

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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IN RE: TEACHING CERTIFICATE \*  
OF EUGENE C. PETTY \*  
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DECISION

Held: The Department of Elementary  
and Secondary Education has  
proven that Mr. Petty is presently  
unfit to hold a teaching certificate.  
His certificate is suspended.

Date: August 3, 1995

### Travel of the Case

On June 13, 1994 the Rhode Island Department of Elementary and Secondary Education notified Eugene C. Petty of its proposed recommendation that the Commissioner revoke his teaching certificate<sup>1</sup>. Following his receipt of this notice, Mr. Petty requested a formal hearing, and the undersigned was designated to hear this matter.

Counsel for Mr. Petty and counsel for the Department presented evidence at hearings held on October 18, November 9, and November 18, 1994. In addition counsel submitted written memoranda, a process completed on February 4, 1995.

### Issue

Is there cause to revoke the teaching certificate held by Eugene C. Petty?

### Findings of Relevant Facts

- Eugene C. Petty has been employed as a public school teacher in the city of Providence since 1971. Tr. 10/18/94 p. 62. He functioned as an art teacher at the Gilbert Stuart Middle School until school year 1993-94 at which time he was assigned to administrative duties at the central office of the school department<sup>2</sup>. Tr. 11/9/94 p. 64; Tr. 10/18/94 p. 62.
- Mr. Petty's record of employment as a teacher in Providence contains no indication that he is anything other than a satisfactory teacher<sup>3</sup>.

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<sup>1</sup> Mr. Petty holds a life certificate in art education and a life certificate as a critic teacher.

<sup>2</sup> Superintendent Arthur Zarrella testified that when he became aware of an incident which was alleged to have taken place in Johnston, Rhode Island in September of 1993, he removed Mr. Petty from the classroom. The Providence School Department had not, as of the date of hearing, made any determination as to Mr. Petty's qualifications to continue his employment as a teacher in Providence. Tr. 10/18/94 p. 70.

<sup>3</sup> Tenured teachers in Providence are not evaluated unless there is a complaint or problem to be addressed. Since there were no complaints or problems noted in his personnel file, Mr. Petty was not evaluated.

- On September 20, 1993 Eugene Petty was one of three passengers in a car driven by Charles Haynes. They traveled from Providence to Johnston at approximately two o'clock (2:00 p.m.). Mr. Haynes parked the car in a parking lot on Killingly Street, got out, walked a short distance away and proceeded to sell cocaine to an undercover policeman. Tr. 10/18/94 pp. 9-12; Tr. 11/9/94 (Petty) pp. 75-79; R.I.D.E. Ex. 3.
- At the time of the above-described transaction, Mr. Petty knew that Charles Haynes was engaging in the sale of cocaine. Tr. 10/18/94 p. 25.
- When brought to the police station following the above-described incident, Mr. Petty was found to have a hand-rolled cigarette in his shirt pocket. Tr. 10/18/94 pp. 25, 27. The partially smoked cigarette was later tested at the state toxicology laboratory and found to be marijuana. Tr. 10/18/94 pp. 28-29, 34; R.I.D.E. Ex. 3.
- When questioned by police after his arrest, Mr. Petty admitted that he knew Max (Haynes) was going to Johnston to sell cocaine. Tr. 10/18/94 p. 25.
- Eugene Petty was charged with possession of marijuana, delivery of cocaine and conspiracy to deliver cocaine. Petty Ex. A. The Department of the Attorney General concluded that there was insufficient evidence to prosecute Mr. Petty on the two felony charges, i.e. delivery of cocaine and conspiracy to deliver cocaine. Petty Ex. A.
- On May 6, 1994 Mr. Petty pleaded nolo contendere to the misdemeanor charge of possession of a controlled substance (marijuana) and the case was filed for one year. Petty Ex. B.
- Since the time of his arrest, Mr. Petty has continued to smoke marijuana when socializing with his friends. He describes his ongoing use of marijuana as "infrequent", occurring "once every couple of months" or so. Tr. 11/9/94 (Petty pp. 105-107).

