the orderly and effective functioning of public education to inform school administrators of the bases or reasons for their suspension, dismissal or non-renewal of their employment relationship, and to afford administrators an opportunity to be heard before the school committee. Full disclosure of the bases or reasons for suspension, dismissal or non-renewal and the hearing which may follow, while providing administrators and school committees a meaningful hedge against mistaken or impermissible actions as well as an opportunity to question and confront those individuals whose judgment or allegations furnish the basis for the actions taken, are ultimately intended to erase harmful innuendo from any suspension, dismissal or non-renewal of an administrator.

In this de novo hearing the Committee has clearly demonstrated a decline in enrollment over time of a substantial nature. The Committee has clearly demonstrated its desire to reduce staff and reorganize its priorities based upon a permissible reason. Therefore, in the instant case we find that the School Committee did not abuse its power when it terminated Mr. Freda from his administrator's position and we uphold the Committee's action.

Further, the General Assembly, in enacting the sections of the general laws heretofore cited, did not intend to interfere with the discretion of school committees to administer the schools in their ". . .entire care, control, and management. . ." (§16-2-9).

There is, however, another clear purpose in §16-12.1-1 which was not fulfilled by the Committee. That purpose, as stated, has to do with the process as an opportunity to understand reasons, confront facts and ". . .are ultimately intended to erase harmful innuendo from any suspension, dismissal or non-renewal of an administrator."

We hasten to note that at no time in this case was job performance an issue. We include this only to support the intent and meaning of the law. We find that the Committee did violate state law as stated in §16-12.1-3, §16-12.1-5, and §16-12.1-6:

16-12.1-3. Notice required - Hearing. - Prior to taking final action dismissing or not renewing the employment of an administrator, and subsequent to suspending the employment of an administrator, a regional or local school committee shall provide the affected administrator with (a) a concise, clear, written statement, privately communicated, of the bases or reasons for the suspension, dismissal or non-renewal and (b) notification of the right of the administrator to a prompt hearing, which shall be at the election of the administrator, and the right to be represented by counsel at the hearing. Upon the request of a hearing by the administrator, prompt notification stating the time and place of the hearing shall be given. The time and place set for the hearing shall allow sufficient opportunity to the administrator for preparation without undue delay.

16-12.1-5. Decision. - Within a reasonable time, not to exceed thirty (30) days, after the conclusion of the hearing, the school committee shall render a concise, clear, written decision. The findings and conclusion therein shall be based exclusively on evidence received at the hearing or on reasonable inferences drawn therefrom. A copy of the decision shall be promptly supplied to the administrator.

16-12.1-6. Appeals. - An administrator aggrieved by a final decision of a school committee, may obtain review under the provisions of chapter 39 of title 16 by petitioning the commissioner of elementary and secondary education within ten (10) days of receipt of the decision. When an appeal is taken, the school board shall forward a copy of the complete record of the case to the commissioner of elementary and secondary education.

The violations were as follows:

The notice of February 15, 1989 was deficient in that it provided no prior notice of action imposed by the law. In addition the letter directed Mr. Freda to the sections of the Rhode Island General Laws for tenured teachers (§16-13) rather than §16-12.1 -School Administrators' Rights, where he rightfully should have been directed.

There is a question by this Hearing Officer as to whether that misdirection of legal reference caused an undue delay in hearing. It is not clear in the record as to fault. What is clear, however, is that Mr. Freda was not granted a ". . .prompt hearing. . ." (§16-12.1-3). Since the hearing took place on June 27, 1989 and the first reference to the hearing being held was a response from the School Committee dated May 25, 1989,

it is a long period between 2/15/89 and 5/25/89. The letter of May 25, 1989 again references the hearing as being held under §16-13 (Teachers' Tenure).

The hearing was held on June 27, 1989 and a decision was rendered by the Committee on July 27, 1989. Mr. Freda filed an appeal to the Commissioner on August 3, 1989.

The School Committee did not forward to the Commissioner, upon appeal, a complete record of the case as required by law.

