

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

MAUREEN MIRANDA

v.

PROVIDENCE SCHOOL BOARD

DECISION

Held: After a de novo hearing on the merits of this appeal, we find that the Providence School Board has established that it had good and just cause for its dismissal of Dr. Miranda, a tenured elementary school teacher. Dr. Miranda has exhibited chronic absenteeism since 2004 and continued to do so during the 2010-2011 school year when she was absent for seventy (70) days from her position as a “long-term substitute in-pool”.

Additional “cause” for her dismissal is Dr. Miranda’s failure to provide notice of her absences by 6:30 a.m. using the AESOP system. Dr. Miranda presented no reason why she failed to provide timely AESOP notice for non-emergency absences during the 2010-2011 school year. Dr. Miranda’s chronic absenteeism and failure to provide notice by 6:30 a.m. using the AESOP system placed an unfair disadvantage on students who would otherwise have had a substitute assigned to cover their class and to deliver the lesson plan left by their classroom teacher.

Although there was good and just cause for the School Board’s August 9, 2011 dismissal of Dr. Miranda, its August 16, 2011 notice to her of this action could not become effective until the beginning of the following school year, i.e. 2012-2013, because the Board did not send Dr. Miranda notice by the statutory deadline of March 1st.

DATE: February 14, 2013

Travel of the Case

On December 5, 2011 Maureen Miranda, through counsel, filed a formal appeal with Commissioner Deborah A. Gist from a Providence School Board decision that “suspended (her) without pay for the remainder of the 2011-2012 school year and terminated (her) effectively immediately”. The undersigned was designated to hear and decide this appeal. Thereafter counsel for Dr. Miranda and for the Providence School Board agreed upon five hearing dates, the first on June 6, 2012 and the last held on October 22, 2012. The record in this matter closed on November 8, 2012 at which time the last transcript was received.

Jurisdiction to hear this appeal arises under R.I.G.L. 16-13-4 and R.I.G.L. 16-39-2.

Issues:

- Should Maureen Miranda’s appeal be dismissed because it is undisputed that she was absent for more than fifteen (15) days after she entered into a Memorandum of Agreement with the School Board in which she agreed not to be absent from work, regardless of the reason, for more than fifteen (15) days during a twelve-month probationary period?
- Did the Providence School Board have good and just cause to dismiss Maureen Miranda, a tenured teacher in the school system?
- Did the Providence School Board follow legally-required procedures in its dismissal of Dr. Miranda?

Findings of Relevant Facts:

- Maureen Miranda was a tenured teacher in the Providence school system who taught for approximately twenty-six (26) years until August 9, 2011 when the Providence School Board unanimously voted to terminate her, effective for the 2011-2012 school year.¹
- The following information was placed on the record with respect to Dr. Miranda’s absences: 1999-2000, 36 days; 2000-2001, 39 days; 2001-2002, 41 days; 2002-2003, 17 days; 2003-2004, 20 days (as of May 7, 2004);² 2007-2008, 24 days; 2008-2009, 36 days; 2009-2010, 100 days (38 days of absence for sick/personal reasons followed by her placement on an administrative leave with pay from March 15, 2010 to April 5, 2010, then followed by a leave under the Family Medical Leave Act from April 5, 2010-June 11, 2010); PSB Ex. 2 and 3; 14, 19, 21-23.
- Dr. Miranda received four (4) written warnings with respect to excessive absences and unacceptable attendance. These warning are dated May 7, 2004; February 5, 2007; June 26,

¹ The School Board simultaneously voted to suspend Dr. Miranda without pay for the 2011-2012 school year. The record does not indicate the reason for a suspension taking effect simultaneously with her termination and Board counsel has presented his arguments solely with respect to the Board’s decision to terminate Dr. Miranda. (Tr. Vol. V, p. 45).

² The record does not include documentation of Dr. Miranda’s attendance for the 2004-2005, 2005-2006 or 2006-2007 school years.

2009; and April 1, 2010. The last two letters were entitled “final” warnings. PSB Ex. 19, 20, 21 and 23.