### Positions of the Parties

#### Department of Elementary and Secondary Education

In its notice to Mr. Petty dated June 13, 1994 the Department sets forth its allegation that just cause for revocation of his certificate exists based on Petty's:

presence in an automobile at approximately 2:15 p.m. on September 20, 1993 at 661 Killingly Street, Johnston, Rhode Island at which time and place you had knowledge that the driver of the automobile was to engage in a sale of a controlled substance, i.e. cocaine, and your possession of a controlled substance, i.e. marijuana, at that time and place. Dept. Ex. 2 notice to Mr. Petty from Louis E. DelPapa, Director of Teacher Educational Certification.

The Department contends that it has proven that Mr. Petty engaged in the conduct described in the June 13, 1994 notice by "clear and convincing" evidence even though it need only have established such facts by a lower standard of proof, i.e. a preponderance of the evidence. Testimony of Lieutenant Joseph Matarese of the Johnston Police Department establishes that Mr. Petty was present in the car driven to a specified location at which the driver engaged in the sale of cocaine. Both Mr. Petty's behavior at the scene, and his statement to Lieutenant Matarese after being taken into police custody support the allegation that he knew the driver was to engage in an illegal drug transaction.

The Department argues that the testimony of Mr. Petty that he had no knowledge of the driver's intentions or his drug activity is not worthy of belief, given all the facts and circumstances of this case. Likewise, the Department discounts the credibility of the driver of the car, Charles Haynes, given his demeanor and criminal history<sup>4</sup>. Mr. Haynes testified that at no time did he tell any of the other three men in the car, including Mr. Petty, of where he was going or the purpose of his trip. Tr. 11/9/94 (Haynes) pp. 5-6, 22-23, 36.

The Department takes the position that the evidence establishes as true the allegations contained in the June 13, 1994 notice. Taking both acts of misconduct together, the Department further alleges that it has demonstrated Mr. Petty's

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<sup>4</sup> Mr. Haynes was convicted and served six months in prison for delivery of cocaine as a result of the September 20, 1993 incident in Johnston.

unfitness to continue as a certified teacher in Rhode Island. Such unfitness presents just cause to revoke his certificate. In the alternative, the Department argues that if the evidence warrants a finding that Mr. Petty "did not engage in any misconduct with respect to the cocaine transaction", (p. 8 of the Department's Memorandum) his possession of marijuana should result in the suspension of his teaching certificate. Such action would be consistent with the decision of the Board of Regents in Department of Education v. Crusier, August 13, 1992. The Department recommends a one-year suspension of Petty's certificate with reinstatement conditioned upon a showing by Mr. Petty of successful steps to end his involvement with marijuana.

Eugene C. Petty

Mr. Petty's counsel argues that there is insufficient evidence to establish Mr. Petty's knowledge of or complicity in the cocaine transaction which took place. The standard of proof which he argues is applicable here is "clear and convincing evidence". He points to Petty's testimony that he had never met Charles Haynes before the day in question, and that he accompanied Mr. Haynes, along with the other two men with whom Mr. Petty was acquainted, merely to go for a ride. Memo of Mr. Petty pp. 7-8. At no time did Mr. Petty inquire of the driver, or anyone else, where they were going or why. Furthermore, Mr. Petty denied ever stating to Lieutenant Matarese that he did know where "Max" (Mr. Haynes) was going and why he was going there. Based on this evidence, counsel for Mr. Petty argues that the Department has failed to establish that he engaged in any misconduct with regard to the cocaine transaction conducted by Charles Haynes on the day in question.

In his memorandum, Mr. Petty does not seek to deny the fact of his possession of marijuana, but he argues that the consequence of such possession should not be revocation, or even suspension, of his teaching certificate. Firstly,

counsel argues that by joining both items of misconduct together in the statement of cause given to Mr. Petty, the Department fails to make a case for annulment of the certificate unless both items are established.

