

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

FERMIN CIPRIAN

V

PROVIDENCE SCHOOL BOARD

Held: The Providence School Board proved that it had good and just cause for its suspension and subsequent termination of Mr. Ciprian, a tenured physical education teacher at Mount Pleasant High School. The School District demonstrated the existence of valid reasons for requiring that Mr. Ciprian undergo a fitness for duty exam prior to returning to his position and that Mr. Ciprian failed to follow the directive to complete the fitness for duty evaluation. The objections that Mr. Ciprian had with respect to the process followed for his evaluation and with the information provided to his evaluator by the School Department were raised in a grievance filed on August 22, 2008 pursuant to the provisions of the teachers' collective bargaining agreement. When Mr. Ciprian failed to pursue this grievance through the steps provided by the collective bargaining agreement, he waived his objections. Mr. Ciprian took no other steps to invalidate the evaluation process. Under such circumstances, his continued refusal to complete the evaluation process constitutes good and just cause for his dismissal.

DATE August 28, 2013

Travel of the Case

On October 14, 2009 Fermin Ciprian's attorney filed an appeal on his behalf requesting a de novo hearing on the issue of his termination by the Providence School Board. A separate appeal was filed with respect to a suspension that preceded Mr. Ciprian's termination which became effective at the beginning of the 2009-2010 school year the undersigned was designated by Commissioner Deborah A. Gist to hear and decide both of these appeals. The parties were requested to provide the hearing officer with an agreed-upon date and they initially agreed to a hearing date of March 24, 2010. However, both the School Department and Mr. Ciprian then requested a stay of the hearing while Mr. Ciprian presented certain claims for alternative relief to the Superior Court and thereafter to the R.I. Supreme Court. The parties notified the hearing officer that the Supreme Court had affirmed the denial of Mr. Ciprian's claims on September 21, 2011.

Hearings were then scheduled and took place on October 13, 2011 and February 10, 2012, November 19, 2012,¹ December 7, 2012, January 30, 2013 and May 8, 2013. Testimony and documentary evidence were taken at this time. The record in this appeal closed on June 17, 2013 upon receipt of the Providence School Board's closing memorandum.

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

ISSUE

Did the Providence School Board have good and just cause to suspend Mr. Ciprian's employment as of October 27, 2008 for the remainder of the 2008-2009 school year and to terminate his employment as a tenured teacher at Mount Pleasant High School effective for the 2009-2010 school year?

Findings of Relevant Facts:

¹ The Appellant retained new counsel during this period and the matter was deferred to provide his new attorney with the opportunity to prepare his case.

- Fermin Ciprian worked as a physical education teacher and coach at Mount Pleasant High School at the beginning of the 2007-2008 school year. He had been employed by the district for almost fourteen (14) years. Tr. p.543.
- On October 15, 2007 Mr. Ciprian was placed on a paid administrative leave because of allegations that he had exhibited disruptive behavior at school and had been threatening and hostile to other employees. The letter placing him on leave notified Mr. Ciprian that the Employee Relations Administrator, Dennis Sidoti, would be conducting an investigation into these allegations. PSB Ex. 5.
- Mr. Ciprian filed a grievance with respect to his placement on paid administrative leave on October 30, 2007. App. Ex. D.² This grievance was denied by Tomas Hanna, Deputy Superintendent for Operations, on January 14, 2008 (Level A of the Grievance Procedure). PSB Post-hearing Ex.1. There is no evidence that Mr. Ciprian appealed this Level A grievance decision to the Providence School Board.
- On or about October 25, 2007 Mr. Ciprian filed a complaint with the Rhode Island Department of the Attorney General. The complaint included a typewritten letter dated October 24, 2007 from Fermin R. Ciprian to then-Attorney General Patrick Lynch. In the letter, Mr. Ciprian asserted that the F.B.I. was conspiring against him, using a mind-control device that could listen to his thoughts and use his thoughts against him. Mr. Ciprian alleged that the F.B.I. used this information to cause people “to act in a harassing or annoying manner” toward him, serve his family unhealthy food and take other action adverse to him and his family. PSB Ex. 2 and 2A; Tr. pp. 67-82, 182. A copy of this letter was forwarded by the Attorney General’s office to the Providence Law Department and from there it was sent to Tomas Hanna, an administrator in the Providence School Department. PSB Ex.2.

² Several exhibits that had been marked for identification only were moved for full admission by the Appellant in his Post-Hearing Memorandum. There was no objection by the School Board to this request and the Board cites to some of these same exhibits. Therefore, App. Ex. D, G, H, I and J, and PSB Ex.2A, previously marked for identification only, have been admitted as full exhibits in this case.

