

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

Providence School Board

v.

Michael Dame

.....

**Rhode Island Department of
Elementary and Secondary Education**

v.

Michael Dame

.....

DECISION

Held: There is good and just cause for Mr. Dame's termination from his position as a tenured teacher. Proof submitted by the Providence School Board demonstrates, by a preponderance of the evidence, that he intentionally slammed a door on a student and induced the student to lie about how his injuries were caused. Cause also exists for the annulment of Mr. Dame's teaching certificate in that the Department of Education has demonstrated his professional unfitness. This finding is based on the same evidence submitted by the School Board proving the Department's assertion that Mr. Dame slammed a door on the student, seriously injuring him, used profanity in speaking to the student in front of the class and induced the student to lie about the cause of his injuries.

DATE: August 17, 2005

Travel of the Case

On May 26, 2004 Michael Dame appealed to Commissioner Peter McWalters from his termination as a tenured teacher in the Providence school department. A final decision by the Providence School Board had been issued on May 24, 2004. A de novo hearing before the undersigned, designated by Commissioner McWalters to hear and decide this appeal, was held on five dates over a four-month period beginning on August 26, 2004 and ending on October 29, 2004. Hearings on the termination appeal were consolidated with hearings on a recommendation made by the Department of Education that the Commissioner revoke the special-education teaching certificate currently held by Mr. Dame. Hearings were consolidated over Mr. Dame's objection because the hearing officer found that the facts in issue were substantially the same in both cases and administrative efficiency would be served without prejudice to Mr. Dame. The record in the cases closed on January 19, 2005 upon submission of briefs by the parties.

Issues:

- I. Is the Providence School Board's dismissal of Michael Dame supported by "good and just cause" as required by R.I.G.L. 16-13-3?
- II. Is there "cause" for the annulment or revocation of the teaching certificate presently held by Michael Dame?

Findings of Relevant Facts:

- Michael Dame is a tenured teacher in the Providence School Department where he has been employed as a special education teacher at Mount Pleasant High School since 1989. Tr. 158-159.
- On May 7, 2003 Mr. Dame was covering an Algebra class for a teacher who was absent. The class was in Room B-20 in the basement of Mount Pleasant High School and it was the second period of the school day. Tr.p.167.
- The class consisted of twenty-eight (28) students and on that date an additional student was in the classroom because he had cut his English class and gone to Room B-20. Finding that the class had a substitute, he remained for a "free period". Tr. p.170, 291-292.
- After passing out some paperwork, Mr. Dame sat at the teacher's desk, took out a newspaper and began eating. Tr.p.296, 366, 419 and 458.
- Most of the students in the class began talking, some in small groups; no instruction was taking place. Tr. pp. 292-296, 344, 365-366, 383, 418, 457 and 460.
- At some point several minutes into the second period, Student H (who had cut his English class) came to the open door of classroom B-20 and began talking and joking with his friends in the class. The noise level in the classroom increased. Tr. pp. 298, 383, 420 and 450.

