

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

RAMON PEREZ

v.

PROVIDENCE SCHOOL BOARD

**DECISION**

**Held: The Providence School Board proved that good and just cause existed for its dismissal of Mr. Perez, a former tenured teacher at the Flynn School. Mr. Perez's deficient teaching performance, lack of classroom management skills and insubordination were substantiated by overwhelming evidence in the record. However, since notice of his dismissal was not provided to Mr. Perez on or before March 1, 2010, his dismissal could not take effect for the subsequent school year, but could take effect on the first day of the 2011- 2012 school year. The issue of a remedy for the unexplained, one-year delay in providing Mr. Perez with an evidentiary hearing before the full Board is moot because the effective date of his dismissal has been deferred for an entire year.**

**DATE: January 14, 2013**

## **Travel of the Case**

Ramon Perez appealed the October 24, 2011 decision of the Providence School Board affirming its previous decision to terminate his employment as a tenured teacher effective for the 2010-2011 school year. The Appellant's November 1, 2011 letter of appeal to Commissioner Deborah A. Gist was submitted by his attorney and referred to the undersigned hearing officer on November 2, 2011. Hearings were then scheduled by agreement of the parties and held on ten separate dates, beginning on November 30, 2011 and ending on July 16, 2012. The final transcript was received on August 14, 2012 and the record closed upon the submission of memoranda by counsel on October 12, 2012.

Jurisdiction to hear this appeal arises under R.I.G.L. 16-13-4, since Mr. Perez was a tenured teacher in the school system and appealed under the provisions of this statute.

### **Issues:**

- Did the Providence School Board follow dismissal procedures that conform to the provisions of the Teachers' Tenure Act?
- Did the Providence School Board have "good and just cause" for its termination of Mr. Perez?

### **Findings of Relevant Facts:**

- Ramon Perez was a bilingual elementary teacher who had been teaching in Providence public schools for approximately seventeen (17) years at the time he was terminated on July 12, 2010. (Tr. Vol. VIII, pp.8-9) In a notice of termination dated July 23, 2010, the President of the School Board, Robert Wise, indicated that Mr. Perez's termination was based on information provided by the Superintendent that Mr. Perez had:
  1. persistently failed to perform (his) teaching responsibilities at a level that meets the Administration's standards and expectations.
  2. been insubordinate in refusing to follow (his) principal's directives.
  3. failed to apply the District protocols related to teaching and learning.
  4. failed to apply District protocols related to classroom management and discipline.(Joint Ex. 1)

- After an evidentiary hearing held on October 11, 2011<sup>1</sup> the School Board voted 5 to 1, with 3 abstentions to uphold its previous decision to terminate Mr. Perez from his teaching position. The grounds cited for upholding the prior termination were identical to those stated in the July 23, 2010 termination decision. Joint Ex. 2.
- Two formal evaluations of Mr. Perez’s teaching performance indicated that his performance was not at a level that met the Administration’s standards and expectations. A regular evaluation conducted on May 15, 2008 by Principal Joyce Fitzpatrick and a February 1, 2010 “off-year evaluation” conducted by a central office administrator<sup>2</sup> found substantial deficiencies in his teaching performance. Both the content of his instruction and the methods he used in delivering lessons were found to be below district standards and expectations. PSB Ex. 13; PSB Ex. 11.
- Numerous informal assessments of Mr. Perez’s teaching performance were made by administrative staff of the Providence School Department. His former principal, Dr. Monica L. Nagy, who supervised Mr. Perez during school year 2005-2006 when he taught at Windmill Elementary School, outlined her observations of his deficient instruction of students in a detailed letter dated October 21, 2005. She placed Mr. Perez on a formal Improvement Plan at that time. PSB Ex. 17, 19, 20, and 21. During school year 2007-2008, his principal at the Edmund W. Flynn School, Joyce Fitzpatrick, observed and documented numerous shortcomings in Mr. Perez’s implementation of the elementary curriculum and his failure to engage students in learning activities. She brought to his attention her concerns for student safety, created by his failure to adhere to protocols required to be followed when students were sent out of the classroom. PSB Ex. 1. When Gary Moroch, Executive Director of Elementary Schools in Providence, visited Mr. Perez’s classroom on several occasions during school year 2008-2009, he observed Mr. Perez’s lack of adherence to the District curriculum, saw no evidence of

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<sup>1</sup> Neither of the parties provided any explanation for the delay of over one year in affording Mr. Perez a hearing on his appeal to the full Board under R.I.G.L. 16-13-4 (a).

