

**STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS**

**COMMISSIONER OF
EDUCATION**

**RHODE ISLAND DEPARTMENT OF
ELEMENTARY AND SECONDARY
EDUCATION**

v.

CHRISTINE CLARKE

DECISION

Held: RIDE has proven that Ms. Clarke's fitness to teach cannot be determined without an assessment and treatment plan from a qualified health care professional. The documentation she has provided to RIDE's Office of Educator Quality and Certification to date does not answer questions about her fitness that are raised by conduct that occurred on February 11, 2014. Her teaching certificates are suspended until such time as she provides the necessary documentation to RIDE's Office of Educator Quality and Certification.

DATE: October 14, 2015

Travel of the Case:

On March 19, 2015, Ms. Lisa Foehr, Director of the Office of Educator Quality and Certification of the Rhode Island Department of Elementary and Secondary Education (“RIDE”) wrote to Ms. Christine Clarke advising her of two actions taken with respect to her educator certification. The first was renewal of her elementary and middle grades social studies certificates. This action was based on Ms. Clarke’s timely application and payment of the required renewal fees. The second action was notice of a recommendation to revoke Ms. Clarke’s certificates because she had failed to present a treatment plan that adequately addressed an incident that occurred on February 11, 2014. According to Ms. Foehr’s letter, the recommendation to revoke Ms. Clarke’s certificates was based on “cause” stemming from an incident that had occurred while Ms. Clarke was driving from Lincoln Middle School, where she is employed as a social studies teacher.

Ms. Foehr’s letter also notified Ms. Clarke that, under R.I.G.L. 16-11-4 and the Commissioner’s Rules Governing Annulment of Certificates, she had the opportunity for a hearing prior to the Commissioner taking any action on this recommendation. Ms. Clarke requested a hearing by email dated April 9, 2015, and the undersigned was designated to hear the matter on May 20, 2015. The case was heard on June 10, 2015. Ms. Clarke appeared *pro se*. The Office of Educator Quality and Certification was represented by its counsel. The parties requested the opportunity to submit written closing statements, a process which concluded on July 24, 2015.¹

Jurisdiction to hear this dispute arises under R.I.G.L. 16-11-4 and 16-39-1.

ISSUE

Has the Office of Educator Quality and Certification proven that “cause” for the annulment of Ms. Clarke’s teaching certificates exists?

¹ Counsel for the Office of Educator Quality and Certification objected to Ms. Clarke’s closing statement based on the fact that extensive portions of the statement were not based upon evidence admitted into the record at the time of the hearing. Ms. Clarke requested that this Objection be stricken because it was vague and overly broad. The hearing officer does not take closing statements (or opening statements) as evidence. To the extent Ms. Clarke’s arguments may rest upon facts that are not supported by evidence in the record, such arguments will be disregarded.

Findings of Relevant Facts:

- On February 11, 2014 at approximately 3:55 p.m., while driving from her place of employment, i.e. Lincoln Middle School, Ms. Clarke crossed the center line of New River Road in Lincoln, Rhode Island, narrowly missed a car coming from the opposite direction,² struck a mailbox and crashed into a snowbank on the opposite side of the road. At the time of the crash, Ms. Clarke had two empty vodka bottles in the front seat of her car, her speech was mumbled, her eyes were bloodshot, and she smelled of alcohol. RIDE Ex.2.
- A coffee mug in Ms. Clarke’s car was filled with a liquid that was later confirmed to be alcohol, according to a state laboratory toxicology report. RIDE Ex. 2.
- Ms. Clarke was arrested by the Lincoln Police Department and charged with a criminal misdemeanor, i.e. driving under the influence of liquor or drugs, first offense (R.I.G.L. 31-27-2). She was also charged with two non-criminal violations, i.e. Refusal to Submit to a Preliminary Breath Test (R.I.G.L. 31-27-2.3) and Refusal to Submit to a Chemical Test, 1st Violation (R.I.G.L. 31-27-2.1). RIDE Ex.2.³
- Ms. Clarke submitted an application for renewal of her teaching certificates to RIDE in May of 2014 and on her application revealed the fact that she had been arrested on February 11, 2014. She contacted RIDE in early August as her certificates were due to expire at the end of August, 2014. Clarke Ex. 4.
- In response to an inquiry from RIDE’s attorney on August 19, 2015, Ms. Clarke submitted a letter dated August 23, 2014 in which she stated that she had been stopped by the Lincoln Police on February 11, 2014 and charged “as indicated”. She stated that she had pleaded *nolo contendere* to a charge of reckless driving and that “all other charges were dropped”. RIDE Ex. 4.