- On December 14, 2007 an arbitrator issued a ruling in Mr. Ciprian’s favor with respect to two letters of warning that had been placed in his personnel file back in 2005.³ The arbitrator ruled that with respect to two separate incidents in 2005 that had resulted in written reprimands, the investigation of one was “so flawed as to constitute a denial of (his) contractual right to due process” and the investigation of the second incident was “perfunctory and incomplete”. The arbitrator ordered that both letters of reprimand were to be rescinded and removed from Mr. Ciprian’s file. App. Ex. C. The person in charge of both of these prior investigations had been Dennis Sidoti, the same person assigned to investigate the allegations that had caused Mr. Ciprian to be placed on administrative leave on October 15, 2007. App. Ex. C.
- On April 3, 2008 Tomas E. Ramirez, Assistant Superintendent for Human Resources and Labor Relations for the School Department, notified Mr. Ciprian that after his review of testimony from witnesses at Mount Pleasant High School (regarding the allegations that had caused the district to place him on leave on October 15, 2007) and Mr. Ciprian’s October 25, 2007 complaint to the Attorney General, he had concluded that Mr. Ciprian’s behavior was “threatening, confrontational and irrational” and that he was a potential danger to the school community. PSB. Ex.5.
- Dr. Ramirez’ April 3, 2008 letter informed Mr. Ciprian that he would not be able to return to work unless he received a fitness for duty examination that would “ensure (his) safety and the safety of the school community”. PSB Ex. 5. The letter further noted that the School Department’s goal was to have Mr. Ciprian return to work as soon as possible under conditions that would benefit all parties. PSB Ex.5.
- Dr. Ramirez sent two follow-up letters to Mr. Ciprian regarding the need for a fitness for duty examination, noting in the second letter dated April 16, 2008 that refusal to comply with the directive to undergo such an examination would cause the district to initiate his termination. PSB Ex. 5.

³ The School Board argues that the arbitrator did not rule on “the truth or falsity of the actual claims”. She did conclude, however, that “The two warnings were not issued for good or just cause” (App. Ex. C, p.14) which we would interpret as a ruling validating the position and arguments advanced by Mr. Ciprian in the arbitration.

- On May 7, 2008 Mr. Ciprian wrote to Dr. Ramirez to indicate that, with certain conditions, he would agree to undergo a fitness for duty examination. PSB Ex. 5.
- On May 15, 2008 Dr. Ramirez wrote to Mr. Ciprian indicating that the School Department would agree to his conditions, i.e. that the evaluation would be conducted by a LifeWatch⁴ physician of Mr. Ciprian's choice, that he would be paid for thirty-eight (38) hours of professional time that he had missed during his administrative leave, and that upon a determination that he was "fit for duty," he would be transferred from Mount Pleasant to a different school and given a new coaching assignment. PSB Ex. 5.
- On July 21, 2008 Dennis Sidoti, who was coordinating the evaluation process for the School Department, forwarded LifeWatch a packet of information regarding Mr. Ciprian. The packet included copies of a written warning that had been issued to Mr. Ciprian on June 5, 2003 for acting in an "aggressive and disrespectful manner" toward Mount Pleasant's athletic director. The packet also included copies of the letter placing Mr. Ciprian on administrative leave on October 15, 2007, the October 24, 2007 letter Mr. Ciprian had filed with the Attorney General's office, and a detailed memo that Dennis Sidoti had prepared several months earlier. This memo was dated November 4, 2007 and it summarized the results of Mr. Sidoti's investigation into the allegations that Mr. Ciprian had acted in a hostile and threatening manner with other employees at Mount Pleasant High School during September and early October of 2007. Supplement to App. Ex. B.
- The November 4, 2007 Sidoti memorandum also included information that in 2005 Mr. Ciprian had been issued two written disciplinary warnings that were "presently under arbiter's review". The memo provided a brief summary of the facts upon which each of the warning letters was based. Although the memo noted that the warning letters were "under arbiter's review"- an accurate statement at the time Mr. Sidoti wrote the

⁴ LifeWatch is the clinical services network utilized by the School Department in its Employee Assistance Program.

memorandum (November 4, 2007), on the date that the packet was sent to LifeWatch (July 21, 2008), these letters of warning had been rescinded. The packet submitted to LifeWatch did not include a copy of the arbitrator's December 14, 2007 decision that sustained Mr. Ciprian's grievance and ordered that the written warnings be rescinded. Supplement to App. Ex. B.

