

State of Rhode Island and  
Providence Plantations

Commissioner of Education

Maria G. Hannon

v.

West Warwick School Committee

#### DECISION

Held: Ms. Hannon's nonrenewal was based on a valid reason, i.e. the district's belief that it could find a more qualified teacher for her position. She has not proven that the district could not find a better qualified teacher for her position as a teacher of students with severe and profound disabilities even though Ms. Hannon did improve to "meet the standard" in each of the areas in which she was evaluated over the course of the school year. Notice of the reason for her nonrenewal was true and accurate, even though specific deficiencies in her performance became the subject of discussion and testimony at the time of her hearing before the School Committee.

DATE: December 4, 2009

## **Travel of the Case:**

On May 28, 2009 Maria Hannon filed an appeal with Commissioner Peter McWalters to contest the decision of the West Warwick School Committee to nonrenew her contract. Her appeal was acknowledged by the undersigned hearing officer, designated by the Commissioner to hear this matter, on June 5, 2009. A hearing was scheduled by agreement of the parties and took place on July 23, 2009, at which time both testimony and exhibits were introduced, including the transcript of Ms. Hannon's hearing before the School Committee. The record in this appeal closed on August 18, 2009 upon receipt of the transcript by the hearing officer.

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

## **Issue:**

Was the decision of the West Warwick School Committee not to renew the teaching contract of Maria Hannon made for a valid reason; did the School Committee provide her with an objectively truthful and accurate notice of its reason; and does the decision otherwise meet the legal requirements for the nonrenewal of a nontenured teacher?

## **Findings of Relevant Facts:**

- Maria Hannon holds certification as a teacher of students with severe and profound disabilities, grades K-12. In January of 2008 she was appointed as a teacher at the Maisie Quinn Elementary School in West Warwick, to teach children in a newly-created in-district program for students with severe and profound disabilities. She had previously taught at Meeting Street School for eight (8) years. Tr. pp. 9, 78.
- During the 2008-2009 school year, Ms. Hannon underwent two "cycles" of evaluation, each consisting of three classroom observations the results of which were "averaged" for each cycle. For each of the six (6) formal observations during 2008-2009 there was a "TEACHER EVALUATION REPORT" completed by her principal and a final report for each cycle. The final teacher evaluation report for Cycle 1 indicated that Ms. Hannon had met the standard on most of the indicators, but on three of the performance indicators, she needed improvement. The final teacher evaluation report for Cycle 2 indicated that Ms. Hannon had met the standard on all of the performance indicators.<sup>1</sup> Appellant Ex. A and B.; Tr. p.21.

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<sup>1</sup> She had met the standard on all of the indicators in all three formal observations of her performance that took place in Cycle 2. The evaluation instrument has no category of performance above "meets standard."

- The principal of Maisie Quinn School, who had performed each of the six (6) observations and had completed each of the evaluation reports on Ms. Hannon's performance, also prepared a summary narrative report for cycle 1 and cycle 2. Tr. pp. 16, 23-24. S.C. Ex. 6 and 7. The principal's summary report for cycle 2 (S.C. Ex.7) described the conclusions he had reached regarding Ms. Hannon's performance based on "the entirety of the two evaluation cycles." The report described the principal's concerns regarding Ms. Hannon's "inconsistent ability to produce acceptable lesson demonstrations," her failure to grasp her legal obligation to file timely reports on physical restraints in her classroom and noted complaints he had received about her (in)ability to manage her class, both students and paraprofessionals. S.C. Ex.7.
- Ms. Hannon's principal concluded that she had made a minimal amount of progress over the course of the year, despite supports that had been put in place to assist her.<sup>2</sup> He did not recommend that her contract be renewed because he was "confident that there are better candidates for his position." This written recommendation was included in his summary report of Ms. Hannon's evaluation dated January 30, 2009. S.C. Ex. 7.
- Principal Keith Remillard reviewed several applications submitted to West Warwick and determined that there were better candidates available for the position. Tr. p. 30.
- Superintendent Kenneth M. Sheehan agreed with the principal's recommendation of non-renewal of Ms. Hannon's contract after reviewing Ms. Hannon's personnel file and checking applications on file from those seeking positions in West Warwick. App. Ex. A, p. 6; He notified Ms. Hannon on February 11, 2009 that he would be making a recommendation that the School Committee not renew her contract at its February 17, 2009 meeting. S.C. Ex. 1.
- The reason for the Superintendent's recommendation was his belief that there were more qualified teachers available for Ms. Hannon's position. S.C. Ex. 1.
- After providing her with the notice, but before his recommendation was presented to the School Committee, Superintendent Sheehan interviewed Ms. Hannon to determine if he should reconsider his recommendation. He met with Ms. Hannon, the Director of Special Education, the Principal, and a representative of the West Warwick Teachers Alliance. Tr. pp. 60-62.
- After this meeting, Mr. Sheehan concluded that his recommendation should not be changed because he continued to believe that there would be someone else better out there for the position. Tr.p. 62.