² The car was being driven by a father with his two young daughters in the back seat.

³ Ms. Clarke’s Closing Statement refers to the expungement of a charge of reckless driving on May 9, 2015. There is no competent evidence in the record that Ms. Clarke was convicted of this, or any other, criminal charge. A letter from Ms. Clarke to RIDE’s attorney dated August 23, 2014 contains a statement that she pleaded *nolo contendere* to a charge of reckless driving and “all other charges were dropped”. RIDE Ex. 4.

- In her letter to RIDE’s attorney dated August 23, 2014, Ms. Clarke also described the specific actions she had taken since the date of the incident to improve and maintain her mental health. RIDE Ex. 4.
- Along with her August 23, 2014 letter, Ms. Clarke provided RIDE’s Office of Educator Quality and Certification with copies of two appointment cards, one listing several appointments with a behavioral health counselor and one an October 9, 2014 appointment with a physician. RIDE Ex. 4. She also submitted an April 17, 2014 letter from a physician who had provided inpatient care to Ms. Clarke from March 10, 2014 to March 17, 2014. This physician confirmed that upon Ms. Clarke’s completion of intensive outpatient treatment, she was “medically cleared to return to work at this time without restriction.” RIDE Ex. 4.
- Upon learning that no aftercare plan had been required by either the Court or the Police Department, RIDE’s attorney communicated with Ms. Clarke by email on September 3, 2014, indicating:

The Certification Office’s practice in cases involving these types of issues is to obtain or review an assessment performed by an appropriate person/organization and incorporate the recommended treatment plan as a condition to the educator’s certification. Do you have an assessment that we can review together? You can be represented by counsel and/or assisted by anyone of your choice in this process... Clarke Ex. 4.

- Prior to a meeting scheduled with RIDE for September 8, 2014, RIDE’s counsel requested that Ms. Clarke bring her “medical documentation” with her. When Ms. Clarke asked for a specific description of the medical documentation she should bring, counsel for RIDE replied in an email dated September 5, 2014:

The Certification Office’s goal in this process is to take the steps that will help ensure that the problematic conduct does not occur

again. RIDE is on notice that there is/was a problem and due diligence requires that we address it. We look for a documented diagnosis and treatment plan from the appropriate medical provider(s).

If either of those are (sic) not available, we get one. We build in review and monitoring stages where adjustments may be made over time. If the condition is resolved, we again revise the arrangement accordingly. So at our meeting, we will be starting this process and we will be looking for a documented diagnosis and treatment plan. If those do not exist, we will discuss a referral to get them. Hope this is helpful. Please let me know if you have any other questions. Again, you are free to bring whoever you want to this meeting. Clarke Ex. 4.

- In response to Ms. Clarke's request for an update on the renewal of her certification on October 6, 2014, counsel for RIDE replied on that same day, indicating "...You will be seeing Dr. Theresa on Thursday. Will she be doing an assessment and developing a treatment plan? As we discussed earlier, RIDE wants to have a treatment plan on record before we renew your certification." Clarke Ex. 4.
- Ms. Clarke replied on October 7, 2014 that her appointment with Dr. Theresa had been rescheduled for the first week in January, 2015. When advised that the renewal of her certification was dependent upon the submission of a viable treatment plan to RIDE, she wrote on October 14, 2014:

I submitted all requirements for certification renewal in May 2014. I received no information from RIDE. With my certification expiring the end of August, I contacted RIDE in early August having heard nothing in all those months. I was not contacted until a week prior to my certificate expiration. Thereafter, you have

continually asked for additional information and I have openly shared that information with you.

Since the incident, I have done everything reasonably expected and more to insure that there will not be a recurrence. To be frank, your inquiries are continually vague and open ended. Nevertheless, I have tried to comply with all your requests.