- The packet of information forwarded by Mr. Sidoti to LifeWatch on July 21, 2008 was reviewed by the physician who had been selected to conduct Mr. Ciprian's fitness for duty examination, Dr. Thomas J. Scaramella, a board certified psychiatrist. PSB Ex.3.
- When Mr. Ciprian appeared for his scheduled fitness for duty evaluation on July 29, 2008, Dr. Scaramella questioned him about the information he had reviewed in the packet forwarded by Mr. Sidoti. With respect to some of the incidents, Mr. Ciprian told Dr. Scaramella that an arbitrator had ruled in his favor. Dr. Scaramella noted in his report that documentation of this fact was not included in the packet that had been provided to him. PSB Ex.3.
- When Dr. Scaramella asked Mr. Ciprian about the October 24, 2007 letter to the Attorney General, Mr. Ciprian said, "I won't discuss that." He continued to refuse to discuss the letter to the Attorney General even after Dr. Scaramella explained that the letter was of concern and that it might relate to his capacity to work. Dr. Scaramella wrote in his report :

The mental status exam performed in the office failed to reveal any active signs of bizarre delusions, inappropriate behaviors or marked changes in mood. However, there was clearly a defensiveness regarding what may be a paranoid or persecutory belief resulting in a formal letter to the Attorney General. His refusal to discuss this has made determination of his true mental status and condition at the time of the evaluation difficult. His letter in October clearly indicates psychopathology of a delusional nature and it is important to ascertain if these beliefs are still active

and his refusal to discuss supports that they may still be present. PSB Ex. 3.

- Dr. Scaramella concluded that “Due to these potential serious problems, which could indicate a psychiatric disorder, I cannot recommend return to duty at the present time.” He recommended scheduling a full psychiatric evaluation at which Mr. Ciprian would have to be willing to discuss the matters outlined in his October 24, 2007⁵ letter to the Attorney General. PSB Ex. 3.
- After receipt and review of Dr. Scaramella’s evaluation and recommendations, Dr. Ramirez wrote to Mr. Ciprian on August 14, 2008. He indicated that Mr. Ciprian was to arrange a follow-up meeting with Dr. Scaramella and that Dr. Scaramella would perform a full psychiatric evaluation at that time. He told Mr. Ciprian that he would be required to discuss the matters outlined in his October 24, 2007 letter to the Attorney General as part of this full psychiatric evaluation. PSB Ex. 5. Dr. Ramirez further advised that the follow-up appointment was needed so that the doctor could make a complete assessment and recommendation regarding Mr. Ciprian’s fitness for duty. PSB Ex. 5.
- The August 14, 2008 directive also established a deadline:

...you are required to notify LifeWatch EAP by 2:00pm on
August 27, 2008 at 1-800-333-6228 to arrange a meeting with
Dr. Scaramella ... PSB Ex. 5.
- Dr. Ramirez’ August 14, 2008 letter emphasized that Mr. Ciprian’s failure to follow his directive by the deadline set forth in the letter would result in grounds for disciplinary action up to and including termination. PSB Ex. 5.
- Mr. Ciprian filed a grievance on August 22, 2008 and revised it on September 3, 2008. This grievance alleged that provisions of the collective bargaining agreement had been

⁵ Dr. Scaramella was provided with the October 24, 2007 typed letter, but not the written cover sheet showing that it was filed with the Attorney General on October 25, 2007.

violated because of false information that Dennis Sidoti had provided to Dr. Scaramella in advance of their meeting.⁶ Mr. Ciprian disputed Dr. Scaramella's account of their discussion at the July 29, 2008 evaluation and challenged his findings. The grievance charged that the doctor's conclusion that Mr. Ciprian needed further evaluation was unfair and invalid. The requirement that he submit to further evaluation or face termination was alleged to violate his right to contractual due process and constitute unfair and inequitable treatment. App. Ex. J. Mr. Ciprian requested that further evaluation of his fitness for duty be delayed. App. Ex. J.⁷

- Mr. Ciprian did not notify LifeWatch by 2:00 p.m. on August 27, 2008 to arrange a follow-up meeting with Dr. Scaramella. Individual Contact Records maintained by LifeWatch indicate that Mr. Ciprian did not make contact with the LifeWatch EAP clinician until the morning of September 4, 2008 at which time he indicated that he would "be in touch with (her) to schedule a FFD evaluation at some point..." App. Ex. B.⁸
- On September 8, 2008 the Providence School Board voted to terminate Mr. Ciprian's employment as a teacher in the Providence Public Schools, citing four grounds, including his refusal to follow the School Department's directive to complete a fitness for duty evaluation. PSB Post-hearing Ex.4.

⁶ Mr. Ciprian also asserted that some of the documents Mr. Sidoti had provided to Dr. Scaramella pertained to a grievance that was "under arbitration." App. Ex. J.