- In early September 2010, the district initiated steps to terminate Dr. Miranda and placed her on an administrative leave. Termination proceedings were scheduled before the School Board for September 27, 2010, based in part upon her “chronic absenteeism” and failure to improve her attendance despite numerous warnings. In order to avoid termination and to obtain an opportunity to resume her duties as a teacher, Dr. Miranda entered into a Memorandum of Agreement with the Providence School Board on November 9, 2010. PSB Ex. 1 and 4.
- Under the terms of the aforementioned Memorandum of Agreement, Dr. Miranda agreed, inter alia: (1) to serve ten days of unpaid suspension to be taken on various dates listed in the Agreement; (2) to her immediate transfer into the substitute pool where she would work as a tenured teacher as a “long-term substitute in-pool” (3) during a 12-month “probationary period”³ she would not use sick time or be absent from work, regardless of the reason, for more than a total of fifteen (15) days and (4) on any day she was absent from work, she would notify the School Department prior to 6:30 a.m. on the day of absence using the AESOP⁴ system. PSB Ex. 1.
- Dr. Miranda testified concerning a job-related injury she suffered in 2006 as well as a series of health problems that have plagued her more recently. She testified with specific reference to a number of medical conditions that caused her to be absent after she entered into the Memorandum of Agreement. Tr.Vol. III, pp. 64-70.
- Medical documentation substantiated that Dr. Miranda was treated for the aforementioned medical conditions during the period after she entered into the Memorandum of Agreement through the end of the 2010-2011 school year. App. Ex.A1-7.
- Dr. Miranda testified that beginning in January of 2011 for a period of four (4) months, her elderly mother experienced health issues that required Dr. Miranda, as her primary caregiver, to be absent from work and to cancel assignments that she had previously accepted as a member of the long-term substitute pool. Tr.Vol.III, pp. 69; 97-98, 102, 117; Vol.IV, pp. 4-6. No medical documentation of her mother’s illness was presented.
- Pursuant to the November 9, 2010 Memorandum of Agreement there were one hundred and eight (108) work days left in the school year after excluding ten (10) days of unpaid suspension and after excluding fifteen (15) days of absence that were permitted by the Agreement. Of these one hundred and eight (108) days, Dr. Miranda was absent for an additional 70.5 days and worked for 37.5 days. On sixty-seven (67) of the 70 days on which she was absent, she called in after 6:30 a.m. to report her absence. PSB Ex. 6, 7 and 13.
- On many of the days on which Dr. Miranda failed to give notice of her absence through the AESOP system by 6:30 a.m., the district was unable to secure another substitute. In such a

³ The twelve-month probationary period was to commence upon her return to work on November 18, 2010.

⁴ AESOP is a computerized system that Providence uses for reporting teacher absences and handling substitute assignments.

situation, students in the class are divided up and sent to other classrooms for the day. PSB Ex. 13; Tr. Vol. II, pp. 29-34.

- Of the additional 70.5 days on which Dr. Miranda was absent during the probationary period that began on November 18, 2010 up through the end of the 2010-2011 school year, 66⁵ days were “personal” days, “personal business/no pay” days or “no pay” days. Numerous absences in the “personal business/no pay” and “no pay” categories were for reasons unconnected either to Dr. Miranda’s own medical condition or to her alleged need to attend to her elderly mother. PSB Ex. 5-8 and 13. At least seven (7) absences occurred because Dr. Miranda did not take any steps to secure an assignment through the AESOP system or by communicating with one of the clerks in charge of substitute teachers.⁶ PSB Ex. 13.

Positions of the Parties

The Appellant

The Appellant’s counsel submits that the Memorandum of Agreement developed by the parties in November of 2010 was fashioned not only to resolve the issue of Dr. Miranda’s history of absences but also to recognize that she was a long-term teacher in the Providence school system who was experiencing health problems. Dr. Miranda had received two work-related injuries in the past and suffered from various ongoing medical conditions that, according to counsel, had been at the root of her attendance issues. Under the belief that these medical conditions had been successfully treated, Dr. Miranda signed a Memorandum of Agreement that limited her absences for a twelve-month period to no more than fifteen (15). The Appellant argues that this commitment was made in good faith and effectively enabled her to continue to work in a profession that she loves and for which she is exceptionally qualified.