The uncertainty festered by your implied threats to not renew my certificate is very stressful. I just want to channel my energies into being the best person and teacher I can be...So, to close this out, please explain exactly what details you are looking for in a “treatment plan”. Clarke Ex. 4.

- On receiving this communication from Ms. Clarke, counsel for RIDE replied “I think it best that you obtain some legal representation. Please show him/her my September 5th email. Thanks.” Clarke Ex. 4.
- Ms. Clarke thereupon responded on October 19, 2014 that “legal representation is not necessary”. She sought to make sure that the anticipated January 8, 2015 appointment with Dr. Theresa and a “plan ultimately provided by Dr. Theresa” would “close this matter”. She pointed out that she had already submitted a physician’s note confirming that she was “medically cleared to return to work at this time without restrictions”. She referred to the emails from counsel for RIDE, stating that “none explain specifically what details you are requesting in such a plan.” Clarke Ex. 4.
- RIDE’s counsel’s response was by email the following day. “Once again, RIDE will need an assessment with a treatment plan. The assessment needs to have findings and a diagnosis. The plan needs to detail the treatment regimen. When do you think Dr. Theresa can develop a plan? Thanks.” Clarke Ex. 4.
- Ms. Clarke replied that she was scheduled to meet with Dr. Theresa on January 8, 2015 and that if she could get an earlier appointment due to a cancellation, she would let RIDE know.

- Counsel for RIDE indicated on October 22, 2014 that a January 8, 2015 appointment was not soon enough. He would ascertain what the deadline was and “get right back” to Ms. Clarke. Two weeks later, on November 7, 2014 Ms. Clarke submitted a note from a prior treatment provider dated November 3, 2014. The doctor’s note did not contain an assessment, diagnosis, or a treatment plan. Clarke Ex. 4. In her email submitting the doctor’s note to RIDE’s counsel, Ms. Clarke requested that he confirm that this documentation was sufficient and that her certification would be renewed promptly. Clarke Ex. 4.
- The Director of the Office of Educator Quality and Certification, Lisa Foehr, wrote to Ms. Clarke on November 24, 2014 “What you provided is sufficient for the development of a plan with the certification office. We will provide something for your review following the Thanksgiving holiday.” Clarke Ex. 2.
- Apparently unaware of the previous communication from Director Foehr,⁴ counsel for RIDE wrote to Ms. Clarke on January 20, 2015 requesting a brief report from Dr. Theresa with regard to Ms. Clarke’s treatment as of January 8, 2015. Ms. Clarke, justifiably confused, referred him to the November 24, 2014 communication from Ms. Foehr. Based on that communication, Ms. Clarke understood that the information she had provided “was sufficient for the Board to act” to renew her certification. In her email dated January 24, 2015 Ms. Clarke also indicated that she had in fact met with Dr. Theresa as scheduled on January 8, 2015 and could provide “another letter similar to those previously submitted”. Counsel for RIDE responded “We are in agreement as to your last point: your certification is contingent upon receipt of a satisfactory report from Dr. Theresa.” Clarke Ex.2.
- On February 13, 2015 Ms. Clarke submitted a letter from Dr. Teresa.⁵
- The letter consisted of three sentences: “(Ms. Clarke) is a patient under my care. She attended an initial intake appointment on January 8, 2015. Thank you for your attention.” RIDE Ex.4.

⁴ Counsel for the Office of Educator Quality and Certification was not copied in on the November 24, 2014 email from Director Foehr to Ms. Clarke. He was also not copied in on the subsequent request from Ms. Clarke to Ms. Foehr for an update on December 19, 2014. Clarke Ex. 2.

⁵ Throughout their communications, the parties referred to “Dr. Theresa” rather than “Dr. Teresa”.

