

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

Jose Dajer

v.

Providence School Board

DECISION

Held: Mr. Dajer's nonrenewal was valid, assuming that the reason for his nonrenewal was the belief of the School Board that a better teacher could be found. Mr. Dajer did not prove that a better teacher could not be found and the evidence showed classroom management problems existed in school year 2003-2004.

DATE: June 6, 2006

Travel of the Case

On December 9, 2004 counsel for Jose Dajer filed an appeal with Commissioner Peter McWalters from a November 29, 2004 decision of the Providence School Board in which it affirmed a prior decision to nonrenew his contract. Mr. Dajer had received notice of nonrenewal prior to the statutory deadline of March 1st in his third year as a probationary teacher in the Providence school system. Mr. Dajer served as a mathematics teacher at the Harrison Street School in school year 2003-2004. The undersigned was designated to hear and decide this appeal.

Counsel provided the hearing officer with an agreed-upon date for hearing, after attempts to resolve the matter by settlement proved unsuccessful. Hearing took place on June 14, 2005 and a briefing schedule was agreed to by the parties. The record closed upon submission of the final brief on December 13, 2005.

Jurisdiction to hear this case arises under R.I.G.L. 16-13-4.

Issue

Was the decision of the Providence School Board not to renew the teaching contract of Jose Dajer made for a valid reason and does the decision otherwise meet legal requirements for the nonrenewal of a nontenured teacher ?

Findings of Relevant Facts:

- Jose Dajer was a third-year probationary teacher at the Harrison Street School. He taught Algebra I to ninth and tenth graders there during school year 2003-2004. PSB Ex.A; Dajer Ex.1; Tr. p. 35. Previously, Mr. Dajer had taught mathematics at Perry Middle School and the Alternate Learning Project High School. Tr. p. 71.
- Harrison Street School first opened in August of 2003 with between 280-300 students in grades nine and ten. During the 2003-2004 school year many of its students were “overflow”, i.e. they entered the system after all seats at other high schools in Providence were filled; a “good portion” of the students at Harrison Street School that year were also students returning after “DR”- disciplinary referral and/or suspension from other high schools in the city. Tr. pp. 11, 15; 33-35.
- Mr. Dajer’s classes included some twelve to fifteen students who were “disciplinary problems” or very difficult students. Tr. pp. 42-43. Over the course of the year, many of these students were removed from the school because of chronic misbehavior or violent behavior. Tr. pp.43-44, 49.
- Some of the students in Mr. Dajer’s Algebra I class were below grade level in math, some at grades 4-6. Tr. pp. 65, 72- 73.

- During the 2003-2004 school year, the composition of Mr. Dajer's class was in flux with students coming and going weekly. This "rotation" of students continued up until the last month of school. Tr. pp. 76-78.
- The principal of Harrison Street School, Wobberson Torchon, visited Mr. Dajer's classroom and observed his teaching on several occasions during the first semester of the 2003-2004 school year. Tr. pp. 15-16.
- During November and early December of the school year, Mr. Torchon visited Mr. Dajer's classroom about fifteen (15) times and on each occasion observed that teaching and learning were at a minimum; few students were on task and the majority were running around, screaming, playing cards and throwing books out the window. PSB Ex.B. Tr. p.18.
- On December 11, 2003 Mr. Torchon sent a memo to Mr. Dajer summarizing his observations. He notes in the memo that despite his suggestions on steps that would improve Mr. Dajer's classroom management, Mr. Dajer had not implemented these measures. The memo concludes with a directive to Mr. Dajer to implement four strategies to improve his management of the classroom. PSB Ex.B.
- Some students, as well as some parents, complained to Mr. Torchon about Mr. Dajer's classes. A couple of the students were transferred to another class at their parents' insistence. PSB Ex.B; Tr. pp. 22-23.
- After sending the December 11, 2003 directive to Mr. Dajer, Mr. Torchon did not see immediate progress and he continued to monitor Mr. Dajer's classes. Tr. pp.23-24.
- When notified by the Human Resources office of the upcoming deadline for principals to identify probationary teachers whom they would recommend for nonrenewal, Mr. Torchon determined that he should recommend that Mr. Dajer's contract be nonrenewed. He completed a "Probationary Teacher Non-renewal Referral" form sometime in late January or early February. The form cited Mr. Dajer's poor classroom management as the basis for his recommendation. PSB Ex. A; Tr. pp. 5-9, 32 and 49.
- Mr. Zimmerman, the Executive Director of Human Resources for the school department, met with each of the principals to review the recommendations they had made. Recommendations that were substantiated were then referred to the Superintendent for her review. Typically¹ the recommendation of the Superintendent for non-renewal of probationary teachers (based on the belief that the department would be able to find more qualified teachers) is then presented to the Providence School Board in a resolution at the last meeting in February. Tr. pp. 6, 10.
- A formal evaluation of Mr. Dajer for his third probationary year was completed in early June, 2004. At that time Mr. Torchon found that Mr. Dajer had implemented some of the strategies he had suggested to decrease "the level of disruptions" and that

¹ We assume that a resolution effectuating Mr. Dajer's non-renewal was presented in due course to the Providence School Board, as this fact was implicit in the presentations of the parties. We also assume that the reason was the belief that the School Board could find a more qualified teacher.

his classroom management skills had improved. Mr. Torchon gave Mr. Dajer a score of 13 out of 20 possible points on the evaluation. PSB Ex. C; Tr. pp. 26-32, 52-53.