Contrary to the argument made by the Providence School Board, the Agreement was not a “Last Chance Agreement” in that it did not call for Dr. Miranda’s automatic termination if she should be absent in excess of fifteen (15) days. Rather, it presented the School Board with discretion⁷ to consider a range of responses, including additional disciplinary action, if she should have occasion to be absent more than the fifteen (15) days. Certainly the reasons for any additional absences were intended to be considered in any School Board decision on whether Dr. Miranda should be disciplined for violating the Agreement. Furthermore, Dr. Miranda did not waive her right of appeal to the Commissioner and expressly retained her right to challenge the factual basis of any specific disciplinary action taken by the School Board.

⁵ Four days on which Dr. Miranda was absent were labeled “personal day” or “PB” with no notation as to whether these days were “no pay” days, but the inference created by the entire record is that after taking the two personal days to which teachers were entitled under the Providence collective bargaining agreement, Dr. Miranda’s personal days would have been without pay.

⁶ Dr. Miranda testified that as a tenured teacher in the long-term substitute in pool, she understood that it was her responsibility to proactively obtain/accept assignments through the AESOP system or by calling a clerk in the substitute office or accepting a call from that office. Tr. Vol. I, pp. 42-44. Later in her testimony, she appeared to have some confusion on this point. Tr. Vol. III, pp. 112-116. The weight of the evidence indicates that it was Dr. Miranda’s responsibility to secure an assignment for each work day or she would be considered “absent” on that day. PSB Ex.1; Tr. Vol. I, pp. 95, 105, 124-125; Vol. II, pp. 28, 31-32.

⁷ Counsel notes that the specific language in the Agreement, paragraph 7, is that “Any failure by Miranda to comply in all respects with the terms of this Agreement, whether or not excusable, **may** lead to additional discipline...” PSB Ex.1.

There was no significance in the number of fifteen absences, other than it is the number of paid sick days to which Providence teachers are entitled under the collective bargaining agreement. For all of the “additional” days that Dr. Miranda was absent after she signed the Agreement up to the end of the 2010-2011 school year, she was not paid. There is no evidence that her absence from an assignment as a substitute caused the type of interruption in instructional continuity or negative impact on students that the absence of a regular classroom teacher would have created. The Appellant argues that any violation of the Agreement was not intentional on her part. She signed the agreement in good faith, with all intent to comply with its provisions, but through no fault of her own, she was absent more than the agreed-upon fifteen (15) days. This is not a case of insubordination as alleged by the School Board in its statement of cause for her termination. The reasons for her absences are tied to her health conditions, the unexpected illness of her mother, and other circumstances beyond her control.

After she signed the Agreement, what occurred was a situation of “medical adversity” in that the Appellant’s health deteriorated and unexpectedly her mother developed a serious health condition that required Dr. Miranda’s presence. Just as the School Board should have taken into account the reasons why Dr. Miranda was absent in excess of fifteen (15) days, so too should the Commissioner take into account these extenuating circumstances in deciding if there was just cause for Dr. Miranda’s termination. There is no proof on this record of her willful violation of the Agreement, her insubordination, or the placement of an unfair burden on students, parents and staff, as alleged by the School Board in its Statement of Cause (PSB Ex. 10). For these reasons, her termination should be overturned.

Procedurally, the Board’s termination of Dr. Miranda was defective because it was not preceded by a hearing before the full Board. The hearing did not take place until November 22, 2011 and Dr. Miranda was not notified of the final decision until November 29, 2011. Therefore, pursuant to R.I.G.L. 16-13-4, her benefits and pay must be reinstated at least from August 16, 2011 to November 29, 2011. Also, since she did not receive a notice of her dismissal on or before March 1st of 2011, her dismissal could not take effect until the 2012-2013 school. Therefore, even if her dismissal is upheld on the merits, its effect must be deferred to the beginning of the 2012-2013 school year.

