

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

Edwin B. Gordon

v.

**The BEACON School a/k/a
Beacon Charter High School**

DECISION

Held: The Petitioner's dismissal from the Beacon School on December 1, 2003 was invalid because the administrative directors lacked the legal authority to terminate him. Mr. Gordon's rights were also violated when he was denied notice of the reason and opportunity to respond prior to the decision. Additional procedural rights to a hearing under R.I.G.L. 16-13-2 and 16-13-4 presume that a decision of the governing body has been made. In Mr. Gordon's case the governing body of the Beacon School, the Board of Trustees, had not acted on his dismissal. Pending such action, the Petitioner is reinstated to his position as a special education teacher at the Beacon School.

DATE: August 18, 2004

Travel of the Case

On February 21, 2004 Edwin Gordon appealed from his termination as a special education teacher at the Beacon Charter School in Woonsocket. The appeal was assigned for hearing and decision to the undersigned. On April 6, 2004 the matter was heard and the Petitioner appeared pro se; Beacon Charter was represented by its counsel. Testimony and documentary evidence were taken at that time. Additional argument and an exhibit were supplied by the Petitioner on May 3, 2004, at which time the record in this case closed.

Jurisdiction to hear this dispute arises under R.I.G.L. 16-39-1 and 16-77-8, which provides for the Commissioner to resolve disputes arising from the operation of charter schools under his general appellate authority.

ISSUE

Was Edwin Gordon's termination from the Beacon Charter School on December 1, 2003 valid and in conformity with requirements of due process and statutory procedures which apply to the dismissal of nontenured teachers in Rhode Island public schools?

Findings of Relevant Facts:

- The Beacon Charter High School (hereinafter "the Beacon School") is a public charter school in Woonsocket, Rhode Island. It serves students in the region of northern Rhode Island and currently enrolls about seventy (70) students in grades nine and ten. Tr.p.80; Hearing Officer Ex.2.
- The Beacon School provides students with a comprehensive high school level program, while at the same time providing an applied learning experience utilizing business plans based on arts, crafts and culinary skills. See H.O.Ex.2- 2000 Charter School Application, Section 2 "Mission Statement"; July 24, 2003 Amendments to the charter school proposal approved by the Board of Regents.
- The Beacon School opened in August of 2003 when it received final approval for a charter from the Board of Regents. During its first year of operation it employed ten (10) staff members, including Edwin Gordon. Tr.pp.82-83.
- Edwin Gordon was hired as a special education teacher at the school by one of the three administrative directors on August 25, 2003. Appellant's Ex.1; Tr.p.83. Mr. Gordon holds appropriate certification as a special education teacher in the state of Rhode Island. Tr.p.18; Appellant's Ex.1.

- Mr. Gordon began work shortly thereafter and continued to work as a special education teacher at the Beacon School until December 1, 2003, when at the end of the school day he was asked to meet with two of the three Administrative Directors, Mr. Lawhead and Mr. Collette. He was informed by Jack Lawhead that he was being dismissed, effectively immediately. Tr.pp.38-39,65;Appellant's Ex.1.
- The decision to terminate him had been made by the three Administrative Directors (Mr. Lawhead, Mr. Collette and Mr. Coppola) at some point prior to the December 1st meeting with Mr. Gordon. Tr.p.65. Appellant's Ex.1.
- At the time Mr. Lawhead informed Mr. Gordon that he was dismissed, he also told him to clean out his desk and leave the school. Mr. Gordon was told that he had failed to complete a special education survey in a timely manner, and as a result, the school was "in noncompliance". He was not provided with further details at that time. Tr.pp.39-42, 45-46.
- Subsequent to his discharge, Mr. Gordon wrote to the Administrative Directors asking to be informed of their specific concerns with respect to his performance and requesting to be given the opportunity to respond. See letter of Edwin Gordon to Paul Collette, Ralph Coppola, and Jack Lawhead dated December 11, 2003, Appellant's Ex.1.
- Mr. Gordon wrote again to the Administrators on December 15, 2003, this time requesting that the reason for his discharge be provided to him in writing and that he be granted a hearing before the Board of Trustees of the Beacon School. The Administrative Directors did not reply to his letter. See letter of December 15, 2003 from Mr. Gordon to Mr.Collette, Coppola, and Lawhead. Appellant's Ex. 1.
- On December 19, 2003 Mr. Gordon met briefly with Mr. Lawhead who offered him a check in settlement of any issues Mr. Gordon had with respect to his termination, in exchange for his signature on a General Release. Mr. Gordon did not sign the release or accept the check. Appellant's Ex.1;Tr.pp.46-47.
- Subsequently, on February 10, 2004 Mr. Gordon wrote again to request reinstatement to his position, payment of back wages, information concerning the Beacon Board of Trustees and copies of minutes of the Board of Trustees' meetings at which his discharge was discussed or acted on. The Administrative Directors did not reply to his letter. See letter from Mr. Gordon to Mr. Collette, Coppola and Lawhead, Appellant's Ex.1.
- Mr. Gordon wrote to Commissioner Peter McWalters on February 21, 2004 requesting that he be granted a hearing to appeal his dismissal. Hearing Officer Ex.1, letter of Appeal of Edwin Gordon dated February 21, 2004.
- On the same date, February 21, 2004, Mr. Gordon sent a letter to the Beacon School, notifying the Chairperson of the Board of Trustees that he had taken formal action in light of the failure of the Board and/or its agents to provide him with a hearing or give him written reasons for his dismissal. See letter of Mr. Gordon to Board of Trustees of the Beacon Charter School, Appellant's Ex.1.