- Although there was no professional development provided specifically to Mr. Dajer on classroom management, there was ongoing school-level professional development, which did include the topic of classroom management, in which Mr. Dajer actively participated. Tr. pp.46-48, 57-58, 82; PSB Ex.A.
- Mr. Dajer's evaluation scores in his prior two years as a probationary teacher were 12/20 and 12/20. PSB Ex. A.

Positions of the Parties

Jose Dajer

The Appellant does not dispute the existence of classroom management problems in his math class during the 2003-2004 school year. He argues that these problems were the result of the unusual circumstances he faced that year—a new high school populated with students who had a high incidence of behavioral problems and whose skills were, for the most part, not up to the level of the course he was assigned to teach them (Algebra I). As he tried respond to the needs of his students and to impose appropriate discipline, he referred many unresponsive students to the office for follow up. There he encountered a first-time principal reluctant to suspend too many students and no assistant principal for most of the first semester to utilize alternative disciplinary measures. The lack of administrative support in the area of student discipline exacerbated the disciplinary problems in his class, Mr. Dajer contends. He did the best he could- in fact, he argues, he did the best *any* teacher could have done under the circumstances.

An objective assessment of Mr. Dajer's strengths as a mathematics teacher would indicate that he has a firm grasp of—indeed a passion for—the subject matter he teaches and has demonstrated a love for his students. He implemented all of the suggestions made by his principal and took advantage of the professional development provided to him. Counsel submits that the June evaluation by Mr. Torchon is more on target with Mr. Dajer's teaching performance in that the narrative is quite complimentary of his teaching skills, although the numerical scores in each of the evaluated areas are inexplicably low. However, given the improvement noted in class behavior and overall discipline in the classroom at the time of the evaluation, Mr. Dajer's nonrenewal on the basis of poor classroom management is inconsistent and arbitrary. If Principal Torchon considered Mr. Dajer's classroom management skills to be a serious issue after his December 11, 2003 memorandum on this subject, he would have followed up with additional communications to Mr. Dajer. As it was, there was no follow up by the principal. Mr. Dajer had no warning that he was in danger of losing his teaching position, so it came as a shock and surprise when Mr. Torchon actually recommended Mr. Dajer's non-renewal in late January. Given the improvements in classroom management noted in the June evaluation, and given the uncontradicted evidence of Mr. Dajer's command of his subject area, his love for mathematics and enthusiastic dedication to his students, he should have been renewed. Counsel argues that Mr. Dajer

is just the type of highly qualified, competent teacher who should be awarded tenure, and but for the mistaken impressions of an inexperienced first-year principal, would have become a tenured teacher in the Providence school system.

Providence School Board

At the outset of its memorandum, the School Board notes that according to the statute and case law, a non-tenured teacher whose contract is non-renewed maintains the entire burden of proof in challenging such decisions. The School Board needs only to give the teacher a valid reason for its action in a statement of cause for non-renewal. In a de novo hearing the burden of proof is on the non-tenured teacher to show that the school committee could not obtain the services of a better teacher elsewhere when this reason is cited by the school committee as the basis for its decision. Since state law requires that non-tenured teachers be notified by March 1st of their non-renewal, the facts as they exist at that point in the school or fiscal year are controlling, according to case law cited by counsel for the Board.

In Mr. Dajer's case there has been no proof that the Providence School Board made a mistake in endorsing the Superintendent's recommendation not to renew his contract. He has not proven that the School Board could not find a better teacher from anywhere to teach at the Harrison Street School. Counsel notes that Mr. Dajer does not deny that there were classroom management issues, and that he argues these problems were not due to any deficiency in his classroom management skills, but rather due to the type of students assigned to his Algebra I class. The School Board submits that the students at the Harrison Street School were not atypical of Providence students. If Mr. Dajer could not engage and control these students, then the district was entitled to seek out a teacher who could. Thus, there was no mistake made by the School Board when it voted to accept the recommendation of the Superintendent (and essentially endorse the good faith belief of Principal Torchon) that it non-renew Mr. Dajer's contract and find a better teacher to take his place at the Harrison Street School.