- Upon his receipt of this letter from Dr. Teresa, Counsel for RIDE emailed Ms. Clarke that it provided no additional information (on her diagnosis or treatment plan). Joint Ex. A.
- Ms. Clarke followed up by email on March 2, 2015. She pointed out that she had provided correspondence “deemed sufficient in November 2014 for the Board to take action”. Nevertheless, she had supplied the additional letter from Dr. Teresa “similar to those provided from other doctors, as promised.” She requested that the Board take action (to renew her teaching certificates) on the documentation provided to date. Joint Ex. A.
- On March 3, 2015 Ms. Foehr wrote a lengthy email to Ms. Clarke which summarized RIDE’s position. She advised Ms. Clarke that the incident in which she had been involved could have bearing on her future certification status. In an attempt to resolve the situation informally, her office had made several requests for detailed information. After summarizing the information received, Ms. Foehr reiterated the request for specific information that had been made by RIDE’s counsel on October 20, 2014: “an assessment with a treatment plan. The assessment needs to have findings and a diagnosis. The plan needs to detail the treatment regimen.” Ms. Foehr’s communication confirmed that the documents provided by Ms. Clarke to date did not meet the description provided in the October request nor did it provide the information Ms. Foehr herself required to renew Ms. Clarke’s certification.⁶ Joint Ex. A.
- Director Foehr also indicated in her March 3, 2015 email that if the detailed information requested were provided, she could “move forward with a review of the information in order to make a determination about your certification status.” Lastly, this communication notified Ms. Clarke that if she were unable or unwilling to provide the information, RIDE would move ahead through a more formal process of dispute resolution...” Joint Ex. A.

⁶ If it had not previously been addressed, this clearly countermanded Ms. Foehr prior miscommunication that the documentation supplied by Ms. Clarke as of November 24, 2014 was “sufficient” for the development of a plan with the Certification Office.

- Thereafter, on March 19, 2015 written notice was issued to Ms. Clarke of the renewal of her teaching certificates and of the recommendation that these certificates be revoked for “cause” pursuant to R.I.G.L. 16-11-4. RIDE Ex. 1.

Positions of the Parties:

Christine Clarke

In her closing statement, Ms. Clarke seeks to contest some of the facts presented as part of RIDE’s case with respect to the February 11, 2014 incident. She argues that while she was involved in a collision with a mail box on that date, “[n]o other vehicle was involved and there were no injuries.” She contends that she “performed and passed all of the basic sobriety tests as requested by the Lincoln police officers”.⁷ She also maintains that the reason she slipped and fell as she exited her car that afternoon is that she was wearing leather boots and the ground was covered in snow. Although she acknowledges that the incident was serious, she views RIDE’s arguments as to its potential for disaster as “filled with speculation about what might have occurred.” In addition, she maintains that RIDE draws upon selected information from the police report to create “innuendos,” presumably referring to proof submitted by RIDE from which one would draw an inference that Ms. Clarke was driving under the influence of alcohol. She points out that, as of May 9, 2015, her criminal record was cleared of any charges.

Ms. Clarke submits that she understands the serious nature of her actions and that she has taken measured and deliberate steps to ensure that there will not be a recurrence. She describes in detail the treatment she has received and argues that she has worked on skills to help her feel better emotionally, deal with difficult, contentious and passively aggressive people, and move further along the road to change and recovery. She submits that she maintains her mental health through periodic counseling and psychiatric sessions and attends a variety of community group health meetings multiple times each week. In the documentation she has provided to RIDE is a letter from a doctor who treated her on an

⁷ This contention is contradicted by the police report of the incident. RIDE Ex.2.

inpatient basis. The letter confirms that upon her completion of “intensive outpatient treatment” Ms. Clarke was medically cleared to return to work without restrictions. This was in April of 2014. Implicitly, Ms. Clarke argues that this documentation should put to rest any concerns about her fitness to return to the classroom.

In her closing statement, Ms. Clarke points out that despite the fact that renewal of her teaching certificates was uncertain during the entire 2014-2015 school year, she nonetheless had a successful year and passed all of her evaluations. Furthermore, she has volunteered to transfer from her Grade 8 team to a Grade 6 team in order to remove herself from a team that had ostracized her since she joined it in 2007. This has provided her with a fresh start.⁸

It is Ms. Clarke’s position that a required disclosure of information concerning her diagnosis and treatment plan, as requested by RIDE, is a violation of her privacy rights. Her position in this regard has been confirmed by her own medical treatment providers, and is consistent with the advice of legal professionals whose opinions she has sought. She has tried both to protect her rights to confidential medical information and yet be transparent and constructive by continually providing information to RIDE, only to be told that she was missing the continually moving target.

