

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

Simon Richardson

v.

Providence School Board

.....

DECISION

Held: The School Board demonstrated good and just cause for Mr. Richardson's termination. Although there is evidence of an illness which could have caused his misconduct, this evidence is insufficient and unpersuasive. Even assuming, arguendo, that sufficient proof of illness as the cause of his misconduct exists, Mr. Richardson failed to submit sufficient evidence that his judgment is no longer impaired and that he could now appropriately perform his teaching duties.

DATE: May 25, 2005

Travel of the Case

On December 26, 2003 Simon Richardson, through his attorney, filed a written appeal with Commissioner Peter McWalters from the decision of the Providence School Board terminating him from his tenured teaching position. Mr. Richardson had taught English at Classical High School since August of 2002 after several years as a teacher at Hope High School. The undersigned was designated to hear and decide this matter and sent written acknowledgement of the same to the parties on January 26, 2004. The matter was heard over the course of six agreed-upon hearing dates, concluding with a hearing on May 6, 2004. Thereafter the parties submitted written memoranda containing their arguments and legal citations. The last memo was received on August 30, 2004 at which time the record in this case officially closed.

Issues:

- I. Is the Providence School Board's dismissal of Simon Richardson supported by "good and just cause" as required by R.I.G.L. 16-13-3 ?
- II. Did Mr. Richardson suffer from an illness which explained, contributed to or caused his misconduct such that it legally excuses him from the consequences of his actions. Stated another way, does the School Board's dismissal of Simon Richardson constitute employment discrimination on the basis of a mental illness which constitutes a disability under the Americans With Disabilities Act ?
- III. Was Simon Richardson's dismissal accompanied by the procedures required by R.I.G.L. 16-13-3 and other appropriate due process ?

Findings of Relevant Facts:¹

- Simon Richardson has been employed as a regular teacher in the Providence school system since 1995. Tr.Vol.V, p.6. He was employed at Hope High School as an English teacher in the Essential School program until September of 2002 when he transferred to Classical High School where he was assigned to teach English to

¹ As the transcript in this case indicates, the School Board's case against Mr. Richardson was unclear. There was no statement of cause, per se, from the Providence School Board. The record shows no document which sets forth a clear and complete list of the conduct alleged to constitute "just cause" for his termination. The record includes reference to incidents which were not subsequently argued to support Mr. Richardson's dismissal. Complicating this, there were some allegations on which no competent evidence was submitted, but yet these incidents were cited and relied on by the School Board in its closing memorandum, e.g. the complaints that Mr. Richardson touched the leg of a student while showing her a book containing some pictures of partially nude women and the complaint that he had sexually harassed a student teacher at Classical. As will be explained later in this decision, our findings relative to just cause include only those matters on which competent evidence was submitted *and* which were identified as "cause" by the School Board prior to the hearing at this level. The legal effect of deficiencies in the notice to Mr. Richardson will be discussed later in this decision.

students in Grades 9 and 10, and an SAT preparation course. Tr.Vol.II, p.54 Vol.VI, pp. 12-14.