- On March 26, 2004 Mr. Lawhead wrote to Mr. Gordon, confirming that a decision to terminate him had been made by the Administrative Directors. Mr. Lawhead indicated in that correspondence that Mr. Gordon could request a hearing before the Board of Trustees of the Beacon School within fifteen (15) days. Appellant's Ex.1.
- On April 1, 2004 Mr. Lawhead wrote again to Mr. Gordon, reiterating that Mr. Gordon's termination had been the decision of the Administrative Directors and adding that the action was based on substandard performance, "particularly in regard to your failure to complete IEP evaluations in a timely fashion in derogation of federal regulations". See letter of Mr. Lawhead dated April 1, 2004, Appellant's Ex.1.
- The Charter School Application filed for the Beacon School on or about November 30, 2000 indicates that the governing body of the school will be a "board of governors" representing the constituency of the school. Hearing Officer Ex.2. The application also states at page 22 that the board of governors will delegate all of the day-to-day business of the school to the administrative directors.
- Amendments to the charter school proposal filed with the Board of Regents on or about July 24, 2003 and approved by the Regents shortly thereafter confirm that governance will be by the "Beacon Charter School Board of Governors". The referenced attachments include the By-Laws describing an eleven-member "Board of Trustees" and a list of eleven individuals elected or designated to serve on the "Beacon Board of Directors". Hearing Officer Ex.2.
- The By-Laws of the "Beacon Charter School Corp." indicate in Article II (entitled "Government") Section I. that three Administrative Directors will conduct all of the day-to-day business of the corporation. Respondent's Ex.1.
- Section II of Article II of the By-Laws indicates that the corporation will have a Board of Trustees consisting of at least seven (7)¹ and no more than eleven (11) members. The By-Laws in Article IV, entitled "Board of Trustees" set forth information on the term of members, filling of vacancies, and removal of members. Article V of the By-Laws² entitled "Meetings" includes information on the minimum number of meetings per year, what constitutes a quorum, and the order of business. Respondent's Ex.1.
- Personnel matters at the Beacon School, including the hiring and firing of faculty, are handled by the three administrative directors of the school Tr.p.84, 91-92.
- None of the ten faculty members is employed pursuant to a written contract. Tr. p. 84.

Positions of the Parties

The Petitioner

Mr. Gordon questions whether the Board of Trustees of the Beacon School has actually delegated to the three administrative directors the authority to terminate

¹ The bylaws go on to require that the Board of Trustees be composed of certain members of representative groups. The total of such required individuals is eleven (11).

² The numbering of the Articles of the By-Laws is not sequential.

professional staff. Implicitly, he argues that the administrative directors lacked the actual authority to fire him in the middle of the school year. If in fact a delegation of such authority has occurred, he argues that it is inconsistent with the statutory requirement that the governing body of the school act in cases of nonrenewal or termination. He cites R.I.G.L. 16-13-2, 16-13-4 and 16-12-6 in support of his position. Since the action to terminate his employment on December 1, 2003 was taken by the three administrative directors, and not the Beacon Board of Trustees, he argues that it is invalid.