Providence School Board

The position of the Board is that Dr. Maureen Miranda signed a November 9, 2010 Memorandum of Agreement in which she committed to end her chronic absenteeism by reducing her absences during the next twelve (12) months to no more than fifteen (15). She also agreed to notify the district before 6:30 a.m. when she would be absent so that another substitute could be secured. This was a “Last Chance Agreement” which Dr. Miranda has “egregiously” violated, resulting in the School Board’s decision to dismiss her. Counsel argues that Dr. Miranda’s dismissal is not subject to challenge because it is undisputed that she was absent in excess of fifteen (15) days and did not notify the district of her absences prior to 6:30 a.m. as required. There is no dispute as to these facts. Given that she waived her right to challenge any decision by the School Board with respect to additional discipline, her appeal should be dismissed.

If the provisions of Dr. Miranda’s “Last Chance Agreement” do not preclude her appeal from going forward and the Commissioner considers her appeal on the merits, counsel for the Board

argues that Dr. Miranda's dismissal has been justified⁸ by proof of the four items of cause⁹ listed in the August 16, 2011 Statement of Cause. By violating the terms of the Memorandum of Agreement, particularly with respect to limiting her absences, the Board argues that Dr. Miranda refused to improve her attendance and is therefore guilty of insubordination. She also willfully violated the provision of the Agreement that required her to notify the Department prior to 6:30 a.m. of her anticipated absence. Dr. Miranda's attendance record demonstrates continued chronic absenteeism, despite numerous warnings from the Office of Human Resources. The implication of the Appellant's absences is that they continue to place an unfair burden on students, parents, and staff, and have a negative impact on student learning and the continuity and consistency of instruction.

When Dr. Miranda signed the Memorandum of Agreement, termination proceedings had been initiated. She signed the Agreement to avoid immediate termination and committed to being absent no more than (15) days. Thereafter, she was not simply non-compliant with the Agreement, her non-compliance was "egregious". After deducting ten days of agreed-upon suspension without pay and fifteen days of permitted absence, Dr. Miranda was absent for an additional 70.5 days and worked 37.5 days of the 108 days of work that remained. On 67 of the 70 days on which she was absent, she called in after 6:30 a.m. On many of these days, another substitute could not be secured to cover the class. Although the provisions of the Agreement made the reasons for her absence irrelevant,¹⁰ even if one considers the reasons provided by Dr. Miranda herself for many of her 70.5 absences, they are unrelated either to her medical condition or that of any of her family members. Thus, her absences not only violated the terms of the Agreement, but constituted continued "chronic absenteeism". Coupled with her failure to notify the substitute office by 6:30 a.m. using AESOP so that a substitute could fill in for her, Dr. Miranda's absences continue to have a negative impact on student learning and the continuity and consistency on instruction. For the foregoing reasons, the School Board requests that her termination be upheld.

As to the March 1st notice requirement, counsel for the Board argues that a notice issued to the Appellant on March 12, 2010 (the year prior to the Memorandum of Agreement) (PSB Ex.22) and that this notice could take effect in the 2011-2012 school year. Also, when the Board terminated Dr. Miranda it also suspended her without pay pending the completion of her termination hearing on November 29, 2011. We infer that the Board takes the position that her suspension could take effect immediately on November 29, 2011 even if the effectiveness of her termination were deferred to the 2012-2013 school year.

DECISION

The Memorandum of Agreement entered into on November 9, 2010 has some, but not all, of the characteristics of a "Last Chance Agreement". As we understand it a "Last Chance Agreement" is a written agreement whereby an employee who has been guilty of serious misconduct is given one last chance to keep his or her job. The Agreement typically provides for the reinstatement of a worker on certain strict conditions and states that the worker will be terminated if he or she breaches any of those conditions. The employee's appeal of a subsequent termination is typically limited to a factual

⁸ Counsel implicitly argues that there is good and just cause for the dismissal of a tenured teacher under the Teachers' Tenure Act.