- Prior to school year 2002-2003, Simon Richardson had no disciplinary record, nor any documented misconduct, in his personnel file. Tr. Vol. II, p. 160. Formal evaluations of Mr. Richardson, the third and last of which was made in June of 1998, show him to be an above-average teacher.² App. Ex.A.
- On October 18, 2002 Mr. Richardson gave a student in his ninth grade developmental writing class a book entitled The Fashion Book, an historical compilation of pictures of fashions and those in the fashion world, with related text. The book includes some pictures of women in fashions which expose their breasts, or are otherwise provocative. PSB Ex.7; Tr.Vol.V, pp.104-111;
- On or about October 18, 2002 Mr. Richardson showed his tenth grade English classes segments of an R-rated film, the Exorcist. Tr.Vol. V.pp.68-69, 71; PSB Ex.8.³
- Mr. Richardson was absent because of illness from October 22 through November 8, 2002. Tr.Vol.I, pp.172-173.
- After a November 1, 2002 written request by Principal John Short that he submit daily and/or weekly lesson plans for use during his absence, Mr. Richardson submitted lesson plans for the week of November 4-8, 2002. PSB Ex.11
- The subjects covered in the above-referenced lesson plans were appropriate in the context of the English curriculum guidelines for the second quarter. Tr. Vol.I, pp.174-178.⁴
- Upon his return to school during the school week beginning November 11, 2002 Mr. Richardson distributed a document to his two tenth grade English classes. The document was entitled a “Cittabus” or sort of syllabus and it listed “upcoming assignments” and activities for the students. PSB Ex. 12. Students were directed to bring in a hammer on “Hammer Day” and a bell on “Bell Day”. One of the days was entitled “Handgun Day”. PSB Ex. 12.
- On November 14, 2002 students brought hammers to school and during class went outside to a nearby field and broke up rocks with their hammers. Mr. Richardson brought in a sledge hammer. The students were not wearing any protective gear at the time they conducted this activity. Tr. Vol.V, pp. 120-129; Vol.VI, pp.21-24.
- On November 18, 2002 Classical High School was scheduled for a NEASC accreditation visit. On that day, Mr. Richardson spray painted the words “Welcome To The Happy Place” on the wall of the corridor on the second floor of the school.

² Counsel for the School Board indicated that the cause for Mr. Richardson’s termination did not include his lack of proficiency as a teacher. Vol.V. pp. 44-45.

³ The movie “Dirty Dancing”, not proven to be R-rated was also shown to the class. Although Mr. Richardson was at one time warned by Mr. Short that both movies were also objectionable in that they were not related to the tenth grade English curriculum, failure to adhere to the curriculum is not one of the bases for his termination. Our finding with respect to his showing of the Exorcist assumes that this act is encompassed in the notice of cause from the School Board with respect to “inappropriate conduct” “on or about October 18, 2002 regarding his use of certain teaching materials in the classroom”(PSB Ex.21).

⁴ We are unaware of what evidence was taken by the School Board with respect to lesson plans. Its post-termination hearing decision of December 15, 2003 continues to cite these lesson plans as a basis for just cause without explanation. Mr. Short’s testimony does not indicate that he found any deficiencies in the lesson plans submitted by Mr. Richardson, nor was any argument submitted at this level that the lesson plans were deficient, although it would appear that they were late.

Tr.Vol. VI, pp. 41-42; PSB Ex.1. On that same morning, he distributed balloons for students to inflate (Tr. Vol.II p.95) and to write anti-establishment slogans on them. (Tr.Vol.III, pp.19-22). A guitar player was also enlisted to play music (Tr. Vol.II, p.95) and was stationed in the same area of the school (Tr.Vol.III pp.16-17).⁵

- Effective Monday, November 18, 2002 Mr. Richardson was placed on administrative leave with pay. He was advised both verbally and in writing that he was not to be physically present on Providence School Department property. Tr. Vol.II, pp. 97-98; App. Ex. B.
- At some point after receiving the above-referenced directions from representatives of the Providence School Department, Mr. Richardson went to both Hope High School and Mount Pleasant High School. Tr. Vol.II, pp. 137-140.⁶
- On or about December 6, 2002 Mr. Richardson went to the place of employment of one of his female students. There, he spoke to her for about forty-five minutes, discussing his “Critical Thinking Day” document, his negative opinion of Principal Short, and the fact that he wanted to find her a better job and teach her about life. He asked her if she would be one of the girls at Classical who would pretend to be pregnant with his child. Tr. Vol.I, pp.27-35.
- This student described Mr. Richardson as being “uncomfortably close” to her throughout their conversation. Tr. Vol.I, pp.28-29, and 39. He also touched her several times in the small of her back. Tr. Vol.I, p.41.
- Mr. Richardson returned to this same student’s place of employment about eight o’clock that night, but the student avoided him by remaining in the manager’s office until Mr. Richardson left. Before he left, Mr. Richardson gave her co-worker an envelope with a note for her, several pictures which showed him in sexually suggestive poses with a female, and messages for teachers at Classical and Principal Short. Tr.Vol.I, pp.42-51; PSB Ex. 3-6.
- The next day, Mr. Richardson returned to this same student’s place of employment about fifteen minutes before the end of her shift. She felt both uncomfortable and frightened, and her supervisor called the police. After talking with the police, the student left with her step-father. Tr.Vol.I, pp.54-59. As a result of this incident, she continued to be fearful, and alter her behavior, for about four months. Tr.Vol.I, pp.66-67.
- After several communications from Mr. Richardson’s attorney, and receipt of supporting documentation from his primary care physician, Dr. W. Tyler Smith, the school department placed Mr. Richardson on sick leave. The documentation submitted to the school department by his physician noted that he suffered from “temporary reactive stress disorder”, and the form completed by Dr. Smith for

