

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

RHODE ISLAND DEPARTMENT  
OF ELEMENTARY AND  
SECONDARY EDUCATION

V.

ROBERT SCHNACK

DECISION

Held: Appellant rebutted evidence of his unfitness to teach by clear and convincing evidence of his rehabilitation and current ability to function as a role model for students. Therefore his request for extension of his provisional teaching certificate is granted contingent upon evidence of his completion of the required coursework.

Date: May 5, 1994

### **Travel of the Case**

On November 23, 1992, Robert W. Schnack, Jr. applied to the Rhode Island Department of Elementary and Secondary Education for an extension of his provisional social studies certificate, which had expired on August 1, 1991. On his application he answered "yes" in response to the question "Have you ever been convicted in this state or any other state of a misdemeanor or a felony". (R.I.D.E. Ex. 2). Some time thereafter, Mr. Schnack was notified that the Department of Elementary and Secondary Education (hereinafter "the Department") would recommend to the Commissioner that the requested extension be denied for good cause. (R.I.D.E. Ex. 3). On April 12, 1993 Mr. Schnack requested a hearing on the action proposed by the Department. At the request of Mr. Schnack's attorney, the hearing was deferred until October, 1993.

The undersigned, designated to hear and decide this matter under R.I.G.L. 16-11-4 conducted a hearing on October 14, 1993. Evidence was taken and testimony was presented on the issue of whether cause existed to deny the requested extension of Mr. Schnack's provisional teaching certificate. The record in this case closed on October 22, 1993.

### **Findings of Relevant Facts**

- On April 16, 1990 Robert W. Schnack, Jr. entered a plea of nolo contendere to the charge of driving to endanger, death resulting in the Superior Court for Providence County. (R.I.D.E. Ex. 5)
- As a result of the aforementioned plea, Mr. Schnack was sentenced to the Adult Correctional Institutions for a period of ten (10) years, serving the first three (3) years in home confinement. Service of the remaining seven (7) years of his sentence was suspended. He was placed on supervised probation for seven years and ordered to perform five hundred (500) hours of community service. (R.I.D.E. Ex. 5).
- Mr. Schnack's criminal charge was based on an accident on January 31, 1988 in which the car he was driving went out of its lane of travel, crossed the south-

bound lane on East Avenue, Pawtucket and struck a granite monument in front of Shea High School. The passenger in Mr. Schnack's car died a short time later, of injuries sustained in the crash. (Tr. pp 38-9, 43).

- Although Mr. Schnack was acquitted of the criminal charge of driving under the influence, (Resp. Ex. A) he was in fact operating his car under the influence of alcohol that night. His blood alcohol concentration was .247 (R.I.D.E. Ex. 6)<sup>1</sup> and Mr. Schnack testified that he knew the accident was related to his consumption of alcohol that night. (Tr. p. 101)
- Subsequent to the accident and his criminal conviction for driving so as to endanger, death resulting Mr. Schnack has refrained from alcohol abuse. He no longer consumes more than two (2) beers and never drives after consuming alcohol. (Tr. pp 99-100).
- Since February of 1988, Mr. Schnack has been employed by Baldwin's Office Supply Co. Inc., where he has worked in several different capacities. His employer submitted a letter stating that he is an excellent worker, and is respected by everyone he has worked with. (Resp. Ex.C).
- According to the pastor of his church, who also submitted a letter on his behalf, Mr. Schnack has "turned his life around," become an active member of his church, and for the past four years has taught weekly religious education classes for eighth graders. The pastor further noted that Mr. Schnack "has done a fine job and enjoys a good reputation in the parish community." (Resp. Ex. B).
- During and after his three-year period of home confinement, Mr. Schnack participated in a support group for other offenders convicted of same charge. He was selected from this group to speak at "drunk driving" classes. (Tr. p. 61).
- During and after his period of home confinement Mr. Schnack voluntarily lectured at several highschool assemblies on the subject of drunk driving. He related the story of what he had done, its effect on him, and urged students not to let this happen to them. (Tr. p. 62).
- Mr. Schnack performed more than the 500 hours of community service required as part of his sentence. Some of his community service was performed at the detoxification unit of a local hospital, where Mr. Schnack

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<sup>1</sup>Rhode Island statutes place the legal limit of blood alcohol concentration at an amount less than one tenth of one percent.

openly discussed his crime with patients and how it had affected his life. (Tr. pp. 83-84).