⁹ Initially, it was the School Department's contention that each of the causes or reasons, standing alone, was a sufficient basis for Dr. Miranda's termination. See PSB Ex. 9.

¹⁰ Dr. Miranda agreed not to use sick time or be absent from work, regardless of reason, for more than a total of fifteen (15) days. PSB Ex.1.

finding of whether the agreement has been violated, with no power of an arbitrator to determine if the penalty is appropriate.¹¹ The School Board argues that Dr. Miranda signed just such an agreement, and that there is no factual issue presented to the Commissioner by Dr. Miranda's appeal. We do not agree.

Although there is a specific reference to a waiver of any recourse she may have under the grievance and arbitration provisions of the collective bargaining agreement, Dr. Miranda clearly retained her right to contest "the factual basis of a specific disciplinary action" that the Providence School Board might impose upon her if she violated the Agreement. Calculation of the number of absences is provided as an example of a fact on which future disciplinary action could be based. This language can easily be interpreted to permit Dr. Miranda to appeal the factual basis of any future disciplinary action, especially a termination which is required to be supported by good and just cause under the Teachers' Tenure Act. We note that there is no provision of the Agreement in which Dr. Miranda acknowledges that her admitted past chronic absenteeism constituted good and just cause for her termination or that any future "excessive" absences would automatically present such good and just cause. The language of this Agreement clearly provides for the future exercise of discretion and a fact-based determination that certain specific discipline is warranted. Taken as a whole, we find that the Agreement does not preclude the Commissioner's consideration of Dr. Miranda's appeal on its merits. The School Board's Motion to Dismiss is therefore denied.

That being said, we find that the record in this matter firmly demonstrates that the Providence School Board's decision to dismiss Dr. Miranda was supported by good and just cause. Item number 1 of the Statement of Cause (PSB Ex. 10) has been fully supported by the evidence. Dr. Miranda's chronic absenteeism persisted despite numerous warnings from the Office of Human Resources dating back to 2004. More significantly, her chronic absenteeism continued even after Dr. Miranda and the Providence Teachers' Union acknowledged and agreed that Dr. Miranda was, by virtue of the Memorandum of Agreement, being "given one final opportunity to perform acceptably" (See Paragraph 11 of the November 9, 2010 Memorandum of Agreement). Dr. Miranda was absent for 70.5 additional days of work out of the one hundred and eight (108) work days that remained at the time of the Agreement, after deducting ten (10) days of unpaid suspension and fifteen (15) permitted absences per the Agreement. On this record, we find that Dr. Miranda exhibited "chronic absenteeism".

The Memorandum of Agreement created the prospect that future discipline, including termination, could be imposed on Dr. Miranda even for "excusable" absences in excess of the permitted fifteen (15). It is clear that the School Board retained the discretion to fashion appropriate discipline based on the number of and reasons for any "excessive" absences (or other relevant facts). The record does not indicate whether the Board exercised this discretion in making its decision to dismiss Dr. Miranda. At this level our review has taken into account both the number of and reasons for the Appellant's absences. Although she contends that her own and her mother's health issues caused her to miss the days in question (Tr. Vol. IV, p. 16), this is simply not supported by the facts. Many of her seventy (70) absences were unrelated to her medical condition (for which there is documentation in the record), the health condition of her elderly mother (for which there is no documentation in the record) or health issues of any other family member.

¹¹ Understanding Last Chance Agreements; Human Resources 101, December 29, 2008.

Dr. Miranda's testimony called into question the accuracy of reasons documented by district staff for only a small number of her absences. Her reasons for numerous absences (non-health related) and the priorities she placed over work attendance indicated that she had little understanding that she had made a commitment to limit her absences during a twelve-month "probationary period". The Appellant showed little recognition of just how important limiting the number of her absences had become in terms of her future employment as a teacher in Providence. On seven (7) work days, she took no steps whatsoever to secure a work assignment. We find that any contention that most or all of her absences were due to medical adversity is not supported in this record.