⁵ When Assistant Principal Cheryl Gomes reported her observations that morning to Principal John Short, he called Mr. Richardson to his office at which time Mr. Richardson admitted his involvement in these activities. Tr. Vol.I, pp. 187-188; he did so again when he met with Donald Zimmerman, the district’s head of Human Resources later that same day. Tr. Vol. II, pp. 94-95.

⁶ Mr. Richardson authored a document entitled “Critical Thinking Day” which, among other things, details these visits to both Hope and Mt. Pleasant. The attempt to use students to distribute this document at Classical appears to be cited by Superintendent Melody Johnson as one of the reasons for her termination recommendation (see PSB Ex.15), but is not a matter raised by the School Board in either its notice or decision. (see PSB Ex. 21 and 16)

purposes of establishing entitlement to leave under the Family and Medical Leave Act indicated he suffered from an “adjustment disorder”. App.Ex.C and G.

- An April 17, 2003 report prepared by Dr. Smith and submitted to the school department by Mr. Richardson’s attorney summarized his recent medical history. Dr. Smith noted that Mr. Richardson’s temporary reactive stress disorder, coupled with an increased level of stress, had produced “severe psychological decompensation”. The report further indicates that medical treatment Mr. Richardson received during a brief hospitalization from November 26, 2002 to December 4, 2002 was reported⁷ to be counterproductive. However, the doctor noted in his report, his symptoms “quickly subsided” when Mr. Richardson left the Providence area for several weeks. App.Ex.E.
- On May 13, 2003 Superintendent Melody Johnson of the Providence School Department notified Mr. Richardson that she would be recommending that he be dismissed from his position for good and just cause. The May 13, 2003 letter from Dr. Johnson indicated that her recommendation would be made at the School Board’s May 20, 2003 meeting and would be based on the reasons of “inappropriate conduct, inappropriate student contact, and insubordination”. The letter went on to include some specific descriptions of the offending conduct. PSB Ex.15.
- The May 13, 2003 letter from Dr. Johnson noted that the Board’s consideration of her recommendation on May 20th was not an “evidentiary hearing”, but would provide Mr. Richardson, or his attorney, with an opportunity to address the Board on his behalf. PSB Ex. 15.
- On May 20, 2003 the Providence School Board considered Superintendent Johnson’s recommendation. Its undated decision which followed this hearing indicates that the Board heard “the presentation of evidence in support of (the) recommendation” and “the presentation of material on Mr. Richardson’s behalf”. The Board states that its decision was based on its conclusion that “Mr. Richardson’s conduct on various dates represents inappropriate conduct, inappropriate student contact and insubordination”. The Board reached its conclusion following its review of both the “evidence” (presented by the Superintendent) and the “material” (presented by counsel for Mr. Richardson). The Board “affirmed the recommendation”⁸ of the Superintendent after its hearing. PSB Ex.21.
- The written decision of the Providence School Board on Mr. Richardson’s termination contains a description of Mr. Richardson’s offending conduct. The description differs in some substantial respects from that of the Superintendent.⁹ PSB Ex. 21.
- The list of specific conduct set forth by the Providence School Board in its undated termination decision does not completely describe the reasons identified for its termination of Simon Richardson. Tr. Vol. I-VI; PSB Ex. 16.

⁷ by Mr. Richardson

⁸ We infer from this that the Board voted to terminate Mr. Richardson as a tenured teacher in the Providence school system.

⁹ It retains the general grounds for termination, i.e. “inappropriate conduct, inappropriate student contact and insubordination. See PSB Ex.21.