- Mr. Schnack has no prior or subsequent criminal convictions. (Tr. p. 89)

### **Positions of the Parties**

#### **Department**

The Department of Education argues that Robert Schnack is an individual who is unfit to teach, and therefore disqualified from holding a teaching certificate. Given his reckless conduct, the criminality of his behavior and the extreme consequence which resulted, the Department takes the position that substantial evidence of unfitness to teach has been shown. The Department emphasizes a teacher's function as a role model, and the statutory duty of every teacher in Rhode Island to implant and cultivate in the minds of all children principles of morality and virtue (R.I.G.L. 16-12-3). Given Schnack's criminal conviction, counsel for the Department argues that it will be impossible for Mr. Schnack to function as an exemplar for the students who would be placed under his care. The Department relies on the expert testimony it submitted with respect to Mr. Schnack's unfitness to teach.

#### **Position of the Appellant**

Counsel for Mr. Schnack essentially argues that his criminal conviction- a single "mistake" in his life-should not deprive him of the opportunity to enter the teaching field. Teaching is a profession for which Mr. Schnack is trained and has demonstrated much promise both in his teaching of religious education classes and his speeches at drunk-driving assemblies at local high schools. The appellant argues that he has accepted total responsibility for the death of his passenger who was also his best friend. Moreover, he has accepted this responsibility as his continuing obligation to give something back to society, by educating others about

the tragic consequences of alcohol abuse. His attorney argues that since the time of Mr. Schnack's criminal act, now some six years ago, Mr. Schnack has reordered his life. The facts contained in the record, he argues, demonstrate that Mr. Schnack is now a person who is of good character and judgment and capable of imparting sound moral values to students. Additionally, he points out that because of the act he committed and the death that he caused, Robert Schnack has been, and will continue to be, a very effective spokesperson against drunk driving.

### Decision

At the outset, it is necessary to set forth the legal and factual issues raised in a proceeding to revoke (or in this case refuse to extend) a teaching certificate. Our General Laws 16-11-4 provide:

the commissioner of elementary and secondary education shall promulgate rules and regulations under which a certificate may be annulled for cause.

In relating the standard of legal "cause" or other such generally phrased reasons for revocation of professional licenses to the teaching profession, the courts (and our own Board of Regents) have uniformly indicated that the relevant inquiry is whether the teacher's conduct indicates that he or she is unfit to teach<sup>2</sup>. A showing must be made that the teacher's conduct materially and substantially affects, or would affect, the teacher's performance.<sup>3</sup>

Neither our statute, nor any administrative regulation automatically disqualifies one convicted of a crime, even a crime as serious as the one committed by the appellant, from the teaching profession. A hearing officer is therefore charged to review all of the facts contained in the record, not just the fact of the

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<sup>2</sup>Morrison v. State of Board of Education, 461 P2d 375 (Ca. 1969), cited as authority most recently in West Valley-Mission College v. Concepcion, 21 Cal. Rptr, 2d5 (1993).

<sup>3</sup>Hoaglund v. Mount Vernon School Dist., etc. 623 P2d 1156 (Wash, 1981).

criminal conviction. A careful and reasoned inquiry into the teacher's fitness is mandated. See West Valley, *supra* at p.10.