DECISION

In the recent decision of Tanguma v. Providence School Board,² we attempted to describe the legal landscape traversed by a non-tenured teacher challenging her non-renewal on the basis of the Board's belief that a better teacher was available. The analysis in the Tanguma case is instructive in this matter. As in that case, counsel for the Providence School Board has preserved the position that it has no burden to prove facts which support its conclusion that it could find a better teacher than Mr. Dajer to teach mathematics at the Harrison Street School. Mr. Dajer faced the daunting task of proving that no better mathematics teacher could be found anywhere. The record made in the de novo hearing at this level does not meet this heavy burden of proof. Some of the difficulty undoubtedly lies in the challenge of proving a negative; that is, the non-

² Decision of the Commissioner dated January 27, 2006

existence of a more qualified teacher. In any event, Mr. Dajer was not able to substantiate his claim that he did the best any teacher could have done to manage the classes assigned to him in 2003-2004, and to overcome the obstacles of grade level disparities, “difficult” students, and ongoing changes in the composition of his classes.

Although it had no burden to prove that Mr. Dajer’s performance was inadequate or deficient in any way, the School Board did in fact present evidence of facts supporting its conclusion that a better teacher might be found.³ Through testimony and documentary evidence the School Board established that there was a “material deficiency” in Mr. Dajer’s performance – persistent classroom management problems throughout much of school year 2003-2004. Principal Turchon testified as to his observations of Mr. Dajer’s teaching and his assessment that teaching techniques could be better utilized to make more students actively engage in classroom learning, rather than disrupting the class. He had gauged Mr. Dajer’s problems with classroom management to be serious enough to warrant a written memorandum, issued on December 11, 2003 and directing immediate implementation of strategies to improve behavior in the classroom. The principal did not deny that Mr. Dajer had several difficult students, or that the achievement levels of his students were disparate. He gave Mr. Dajer credit for those attributes he found beyond criticism – his command of his subject matter, his enthusiasm and preparation, and his love for his students. The testimony of Mr. Turchon was credible and convincing.

Although the Appellant argues that his performance at the time of his evaluation in May/June of the school year was vastly improved, the score on his evaluation – a 13 out of 20 – presents an overall different picture. The principal’s balanced commentary as contained in the June evaluation noted many positive aspects of Mr. Dajer’s lesson and his performance. Students were found to be well-behaved during the class. However, Principal Turchon was critical of the pedagogical approach used by Mr. Dajer in that it failed to engage some of the students in the class. In testimony the principal stated that although classroom management had improved at the time of his formal evaluation in June, he had not changed his assessment that a better teacher than Mr. Dajer could be found.⁴ The record establishes a factual basis for this conclusion. It was apparently Mr. Turchon’s assessment alone which was later accepted by the members of the School Board.⁵

This case presents another instance of a nonrenewal decision involving a teacher in the third year of his probationary period made without reference to evaluative

³ The tendency to establish that the Board’s decision was not arbitrary or capricious, that it was rational and had factual support is no doubt based on decisions in non-renewal cases which pre-date Kagan and McGhee v. Bristol/Warren Regional School Committee, decision of the Board of Regents, October 12, 1995, affirmed by the R.I. Superior Court on August 21, 1997, 1997 WL 1526517.

⁴ We should note that even if a vastly different picture of Mr. Dajer’s performance was contained in the June evaluation, the School Board had to base its decision on the facts as they existed on the March 1st deadline for non-renewal decisions.

⁵ The decision of the Providence School Board is not in evidence, but the parties have implicitly agreed that the reason for its decision, which it later affirmed, was the belief that a better teacher than Mr. Dajer could be found to teach this class.

information available over the entire probationary period.⁶ In this case, this procedural defect is much less significant than in the Tanguma case. Here substantial evidence – persuasive testimony of Mr. Dajer’s principal – supports the conclusion that a better teacher could be hired. The evaluative information from the two prior years (scores listed on the non-renewal referral form) support Mr. Torchon’s conclusion.

From a process standpoint, the commissioner has emphasized the importance of evaluative information collected during the entire probationary period. He has cautioned administrators and school committees of the need for full and fair evaluations in each year and the need to reference evaluation results (along with other pertinent information) in decisions on non-renewal.⁷ Such a process will better ensure that these decisions are based on a teacher’s performance over time and allow for consideration of more than one evaluator’s assessment of the teacher’s performance.

For the foregoing reasons, the appeal of Mr. Dajer is denied and the decision of the School Board is affirmed.

For the Commissioner

Kathleen S. Murray
Hearing Officer

APPROVED:

Peter McWalters, Commissioner

June 6, 2006
Date

⁶ There is no evidence that anyone in the decision-making process (Mr. Turchon, the superintendent, or the school board) took into account evaluation information on Mr. Dajer for the two prior years of his probationary period. It is unclear at what point the scores Mr. Dajer had received on his two prior probationary evaluations (both a 12 out of 20) were handwritten on the Non-renewal Referral form. Mr. Torchon confined the basis of his recommendation to performance in 2003-2004. (PSB Ex. A).

⁷ See the discussion in Namerow v. Pawtucket School Committee, decision of the Commissioner dated November 9, 1999.