- The post-hearing decision of the Providence School Board dated December 15, 2003 does not clearly or completely set forth the reasons for which Simon Richardson was terminated by the Providence School Board.¹⁰ PSB Ex. 16; Tr. Vol.I-VI.

Positions of the Parties

Simon Richardson

The basic argument on which the Appellant relies is that the School Board has failed to sustain its burden of proof that good and just cause exists for his termination. Conceding for the sake of argument that some of Mr. Richardson's conduct in the late fall and early December of 2002 may constitute sufficient cause for his termination, counsel for Mr. Richardson argues that the School Board failed to take into account the role mental illness played in his conduct. Counsel submits that the offending conduct resulted from illness and was not intentional. Given that Mr. Richardson had no prior disciplinary record and past evaluations of his teaching performance had been exemplary, his termination was unwarranted. In light of the fact that he suffered from a mental disability which caused his misconduct, Mr. Richardson's dismissal constitutes illegal discrimination under the Americans with Disabilities Act, counsel argues implicitly.

From a procedural standpoint, it is argued that the termination process utilized by the School Board did not comply with requirements of due process. Counsel for the Appellant focuses on the May 13, 2003 letter from Melody Johnson as the "charging letter". He argues that this was the only notice Mr. Richardson received prior to the pre-termination hearing on May 20, 2003. Dr. Johnson's letter does not comply with standards of due process in that it is vague and ambiguous, lacks specification and does not adequately inform Mr. Richardson of the charges against him. The Superintendent's May 13, 2003 letter, the Appellant argues, lacks a clear statement with respect to each of the charges, the date or dates of the alleged conduct, where it took place, the names of the students—or even which of Mr. Richardson's classes—were involved. Since the notice to him was defective, counsel argues that the pretermination hearing on May 20, 2003 was not meaningful and did not present a real opportunity for Mr. Richardson to respond, or for his attorney to respond on his behalf. Counsel submits that notice and hearing prior to the School Board's May 20th decision to terminate him were required and in this case he was deprived of a property right, i.e. his tenured teaching position, without due process of law.

As we understand counsel's argument, the issue of whether Mr. Richardson was provided with legally sufficient notice of the basis for his discharge is a constitutional due process claim, and is exclusively based on the Superintendent's May 13, 2003 letter. (See pages 5-14 of the Appellant's Memorandum). The Appellant notes that subsequent communications from the Providence School Board contained additional facts and specifications with respect to the charges against him. He points out that these additional

¹⁰ The decision does not identify the evidence on which the Board relied in drawing its conclusions and making its decision. See Hobson v. South Kingstown School Committee, April 4, 1988.

facts were obviously available to the School Board from the outset of the termination process, and yet were purposefully not included in the Superintendent's May 13, 2003 "charging letter". Again, as we understand the Appellant's argument, the additional information provided by the School Board after the pretermination hearing on May 20, 2003 and that contained in its post-hearing decision dated December 15, 2003 did not cure the prior defective notice of May 13, 2003.¹¹ To the extent there was greater specificity with respect to the "charges", it was untimely, i.e. it occurred after the deprivation of Mr. Richardson's property interest.

In summary, the Appellant disputes that good and just cause has been shown for his termination. The medical evidence submitted on Mr. Richardson's behalf, which stands uncontradicted, would indicate that at no time did he intentionally seek to harass or harm anyone. Because of his medical condition, he did not intend to act contrary to the interests of the school department during this brief period in a long career. Finally, given the substantial violations of his due process rights which have occurred, his termination must be overturned and he should be reinstated to his position, with back pay and other appropriate damages.

Providence School Board

Counsel for the School Board argues that substantial proof exists of Mr. Richardson's insubordinate, grossly inappropriate, and dangerous behavior with students and staff. It is submitted that there is clear evidence of the just cause supporting his termination. With respect to Mr. Richardson's argument that mental illness caused or contributed to his misconduct, the school department argues that there has been no clear diagnosis presented by a qualified mental health professional. For the same reason, the School Department submits, there is inadequate proof of a causal relationship between any psychiatric difficulties experienced by Mr. Richardson and the behavior which gives rise to the charges against him. If Mr. Richardson does suffer from a mental illness, there is little indication that Mr. Richardson acknowledges it or that he attributes his behavior to this condition. For the most part Mr. Richardson did not seek to excuse his actions, but rather defended much of his conduct as evidence of his superior approach to teaching.