Having identified the role of the hearing officer and the focus of our review of the record, it is equally important in this case to identify a responsibility with which we are not charged-to respond to any perceived inadequacy of the sentence imposed by the criminal court in its consideration of the conduct in question. While one might argue that the sentence imposed in 1990 on Robert Schnack for his offense was far too lenient<sup>4</sup> and that he should be further punished by having his teaching certificate revoked, the appropriateness of the punishment meted out by the sentencing court is not relevant here. Our review is confined to a determination of his present fitness to teach.

Evidence submitted in this case by the Department, if viewed in isolation, would establish that Robert Schnack is unfit to teach. Proof of criminal conviction of a felony of this type, and the disregard for human life which it indicates, constitutes a prima facie case of unfitness. We agree with counsel for the Department that a person who commits this crime demonstrates reckless disregard for human life and an inability to make the type of decisions expected of a teacher. The ability of the teacher to function as a role model is of utmost importance. Were our inquiry to stop here or should we be assessing Mr. Schnack's ability to function as a role model at a point close in time to his crime there is no doubt that we would find him unfit to teach.

However our review of the total record in this case takes us to a point in time well beyond January 31, 1988. The record contains evidence, noted with specificity in our findings of fact, that Robert Schnack is an individual who has undergone substantial change. Facts introduced into the record demonstrate that his acceptance of responsibility for his actions --the taking of his best friend's life -

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<sup>4</sup>especially in light of some recent sentences imposed for this type of offense.

-have put him on a mission to prevent further loss of life by drunk drivers. His active participation in such activities, together with other steps he has taken to reorder his life, indicate that he is a person substantially different from the person who made a conscious decision to drive while intoxicated on January 31, 1988.

The record contains testimony from two individuals who had contact with Mr. Schnack over the period of time he was in home confinement. Both the director of the home confinement program and Mr. Schnack's counselor testified without reservation that from their extensive firsthand knowledge of him and their observations of him as an effective lecturer he would, in their opinion, be an excellent teacher and a good role model for students. This testimony was at variance from that of the Department's expert, whose testimony rested solely on the fact of Mr. Schnack's conviction and underlying misconduct. We are cognizant of the fact that the Department's expert is a professional educator, however, because her opinion was rendered without knowledge of all the relevant facts in this case, it is not persuasive.

Mr. Schnack has demonstrated that he can function as an effective role model despite his past misconduct. By clear and convincing evidence of rehabilitation he has rebutted the Department's prima facie case of unfitness. We would note that, unlike some states, such as New Jersey, which do not permit evidence of rehabilitation to be taken into account in teacher certificate revocations<sup>5</sup> Rhode Island's statute has been interpreted to permit consideration of such evidence in revocation hearings. See the Board of Regents decision in Department of Education v. Cruser, August 13, 1992 and the decision of the Commissioner in Rhode Island Department of Education v. Bernardo, July 16,

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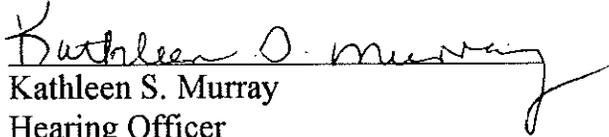
<sup>5</sup>New Jersey has adopted a statute (N.J.S.A. 18A: 6-7.1) which specifically provides that a teacher may present evidence of rehabilitation when reapplying for the teaching certificate.

1993. With such convincing evidence of rehabilitation in the record here, it must be given appropriate weight.

We find that Robert Schnack is presently fit to teach and that there is no "cause" to deny his request for extension of his provisional certificate, assuming he has also completed the required course work.

We do require, however, that Mr. Schnack disclose to any prospective employer (in the teaching field) the fact of his conviction, unless the record of his conviction has been expunged under provisions of Rhode Island law. Furthermore, should he at any future point be arrested for violation of the criminal laws of any state, including Rhode Island, he must immediately advise the Commissioner of Elementary and Secondary Education of this fact in writing.

His appeal is sustained.

  
Kathleen S. Murray  
Hearing Officer

Approved:

  
Peter McWalters  
Commissioner of Education

May 5, 1994  
Date