In summary, Ms. Clarke argues that she recognizes the seriousness of the February 11, 2014 incident and has taken appropriate actions to ensure that it is never repeated. She has persevered and thrived in the classroom, even though she worked under a cloud of uncertainty during the past school year. Her consistent periodic healing activities have been documented throughout her efforts to describe her “treatment plan.” This information, together with the quality of her classroom teaching during the entire 2014-2015 school year, clearly should provide RIDE with the assurance that her “issue” or “illness” – whatever it may be- does not compromise her fitness to teach or pose a danger to the school or community at large.

If Ms. Clarke’s arguments are not found to have merit, then in the alternative she requests that the Commissioner clearly identify by way of example what details are

⁸ There is no evidence in the record concerning Ms. Clarke’s performance/evaluations during the 2014-2015 school year, or facts concerning her transfer to a different team at Lincoln Middle School.

required to ensure that the matter will be closed if more information is provided.

Ultimately, Ms. Clarke desires more than anything to continue to teach her students in a safe, nurturing, non-threatening environment.

RIDE

RIDE submits that on February 11, 2014 a disaster nearly occurred because Ms. Clarke was driving her car under the influence of alcohol. A father and his two young daughters who were in a car coming from the opposite direction on New River Road in Lincoln narrowly escaped injury. The cause of the near-disaster was Ms. Clarke, a teacher driving home from school at the end of a work day: more specifically, a teacher driving home from school with bloodshot eyes, mumbled speech, unsteady footing, and smelling of alcohol in an SUV containing two empty vodka bottles and a coffee mug with alcohol in it.

Ms. Clarke admitted at the hearing that she had an “underlying issue” and “an illness” but did not disclose, or provide medical documentation related to, this illness. The medical documentation she has provided to the Office of Educator Quality and Certification to date discloses that she was discharged from a one-week “program” at Butler Hospital on March 17, 2014; completed “intensive outpatient treatment” as of April 17, 2014; was attending “therapy biweekly for behavior management activities...(with) an appointment with (a doctor) every other month for medication management...while staying active spiritually and attending groups for coping skills” as of November 3, 2014; and became “a patient under (Dr. Mary Santa Teresa)” on January 8, 2015. (RIDE Ex. 4) This information is very general and fails to disclose the nature of Ms. Clarke’s problem and the details of the approach to resolve or manage it. Despite numerous requests from the Office of Educator Quality and Certification that she provide a medical assessment (including a history and diagnosis) and a treatment plan, Ms. Clarke has refused to provide this information. (Joint Ex. A). At the time of the hearing in this matter, Ms. Clarke stated that her “illness” and “hospital information” are private.

According to RIDE’s closing statement, the circumstances surrounding the February 11, 2014 incident are indeed serious. Furthermore, the fact that Ms. Clarke was driving

under the influence of alcohol on her way home from school directly implicates Ms. Clarke's professional fitness and place of employment, Lincoln Middle School. It is her burden to show that her "issue" or "illness" whatever it may be, does not compromise her fitness to teach or pose a danger to the school or community at large. Relevant information pertaining to unprofessional conduct by a public school teacher cannot remain "private" if the teacher wishes to remain certified. The Office of Educator Quality and Certification's duty of due diligence demands that it obtain appropriate assurances that Ms. Clarke's "issue" or "illness" has been appropriately addressed. Absent those assurances, RIDE cannot continue to certify Ms. Clarke as a public school educator. Absent a change of heart by Ms. Clarke, the Office of Educator Quality and Certification has no alternative but to request that all teaching certificates she currently holds be revoked for the cause set forth in RIDE Ex. 1.

DECISION

Based on the record created at the June 10, 2015 hearing in this matter, we find that RIDE has proven that cause exists to annul Christine Clarke's elementary grades and middle grades social studies (elementary extension) certificates.