<sup>2</sup>At that time tenured teachers in Providence were formally evaluated once every five (5) years. Because his 2008 evaluation had been less than satisfactory and his principal had sought the intervention of the Human Resources Office with respect to ongoing issues of insubordination in May of 2009, it was determined that Mr. Perez would undergo an “off-year evaluation”. At a meeting with his principal and central office staff on September 29, 2009, Mr. Perez and his union representative were informed that he would undergo this evaluation in accordance with §8-14.4 of the collective bargaining agreement. A protocol for the evaluation was agreed upon. Tr. Vol. II, pp. 102-105, 109. Although the collective bargaining agreement expressly permits a teacher to appeal an unsatisfactory off-year evaluation under the grievance procedure, there is no evidence that Mr. Perez ever grieved the February 1, 2010 unsatisfactory evaluation of Dorothy C. Smith, the K-8 Supervisor of the Providence School Department. Vol. I, p. 229.

reading, writing or English/Language Arts being taught during time scheduled for literacy instruction and noted that students were not engaged in activities related to the school curriculum.<sup>3</sup> Tr. Vol. II, pp. 107-108, 144, 174-176, 192-197.

- Mr. Perez was insubordinate to Principal Monica Nagy during school year 2005-2006. He failed to comply with her directive to submit emergency plans for days when he was absent and as a result, his students had no work to do. PSB Ex. 16. He was also insubordinate to her when he continued to use his cell phone during class time despite her directive not to do so. PSB Ex. 15, 17, and 18.
- Mr. Perez was insubordinate to Principal Joyce Fitzpatrick during the 2008-2009 school year. He failed to comply with directives that:
  - he was not to use his cell phone during class time to call parents of students who were misbehaving to request that they come to school to pick up their children. Tr. Vol. V, pp. 112-113.
  - he was not to send students out of his room to other classrooms without her approval.
  - he was not to send students who were “disruptive” out of the classroom and then lock the door.
  - he must develop Personal Literacy Plans for students in his bilingual class who were not at grade level proficiency in literacy.
  - he must monitor student progress by testing students using DIBELS and ACCESS testing.
  - he must bring completed documentation on a student referred to the DPT team when it met to evaluate his eligibility for special education.
  - he must follow District Pacing Guides in the delivery of lessons in literacy and mathematics. PSB Ex. 4 and 5; Tr. Vol. 1, p.118.<sup>4</sup> Vol. IV, pp. 16-18.
- Mr. Perez did not attend any of four (4) scheduled meetings in May and June of 2009 with a representative of the Providence School Department’s Human Resource Office

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<sup>3</sup> According to Mr. Moroch’s testimony, he was called to Flynn by Principal Fitzpatrick on multiple occasions with respect to Perez’s classroom management problems and the fact that students in Mr. Perez class were roaming the corridors. On those occasions when Mr. Moroch would remain in Mr. Perez’s classroom after gaining re-entry for students who had been locked out, he observed that the overall environment in Mr. Perez’s classroom was “always chaotic”. Tr. Vol. II, pp. 183-197.

<sup>4</sup> Principal Fitzpatrick had given Mr. Perez a memorandum during the previous school year (February 5, 2008) in which she documented her concerns with respect to many of these same issues. It is not clear from the record whether Mr. Perez complied with the directives contained in the memorandum at that time. PSB Ex. 1.

(Dennis Sidoti) to review allegations of his ongoing insubordination to Principal Joyce Fitzpatrick. PSB Ex. 6, 7, 8 and 9.<sup>5</sup>

- To the extent that the development of a Personal Literacy Plan (“PLP” which is required for any student who is not at grade level proficiency in literacy) constitutes a “protocol related to teaching and learning,”<sup>6</sup> Mr. Perez “failed to apply this protocol”. At least some, if not all, of the students in his bilingual class were not at grade-level proficiency reading in English. Tr. Vol. I, p. 119; Vol. IV, p.47. Yet, Mr. Perez did not complete PLP’s for any of his students during the 2008-2009 school year. PSB Ex. 5; Tr. Vol. IV, pp. 48-54.
- To the extent the administration of a DIBELS assessment for reading and comprehension (to determine the goals of a student’s PLP and progress in attaining these goals) constitutes a “protocol related to teaching and learning,” Mr. Perez “failed to apply this protocol”. He administered DIBELS to only two (2) out of twenty-six (26) students in his third grade class in the 2008-2009 school year. PSB Ex. 4; Tr. Vol. I, pp. 93, 99-100, 116 and 122. Vol. IV, pp. 60-65.
- During the 2008-2009 and 2009-2010 school years the Flynn School operated under a “Positive Behavior Intervention and Support” (“PBIS”) model which included a five-step protocol that teachers had agreed to use to support positive behavior and reduce disruptive behavior in the classroom. Mr. Perez did not apply PBIS protocols to the management of his classroom. During the 2008-2009 school year “disruptive” students were often sent out of the class without notice to the principal’s office. Some were sent to other classrooms without the principal’s permission. Many times Mr. Perez locked misbehaving students out of his classroom. Mr. Perez did not develop behavior plans for students with challenging behaviors, did not refer them to the teacher support team