⁷ There is no evidence that this grievance was ever heard or pursued and the record is unclear as to whether there was an agreement to hold it in abeyance. A School Department witness, Dr. Ramirez, testified that he believed that there was an agreement to hold this grievance in abeyance, pending resolution of Mr. Ciprian's employment issues. Tr. p. 202. Counsel for the School Department asserted at the close of the hearing that this grievance was withdrawn, along with other pending grievances. Mr. Ciprian testified that this grievance, along with others, was held in abeyance without his consent. Tr.pp.596,678-687. The supplemental exhibits submitted by stipulation do not resolve this factual issue.

⁸ Mr. Ciprian testified that he made an unsuccessful attempt to contact his LifeWatch EAP clinician on August 27, 2008 "sometime after twelve." Tr. pp.597-598. In a memo he wrote to the Providence School Board on September 6, 2008, he indicated that his call on the 27th was "at approximately 4:00p.m." PSB Ex.2A. Mr. Ciprian testimony on this point was tentative and we find it more likely that his attempt to contact LifeWatch occurred after 2:00 p.m. In any event we do not construe an unsuccessful attempt to contact LifeWatch as taking the action that he had been directed to take, i.e. making contact and arranging for the follow-up evaluation. He did not make contact with the LifeWatch clinician until September 4, 2008. LifeWatch contact records show that the clinician "called (Mr. Ciprian) back at 9:35 a.m." on August 28, 2008, that he was unavailable and she left him a message. Mr. Ciprian did not return her call until September 4, 2008. App. Ex. B.

- On October 14, 2008 the Providence School Board rescinded its September 8, 2008 termination of Mr. Ciprian⁹, and voted instead on October 27, 2008 to suspend him without pay for the remainder of the 2008-2009 school year and to terminate him effective for the 2009-2010 school year. PSB Ex. 5 and 6. The votes to suspend and to terminate Mr. Ciprian were based on four grounds, including his refusal to follow the School Department's directive to complete a fitness for duty evaluation. PSB Ex.6.
- On September 21, 2009, after providing Mr. Ciprian with a hearing before the full Board, the School Board voted to affirm its decision of October 27, 2008. The Board again cited four grounds for its actions, including refusal to follow the School Department's directive to complete a fitness for duty evaluation. PSB Ex. 7.

Positions of the Parties:

Providence School Board:

Counsel for the School Board submits that only one question need be answered in order to resolve this appeal under the Teacher Tenure Act:

Should a teacher and assistant soccer coach who is, or recently was, under the paranoid delusion that the FBI was engaged in a bizarre conspiracy against him using a powerful mind control device- a conspiracy which allegedly touched upon both his professional and private life-be allowed to work in our schools and interact and supervise students, when: (1) a board-certified psychiatrist refused to certify that he was fit to return to work; and (2) the teacher and assistant coach in question failed and refused to even: (a) discuss any aspect of his bizarre conspiracy theories with the psychiatrist engaged to determine whether he was fit for work, or (b) follow the

⁹ Litigation challenging the legality of a termination for which a March 1st notice had not been provided apparently prompted the School Board to reconsider its September 8, 2008 vote and to convert its action to a suspension, followed by a termination, effective the following school year.

instructions of his employer and the recommendations of this same psychiatrist and timely submit to a follow-up psychiatric evaluation?
(Post-hearing Memorandum of the Providence School Board at page 2)

The School Board argues that Mr. Ciprian's behavior raised concerns for his safety and that of other members of the school community. His refusal to complete a fitness for duty evaluation, coupled with his claims that his contractual rights were violated by such process, left the School Board with no option as far as Mr. Ciprian's continuation as a teacher. The facts here are that the School Department was confronted with a teacher who had a history of aggressive and disrespectful behavior going back as far as 2003. In October of 2007 this same teacher presented evidence that he suffered from bizarre paranoid delusions. After various objections to an evaluation were resolved, the School Department was able to set up a fitness for duty evaluation to ensure that Mr. Ciprian's continued employment did not present safety issues for the school community. Unfortunately, Mr. Ciprian's evaluation by a board-certified psychiatrist was not able to be completed because of his refusal to answer questions regarding the October 24, 2007 letter in which these delusionary thoughts were expressed. A pattern of obstruction and delay undermined the School Department's best efforts to have Mr. Ciprian evaluated and his fitness for duty established.