Unlike a criminal case in which the burden of proof is "beyond a reasonable doubt" the burden of proof in cases involving the revocation of a teacher's certificate in Rhode Island is by a "preponderance of the evidence."⁹ RIDE Ex.2 establishes by a preponderance of the evidence¹⁰ that on February 11, 2014 Ms. Clarke was driving under the influence of alcohol on her way home from her place of employment, Lincoln Middle School. This conclusion is based on the information contained in the business records of the Lincoln Police Department that were submitted into evidence and inferences drawn directly therefrom. Driving under the influence of alcohol in Rhode Island is criminal conduct, albeit a misdemeanor. It is conduct that endangers the public safety and, when it occurs on

⁹ See the discussion of this issue in the Commissioner's August 3, 1995 decision in In Re: Teaching Certificate of Eugene C. Petty at page 7. Also see the cases cited in footnote 8 of this decision, Department of Education v. Sullivan, decision of the Commissioner dated June 9, 1992 and Lincoln School Committee v. Goodreau, decision of the Commissioner dated July 26, 1989.

¹⁰ In fact, this exhibit provides clear and convincing evidence, even though this standard of proof is not required in this case.

or near school grounds, the safety and welfare of the school community. When a public school educator drives under the influence of alcohol on her way home from school after completion of her teaching duties, with a coffee mug containing alcohol and two empty Vodka bottles in her car, there is a nexus between this misconduct and the teacher's fitness to teach. We do not mean to imply that driving under the influence of alcohol constitutes *per se* unfitness to teach. However, such conduct, standing unexplained under the circumstances here, requires that a determination of fitness be made by RIDE. Stated another way, RIDE is justified in conditioning Ms. Clarke's license to teach on its receipt of additional information.

The need for more information is all the more compelling when the teacher continues to maintain that RIDE's allegation that she was driving under the influence is based on "innuendo" and that the characterization of the incident as a near disaster is "filled with speculation about what might have occurred." Questions are raised here as to whether Ms. Clarke is in denial about the fact that she was driving under the influence of alcohol that day and whether she truly appreciates the seriousness of such conduct.

The record here establishes that since being made aware of the February 11, 2014 incident, RIDE staff have recognized that, as the licensing agency, RIDE must exercise due diligence to determine the circumstances attendant to Ms. Clarke's misconduct. Director Foehr and her counsel have responded on numerous occasions to Ms. Clarke's questions concerning this process. Both the process and the rationale behind it have been explained and presented to Ms. Clarke in writing.¹¹ They have explained that the request to provide RIDE with an assessment, including a diagnosis of what "illness" or "issue," if any, was attendant to the incident of February 11, 2014 is necessary for RIDE to fulfill its due diligence obligation. The request that a medical professional provide details concerning a treatment plan, if Ms. Clarke has an illness or condition that requires treatment, has been explained as well. At this point Ms. Clarke should understand that RIDE will incorporate

¹¹ The process of determining if a teacher is fit to continue to hold a teaching certificate is legal in nature. A hearing to consider a recommendation that a teacher's license be revoked is a legal proceeding. Both Ms. Foehr and counsel for RIDE suggested that Ms. Clarke obtain an attorney to represent her in this process. Ms. Clarke has chosen to proceed without an attorney, which is her prerogative.

any such plan into a formal agreement to monitor her progress and ensure student and staff safety.

On this record, we find that RIDE has proven that these are reasonable measures it consistently follows in dealing with school professionals when their misconduct may be due to a medical or health issue. On numerous occasions, RIDE has specifically and clearly outlined for Ms. Clarke what information is required. Although there was one inadvertent miscommunication to the contrary, Ms. Foehr has since clearly indicated that the documentation Ms. Clarke has provided to date is insufficient to meet these requirements.¹² It is our conclusion that privacy rights under these circumstances must give way to RIDE's compelling need to ensure that student and staff safety are not compromised. Without such information, we find that RIDE is justified in recommending that Ms. Clarke's teaching certificates be revoked. However, in the hope that Ms. Clarke will change her position and comply with RIDE's request, we modify this recommendation and order that Ms. Clarke's teaching certificates be suspended immediately. In order to apply for reinstatement of her certificates, Ms. Clarke will need to provide RIDE with the requested information and demonstrate to RIDE's satisfaction that any questions as to her fitness to teach have been resolved in her favor.

For the foregoing reasons, the teaching certificates held by Ms. Clarke are hereby suspended.

For the Commissioner,

Kathleen S. Murray,
Hearing Officer

Ken Wagner, Commissioner

Date: October 14, 2015

¹² At this point, Ms. Clarke's reliance on a single inadvertent misstatement by Ms. Foehr on November 24, 2014 that documentation was "sufficient" is simply not reasonable.