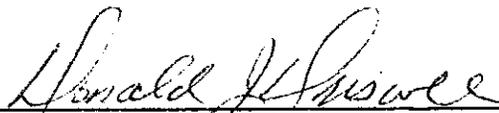
Of more import, however, is the failure of the School Committee to adhere to the "open meetings law" as cited in a letter from the Attorney General's office dated January 16, 1990. (Copy attached).

The failure to publish the notice of meeting and the failure to document the vote on holding closed meetings are serious breaches of process. While the Attorney General did not elect to pursue legal action, we conclude some notice should be taken of these procedural omissions.

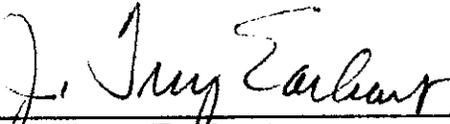
The Committee by omission or commission has caused serious errors in the process and has by those errors abused the processes set up by law to protect the governed as well as those who govern. We find that Mr. Freda has suffered some deprivation and award to him nominal damages in the amount of One (\$1.00) Dollar for violation of his right to due process.

In summary, we find that the Committee acted lawfully and within its discretionary authority in voting to terminate Mr. Freda's services as an administrator.

Accordingly, the appeal is dismissed. We, however, note serious omissions in process and award damages to Mr. Freda for same.

  
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Donald J. Driscoll  
Hearing Officer

Approved: September 5, 1990

  
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J. Troy Earhart  
Commissioner of Education



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January 16, 1990

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FEB 6 1990  
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RE: Open Meetings Act Complaint - Johnston School Committee

Dear Mr. Henry:

As you may know, Special Assistant Attorney General Rebecca Partington is temporarily out of this office on maternity leave. I have been asked to complete this Department's investigation of the Open Meetings Act complaint filed by Alexander J. Freda against the Johnston School Committee.

Based upon my review of the complaint, the Johnston School Committee response thereto, and your follow up letter to Rebecca Partington dated September 19, 1989, as well as excerpts from the hearing held at the Department of Education on November 28, 1989 in reference to Mr. Freda's complaint against the Johnston School Committee, it is my conclusion that the provisions of the Open Meetings Act were not followed by the Johnston School Committee at the meeting held on July 27, 1989. 

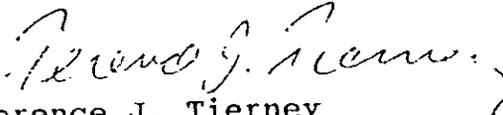
As you are aware, Section 42-46-6(c) of the Open Meetings Act requires that school committees publish notice of their meetings in a newspaper of general circulation in the school district under the committee's jurisdiction. The Superintendent of Schools in Johnston, Dr. Ralph Jaspardo, has testified before the Department of Education that notice of the special meeting held on July 27, 1989 was not published in a newspaper. In addition, Section 42-46-5(a)(1) provides that a person whose job performance will be discussed by a public body may require that such discussion be held at an open meeting. While you have stated that the purpose of the meeting held on July 27, 1989 was the review of the transcript of the hearing, the exhibits and "to render a decision on the renewal or nonrenewal of Mr. Freda's contract for the 1989-1990 school year", it is my conclusion that such a purpose necessarily

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involved a discussion of Mr. Freda's job performance, and under the statute, he would be entitled to require that this be done at an open meeting. Dr. Jasparro testified at the Department of Education hearing that Mr. Freda was not provided with an opportunity to request that the meeting be held as an open meeting. Furthermore, Section 42-46-4 of the Open Meetings Act provides that "the vote of each member on the question of holding a meeting closed to the public and the reason for holding such a meeting, by a citation to a subsection of 42-46-6, and a statement specifying the nature of the business to be discussed shall be recorded and entered into the minutes of the meeting." I have reviewed the minutes of the meeting held on June 27, 1989 and they do not contain a citation to a subsection of §42-46-6.

Notwithstanding this Department's finding of Open Meeting Act violations, an action in Superior Court will not be commenced against the School Committee and its members. However, I have enclosed herein a copy of the Open Meetings Act which I would ask you to provide to each member of the Committee so that they may strictly follow its provisions in all future meetings.

Very truly yours,

  
Terence J. Tierney  
Special Assistant  
Attorney General

TJT:jb  
1081Hp.107

cc: James McAleer, Esquire