Although this is a case of insubordination and Mr. Ciprian's refusal to comply with the directive to complete his fitness for duty examination has been established on the record, this is not a simple case of insubordination. It would have been reckless for the School Department to allow Mr. Ciprian to return to work. Stated another way, the School Board not only had good and just cause for Mr. Ciprian's dismissal, but really had no choice but to terminate him under the circumstances in this case.¹⁰

The Board's proof focused on the fact that Mr. Ciprian had written to the Attorney General on or about October 24, 2007 and made disturbing observations that resulted in school administrators being gravely concerned regarding his fitness for duty and the safety of the school community and that he refused to follow the School Department's directive to complete a fitness for duty evaluation. On May 15, 2008 Dr. Ramirez notified Mr. Ciprian of the district's

¹⁰ The School Board originally cited four separate reasons in support of its decision. In defending this appeal, the Providence School Board waived reasons one and two and relied exclusively upon reasons three and four.

willingness to allow him to return to work, as long as his fitness to continue as a teacher was established. His refusal to cooperate and, ultimately, his refusal to complete the evaluation by Dr. Scaramella made reinstatement impossible. Based on his first interview, Dr. Scaramella had concluded that there were “potential serious problems which could indicate a psychiatric disorder” and he could not recommend a return to duty. The only proper course at this point was to proceed with Mr. Ciprian’s termination.

The School Department disputes the notion that Mr. Ciprian’s failure to cooperate was justified because Dennis Sidoti, who was overseeing the LifeWatch evaluation process, was biased against him and tainted the evaluation process. The fact that Mr. Sidoti forwarded a packet of information to LifeWatch that referenced matters under arbitration does not validate Mr. Ciprian’s refusal to complete the evaluation. Counsel notes that the packet did not include copies of the two rescinded warning letters themselves (as the Appellant contends) but merely referenced them briefly. In any event, this information did not form a “significant part” of the information provided to Dr. Scaramella. As confirmed by Dr. Scaramella in his testimony and in his report, his inability to certify Mr. Ciprian as fit for work was not due to past conduct- which was discussed during the evaluation- but rather due to Ciprian’s refusal to discuss the bizarre complaint he had filed with the Attorney General. It was discussion of the complaint that was necessary for Dr. Scaramella to make a determination of whether or not Mr. Ciprian suffered from a psychiatric disorder.¹¹

With respect to the Appellant’s argument that he was attempting to cooperate in good faith with the School Department’s directive at the time of the deadline, the Board points out that there is no proof of this. The LifeWatch records do not support this proposition and in fact, show that Mr. Ciprian waited until September 4, 2008 before returning a call from the LifeWatch clinician. More likely is that Mr. Ciprian was not willing to complete the evaluation process, especially since he had asserted in a grievance filed on August 22, 2008 that continuing his evaluation with Dr. Scaramella violated his contractual rights.

Finally, the Board asserts that Mr. Ciprian has waived any claim that his refusal to continue with the evaluation process with Dr. Scaramella was reasonable –not insubordinate-

¹¹ In his written report, Dr. Scaramella indicates that Mr. Ciprian’s October 24, 2007 letter to the Attorney General “clearly indicates psychopathology of a delusional nature and it is important to ascertain if these beliefs are still active and his refusal to discuss supports that they may still be present.” The doctor goes on to add that “Statements in the record from the school department concerning his hostile and threatening behaviors indicated concerns on their behalf about his mental stability. PSB Ex. 3 at page 2.

because the doctor had received false information about his 2007 behavior with co-workers and had considered two letters of warning from 2005 that an arbitrator had rescinded. Allegations of false information and documents “under arbiter’s review” in the LifeWatch packet had been raised in two grievances that were not pursued. Under Section 15-3.2 of the collective bargaining agreement, these claims were waived since they were not appealed through any of the successive levels within the time limits prescribed by the agreement. The claim that Mr. Sidoti prejudiced Dr. Scaramella’s conclusions and manipulated his decision to order a full psychiatric workup had been asserted in a grievance filed on August 22, 2008 and revised on September 3, 2008. This grievance is not “pending” as the Appellant now asserts, but rather was waived along with the October 30, 2007 grievance challenging the allegations of his co-workers in the fall of 2007.

If these grievances were not effectively waived by Mr. Ciprian’s failure to appeal through successive levels of the grievance procedure, then they were waived when he elected to pursue multiple other remedies - an appeal to the Commissioner under the Teachers’ Tenure Act, actions filed in court, and a complaint of discrimination with the Rhode Island Commission for Human Rights. For the foregoing reasons, the School Board requests that Mr. Ciprian’s appeal be denied and dismissed, and the Board’s decision of September 21, 2009, ratifying his suspension for the 2008-2009 school year and terminating his employment, effective for the 2009-2010 school year, be affirmed.