Assuming for the sake of argument that Mr. Richardson has a mental illness which caused his misconduct, then the School Board argues implicitly, there is no evidence that Mr. Richardson has been effectively treated. The only medical professional who testified on his behalf was an internist who merely referred Mr. Richardson to other mental health professionals for treatment. Absent competent and persuasive evidence that whatever medical condition may have caused his behavior has been brought under control, the School Board submits that it is not "confident that Richardson would not pose a continued danger to students and staff" (School Board memo at page 10). The School Board takes issue with any argument that state and federal antidiscrimination laws confer protection upon Mr. Richardson, in that his misconduct is not required to be

¹¹ Counsel notes on page 13 that PSB Ex. 16 and PSB Ex. 21 conveyed more information on the facts supporting Mr. Richardson's discharge, but takes the position that they were still "inadequate".

tolerated, or “accommodated”, by the school system. In terminating Mr. Richardson the Board acted, as it must, to protect the safety and welfare of its students. (See footnote 2 at page 9 of the Board’s memo)

DECISION

Evidence of Just Cause:

The processing of this appeal has been complicated – in part because of the complexities of the legal issues and in great part because of the failure of the Providence School Board to clearly describe the conduct at issue. There had been many issues between Mr. Richardson and his employer prior to Superintendent Johnson’s decision to recommend his termination. Evidence in this record touched upon most, if not all, of these matters, on the possibility of their relevance to the School Board or to the hearing officer. The lack of clarity in the written communications to Mr. Richardson from the Superintendent and the Providence School Board, PSB Exhibits 15, 16, and 21 resulted in an “open-ended” inquiry. The legal effect of the absence of a statement of cause to Mr. Richardson will be dealt with later in this decision.

There is ample evidence in the record of just cause for Simon Richardson’s termination as a tenured teacher in the Providence school system. As indicated in the findings of fact, upon his return to school in the week beginning November 11, 2002 Mr. Richardson distributed a document to two of his English classes which called for them to bring hammers to school. Consistent with that instruction, students brought hammers to school and proceeded to break up rocks in a nearby field. Mr. Richardson used a sledgehammer. Even if this activity was designed to tie in to his instruction, as Mr. Richardson suggested, it was clearly inappropriate and threatened the safety of students and others. Students should not be directed to bring in tools that have the capability to be used as weapons. Although there is no direct evidence of a violation of Classical’s disciplinary code, we take administrative notice of the fact that most, if not all, student disciplinary codes prohibit possession of such items on school premises. The dangers to student safety posed by this activity are obvious. The potential danger created by Mr. Richardson’s scheduling of the upcoming “handgun day”¹² was a legitimate concern of school administrators at Classical, and one to which they responded as soon as they became aware of the situation.

¹² The syllabus or “cittabus” he distributed to his classes (PSB Ex. 12) included several topics and activities, including “hammer day”, “bell day” and “handgun day”.

Mr. Richardson's conduct on November 18, the day of the NEASC accreditation visit, was disruptive and injurious to the interests of his employer. His damage to school property by spray painting the wall of the second floor corridor and his use of students in blowing up balloons and writing slogans on them was inappropriate and unprofessional. His bringing of a stranger (the guitar player) into the school building without the knowledge and consent of the building principal violated school policy on procedures for bringing visitors into the school. Although Mr. Richardson testified that he viewed his preparations for the NEASC visit as creating a "special lesson" that would be "more engaging for visitors,"¹³ there is some evidence, not altogether clear, that these activities were really intended as a protest to the NEASC visit and to the school's preparations for it.