Secondly, counsel points to past decisions of the Commissioner and the Board of Regents in which a teacher's criminal conviction for possession of marijuana resulted in a suspension of her certificate.<sup>5</sup> Counsel seeks to distinguish the facts in this case from those in Cruser, supra to support his argument that even a suspension is not justified in this case. He argues that a suspension of Mr. Petty's certificate would jeopardize his retention of his position as a tenured teacher in the city of Providence. In Cruser suspension of the certificate did not impact on her employment as a teacher since Ms. Cruser was not employed in the teaching field. Counsel also points out that the disposition of the criminal charge stemming from Mr. Petty's marijuana possession leaves him without a criminal conviction, a fact which further distinguishes his case from that in Cruser, supra. In addition, Mr. Petty's plea of nolo contendere may not be used against him in any way in these proceedings, pursuant to R.I.G.L. 12-18-3.

Finally<sup>6</sup>, counsel for Mr. Petty states that if the record supports this hearing officer's conclusion that "some legal misconduct has occurred which properly is relevant to (Petty's) certification" he submits that the appropriate administrative response should be only a written warning as to the possible impact and consequences of any subsequent misconduct. (Petty Memorandum at page 42).

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<sup>5</sup> Dept. of Education v. Cynthia T. Cruser, decision of the Commissioner dated December 4, 1991, decision of the Board of Regents dated August 13, 1992. Note that although the Regents found that by the time of the Commissioner's hearing Ms. Cruser had established her fitness to teach, it nonetheless merely reduced the suspension period ordered by the Commissioner, rather than eliminate it entirely.

<sup>6</sup> The memorandum filed on Mr. Petty's behalf raises a number of additional issues which we have reviewed, but have omitted from this summary.

## Decision

### Standard of Proof

While we agree that substantive and procedural due process rights attach to a teacher involved in proceedings to revoke his or her certificate<sup>7</sup>, we do not agree with the argument that constitutional due process requires the Department to prove its allegations of misconduct by an evidentiary standard of "clear and convincing" evidence. Whether the protected interest is the right to continued employment or the credential required by the state to engage in such employment the standard of proof is that of a preponderance of the evidence. The cases cited in Mr. Petty's memorandum as authority for a "clear and convincing standard"<sup>8</sup> are cases in which both the position of the Department of Education and the ruling of the hearing officer were clearly that a "preponderance" standard applied in revocation cases. A hearing officer's finding that in a particular case the evidence is clear and convincing (coupled with the statement that only a preponderance of evidence was required) does not, as Mr. Petty asserts, create "binding precedent" for the application of the more stringent standard of proof. The cases cited by Mr. Petty establish only that in those particular cases the quantum of proof was found to exceed the required standard of "preponderance of the evidence". He cites no other authority for the proposition that due process requirements dictate more than a "preponderance" standard.

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<sup>7</sup> actually the memorandum filed on Mr. Petty's behalf asserts such due process rights attach to the property interest of the tenured teacher in continued employment. We would note that Judge Selya in Audet v. Board of Regents, 606 F.Supp 423 (1985) noted: the right to engage in an occupation must be considered one of the core values of liberty, such that no person can be arbitrarily deprived of it by government. It is Mr. Petty's right to engage in the teaching profession, not his retention of his position as a tenured teacher, which is at issue here.

<sup>8</sup> Dept. of Education v. Sullivan, June 9, 1992 decision of the Commissioner. Lincoln School Committee v. Goodreau, July 26, 1989 decision of the Commissioner.

## Findings of Fact

- I. Mr. Petty's presence in a car with knowledge that the driver was engaged in an illegal drug transaction in Johnston, R.I. on September 20, 1993.