Secondly, the Petitioner points to the lack of procedural due process which accompanied his dismissal. As a nontenured teacher he should have received the procedural protections provided in Title 16, including notice of the reasons for his dismissal and the opportunity to be heard prior to a decision being made. As it was, the abrupt nature of his termination provided him no notice, and therefore no opportunity to prepare in order to respond to the reason identified by the two administrative directors. Even if he could have responded, the decision had already been made at the time Mr. Lawhead and Mr. Collette met with him on December 1, 2003. Additionally, in spite of his many requests that he be provided with a written reason for his dismissal and opportunity for hearing before the Board of Trustees, it was not until March 26, 2004 that he was afforded an opportunity to be heard by the board, and not until April 1, 2004 that the reason for his December 1, 2003 dismissal was placed in writing. Because of these procedural deficiencies, he argues that his termination must be invalidated.

The Beacon School

Counsel for the Beacon School submits that the three Administrative Directors, Mr. Lawhead, Collette and Coppola, function as the “governing body” of the Beacon School under Title 16 and clearly have authority over day-to-day governance such as staff dismissal. The Board of Trustees of the Beacon School, he argues, functions as an advisory board, consisting of community leaders, elderly people and people involved in the education field. See arguments at page 99 of the transcript. Therefore, the three administrative directors had the actual and legal authority to terminate Mr. Gordon on December 1, 2003.

When Mr. Lawhead and Mr. Collette met with Mr. Gordon on December 1, 2003 they mentioned shortcomings in Mr. Gordon’s performance and gave him verbal notice of his immediate termination. On December 19, 2003 the written release presented to Mr. Gordon for his signature provided implicit confirmation that he had been dismissed (and offered a nominal sum in exchange for his release of the school from any claims of liability for wrongful termination). Within a reasonable time thereafter, i.e. March 26, 2004 Mr. Gordon was notified in writing that his termination was the result of a decision of the Directors, and that he could request a hearing on the issue before the Board of Trustees of the school within fifteen days. Although the March 26 communication did not include written notice of the reason for his termination, this was quickly remedied. A subsequent communication on April 1, 2004 identified his substandard performance, particularly with respect to completion of required IEP’s, as the reason and again offered the opportunity for hearing before Beacon’s Board of Trustees, if requested within a fifteen (15) day time

period. Implicit in the argument of counsel is that the net effect of these communications was to provide Mr. Gordon with the required notice and opportunity for hearing. Thus, Mr. Gordon's termination was valid and supportable action taken by the Administrative Directors and was accompanied by the required procedures.

DECISION

Edwin Gordon's status as a non-tenured teacher in a public charter school provides him with certain rights under Rhode Island education law and principles of Constitutional due process. Although the employment relationship between the Beacon School and Mr. Gordon was not described in a written contract, under our state law, particularly R.I.G.L. 16-13-2, teaching service of non-tenured teachers in public schools "shall be on the basis of an annual contract". Thus, his employment was pursuant to an annual contract implied by state law. Furthermore, the provisions of R.I.G.L. 16-12-6, also applicable to non-tenured teachers³, require that a non-tenured teacher who is dismissed during the school year be afforded a hearing at which just cause for termination is demonstrated. See Jacob v. Board of Regents for Education, 117 R.I. 164, 169 (footnote 3), citing Town of North Kingstown v. Robinson, 99 R.I.348, 207 A.2d389 (1965). In this context, then, Mr. Gordon's purported termination on December 1, 2003 deprived him of a property right, i.e. his entitlement to a full year of employment and the balance of the salary payable to him under his annual contract.

Therefore, principles of procedural due process dictate that certain procedures must accompany a decision to terminate Mr. Gordon in the middle of the school year. A basic requirement is for reasonable notice and hearing. This right is supplemented by the entitlement of a non-tenured teacher to a written "statement of cause" (if requested) and "a hearing and appeal pursuant to the procedure set forth in Section 16-13-4" (16-13-2).⁴

In light of the property interest created by state law in addition to these procedures, the non-tenured teacher dismissed mid-year is entitled to due process *prior* to the decision to terminate him. While it need not be elaborate, the notice and hearing required in the public employment context must give the employee a pre-termination notice of the charges against him, an explanation of the evidence, and an opportunity to respond. See Cleveland Board of Education v. Loudermill, 470 U.S. 532, 84 L.Ed 2d 494, 105 S.Ct. 1487 (1985).