It was soon thereafter that Mr. Richardson was placed on paid administrative leave and directed to remain away from school department property. As indicated in the findings of fact, this direction was given to him both verbally and in writing. The intent of the directive was to protect students from any potential harm, and given what the school officials knew of his past conduct, the directive was well founded. Nonetheless, Mr. Richardson violated these instructions and proceeded to "visit" both Mount Pleasant and Hope High School. There is no indication in the record that Mr. Richardson's violation of these directives was due to any responsibilities he had as a parent of two children enrolled in the Providence school system, or otherwise justified in some way. His violation of this directive constitutes insubordination.

While on administrative leave, Mr. Richardson visited one of his students at her place of employment. The student's testimony was both credible and persuasive as to the nature of the visits, the topics of conversation, the physical closeness and the unwanted touching by Mr. Richardson. Mr. Richardson's testimony was not persuasive in terms of his denials of what transpired. His behavior, especially his physical contact with this student, was inappropriate. We must observe that his conduct would be viewed more as "harassment"¹⁴ if one takes into account the pictures of himself that he left for the student with a co-worker. We do not take the pictures into account.¹⁵ Although Superintendent Johnson specifically described the pictures in the reasons for her recommendation to the School Board on May 13, 2003, the School Board omitted reference to the pictures in both of its decisions.¹⁶ Assuming this omission to be intentional, we do not consider the pictures in evaluating Mr. Richardson's interactions with this student as a ground for his termination.

¹³ Tr. Vol. VI, p.45

¹⁴ the label placed on it by the School Board

¹⁵ the facts with respect to the pictures are retained in our findings of fact but do not form the basis for the conclusion that Mr. Richardson acted inappropriately during his visits to this student's place of employment.

¹⁶ including the decision identified by counsel as the School Board's statement of cause for Mr. Richardson's termination, PSB Ex. 21.

Evidence of Mr. Richardson's Illness

The assertion we are presented with is that Mr. Richardson's mental illness caused, or at least contributed to, his behavior from early November through December of 2002 and that he should therefore not be held accountable or disciplined. To do so, his counsel argues, is discriminatory. There is some proof in this record that Simon Richardson suffered from some type of mental illness during the period in which his misconduct took place. What remains unproven is the specific illness from which he suffered and how it may have affected his judgment and behavior during this period. The testimony of Mr. Richardson's internist was unpersuasive on either of these points. Although the internist, Dr. William Tyler Smith, testified at the hearing that during the relevant period of time Mr. Richardson suffered from mania and that this condition impaired his judgment, a psychiatrist who treated him during this period made a different diagnosis, i.e. an adjustment disorder.¹⁷ Dr. Smith himself described Mr. Richardson's condition in an April 17, 2003 status report (App.Ex.E) as "reactive stress disorder" with no mention of mania. While Dr. Smith appears to have monitored Mr. Richardson's progress during this period, it does not appear from this record that he actually treated him for his mental illness, but rather that he referred him to others for treatment. Dr. Smith has treated a small percentage of his own patients for their mental illness symptoms, but Mr. Richardson was not one of them. This last finding is based on our review of Dr. Smith's entire testimony.¹⁸

Even assuming that Mr. Richardson suffered from mania during this period, Dr. Smith's testimony did not establish that the behavior resulting in his termination was caused by this condition. Initially, Dr. Smith testified that Mr. Richardson's behavior was "absolutely" caused by a manic episode. Tr. Vol. IV, pp. 85-86. However, he went on to indicate that he lacked specific knowledge as to what conduct had occurred. Mr. Richardson did not go into the specifics with him, nor did Dr. Smith review any records, or otherwise inform himself of what had happened. Tr. Vol. IV, pp. 86, 138-142. Dr. Smith's opinion on the cause of Mr. Richardson's misconduct was unconvincing because he lacked knowledge of the specific incidents that had occurred in this case. Taken as a whole, his testimony indicated only that mania could affect a person's judgment and ability to act appropriately and follow rules. His opinion failed to address the facts of this specific case.

Based on this record and the incidents of proven misconduct, there is just cause for Mr. Richardson's dismissal.¹⁹ The pattern of conduct cited in this decision,

¹⁷ The record includes no direct report of this psychiatrist, but Dr. Smith relates this information in his reports, included in Appellant's Ex. C, D, and E.

¹⁸ again, his opinion was unpersuasive as to the nature of Mr. Richardson's illness.