Although accumulating more than fifteen (15) absences also violated paragraph 5 of the Memorandum of Agreement,¹² we find that her violation of the Agreement, in and of itself, does not constitute additional good cause for her dismissal. Thus item number 3 does not establish an additional ground supporting the School Board's decision. As indicated previously in this decision, we do not find all of the elements of a "Last Chance Agreement" to be contained in the document signed by the parties. If the Memorandum contained a provision that called for Dr. Miranda's automatic termination if she failed to comply with it, then obviously a violation would establish just cause. If the parties' Agreement included language that any violation would constitute good and just cause for her dismissal, then item 3 ("failure to abide by the terms of the Memorandum of Agreement") would likewise establish just cause for her dismissal. This language is not found in the Agreement and therefore it is the underlying conduct of the Appellant that must establish cause for her dismissal.

The record in this matter also demonstrates that with the exception of three occasions, the Appellant failed to notify the substitute office of her anticipated absence as she agreed that she would by using AESOP no later than 6:30 a.m. For many of these days the reasons for her absence were not medical in nature or otherwise explained by an emergency situation. Dr. Miranda's failure to provide timely notice on so many of these occasions on which it was clearly possible for her to do so constitutes insubordination and supports item number 4 of the Statement of Cause which alleges, in part, that her violation of the Memorandum of Agreement constitutes insubordination. The School Board alleges additional insubordination in Dr. Miranda's "refusal to improve (her) attendance despite numerous directives and warnings". Throughout the hearing, in her testimony and in the arguments presented by her attorney, the Appellant took the position that her numerous absences and consistent failure to give timely notice were not "intentional". Yet, a review of the entire record establishes that for many absences and for many days on which she neglected to let district staff know in time so they could get another substitute, there was simply no good or acceptable reason. The only conclusion to be drawn from this is that the Appellant was in willful noncompliance with the district's reasonable requests to improve her attendance and follow a procedure that would result in class coverage. Thus, the allegation that she has been insubordinate has been proven, perhaps not to the same level as found by the School Board.

Both her "chronic absenteeism" and her failure to give timely notice using the AESOP system prevented district staff from securing another substitute in time to cover assignments she had previously accepted. This caused classes to go uncovered and students to be divided up and sent to other classrooms on numerous occasions. Testimony supports the fact that the lesson plan of the regular classroom teacher was not delivered on such occasions and supports the inference that a

¹² Her failure to provide notice by 6:30 a.m. using the AESOP system also violated the Memorandum of Agreement. The implications of this conduct will be discussed at a later point in this decision.

disadvantage to students in terms of an interruption of the consistency of their instruction resulted. Thus, the School Board has established item number 2 of its Statement of Cause.

For the foregoing reasons, we find that Dr. Miranda's dismissal has been supported by good and just cause. Items 1, 2 and 4 of the Statement of Cause have been proven. Taken individually or collectively they establish sufficient support for the Appellant's termination. Unfortunately, it was not until August 16, 2011 (well after the statutory deadline of March 1st) that notice of termination was provided to Dr. Miranda. The failure to provide her with a notice by the March 1st deadline prevents her dismissal from being effective until the beginning of the 2012-2013 school year.¹³

We find that deferral of the effective date of her termination to the beginning of the 2012-2013 school year renders moot her claim that she was entitled to a full evidentiary hearing prior to her termination.

For the foregoing reasons, Dr. Miranda's appeal to the Commissioner is sustained in part and denied in part. The School Board is directed to defer the effective date of her termination to the first day of the 2012-2013 school year and to compensate her accordingly for the 2011 – 2012 school year taking into account the level of earnings she had during her last year of employment, i.e. the 2010-2011 school year when her absences significantly reduced her salary. Her termination is upheld.

For the Commissioner,

Kathleen S. Murray

February 14, 2013

Date

Deborah A. Gist, Commissioner

¹³ 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.