The Appellant

Counsel for the Appellant frames two issues for resolution in this appeal:

1. Was Mr. Ciprian insubordinate in refusing to schedule and cooperate with a psychological evaluation which was intended to determine his fitness for duty?
2. If he was insubordinate, then does his insubordination constitute good and just cause for his termination?

In light of Mr. Ciprian’s status as a tenured teacher in Providence, the burden of proof is on the district to establish that he was insubordinate, i.e. that he was given reasonable directives

and that he willfully disregarded those reasonable directives. The proposition on which the School Board has rested its entire case is that Mr. Ciprian failed to submit to and pass a fitness for duty examination. Although much of the evidence centered on an October 24, 2007 letter purportedly authored by Mr. Ciprian and delivered to the Office of the Attorney General, facts related to the letter itself are not relevant. This is because in litigation in Superior Court the School Board narrowed its grounds for termination to a single reason: failure to cooperate with the fitness for duty evaluation.

When first informed of the requirement that he undergo a fitness for duty evaluation from a physician approved by the Employee Relations Administrator, Dennis Sidoti, Mr. Ciprian filed a grievance. It was clear to the Appellant from the outset that Mr. Sidoti's involvement in any determination of his fitness to continue teaching was problematic. Mr. Sidoti's investigative tactics and his credibility had been questioned by an impartial arbitrator in a decision issued on December 14, 2007. For whatever reason,¹² Mr. Sidoti was biased against Mr. Ciprian. The Appellant sought to have Dr. Ramirez, the Director of Human Resources, oversee the process to ensure that it would be fair and impartial; however, Dr. Ramirez delegated oversight of the LifeWatch evaluation to Dennis Sidoti. The objections and concerns that the Appellant had about the evaluation process caused him to question, and challenge, Dr. Scaramella's selection as his evaluator, information that was provided for his review by Mr. Sidoti, and the doctor's ultimate conclusion that Mr. Ciprian required further psychiatric evaluation. Counsel for the Appellant points out that Mr. Ciprian sought only to ensure that his evaluation would be fair, and, especially when he exercised his rights under the grievance process, this should not be held to constitute insubordination.

The record reflects that Mr. Ciprian had justified concerns regarding Dennis Sidoti and his conduct. In fact, at one point, Mr. Sidoti cancelled a scheduled evaluation date because in his view Mr. Ciprian was putting "too many conditions" on the evaluation process. In fact, the Appellant was simply protecting his right to keep his medical information confidential and making sure that the doctor who was selected was truly impartial and qualified. He was thwarted in these efforts because, prior to his interview with Dr. Scaramella, Dennis Sidoti forwarded for

¹² Mr. Ciprian did not allege racial or ethnic bias on the part of any of the representatives of the Providence School Board in this forum. He did, however, file a complaint of discrimination and retaliation under Title VII of the Civil Rights Act of 1964 with the Rhode Island Commission for Human Rights and, upon his receipt of a right to sue letter, commenced litigation in the United States District Court for the District of Rhode Island on September 17, 2012. PSB Supplemental Ex. 11 and 12.

the doctor's review a packet that included a detailed letter documenting the School Department's concerns from Dennis Sidoti dated November 4, 2007. Counsel for the Appellant argues that the information provided by Mr. Sidoti was intended to influence the evaluator against Mr. Ciprian and it evidently did so. The administration's account of the October 2007 incidents was under grievance and the 2005 warning letters had been rescinded, but Mr. Sidoti's memo made reference to this information anyway. It was this information that Dr. Scaramella found to be "concerning" even when his examination of Mr. Ciprian did not suggest that he was hostile or threatening. What actually caused Dr. Scaramella to be unable to certify that Mr. Ciprian was fit to return to work¹³ was the documentation received from Mr. Sidoti, not the findings he made after meeting with Mr. Ciprian face to face. Most significantly, although Mr. Ciprian had been told that all allegations against him prior to March 28, 2008,¹⁴ including the letter to the Attorney General, "would be forgotten if he would agree to a fitness for duty evaluation," to his dismay not only were contested allegations about his past behavior brought up, but the doctor insisted on probing about the letter he had written to the Attorney General on October 24, 2007. For the foregoing reasons, the Appellant "shut down" and refused to cooperate further with the evaluation. This act was not a willful refusal to cooperate, but rather an understandable response of a man who justifiably felt that he was a victim of a continued pattern of unprovoked harassment. For unexplained reasons, he was an employee who Mr. Dennis Sidoti was intent on removing from his position.