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<sup>2</sup> Including a paid summer development session to assist her in class planning

- The basis for the Superintendent's conclusion was the evaluation materials submitted to him by Ms. Hannon's principal. These included information on her failure to report a physical restraint in a timely manner. App.Ex. A, p. 49; Tr. pp. 64-66.
- At its meeting on February 17, 2009 the members of the School Committee voted unanimously not to renew Ms. Hannon's teaching contract based on the Superintendent's belief that there were more qualified teachers available for her position. S.C. Ex. 2.
- Following a full hearing on May 11, 2009 held at Ms. Hannon's request, the West Warwick School Committee voted unanimously to sustain its previous action on the basis that Ms. Hannon had been serving as a non-tenured teacher and "there are more qualified teachers available for her position." S.C. Ex. 3.
- At the May 11, 2009 meeting the Superintendent testified concerning his recommendation of nonrenewal and the basis of his belief that there are more qualified teachers available for her position. App. Ex. A.
- After reading a prepared statement at her May 11, 2009 hearing before the School Committee, Ms. Hannon was then questioned at length by the attorney representing the administration, by members of the School Committee and by her own advocate with respect to her teaching performance, evaluations, and the details surrounding an incident in which she evidently had not filed a physical restraint report in a timely fashion. App. Ex. A.
- Following this discussion at the May 11<sup>th</sup> hearing, Superintendent Sheehan indicated to those present that his recommendation not to renew Ms. Hannon's teaching contract was based entirely on her evaluations, of which the issue on reporting physical restraints was "just a piece of the entire puzzle regarding evaluation." App. Ex. A p. 49.
- At the conclusion of the hearing, the School Committee voted to sustain its previous action of February 17, 2009 and voted to non-renew the teaching contract of Ms. Hannon on the basis that she had been serving as a non-tenured teacher and there are more qualified teachers available for her position. S.C. Ex. 3.
- Mr. Remillard, Ms. Hannon's principal, was in his second year as principal of Maisie Quinn Elementary and had previously served for eight (8) years as a music teacher in the Pawtucket school system. Tr. pp. 8-9; Mr. Remillard is not certified in special education. Tr. p. 31.

## **Positions of the Parties:**

### **Appellant Maria G. Hannon:**

From a procedural standpoint, Ms. Hannon's union representative points out that although Superintendent Sheehan's recommendation was based entirely on evaluations of Ms. Hannon's performance, the notice he sent to her on February 11, 2009 indicated only that:

The reason for my recommendation is that you have been serving as a non-tenured teacher and I believe that there are more qualified teachers available for your position.

This same reason was affirmed in the February 23, 2009 notice that the School Committee had voted to accept Superintendent Sheehan's recommendation. As a result, when Ms. Hannon appeared before the School Committee on May 11, 2009 for her full hearing, she was ill-prepared to answer specific questions with respect to her evaluations. She was also surprised, she alleges, that the focus of the questions put to her by counsel for the administration and members of the School Committee pertained to the details of her principal's complaint that she had failed to make timely reports of physical restraints used in her classroom. If the notices to her had specifically identified poor or unsatisfactory evaluations as the basis for her non-renewal, she and her union representative would have come prepared to demonstrate that her evaluations for Cycle #2 uniformly indicated the adequacy of her teaching. If the Superintendent had previously raised the issue of improper restraints or compliance with reporting timeframes, she would have been well-prepared to discuss the details of physical restraints<sup>3</sup> she had used on one or two occasions when needed to instruct her severely disabled students. The notices she did receive placed her at a disadvantage at the time of her hearing before the West Warwick School Committee.