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<sup>5</sup> Mr. Perez’s failure to attend any of meetings scheduled during May and June of 2009 to discuss the issue of insubordination to his principal’s directives constituted additional evidence of his insubordination to her. See ruling on the admissibility of PSB Ex. 6-9, Vol. I, pp. 141-143. There is some evidence that Mr. Perez was actually in school on the date scheduled for the first meeting, May 13, 2009. PSB Ex. 23. Principal Fitzpatrick testified that on each of the days when a meeting with Mr. Sidoti of Human Resources was to be held (in May and June of 2009), Mr. Perez was not in school. Tr. Vol. I, pp.132-143. Mr. Perez testified that he became “very ill” at the end of April, beginning of May, 2009. He also testified that as far as he could remember, he was also sick at the end of the school year, in June, when Mr. Sidoti was attempting to meet with him to review allegations of insubordination. We find that there is insufficient evidence of a valid excuse for Mr. Perez’s failure to attend any of the meetings in May and June of 2009 at which the issue of his insubordination to Principal Joyce Fitzpatrick was to be addressed.

<sup>6</sup> Item number three of the District’s summary of reasons for its termination of Mr. Perez- agreed by the parties to constitute the “Statement of Cause” under the statute- is that Mr. Perez “failed to apply the District protocols related to teaching and learning”. Joint Ex. 1.

(“TST”) or make referrals so that they could be evaluated to determine whether they had special education needs. PSB Ex. 4; Tr. Vol. I, pp.88-92, 95-98, 106-111; Vol. II, pp. 106-107, 193-197; Vol.III, pp. 161-162; Vol. V, pp.121-122; Vol. X, pp. 52-54.

- During the 2008-2009 and 2009-2010 school years, Mr. Perez had available to him the support of his principal, Joyce Fitzpatrick, who worked with him on classroom management issues, his instructional techniques, and delivery of the curriculum. During both of these years, he also had available a volunteer team of teachers called the “TST” that worked with individual teachers, upon request, to address the academic and behavioral needs of their students. During the 2008-2009 school year, Ms. Fitzpatrick assigned the school’s literacy and math coaches to work with Mr. Perez for six-week “support cycles,” during which they were available to model lessons for him, observe and critique his teaching, and answer any question he might have.<sup>7</sup> During the 2009-2010 school year, the literacy and math coaches were available to him on an “as needed” basis. Tr. Vol. I, pp. 104-110; Vol.III, pp.162-177, 200-202, 226-227; Vol. IV, pp. 7-12, 39, 58-59; Vol.VII, pp.6-9, 34-35.

## **Positions of the Parties**

### **The Appellant**

Counsel for Mr. Perez argues that flaws in the procedures utilized by the Providence School Board require that its termination decision be vacated and that Mr. Perez be awarded back pay for the period July 23, 2010 through October 24, 2011, the date of the decision following the full board hearing. Pursuant to R.I.G.L. 16-13-3, a tenured teacher such as Ramon Perez was entitled to written notice on or before March 1<sup>st</sup> of the school year immediately preceding the school year in which the dismissal is to become effective. In this case, it is uncontroverted that Mr. Perez did not receive notice that he was dismissed until he received a July 23, 2010 letter from Robert Wise, the President of the Providence School Board. Moreover, the July 23, 2010 letter constitutes the “Statement of Cause” which is required to be given to the dismissed teacher “at least one month prior to the close of the school year” according to R.I.G.L.

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<sup>7</sup> Both the literacy coach and the mathematics coach testified that they were not able to complete “cycle work” with Mr. Perez (as they did with other teachers they were called upon to assist) because he would be absent on the day scheduled for this work and would fail to reschedule with them or he would not be prepared for the particular lesson planned for that day. Mr. Perez did not seek out additional help (“spot coaching”) from either of the coaches, despite their availability before and after school and during his unassigned period. Tr. Vol. IV, pp. 12, 22-27, 29-30 154-155, 213; Vol.VII, pp.8-9, 35, 37, 53-54.

16-13-4. Compounding these issues of timeliness under the teacher tenure act, Mr. Perez's procedural rights were also violated by the fact that the evidentiary hearing before the full Board was not provided to him until October 11, 2011, over one year after his termination.

Courts have remedied such procedural violations when the failure to provide a hearing "at a meaningful time and in a meaningful manner" compromises a tenured teacher's right to constitutional due process. Counsel cites Corrigan v. Donilon, 639 F.2d 834 (1<sup>st</sup> Cir. 1981) to support his position that Mr. Perez's dismissal should be vacated as a remedy for (a) untimely notice of his dismissal (b) untimely communication of the statement of cause and (c) egregious delay in providing him with an evidentiary hearing. The Appellant notes that during this long period of delay, Mr. Perez was left without a salary and healthcare benefits. He requests that the Commissioner remedy these procedural violations by ordering the School Board to pay his back salary up to the date of his evidentiary hearing before the full Board, October 11, 2011.