Mr. Ciprian again followed protocol and filed a grievance on August 22, 2008 after receiving the letter threatening termination if he did not re-schedule with Dr. Scaramella for a full psychiatric evaluation. Several grievances, including this one, were pending at the time of his termination. Clearly, this record does not establish willful insubordination. What has been established is that Mr. Ciprian's mistrust of Dennis Sidoti had been validated by an arbitrator and his misgivings with respect to a fair and impartial evaluation were supported by prejudicial information provided to his evaluator.

¹³ Counsel for the Appellant submits that Dr. Scaramella actually made a finding that Mr. Ciprian was not fit for duty, even though the doctor testified that he was unable to make a determination of his fitness because Mr. Ciprian wouldn't discuss the October 24, 2007 letter. Dr. Scaramella's finding was included in the notes of the LifeWatch clinician who spoke to him on July 30, 2008. App. Ex. B.

¹⁴ In his closing memorandum the Appellant's counsel describes a meeting on or about March 28, 2008 at which time Mr. Ciprian met with his union representative and his attorney. Apparently, Mr. Ciprian received these assurances at that time. The record does not contain evidence of either the meeting or such assurances.

If the Appellant was insubordinate, there were so many reasonable explanations for his mistrust of the evaluation process that there was not the type of willful disobedience that would support his termination by the School Board. In fact, despite his misgivings about the fairness of the evaluation process, he had attempted to contact LifeWatch to schedule a follow up appointment with Dr. Scarmella when Mr. Sidoti interjected himself with a telephone call on August 28, 2008. After a brief conversation in which the technician indicated only that she had no “releasable information” for him, Sidoti mistakenly concluded that Mr. Ciprian had not followed up. He announced to the LifeWatch clinician that the district would be pursuing termination. Shortly thereafter, Mr. Ciprian received a notice that the Superintendent would be recommending his termination to the School Board.

The evidence here is such that the Board has failed to prove that Fermin Ciprian was insubordinate or that his termination was in any way justified. The decision to terminate him must be rescinded and he must be reinstated with tenure and back pay. Counsel further requests that Mr. Ciprian be reimbursed for reasonable litigation expenses under the Equal Access to Justice Act, R.I.G.L. 42-92-1.

DECISION

Mr. Ciprian’s appeal under the Teachers’ Tenure Act comes here for resolution amidst an extended period of litigation on multiple issues in state and federal court. The parties are still engaged in litigation on discrimination and retaliation claims in federal courts. The issue before the Commissioner is fairly simple, i.e. whether or not there was good and just cause for Mr. Ciprian’s suspension and termination. Although the legal issue is straightforward, the facts of this case are somewhat complex. As our findings of fact indicate, the Providence School Board initially cited four (4) reasons for Mr. Ciprian’s suspension and subsequent termination. In proceeding at this level, the Board reduced its reasons for suspending Mr. Ciprian on October 27, 2008 and terminating him effective for the 2009-2010 school year to two: (1) a letter he wrote to the Attorney General that created grave concerns regarding his fitness for duty and the safety of the school community and (2) his failure and refusal to follow the directive to fully complete a fitness for duty evaluation.

One need only read the letter dated October 24, 2007 entitled “FBI Conspiring Against My Rights” and, as a lay person, become alarmed by the potential implications as to the state of

mind of the author. Administrators of the School Department, obligated as they are to make sure that dangers to the school community are immediately assessed and any necessary protective measures taken, acted reasonably and appropriately and with sufficient justification in directing Mr. Ciprian to undergo a fitness for duty evaluation. Justification is based on the letter and on the behaviors he had reportedly been exhibiting at school. As our findings of fact indicate, when Mr. Ciprian finally met with a board-certified psychiatrist retained by LifeWatch on July 29, 2008, these concerns for his mental fitness were not dispelled. His ongoing refusal to discuss “the letter” caused Dr. Scaramella to conclude that he could not yet rule out the presence of a psychiatric disorder, could not recommend return to duty and that further evaluation was warranted.

The Appellant’s refusal to comply with the directive to undergo further psychiatric evaluation, grounded as this directive was in its inception by a bizarre and potentially delusionary letter and then further supported by the preliminary findings of a board certified psychiatrist (Dr. Scaramella) constitutes good and just cause for Mr. Ciprian’s suspension without pay on October 27, 2008.¹⁵ We infer that the suspension had both a disciplinary purpose and was designed to protect the school community from potential harm. The district’s position, clearly stated in the notices sent to Mr. Ciprian, was that he posed a threat to the school community and, without passing the fitness for duty evaluation, could not return to school. At the time of the Board’s vote, Mr. Ciprian had been on paid administrative leave for over a full year. The August 22, 2008 grievance (revised on September 3, 2008) in which Mr. Ciprian challenged certain aspects of the evaluation process had been filed, but not yet acted upon. Taking into account all of these facts, we find that the School Board had proven justification to suspend Mr. Ciprian without pay under R.I.G.L. 16-13-5.