³ Our charter school statute, R.I.G.L. 16-77-1 et seq. states that employment in a charter school shall be considered "service" as that term is defined in chapter 16 of this title. All employees and prospective employees of a charter school shall be deemed to be public school employees, having the same rights, including retirement, under Rhode Island and federal law as employees and prospective employees at a non-chartered public school (See 16-77-4 (b) (12)). We find that 16-77-11, entitled "Portions of title 16 applicable to charter schools" is not intended to be a complete list of those portions of title 16 which apply to charter schools, but rather, as the text of the section indicates, is a list of those provisions of Title 16 which "may not be waived by the commissioner of elementary and secondary education".

⁴ If Mr. Gordon's annual contract was non-renewed pursuant to R.I.G.L. 16-13-2 the procedures provided by the statute would still apply, but there would clearly be no requirement to establish just cause for his non-renewal. See the discussion of the nature of the hearing in non-renewal cases in Jacob v. Board of Regents, 117 R.I. 164, 169-170.

The likelihood of the accuracy of the facts on which the decision is based is thereby increased. Even when the facts are clear, the appropriateness or necessity of the discharge may not be. The employee is, in such cases, provided a meaningful opportunity to invoke the exercise of discretion by a fully informed decision maker. See Cleveland Board of Education, at 543.

Pursuant to our findings of facts, Mr. Gordon was not provided with the required procedures when he was dismissed on December 1, 2003 from his position as a special education teacher at the Beacon School. When he was called to meet with two of the three administrative directors, the decision had already been made that he would be terminated, effective immediately. He had no prior notice of this action or the reasons on which it was based. We find he was not provided with a meaningful opportunity to respond on December 1, 2003 when he was terminated. No post-termination procedures were made available to him, nor was he given the courtesy of a written reply to his many letters, prior to March 26, 2004. On that date he was advised—again—that he had been terminated – a fact that he was obviously well aware of after almost four months of unemployment. Even at that time, no written reason was provided for the immediate and abrupt termination which he had experienced on December 1, 2003. The written reason for Mr. Gordon’s December 1, 2003 termination was not provided to him until April 1, 2004.⁵

In addition to these procedural deficiencies, it is our conclusion that the three Administrative Directors who purportedly made the decision to dismiss Mr. Gordon lacked the actual and legal authority to do so. The documentation which formalizes the creation and chartering of the Beacon School⁶ indicate that the Administrative Directors are in charge of the day-to-day school operations. Hopefully, our current educational climate is not such that the termination of a professional teacher is considered day-to-day business. We have no documentation that supports the actual delegation of such decisions to the Administrative Directors.

Even if there were evidence of such a delegation of authority, it would have questionable validity. Our statute requires that the decision to non-renew or dismiss a teacher in a public school be made by the school committee or the “governing body” of the school. We find, based on the record here, that the “Board of Trustees”⁷ of the Beacon School is its governing body as that term is used in Title 16. It is also the functional equivalent of a school committee. While it may have been the intent to have the Board of Trustees act in a purely advisory capacity, as counsel for the Beacon School has argued, we do not find that fact to be demonstrated on the record in this case. Therefore, any decision to dismiss, or even non-renew, Edwin Gordon could not validly be made by the three Administrative Directors. It could be made validly only by the Board of Trustees.

In light of the foregoing, we find that his dismissal was invalid and he should be reinstated to his position, effective December 1, 2003. The parties are directed to confer to

⁵ we express no opinion on the merits of Mr. Gordon’s termination. Mr. Gordon’s appeal from a subsequent Board of Trustee’s decision to terminate him is presently pending before the undersigned.

⁶ all documentation included in the record of this case.

⁷ In its own documentation the “Board of Trustees is alternatively referred to as the Board of Governors and Board of Directors.

determine the amount appropriate to compensate Mr. Gordon for lost wages, and other benefits, that are due him.

For the Commissioner,

Kathleen S. Murray, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

August 18, 2004
Date