Recent case law in the Rhode Island Superior Court<sup>8</sup> has highlighted an arguable conflict between the notice provisions of R.I.G.L. 16-13-3 and 16-12-6 in terms of whether a March 1<sup>st</sup> notice date applies to situations in which tenured teachers are dismissed. This statutory conflict has resulted in a remand to the Board of Regents in one case (Perrino) and in the other (McCrink) a ruling that R.I.G.L. 16-13-3 controls the procedures attendant to dismissal of tenured teachers, thus imposing a March 1<sup>st</sup> deadline. In McCrink, the Superior Court ruled that notice of termination supported by good and just cause and provided to a tenured teacher after March 1,<sup>st</sup> could not take effect in the succeeding school year, but only in the next subsequent school year.

Counsel for Mr. Perez also submits that R.I.G.L. 16-13-3 and 16-13-4, read together, should be interpreted to require that any cutoff of salary and benefits of a tenured teacher be preceded by a full board hearing. In any event, the timeliness violations accompanying Mr. Perez's dismissal-particularly the egregious delay in providing him with the full board hearing-would justify an order of the Commissioner that he receive back pay for the period of delay, i.e. from July 23, 2010 (when he was formally terminated) to October 11, 2011(when he was provided with an evidentiary hearing before the full Board).

Counsel argues that other procedural flaws undermined the due process to which Mr. Perez was entitled as a tenured teacher. His ability to prepare adequately for the evidentiary

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<sup>8</sup> The Appellant cites Perrino v. R. I. Board of Regents for Elementary and Secondary Education (PC 10-4247) August 2, 2011 and Bernard McCrink v. City of Providence et al.(PC10-4304) September 28, 2012.

hearing before the full School Board was impeded by a vague Statement of Cause. The notice of July 23, 2010 was so vague that it failed to give him adequate notice of the reasons for his termination. The four items listed in the Statement of Cause lack detail or reference to a time frame, such that Mr. Perez and his counsel could prepare to rebut these allegations. After an evidentiary hearing, the four items of “cause” remained unamplified, with no reference to the evidence on which the Board relied in voting to affirm its previous termination decision. Just as it was not clear what facts had been asserted in the Statement of Cause, there were no clues as to the findings of the School Board after its evidentiary hearing. See Joint Ex. 2, the final decision of the Providence School Board dated October 24, 2011. Parameters of relevant evidence at the de novo hearing before the hearing officer were therefore not clear, to Mr. Perez’s disadvantage. As drafted, the Statement of Cause and final decision of the Providence School Board unfairly brought into issue Mr. Perez’s performance over his entire seventeen (17)-year period of employment as a Providence Teacher.

The Appellant notes in his memo that the hearing officer dealt with the difficulties presented by the vagueness of the Statement of Cause and the repetition of these general allegations, with no factual findings, after the School Board conducted an evidentiary hearing on October 11, 2011. Where due process for Mr. Perez would have required additional detail and a fair summary of the evidence relied upon, there was none. Evidence admitted at the de novo hearing was confined to grounds for termination of which Mr. Perez had received prior notice. However, counsel argues that despite this, Mr. Perez was prejudiced by the Board’s presentation of exhibits and testimony that had not been previously presented.

The Appellant takes the position that the off-year evaluation by Dorothy Smith, which precipitated his termination, was unfairly administered and resulted in unjust conclusions about his teaching. The “Non-Evaluation Year Intervention” as it is described in §8-14.4 of the Collective Bargaining Agreement, is supposed to be preceded by certain conditions, including numerous observations by the principal, conferences with the teacher, recommendations for improvement and a determination of whether recommendations have been followed. In Mr. Perez’ case none of the preconditions to an off-year evaluation were afforded to him. In fact, during the entire year preceding the meeting at which he was informed that he would undergo the off-year evaluation, i.e., the 2008-2009 school year, he had not received any formal written evaluation at all.



Mr. Perez testified that he was not aware that Principal Fitzpatrick had any concerns about his teaching at the time the subject of an off-year evaluation was raised in late September of 2009. The concerns she had most recently expressed were with respect to his behavior management, failure to complete PLP's, DIBELS testing, and student referrals. He felt that he had adequately addressed all of these concerns in a letter dated May 18, 2009 sent to Dennis Sidoti, the district's Employee Relations Administrator. In his letter, Mr. Perez denied all of the principal's allegations. He wrote that her assessment of his teaching performance in 2008-2009 was based solely on informal "walk throughs" during which Ms. Fitzpatrick did not sit down or spend any meaningful length of time in his classroom, took no notes and provided him with no written feedback. Her view that Mr. Perez did not create a positive learning environment for students was just her opinion, based on very limited observations of him at work in his classroom during the 2008-2009 school year.