A more complex question is whether or not the Board’s simultaneous decision that Mr. Ciprian was to be terminated was also supported by good and just cause. At the time the Board

¹⁵ See Sullivan v. River Valley School District, 197 F.3d 804 (6th Cir. 1999) a case involving a teacher’s claim of ADA violation based on suspension for refusal to undergo mental and physical fitness for duty examination. The Court found that the school district had articulated a legitimate, nondiscriminatory reason for suspension of the teacher, based on repeated episodes of insubordination, including his refusal to undergo mental and physical fitness-for-duty examinations. In proceedings challenging his subsequent termination by the River Valley School Board, the Michigan State Tenure Commission decided that while his actions did not merit discharge, they did merit a three-year unpaid suspension. The Commission also directed Sullivan to undergo mental and physical examinations at the school board’s expense. This decision was upheld on appeal. See also Appel v. Spiridon, 531 F.3d 138 (2nd Cir. 2008).

voted to take this action and continuing up to the time Mr. Ciprian's termination became effective he had still not complied with the directive that he complete a fitness for duty evaluation. District officials had determined, and correctly so, that they could not place him back into his teaching position without a medical opinion that he was fit for duty. Mr. Ciprian's grievance of the decision to place him on paid administrative leave because of reports of co-workers that he had exhibited behavior that was hostile, threatening and irrational had been denied on January 14, 2008 and pursued no further. The grievance that challenged the August 14, 2008 directive that he was required to submit to further psychiatric evaluation with Dr. Scaramella or face termination had been filed but not acted upon. Contrary to the Appellant's assertion that these grievances were "pending" at the time of his termination, the record establishes that these grievances, together with the issues they raised, were simply never heard. According to Mr. Ciprian's testimony they were held in abeyance without his consent. If such was the situation, the collective bargaining agreement provided him with a remedy-proceeding to the next level of the grievance procedure and ultimately to arbitration of these issues.

The objections that Mr. Ciprian raises at this hearing to explain and excuse his noncompliance with the directive to complete his evaluation are the same objections that he raised in the grievance process. The Appellant initially sought a remedy for an evaluation process that he claimed had been prejudiced against him under the provisions of the collective bargaining agreement. There is no evidence that this grievance was ever pursued. The record contains scant evidence of any agreement that it would be held in "abeyance". According to the collective bargaining agreement, Mr. Ciprian has waived these claims.

Mr. Ciprian took no other steps to resolve the issue of the fairness and validity of his fitness for duty evaluation. He did file lawsuits and complaints, but none of them raised issues related to the evaluation process. If raised and pursued either through the grievance process or in an appropriate forum, these issues would have been resolved in a timely manner. By a "timely manner" we mean before the Providence School Board took final action on his termination. By the time the full Board met on September 21, 2009 to consider the issue of his termination- some eleven (11) months after it initially voted to terminate- there should have been some action on the part of the Appellant to press his claim of legal defects in the process the School Department was requiring him to follow. The Appellant has, in our opinion, waived these issues by his inaction and cannot reassert them at a hearing on whether just cause supported his termination.

If the Appellant did not waive the right to raise issues with respect to the fairness of the evaluation process, we find that the issues he has raised at this hearing do not excuse his refusal to complete his evaluation by Dr. Scaramella. It is unfortunate that the district included in the packet of information provided to the doctor references to the incidents that occurred in 2005. These matters had been resolved in Mr. Ciprian's favor in an arbitration decision several months previously and Mr. Ciprian explained this to the doctor. In fact, Dr. Scaramella's testimony indicates that he was sifting through the information that had been provided to him, noting Mr. Ciprian's corrections as he proceeded to discuss the issues at hand. Most significantly, the central issue in the evaluation, as described by Dr. Scaramella in his testimony, was to rule out any serious mental disorder that would have called into doubt Mr. Ciprian's fitness to serve as a teacher and coach. This required a discussion of "the letter," a discussion the Appellant declined to have at that time or at a subsequent meeting. This prevented the district from obtaining a determination of his fitness for duty. Mr. Ciprian's ongoing refusal to complete his fitness for duty evaluation thus constitutes good and just cause for his termination.

For the foregoing reasons, the decision of the Providence School Board to suspend and terminate Fermin Ciprian is sustained and his appeal is denied and dismissed.

For the Commissioner

Kathleen S. Murray, Hearing Officer

Deborah A. Gist, Commissioner

August 28, 2013
Date