As our findings of fact indicate, the Department has proved by a preponderance of the evidence that Mr. Petty knew what was transpiring in the parking lot on Killingly Street in Johnston on the day in question. It is highly implausible to begin with that an adult on his first time away from home one week after major surgery would be out "for a ride" some four hours after leaving his house in a car driven by a man he did not know to an unknown destination. Mr. Petty's testimony that he was completely unaware of where he was going, or the driver's purpose in going to Johnston that day did not ring true. Coupled with his later testimony that, in addition, he had no idea what the marijuana cigarette was doing in his shirt pocket or to whom it belonged, his entire testimony is simply unbelievable. We accept as an accurate recollection Lieutenant Matarese's testimony that while in custody Mr. Petty admitted having knowledge that Max was going to sell cocaine. Counsel's suggestion that the statement was intended to describe knowledge Mr. Petty acquired after his arrest is rejected, even though we would acknowledge that Lieutenant Matarese used somewhat different language to describe the statement in his October 7, 1993 written report (R.I.D.E. Ex. 4). The clear import of this police officer's testimony was that Petty had indicated he had such knowledge at the time of his ride in the Haynes' vehicle. Furthermore, Mr. Petty denied making any statement at all to Lieutenant Matarese with respect to his state of mind, rather than admitting to making a statement which described knowledge he acquired only after being at the police station and overhearing questioning of the other individuals involved.

II. Petty's possession of marijuana on September 20, 1993.

The Department presented uncontroverted evidence that Eugene C. Petty was in possession of a controlled substance i.e. marijuana on the date in question. It should be clear that Mr. Petty's record is free from any criminal conviction for this conduct, and as required by statute his plea of nolo contendere to possession of marijuana has not been used as evidence of this fact. Our finding of fact in this regard is based exclusively on Lieutenant Matarese's testimony, testimony of Mr. Petty and Department Ex. 3.

Conclusions

In each of the cases in which the issue of cause for revocation of a teacher's certificate is presented the question becomes whether the teacher has been shown to be unfit to continue in the profession. Landmark decisions in this area<sup>9</sup> as well as more recent cases<sup>10</sup>, set forth the responsibility to conduct a careful and reasoned inquiry into the teacher's fitness to teach. In assessing the impact of out-of-school misconduct of a teacher, the consideration many times includes not only the teacher's ability to impart instruction and perform the more obvious professional duties of a teacher, but also the duty to function as a role model for students.

Our Supreme Court has summed up a teacher's role model function as follows:

...a teacher serves as a role model for his students, exerting a subtle but important influence over their perceptions and values. Thus, through both the presentation of course materials and the example he sets, a teacher has an opportunity to influence the attitudes of students toward government, the political process, and a citizen's social responsibilities. Ambach

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<sup>9</sup> See Morrison v. State Board of Education, 462 P2d 375 (Cal. 1968) at page 394.

<sup>10</sup> See West Valley-Mission College v. Concepcion, 2. Cal Rptr 2d 5 (Cal. App 6 Dist 1993) at page 10.

v. Norwick, 441 U.S. 68, 78-79, 99 S.Ct. 1589, 1595-1596, 60 L.Ed. 2d49.

Our state has by statute confirmed a teacher's role and duty to function as an exemplar for students. R.I.G.L. 16-12-3 entitled "duty to cultivate principles of morality" states:

Every teacher shall aim to implant and cultivate in the minds of all children committed to his care principles of morality and virtue.

In reviewing the record compiled in this case, we must assess the impact Mr. Petty's misconduct will likely have on his fitness to perform all of his professional duties, including his duty to function as a role model. We have also carefully considered the testimony of the Superintendent in this matter regarding the "negative effect" such conduct would have on Mr. Petty's ability to function as a classroom teacher, particularly in light of the mission schools have to create a drug free environment and one which conveys a negative, rather than a positive, message regarding drug use.