¹⁹ Even assuming, arguendo, that a manic episode, or an ongoing mental disability, caused Mr. Richardson's behavior, it would be part of his burden to show that he had addressed these health issues to the point that this conduct would not likely be repeated. Again, there is no persuasive evidence on the record with respect to these facts. Dr. Smith's April 17, 2003 opinion was that the symptoms of "reactive stress disorder" had subsided and that Mr. Richardson was able to return to work and handle his teaching

culminating in his visits to a student's place of employment and inappropriate behavior with her on those occasions, justifies his termination. While there may be an inference that his mental health status was a factor in this pattern of activity, the inference is not supported by competent evidence.

Due Process

Appellant's counsel makes a strong argument as to defects in the notice provided to Mr. Richardson prior to the School Board's vote to terminate him on May 20, 2003. The record will show that the parties, and the hearing officer, struggled to determine the parameters of the facts on which Mr. Richardson's termination was based. The focus of the Appellant's claim as to defective notice was the Superintendent's May 13, 2003 "pretermination" notice.²⁰ We find that this notice fails in many respects to clearly and comprehensively describe the allegations against Mr. Richardson. We further find that the pre- and post-termination notices, taken as a whole, are insufficient to provide him with a statement of cause for his termination. The conduct described in the Superintendent's May 13, 2003 notice varies from that described in the Board's May 20, 2003 decision, the document argued to be the statement of cause required by R.I.G.L. 16-13-3 and 16-13-4. The decision of the School Board on December 15, 2003, which followed several days of hearing, does not provide the clarification it would have had it contained a brief reference to the evidence supporting each of the allegations. "Conduct on and after November 12, 2002, including but not limited to..." and "certain teaching materials" is not clear. Dates of incidents and the names of those involved are omitted. The lack of clear and complete notice violated Mr. Richardson's due process rights.

We have reviewed the law relating to appropriate relief, or remedy, for due process violations. Based on that review, we decline to award actual damages in the nature of lost wages in this case.²¹ The better rule on procedural violations, both constitutional and statutory, is ensuring that the required procedures are furnished without delay. The defects in the notice to the Appellant were not raised as a threshold issue. There was no request to remand this matter to the School Board for the issuance of a revised notice, but rather a decision was made to submit the entire case to the hearing officer. As the hearing and decision process proceeded over a period of several months, counsel for Mr. Richardson took advantage of every opportunity to request clarification when possible and any continuances required to provide effective representation of his client. As indicated at the outset of this decision, the lack of clarity and comprehensiveness of the notice provided to the Appellant caused us to focus on only those matters which were specified sufficiently in the notices. In this particular case, we view the de novo hearing provided to Mr. Richardson at this level as providing him with

duties, that his behavior was not likely to be repeated. (App.Ex. E); Dr. Smith was more tentative on this issue when testifying on April 19, 2004. See Tr. Vol. IV, pp. 142-147.

²⁰ As noted previously in this decision, the Appellant viewed the subsequent post-deprivation notices from the School Board as clearer, but not effective to cure defects in the initial notice.

²¹ See the discussions of this legal issue in Hobson v. South Kingstown School Committee, decision of the Commissioner dated April 4, 1988 and October 2, 1990; Simmons v. Tiverton School Committee, Decision on Remand, March 4, 1986.

a full and fair hearing, and one which – ultimately – provided him with procedural due process.²²

For the foregoing reasons, the appeal is denied and the decision of the Providence School Board is hereby affirmed.

For the Commissioner

Kathleen S. Murray
Hearing Officer

APPROVED:

Peter McWalters, Commissioner

May 25, 2005
Date

²² See the discussion of remedies for defective notice in the administrative process in Professor Davis' Administrative Law treatise, cited at page 7 of the Commissioner's decision in *Simmons v. Tiverton School Committee*, February 8, 1985. We can envision cases in which it is not possible to cure due process deficiencies through the de novo hearing provided by the Commissioner. The School Board is therefore directed to review its procedures in following up on misconduct allegations, investigations and administrative follow up to ensure that the process complies with both Constitutional and statutory requirements.