Furthermore, prior to the off-year evaluation, Mr. Perez had asked for assistance in the classroom and yet help came sporadically, inconsistently, and with little or no follow-up support. The off-year evaluation should be viewed as a premature response to unfounded concerns regarding Mr. Perez's teaching abilities and, he notes, it should have been preceded by a period of time in which he received the supports he had requested to improve his skills. To make matters worse, he was teaching at a new and unfamiliar grade level --grade five-- during school year 2009-2010.

The off-year evaluation that was ultimately conducted, with the evaluator's conclusions summarized in a letter to Mr. Perez dated February 1, 2010, was conducted improperly and unfairly. According to Mr. Perez, the evaluator was supposed to be bilingual because his assignment to a bilingual class required him to speak Spanish in order for students to understand the lessons. Counsel asserts that it was impossible for an evaluator who does not speak Spanish to understand the nuances of Mr. Perez's teaching. There was no pre-observation conference at which Mr. Perez could explain what his objectives were and how he planned to address the varying educational and language levels of his students. All three observations by Ms. Smith were unannounced. According to Mr. Perez, it was Ms. Smith's responsibility to contact him to set up the four announced observations. He testified that she never contacted him or approached him in person to arrange scheduled observations, to his obvious disadvantage.

This lack of direct communication also prevented Mr. Perez from providing Ms. Smith with accurate information about the supports he had received (or not received) and an

opportunity to emphasize that this was his first year teaching fifth grade. She mistakenly believed that Mr. Perez had failed to improve his teaching practice despite his receipt of supports on a daily basis. In fact, he had not received many of the supports Ms. Smith cited, and those supports he had received related to the previous year in which he taught third (3<sup>rd</sup>) grade. On the basis of three brief unannounced visits to his classroom in which she could not understand much of what he was communicating to his Spanish-speaking students, Ms. Smith recommended that Mr. Perez's employment be terminated. This flawed evaluation with its inaccurate conclusions undoubtedly played a major role in the Board's decision, and for this reason counsel for the Appellant requests that the Commissioner remand this matter to the School Board for further consideration.

Finally, counsel submits that Mr. Perez's termination was actually based solely on the off-year evaluation of his teaching, at least according to the testimony of Dr. Tomas Ramirez.<sup>9</sup> Yet, the Board now attempts to "bootstrap" its decision with other reasons. Counsel poses the question as to why the district has reached back to put forth issues that arose when he taught an especially-unruly group of third graders during the 2008-2009 school year. There is evidence that Mr. Perez had a challenging class that year, with many newcomers to this country placed into his class throughout the year. There is also testimony from one of his colleagues at Flynn that all of the teachers in the school faced many challenges that year. There was no vice principal at Flynn and teachers had no access to technological tools- such as iPads, SMART boards and ELMO's- to assist them in providing instruction and engaging students. Instead of providing Mr. Perez with supports to teach fifth grade during 2009-2010, especially after his less-than satisfactory "off-year intervention," the administration unjustly moved forward to terminate him. Mr. Perez should not have been terminated under these circumstances.

The Appellant requests that the decision of the Providence School Board be reversed based on the foregoing arguments and the absence of good and just cause to terminate him.

### **Providence School Board**

Counsel for the School Board submits that the Board has met its burden of proving that good and just cause for Mr. Perez's termination exists by a preponderance of the evidence. The record in this case substantiates the fact that since at least 2003<sup>10</sup> Ramon Perez has failed to meet

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<sup>9</sup> Dr. Ramirez is the district's Acting Assistant Superintendent for Human Resources and Labor Relations.

<sup>10</sup> Although the School Board limited its case-in-chief documentation of Perez's teaching performance and insubordination to a five (5) year period between 2005-2010, Mr. Perez's testimony that, prior to that time, his

district and state standards for competence in teaching and classroom management.<sup>11</sup> Despite ongoing supports from the district, Mr. Perez has been unable to improve his chronically-ineffective instructional practice, as shown by formal and informal classroom observations made by five (5) different administrators. In addition, Mr. Perez has been unable to create a safe and positive learning environment for his students. The district's attempts to ensure the creation of a positive and safe learning environment have been the basis for directives from two of his principals. These directives were met by ongoing insubordination as Mr. Perez continued to ignore instructions that he follow PBIS disciplinary protocols, refrain from removing misbehaving students from his classroom without his principal's knowledge or permission, stop locking his students out of the classroom, and discontinue his practice of calling students' parents during class time to report their children's behavior.

Accordingly, the School Board requests that the Commissioner affirm the Board's dismissal decision and deny Mr. Perez's appeal. Counsel for the district submits that good and just cause pursuant to R.I.G.L. 16-12-6 supports his dismissal and that Mr. Perez has been afforded reasonable notice of termination and all of the procedures due him under the Teachers' Tenure Act.