Mr. Petty's presence at the drug transaction which occurred in Johnston on September 20, 1993 and his possession of an illegal drug on that date raise serious questions as to his professional fitness. However, we decline to revoke his teaching certificate on the basis of these two actions of misconduct standing alone. We do not wish this decision to be viewed as in any way compromising the anti-drug message that must be conveyed by schools and teachers. Supporting a drug-free school environment is a most important objective.

However, our "careful and reasoned inquiry" compels us to take into account other factors which must be considered. First, administrative precedent found in prior Commissioner's and Board of Regents' decisions has drawn a

distinction between drug possession and the sale/delivery of illegal drugs<sup>11</sup> in terms of the impact on a teacher's certificate. We note that while Mr. Petty's possession of marijuana was illegal he has no criminal conviction for his actions and if he did, it would be a misdemeanor. The Commissioner has indicated, and the Board of Regents has affirmed, that "a single conviction for simple possession of marijuana" should not necessarily carry with it the sanction of permanent revocation of a teaching certificate.

It is true that the misconduct of Mr. Petty goes beyond simple possession of marijuana to include his presence in a car with knowledge that the driver was to engage in the sale of cocaine. The Attorney General declined to prosecute Mr. Petty for participation or conspiracy with regard to this drug transaction. We take this to indicate that the facts presented no criminal culpability on Mr. Petty's part. The record created before us likewise showed no active participation<sup>12</sup> in this criminal enterprise. We have no evidence that Mr. Petty frequents the company of drug dealers or that there is a pattern of this type of activity. These factors, together with the administrative precedent established by the Commissioner and Board of Regents' in Cruser, lead to our conclusion that the alleged and proven misconduct here does not support revocation of his teaching certificate.

Of greater import vis à vis Mr. Petty's fitness to teach is the fact that even after his arrest, after the criminal proceedings attendant to his misconduct, and after the Department's recommendation to revoke his certificate, he continues to engage in marijuana use. He described his continuing infrequent use of marijuana

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<sup>11</sup> See Department of Education v. Cruser decision of the Commissioner dated December 4, 1991; decision of the Board of Regents' dated August 13, 1992. Dept of Education v. Slom decision of the Commissioner dated September 15, 1992; Dept of Education v. Marks, decision of the Commissioner dated July 22, 1993; Dept of Education v. Sowa, decision of the Commissioner dated May 28, 1992.

<sup>12</sup> The Department did attempt to demonstrate that Petty's role in the car was that of a lookout. There was insufficient proof that his presence or his "looking back and forth" as Mr. Haynes engaged in the transaction was to function as a "lookout".

on social occasions. This testimony was in response to questioning by the hearing officer. We believe the subject of illegal drug use by Mr. Petty subsequent to the misconduct which was the focus of the hearing to be a legitimate area of inquiry. It bears on the issue of his rehabilitation. It relates directly to the issue of whether there is a likelihood of recurrence of the misconduct in question, a factor which can and must be taken into account in certificate revocation matters.

Based on our findings of misconduct and given Mr. Petty's testimony regarding his ongoing use of illegal drugs, we find that our doubts regarding his fitness to teach must be addressed through suspension of his teaching certificate for a period of one year. During this time, Mr. Petty must, at his own expense, receive drug counseling and, prior to reinstatement of his certificate, he must demonstrate that his ongoing use of marijuana has terminated.

Should Mr. Petty subsequently be charged with criminal activity or should he be shown to have engaged in any subsequent misconduct affecting his certificate, we will entertain the Department of Education's request that a hearing be convened to establish whether such activities, together with those items of misconduct already proven herein, constitute cause for revocation of his certificate.

We express no opinion on what action, if any, should be taken by his employer, the Providence School Board, with regard to Mr. Petty's retention of his position as a tenured teacher.

Kathleen S. Murray  
Kathleen S. Murray, Hearing Officer

Approved:

Peter McWalters  
Peter McWalters, Commissioner

August 3, 1995  
Date