

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

.....  
**Peter Pinkhover**

**Vs.**  
**Chariho Regional School District Committee**  
.....

**DECISION**

Held: In this case the petitioning tenured teacher is contending that he was denied his right to a due process hearing before the Chariho School Committee as provided for by R.I.G.L. 16-13-3 and R.I.G.L.16-13-4. The petitioner's appeal is denied and dismissed because this appeal is time barred and because this matter must now be adjudicated through the arbitration process.

DATE: May 9, 2013

## **Jurisdiction and Travel of the Case**

In this case the petitioning tenured teacher is contending that he was denied his right to a due process hearing before the Chariho School Committee as provided for by R.I.G.L. 16-13-3 and R.I.G.L.16-13-4. Jurisdiction is present under R.I.G.L.16-39-1 and R.I.G.L.16-39-2.

## **Position of the Chariho School District**

Chariho contends that the petitioner is bound by a “Last Chance Agreement” (Exhibit A) that the petitioner signed. This agreement, in Chariho’s view, constituted a waiver of his statutory tenure rights under R.I.G.L. 16-13-3 and R.I.G.L.16-13-4 in exchange for one final contractual opportunity to attempt to improve his teaching performance rather than face immediate dismissal. When the petitioner failed to obtain a passing final evaluation, Chariho contends that it had every right to simply accept the petitioner’s resignation as provided for in the “Last Chance Agreement” rather than accord him a hearing as provided for by R.I.G.L. 16-13-3 and R.I.G.L.16-13-4. Chariho also contends that the petitioner’s appeal is time barred.

## **Position of the Petitioning Teacher**

The petitioner contends that he has been denied his statutory and constitutional rights as a tenured teacher by virtue of Chariho’s decision to simply accept his resignation as a tenured teacher in accordance with the agreement he signed rather than providing him with a hearing in accordance with R.I.G.L. 16-13-3 and R.I.G.L.16-13-4. He argues that he should be accorded a hearing to challenge the evaluation which resulted in the termination of his employment with the Chariho Regional School District. He further contends that his appeal should not be considered to be time barred.

## **Findings of Fact**

1. Petitioner Peter Pinkhover began working as a teacher for the Chariho Regional School District in September of 1999. He has been a tenured teacher with the school district since 2002.
2. On or about February 2, 2011, the Chariho Superintendent of Schools, Barry J. Ricci, notified Pinkhover of his intention to recommend that Pinkhover’s teaching contract not be renewed for the 2011-2012 school year.
3. By a letter dated February 9, 2011, Pinkhover was notified that on February 8 the Chariho Regional School Committee had voted not to renew his teaching contract for the 2011-2012 school year. The letter further notified Pinkhover that this action was taken due to “[p]erformance that remains less than proficient despite support offered over a two (2) year period through a Professional Growth Plan.”

4. On or about February 28, 2011, Pinkhover's collective bargaining representative, NEA Chariho, filed a grievance alleging that Chariho's action to non-renew Pinkhover's contract violated the collective bargaining agreement between Chariho and NEA Chariho. (Exhibit B)
5. On or about June 11, 2011, Pinkhover, NEA Chariho and Chariho's school committee President reached an agreement, Exhibit C, withdrawing the February 9, 2011 termination letter and the February 28, 2011 grievance. The Agreement provided, among other things, that Chariho would provide Pinkhover with support "through the mutually developed Growth Plan" over the 2011-2012 school year; the parties would meet to discuss and review Chariho's expectation for Pinkhover; Chariho would evaluate Pinkhover "by the approved evaluation instrument on or about February 15, 2012; and, in the event Pinkhover's evaluation was less than "proficient" or "effective" in accordance with the evaluation instrument, Chariho would accept a letter of resignation from Pinkhover effective the end of the 2011-2012 school year. The Agreement also specified that "Mr. Pinkhover's performance, as measured by the approved evaluation instrument, had been less than 'proficient over a two-year period despite support offered through a through a Professional Growth Plan'" and that "The 2009-2012 collective bargaining agreement between NEARI-Chariho and Chariho defined 'just cause' to include but not limited to teaching performance that remained less than proficient over a two-year period despite support offered through a Professional Growth Plan..."
6. On or about May 2, 2012, Chariho issued Pinkhover an evaluation wherein he was found, yet again, to be less than proficient.
7. On or about May 9, 2012, the Chariho Regional School Committee accepted Mr. Pinkhover's resignation as provided for in the agreement. (Exhibit A)
8. On October 31, 2012, almost exactly six months later, Mr. Pinkhover filed a petition with the Commissioner of Education alleging that Chariho had violated his legal rights by "(a) terminating his employment without notice or good cause and (b) refusing to provide him a hearing thereon, pursuant to RIGL sec. 16-39-1 and 2."

### **Conclusions of Law**

1. A litigant in a labor context can assert a statutory remedy or an administrative remedy but cannot pursue both. *School Committee of North Kingstown v. Crouch*, 808 A.2d 1074 (R.I. 2002)
2. R.I.G.L. 16-13-3 (b) as it relates to the rights of tenured teachers provides that "Nothing contained in this section shall be construed to prohibit a school committee from agreeing, in a collective bargaining agreement, to the arbitration

of disputes arising out of the dismissal of a tenured teacher pursuant to subsection (a) of this section.”

3. An Appeal to the Commissioner of Education under R.I.G.L. 16-39-1 or R.I.G.L. 16-39-2 must be filed in a timely fashion and if the appeal is not so filed in a timely fashion it will be dismissed. *Kittredge v. The Compass School*, No.048-06, Commissioner of Education October 23, 2006.

### **Discussion**

In the matter now before us we find that the petitioner did not file his appeal in a timely fashion. The evaluation which the petitioner is challenging before the Commissioner was issued on May 2, 2012 but no appeal was filed until October 31, 2012, well after Chariho had its staff in place for the 2012-2013 school year. Under these circumstances we find that the petitioner waited an unreasonably long period of time to file his appeal and that moreover this delayed filing resulted in prejudice to Chariho. We therefore must dismiss this appeal as being time barred. *Kittredge v. The Compass School*, No.048-06, Commissioner of Education October 23, 2006.

We also find that the petitioner, instead of following the statutory remedies provided for tenured teachers who face dismissal for alleged good and just cause, elected to pursue arbitration as permitted by R.I.G.L. 16-13-3 (b). To settle this arbitration the parties did not revert to the statutory hearing mechanism provided for tenured teachers in R.I.G.L. 16-13-4 but instead entered into a non-statutory agreement to resolve their dispute. This contract in itself, just as most aspects of collective bargaining agreements, does not arise under R.I.G.L. 16-39-1 or R.I.G.L.16-39-2. Disputes arising from this agreement, including disputes relating to the petitioner’s last evaluation, must be left for adjudication through the arbitration process. *School Committee of North Kingstown v. Crouch*, 808 A.2d 1074 (R.I. 2002) See: *Martone v. Johnston School Committee*, 824 A.2d 426 (R.I. 2003) and *Hoag vs. Providence School Board*, Commissioner of Education, June 1988.

### **Conclusion**

The petitioner’s appeal is denied and dismissed for the reasons discussed above.

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Forrest L. Avila, Hearing Officer

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Deborah A. Gist, Commissioner

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May 9, 2013  
DATE