In an extensive, seventy-page memorandum, counsel for the School Board sets forth a lengthy chronology of proposed findings of fact and argues that these facts provide ample evidence of Mr. Perez's (1) failure to perform his basic teaching responsibilities at a level meeting the District's standards and expectations; (2) insubordination; (3) failure to follow protocols related to teaching and learning; and (4) failure to follow District protocols related to classroom management. Taken individually or cumulatively, these proven allegations constitute good and just cause for termination of Mr. Perez.

The Board's case in chief includes formal assessments of Principal Fitzpatrick and Ms. Dorothy C. Smith, the K-8 Supervisor in Providence. These evaluations demonstrate that Mr. Perez failed to teach grade-appropriate lessons and teach according to the district's curriculum; that he did not follow pacing guides in math and literacy. The evaluations document his failure to utilize sound instructional strategies, such as differentiated instruction and student

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formal evaluations had been positive "opened the door to rebuttal evidence showing that his prior 2003 evaluation was, in fact, quite negative". PSB memorandum at pages 1-2. Counsel for the Board thus argues that the hearing officer must consider his 2003 evaluation not just for impeachment purposes, but as relevant evidence supporting his termination.

<sup>11</sup> The School Board cites specific standards contained in the Board of Regents' Regulations entitled "The Rhode Island Professional Teaching Standards" included as an Appendix to its memorandum.

participation, that have been proven to be effective in engaging students in learning. Both Ms. Fitzpatrick and Ms. Smith noted issues with Mr. Perez's content knowledge in literacy and mathematics, with students learning wrong answers/terminology in math and incorrect English vocabulary. The district's standard and expectations in regard to a teacher's knowledge of the content areas they teach is set by the state. This standard requires that "(t)eachers have a deep content knowledge sufficient to create learning experiences that reflect an understanding of...the disciplines/content areas they teach". R.I. Admin. Code 21-2-59:3.2. Incorrect information and the lack of clear explanations to students of the content of the lesson were persistent complaints of Perez's evaluators.

The Board submits that its allegations that Mr. Perez failed to perform his basic teaching responsibilities as a teacher extend back to 2003, when his principal at Laurel Hill Elementary School, Jose Valerio, observed a science lesson as part of Mr. Perez's formal evaluation that year. Mr. Valerio concluded that Mr. Perez did not present a rigorous or even a grade-appropriate lesson, did not explain the subject in a meaningful manner and did not differentiate instruction for his students. In light of the hearing officer's ruling that Mr. Valerio's evaluation was not admissible because the Statement of Cause could not be interpreted to bring into issue Mr. Perez's performance as far back as in 2003, the evaluation was then admitted after Mr. Perez testified that prior to Ms. Fitzpatrick's 2008 evaluation, no other principal had been critical of his performance. This evidence, counsel for the district argues, should not be limited to impeachment purposes, but should be accepted for the broader purpose of relevant substantive evidence of his failure to perform his teaching responsibilities. The district submits that its rebuttal evidence of Mr. Perez's persistent failure to perform his basic teaching responsibilities- as far back as 2003- constitutes additional good and just cause for his dismissal.

According to his supervisors, it was deficiencies in Mr. Perez's instruction that resulted in classroom management issues. His students were alternately described as inattentive, idle, unengaged in academic activities, wild, and out of control. Testimony and documentation indicate that they often left the classroom, only to be found roaming the hallways. When the students were escorted back to the classroom, often the door had been locked (from the inside). On one occasion when Principal Fitzpatrick accompanied students back to their classroom, Mr. Perez, speaking through the closed door, was heard to tell them they were not allowed back and that they were to go to another classroom.

The district submits that the testimony of Ms. Fitzpatrick and Mr. Moroch, as well as that of the literacy and mathematics coaches, tie the behavior at the root of these classroom management issues to the fact that students were not actively engaged in learning in Mr. Perez's classroom. Counsel points out that all of the various reasons cited by Mr. Perez for his students' behavior- that his classroom had fifteen (15) "newcomers," that seven (7) of his students were "behavior disordered" and that six (6) were on medication for extremely bad behavior were rebutted by testimony and documentation presented by the School Board. The Principal's testimony contradicted that of Mr. Perez with respect to the claim that she had failed to "back him up" or help him with what he viewed as extraordinary disciplinary issues that year. Mr. Perez's testimony that students were often locked out because the door to his classroom malfunctioned was countered by Ms. Fitzpatrick's testimony that the problem with the lock on his door was almost immediately fixed by a locksmith.

On March 10, 2009 Principal Fitzpatrick cited Mr. Perez for insubordination with respect to his failure to comply with numerous directives: that he utilize PBIS disciplinary protocols, stop sending students out of his classroom without her knowledge or permission and refrain from locking students out of his classroom. In her letter, Ms. Fitzpatrick also directed Mr. Perez to follow District Pacing Guides and complete required assessments that he had not yet administered to his students (DIBELS and ACCESS tests). She warned him that if he continued to be insubordinate, he would face further disciplinary action. A copy of the March 10, 2009 letter was placed in his personnel file.

