

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

ROBERT S. LEVESQUE

vs.

WEST WARWICK
SCHOOL COMMITTEE

D E C I S I O N

September 14, 1990

This matter was heard on January 30, February 14 and 28, 1990 upon the appeal to the Commissioner of Education of Robert S. Levesque, a teacher in the West Warwick School System, of an action by the School Committee suspending him, without pay, for a period of time.

The Commissioner has jurisdiction to hear this appeal by virtue of R.I.G.L. §16-13-4 which is referenced as the appeal process in §16-13-5. The matter was heard by the undersigned Hearing Officer upon appointment by the Commissioner. The hearing was de novo and encompassed the record of the School Committee's hearing of November 29, 1989.

Due notice was given to the interested parties of the time and place of the hearing, both parties were represented by counsel, witnesses sworn, testimony taken and a transcript made.

Findings of Fact

Upon the testimony and evidence presented we find the following facts to apply:

- Mr. Levesque is an elementary physical education teacher in the West Warwick School System.
- There were four (4) specific allegations of behavior by Mr. Levesque toward different students which were of an unacceptable nature; i.e. May 1988, January 1989, May 1989 and September 1989.
- The unacceptable behavior (use of excessive force in handling pupils) was identified by the Principal, Robert W. McKenna in three (3) specific incidents, through investigation, witnesses and partici-

pant interview. The fourth incident (May 1989) did not yield a definitive set of facts and as a result was not pressed by the Principal.

- The unacceptable behavior was of such a nature as to be of extreme concern to the Principal and contrary to any definition of appropriate control of students.
- Principal McKenna instituted a program of discussion with Mr. Levesque; i.e. counselling, etc. which was a fair representation of the supervision and advice that an administrator/supervisor would give to an instructor/teacher in a school environment. The counselling was direct, clear, and understandable as to expectations of appropriate behavior. There were also very clear warnings included.¹
- Mr. McKenna did inform and involve his Superintendent in corrective actions taken prior to the last incident of September 1989.
- The act of September 1989 did cause the School Committee upon recommendation of the Superintendent to conduct a pre-deprivation hearing (September 28, 1989) and as a result issue sanctions against Mr. Levesque; i.e. a ninety (90) working day suspension without pay, and with " . . . proof of psychiatric testing and counselling during the . . . period."

1] Rhode Island has no statutory or regulatory requirement which causes an action which has become known as "progressive" discipline in a discharge case. We do not agree that "progressive discipline" was a requirement of due process herein. The issue, however, is moot since the School Committee and its agents elected that course of action in this case.

- Mr. Levesque requested a full hearing in the case and received a hearing before the School Committee on November 29, 1989. As a result the sanctions of September 28, 1989 were modified to a forty-five (45) working day suspension and the counselling requirements were dropped.
- Mr. Levesque returned to work on December 7, 1989.

Summary of Argument

The Union (Rhode Island Federation of Teachers, AFT) argues that the Committee's case lacks substance since it failed to demonstrate progressive discipline and failed to prove just cause.

The School Committee argues that Mr. Levesque was warned and counseled in a progressive manner over a period of two school years. The Committee alleges that his behavior, by continuing in spite of administrative supervision and advice, ". . .has jeopardized the safety of our students." (S. C. Ex. 10).

DECISION

There is no doubt in this case that we are dealing with a serious problem - both for the teacher himself and the pupils and families with whom he interacts. We do not deal lightly with the consequences to either party - neither the deprivation of the opportunity to earn a living by the teacher and/or the right of every student to be taught in a safe and secure environment provided by the Committee through its staff.

To place children in jeopardy is the far more weighty matter to us, however. We find in this case that the defendant did engage in behavior

as described by the School Committee and as such did place himself in a position of needing corrective action. The Committee has proven to this Hearing Officer, beyond a doubt, that the actions of Mr. Levesque were incorrect and must be stopped. The record supports that the Committee had just cause for its action.

The School Committee did provide, at its election, progressive discipline and the pre-deprivation hearing and all other safeguards to satisfy the requirement of law R.I.G.L. §§16-13-4 and 5 and Cleveland Board of Education v. Loudermill 105 S.Ct. 1487 (1985)). We hasten to note here again that "progressive discipline" was not required, but the severity of a problem, however, truncates the period of time and effort required for "progressive discipline" when it is elected. The very term indicates some time being available for corrective action to be proposed and adopted. Clearly, harmful situations demand more immediate action and in this case we find the time and the attempts have been appropriate.

For the reasons cited above we find for the School Committee. The appeal is denied. We find, that since the Committee proposes to continue its employment of Mr. Levesque, it do so with some additional assistance to him so that every chance for a felicitous conclusion is assured. With that we order that an Employee Assistance package be developed by the School Committee, a cooperative design by its agents and the defendant, which would assist him in his behavior modification.

Approved: September 14, 1990

J. Troy Earhart
J. Troy Earhart
Commissioner of Education

Donald J. Driscoll
Donald J. Driscoll
Hearing Officer