Also, given the nature of the discussions before the School Committee, Ms. Hannon submits that it is clear that the actual reason for her non-renewal was not a belief that the district could secure a better qualified teacher, but rather the fact that she had received unsatisfactory evaluations that had noted, among other shortcomings, what was perceived to be her inability to "grasp her legal obligations as a teacher given her failure to timely report a physical restraint." Non-tenured teachers are entitled under R.I.G.L. 16-13-2 to receive notice of the actual and objectively truthful reason for their non-renewal.<sup>4</sup> It is evident from Superintendent Sheehan's testimony and the transcript of Ms. Hannon's hearing before the

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<sup>3</sup> Which she had previously viewed not as physical restraints, but as "instructional physical guidance" needed to assist her students.

<sup>4</sup> The Appellant cites Germani v. Providence School Committee, decision of the Commissioner dated March 30, 1984, a case in which the reasons for "non-renewal" of several Providence teachers (all except for one being tenured) were analyzed for factual accuracy and compliance with the statutory requirement that teachers be provided with notice of the reason for their non-renewal, layoff, or dismissal.

School Committee that in her case she did not receive a notice of the real reason for her non-renewal.

Substantively, Ms. Hannon's union representative argues that reliance upon an evaluation by a principal who was in only his second year as an administrator and who had no background in special education is misplaced. The evaluations indicate a professional difference of opinion (between Ms. Hannon and Mr. Remillard) as to what constitutes a physical restraint as opposed to instructional physical guidance and when Mr. Remillard directed Ms. Hannon to file a report to document this restraint on December 2, 2008, he coupled this request with a litany of other tasks such that any reasonable person could not have complied within the short timeframe established. More importantly, considering that the reports from the second cycle of evaluations show that Ms. Hannon "met the standard" on each and every observation made of her performance, she obviously exhibited no performance deficiencies. Since this is the evaluative context from which Mr. Remillard made his recommendation, as did the Superintendent, how does the recommendation to non-renew Ms. Hannon's teaching contract draw its essence from the evaluation forms? The recommendation to non-renew the Appellant's contract does not link up with her formal evaluations, and there is no testimony with respect to the Principal's reliance on informal observations or other information that would have supplemented the formal evaluations he made of Ms. Hannon's teaching performance.

For the foregoing procedural and substantive reasons, Ms. Hannon's contract should be renewed for one year and she should be permitted additional time in which to demonstrate that she is a capable and caring teacher for students in her class.

### **West Warwick School Committee:**

The focus of the School Committee's argument is that once it establishes that its reason for non-renewal is to find a better teacher, the burden is then that of Ms. Hannon to establish that there are not better teachers available. In this case, the Committee argues, that burden of proof has not been met. Ms. Hannon has not demonstrated that a more qualified teacher could not be found to replace her. Counsel for the School Committee emphasizes the distinction between tenured and non-tenured teachers, noting that it is significant in that although the non-tenured teacher is entitled to be provided with a written notice of the reason for non-renewal, that reason need not constitute "good and just cause" for the School Committee's action. It was clearly established in Jacob v. Board of Regents, 117 R.I. 164, 365 A2d 430 (1976) not only that "good and just cause" need not be shown, but also that at the hearing to which the non-tenured teacher is entitled, there is no burden of proof upon a school committee. It need only listen to the dissatisfied teacher in an objective manner and fairly reconsider its original decision.

The School Committee points out that in Ms. Hannon's situation, she was provided with an additional step in the decision-making process, in that before the Superintendent

presented his recommendation at the February 17, 2009 School Committee meeting, he met with Ms. Hannon, her union representative and others to give her an opportunity to present certain additional information he felt would be germane to his decision. This additional opportunity for Ms. Hannon to persuade the Superintendent that his intended recommendation would be a mistake was not required by statute or otherwise. This meeting is implicitly argued to be evidence of the fair consideration given to Ms. Hannon in this matter. She did not persuade the Superintendent to change his recommendation and she failed to persuade the members of the School Committee when it heard the matter on May 11, 2009.