When Ms. Fitzpatrick learned that Mr. Perez had not utilized DIBELS testing to progress monitor his students, had not completed PLP's for any of his students and that he had not produced a referral document needed for a special education meeting held on April 29, 2009 (despite a prior request for the document and her reminder earlier in the day to bring the form to the meeting), she notified Mr. Perez that she was "requesting Human Resources involvement". Representatives of the Human Resources office were unable to secure Mr. Perez's presence at a meeting on May 13, 19, June 5, and June 16, 2009.

On September 29, 2009 Mr. Perez "finally showed up" to meet with School Department administrators. He was accompanied by his union representative, Paul Vorro. After Mr. Perez was informed that he would undergo an "off-year evaluation" due to his performance on his last formal evaluation and ongoing "concerns" of his principal, the protocol for the evaluation was agreed upon. It was determined that Dorothy Smith, newly-appointed as a K-8 supervisor,

would be an appropriate evaluator, since she did not know Mr. Perez and had not observed his classroom. It was also agreed that Ms. Smith would conduct up to eight observations, four announced and four unannounced. Mr. Perez was to email or telephone Ms. Smith with dates for announced visits to his classroom. The purpose of the off-year evaluation was to determine whether his performance was “acceptable or unacceptable”.

Counsel for the district notes that Mr. Perez never contacted Ms. Smith to schedule the announced visits to his classroom. He did not email or telephone her and never spoke to her when she came to his classroom for three unannounced visits. The district argues that Mr. Perez ignored Ms. Smith’s attempts to contact him to set up the announced visits, even after Ms. Fitzpatrick handed him a copy of a printed email from Dorothy Smith dated November 2, 2009, requesting that he forward her “4-6 dates” as soon as possible so that the process could be concluded by the end of January. Ms. Smith went ahead with unannounced visits to Mr. Perez’s classroom. On the basis of her observations during three unannounced sixty-minute visits, Ms. Smith concluded that Mr. Perez showed no improvement since the time of his last formal evaluation in 2008.

Smith’s written summary of her observations indicated that there was very little whole group or individual teaching taking place. When Mr. Perez did provide instruction, it was not differentiated so that students who were capable could benefit from a more challenging lesson. Students who were struggling were told to work with a student who understood the material. Ms. Smith found consistent evidence that Mr. Perez was unprepared. He taught literacy and math lessons incorrectly. He had students open their books to certain pages and do exercises written on the board, without prior demonstration or review, sharing of thought processes or problem solving strategies. Counsel for the district notes that these deficiencies demonstrate that Mr. Perez did not teach in accordance with the state-mandated professional standard that teachers “reflect an understanding of how children learn and develop,” “create age-appropriate lessons and activities” or “encourage students’ critical thinking and problem-solving”.

Ms. Smith noted that similar concerns had been documented in his May, 2008 evaluation by Joyce Fitzpatrick and she concluded that Mr. Perez’s classroom practice did not reflect that any effort had been made to improve his teaching or his students’ learning. She listed the supports provided to him over the years, including the services of the literacy coach and math intervention specialist. Her written evaluation dated February 1, 2010 ended with a recommendation that Mr. Perez be terminated.

The Providence School Board submits that this record contains ample evidence of good and just cause for Ramon Perez's termination and that each of the four items in its Statement of Cause are supported in this record. Mr. Perez's dismissal should be affirmed by the Commissioner and his appeal denied and dismissed.

### DECISION

The brevity of this decision is premised on the overwhelming evidence presented by the Providence School Board of good and just cause for its dismissal of Ramon Perez. There are ten volumes of testimony and several exhibits that comprise the record in this case. There is little, if any, credible evidence countering the district's allegations against Mr. Perez. The School Board has met its burden of proof to demonstrate by a preponderance of the evidence that Mr. Perez persistently failed to perform his basic teaching responsibilities;<sup>12</sup> that he was insubordinate to his principal, Joyce Fitzpatrick; that he failed to follow District protocols with respect to teaching and learning (development and monitoring of PLP's, administration of DIBELS and other assessments to his students) and that he failed to follow District protocols related to classroom management (sending "disruptive" students out of the classroom unsupervised, not adhering to the PBIS protocols in effect at the Flynn School).

Each of these items of cause, standing alone in the context of the facts in this case, would provide adequate cause to terminate Mr. Perez. Taken together, they present an alarming picture of a school system that was incapable of responding in a timely fashion to the many indications that Mr. Perez was not teaching students in his bilingual class in accordance with the district's curriculum using effective instructional strategies or administering required assessments.<sup>13</sup> For reasons that remain unexplained, Mr. Perez did not make effective use of the support of the literacy and mathematics coaches, or even follow the suggestions of his principal. It was not until Mr. Perez's intractable insubordination in 2009 that the district took steps to do an "acceptable or not acceptable" evaluation of his teaching. Despite the high stakes nature of his

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<sup>12</sup> We must note here that the July 23, 2010 Statement of Cause (as well as the October 24, 2011 final decision of the Providence School Board) states this allegation as "You have persistently failed to perform your teaching responsibilities at a level that meets the Administration's standards and expectations". Throughout its memorandum, the School Board refers to Mr. Perez's failure to perform his **basic** teaching responsibilities at a level meeting the District's standards and expectations.

<sup>13</sup> The 2003 evaluation of Mr. Perez conducted by Principal Jose Valerio of the Laurel Hill Avenue School was admitted solely for impeachment purposes and does not constitute evidence of "good and just cause" for Mr. Perez's dismissal.

“off-year evaluation” Mr. Perez made no attempt to contact Dorothy Smith to arrange to have a scheduled visit to his classroom or to set up a conference with her. The findings of his 2008 evaluation were confirmed by Ms. Smith in her written evaluation, a copy of which was sent to Mr. Perez on February 1, 2010.<sup>14</sup> Although Mr. Perez could have filed a grievance under the collective bargaining agreement to challenge this highly critical evaluation, he did not do so.

As for the procedural claims advanced by the Appellant, he contends that the Statement of Cause was vague and failed to provide him with adequate notice of the reasons for his termination. His counsel argues that the vague notice was compounded by the failure of the School Board to state its reasons and the evidence on which it relied in its written decision of October 24, 2011. These procedural flaws provided the Appellant with no time frame and inadequate details. He alleges that he was at a disadvantage in disputing the allegations made against him by the School Board and as a result his Constitutional right to due process was violated. In response to these claims, the district takes the position that the notices provided to Mr. Perez on July 2, 2010 and October 3, 2011 had attached lists of supporting documentation<sup>15</sup> that, by inference, provided the specifics and detail that may have been lacking in the Statement of Cause.

We find that the documents attached to notices provided to the Appellant during the termination process did provide him with some of the detail needed for him to be adequately apprised of and respond to the reasons for his dismissal. See PSB Ex. 2 and 3. As this case unfolded at the Commissioner’s level, every request for more time in which to present any necessary witnesses was accommodated. Admissible evidence was confined to those matters of which the Appellant had been duly noticed. Consistent with the Commissioner’s ruling in Richardson v. Providence School Board<sup>16</sup> we find that the post-termination, de novo hearing before the Commissioner provided Mr. Perez with Constitutional due process and complied with the provisions of the Teachers’ Tenure Act.

Unfortunately, it was not until July 2, 2010 (well after the statutory deadline of March 1<sup>st</sup>) that notice of termination was provided to Mr. Perez. The failure to provide Mr. Perez with a notice by the March 1<sup>st</sup> deadline prevents his dismissal from being effective until the beginning

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<sup>14</sup> We find that Ms. Smith’s evaluation was unbiased and comprehensive and that the fact that she did not speak Spanish did not undermine the validity of her evaluation. The Appellant’s counsel made valiant attempts to challenge her findings and conclusions, but the district’s evidence was persuasive.

<sup>15</sup> The collective bargaining agreement requires in §8-25 (3)(c) that all evidence and documents that may be introduced at a disciplinary hearing be provided to the teacher or the Union. See Joint Ex.4.

<sup>16</sup> Decision of the Commissioner dated May 25, 2005; n. b. pp.10-11; aff’d by the Board of Regents in a decision dated December 14, 2006.



of the 2011-2012 school year.<sup>17</sup> We find that deferral of the effective date of his termination to the beginning of the 2011-2012 school year renders moot any claim that he is also entitled to a remedy<sup>18</sup> for the unexplained and inordinate delay of almost fifteen months in providing him with an evidentiary hearing before the full School Board.

For the foregoing reasons, Mr. Perez's appeal to the Commissioner is sustained in part and denied in part. The School Board is directed to defer the effective date of his termination to the first day of the 2011-2012 school year and compensate him accordingly. His termination is upheld.

For the Commissioner,

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Kathleen S. Murray  
Hearing Officer

DATE: January 14, 2013

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Deborah A. Gist, Commissioner

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<sup>17</sup> See Quattrucci v. East Providence School Committee, decision of the Commissioner dated October 28, 2002; aff'd by the Board of Regents October 28, 2004. Affirmed by the Superior Court on May 30, 2006; McCrink v. Providence School Board, decision of the Commissioner dated October 20, 2009; affirmed by the Board of Regents, July 1, 2010; reversed by the Superior Court, McGuirl, J; Sup.Ct.No. PC 10-4304, September 28, 2012.

<sup>18</sup> We make no finding that Mr. Perez would be entitled to a monetary award such as back pay for the Board's failure to provide him with a prompt post-termination hearing.