For these reasons, the School Committee argues that its decision should be affirmed.

## DECISION

Although we must acknowledge at the outset the difficulty of the assignment Ms. Hannon had in working with severely disabled elementary students at the Maisie Quinn School, she has not met the burden of demonstrating that her employer could not find a teacher more qualified than she to do this work.

The reason provided to her by both Superintendent Sheehan and the School Committee has been shown to be both accurate and truthful.<sup>5</sup> It is true that the discussion before the School Committee on May 11, 2009 probed into some of the specific factual underpinnings for the conclusion of both the Superintendent and the members of the School Committee that a better teacher could be found for the Appellant's position. However, this did not negate the legitimacy and accuracy of the reason provided to Ms. Hannon in the various notices she had received.

The Court stated in Jacob v. Board of Regents, supra, that at a non-renewal hearing it is the school committee's duty to "listen" to the teacher in an objective manner and fairly consider its original decision. We do not read the Jacob case as confining the members of the School Committee to simply being good listeners and constraining them from asking relevant questions. Although the Supreme Court specifically noted in the Jacob case that such a hearing was not "quasi-judicial in nature", it would be an unreasonable interpretation of the Court's decision, we believe, to prohibit the administration's legal counsel from asking questions of the teacher (or of any witness that may be presented on her behalf) and from presenting evidence that supports the Superintendent's recommendation when that recommendation is challenged by the teacher.

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<sup>5</sup> The validity of the reason "to find a better teacher, as yet unidentified" has been affirmed in numerous decisions of the Commissioner of Education, from as far back as Karagozian v. North Providence School Committee, decision of the Commissioner dated May 17, 1979 to Tracy v. Scituate School Committee, March 12, 1984 to as recently as November 6, 2009 in Hart v. Newport School Committee.

In this case, Ms. Hannon appeared before the School Committee<sup>6</sup> and contended that she had demonstrated continuous progress. She pointed out in her prepared statement that she had met the standards in all areas in which she was evaluated and requested that the School Committee provide her with another year before making a “final determination” on her retention. She then entertained questions. Although what followed was more akin to a quasi-judicial hearing, it became so only because there were factual issues raised by Ms. Hannon herself in her statement to the School Committee. It does not appear that the questioning went beyond what was needed to attempt to ascertain what the true facts were with respect to her performance. All of the facts which were discussed in the testimony before the School Committee pertained to the ultimate issue of whether or not the district could find a teacher better qualified than Ms. Hannon for the position she held. As indicated in the written decision issued by the School Committee issued on May 14, 2009 (S.C. Ex. 3) none of the information presented at the May 11, 2009 hearing changed its conclusion in this regard.

Under these circumstances, we find no violation of Ms. Hannon’s rights to a clear notice of the reason for her non-renewal. The Superintendent and School Committee cited the reason that a better qualified teacher than Ms. Hannon could be found and, based on the record, this reason was accurate, truthful, and supported by the facts adduced in both the hearing before the West Warwick School Committee and the hearing at this level<sup>7</sup>.

For the foregoing reasons, Ms. Hannon’s appeal is denied and dismissed.

For the Commissioner

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Kathleen S. Murray

APPROVED:

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Deborah A. Gist, Commissioner

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December 4, 2009

Date

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<sup>6</sup> After Superintendent Sheehan had appeared before the Committee to reaffirm his opinion that there were more qualified teachers available for Ms. Hannon’s position.

<sup>7</sup> As indicated in the recent decision of the Commissioner in Hart v. Newport, November 6, 2009 there is a presumption that there is a factual basis for the conclusion that a better-qualified teacher is available to replace the non-renewed teacher and a school committee has no burden to establish this pursuant to the Superior Court decision in Kagan and McGhee v. Bristol/Warren Regional School Committee, 1997 WL 1526517. In Ms. Hannon’s case, this presumption is supported by evidence of specific facts on which this conclusion was based.