- When Mr. Dame saw Student H at the door of the classroom, he got up from the desk, walked toward the door and said “Get the fuck out”. Student H. left the doorway, but remained in the corridor, chatting with another student. Mr. Dame returned to sit at the desk. Tr.pp. 298, 345, 455-456, 460 and 483¹.
- After finishing his conversation in the corridor, Student H heard his name being called by a student in B-20 and he again poked his head in the door and continued to talk and laugh with the students, again increasing the noise level in the classroom. Tr. pp.299-300, 305, 367, 383 and 460.
- Mr. Dame answered the telephone in the classroom and received information regarding a student’s request to see the school nurse. After conveying the message to the student that she should go to the nurse’s office, Mr. Dame became aware of Student H’s returned presence at the door and became angry. He quickly went to the door, and slammed it very hard, striking Student H in the head and causing him to fall onto the floor. Tr. pp.300-305, 367-372, 383-384, 462-465, 495, and 604.
- Student H was dizzy and his head hurt. He noticed he was bleeding and he admits to crying a “little bit”. Tr. 465-468.
- Mr. Dame asked Student H what had happened to him as he was lying on the floor. Student H responded that Mr. Dame had hit him with the door. Mr. Dame said nothing at that time and proceeded to assist Student H to the school nurse’s office. Tr. pp. 465, 602-603.
- On the stairs going up to the nurse’s office, Mr. Dame told Student H to say that he had hurt himself by slipping on water, stating that if Student H told that story, Mr. Dame would not turn him in for cutting class. Tr. pp. 466, 469, 516-517, 573-574.
- Student H told the school nurse that he had slipped and fallen on water outside of Mr. Dame’s room as Mr. Dame stood nearby in her office. Tr. pp. 52, 54-57. Student H repeated this story to hospital personnel who treated him, and to his mother because he was afraid of what would happen to him if he told the truth. Tr. pp. 470, 472, 481, 518, 526-527, and 615.²
- When he returned from B-20 to his own classroom on the second floor, Mr. Dame encountered his teaching assistant there and stated to him that he had slammed the “fucking kid’s” head in the doorjamb and made him bleed. Tr.pp. 132-133. He also stated to his teacher assistant that he had told the student to lie and say that he had slipped on water and hit his head on the floor. Tr. p. 134.
- Later that morning on May 7, 2003 (after Student H had left for the hospital) Mr. Dame went back to the school nurse’s office where he found her alone and stated to her “I got him good”, using an expletive, demonstrating how he had slammed the door on Student H and stating “I slammed the door”. Tr. pp.61-62.
- Student H received injuries to his face and the back of his head. He was driven to an emergency room where xrays were taken and staples were used to close the wound on the back of his head. He missed several days of school. Tr.pp. 471-473, 611-613.

¹ Two female students testified that Mr. Dame told Student H to leave at this point, but did not describe the profanity he used . Two other witnesses, including Student H, described quite credibly and with conviction Mr. Dame’s use of profanity in a loud voice in front of the class.

² Student H. told school officials about a week later that Mr. Dame had seen him at the door of B-20, run toward the door and pushed it with all his strength, striking him in the face and head. Tr. pp. 474-475; PSB Ex. 8.

- When Student H returned to school about a week after the incident, he saw Mr. Dame at the stairwell. Mr. Dame laughed and asked if they were still friends. When Student H did not answer, Mr. Dame gave him a dollar from the pocket of his shirt. Tr. pp. 476-477.
- Prior to his termination, Mr. Dame had not been disciplined by his employer for any prior misconduct.³

Positions of the Parties

Providence School Board

In its memorandum, the School Board focuses on the facts of the incident and the testimony of several witnesses that Michael Dame intentionally and/or with reckless disregard for the student's safety, slammed a heavy classroom door on Student H, causing him to suffer significant injuries to his head. In addition to this egregious misconduct, Mr. Dame then conjured up a false story as to how Student H received his injuries and induced Student H to tell this lie when reporting the incident to the school nurse. These two acts of misconduct, taken together, are argued to constitute "cause" for his termination by the School Board. If Mr. Dame is not terminated, the Board contends, his continued presence in a school setting would put students at risk of physical and emotional harm.

Counsel for the School Board implicitly argues that the weight of the evidence of these facts is not a mere preponderance, but clear and convincing. She notes that in addition to the testimony of the victim, three student witnesses provided credible and consistent testimony that Mr. Dame slammed the door knowing that Student H was in the doorway and angry that Student H was causing disruption in the classroom by talking and joking with students in the room. Their account, not Mr. Dame's version of the events should be accepted. Mr. Dame's testimony that there was noise outside the door

³ Counsel for the Providence School Board sought to introduce evidence of several other instances of prior misconduct, including allegations of serious misconduct involving students. Evidently, these serious acts of prior misconduct had not resulted in prior disciplinary action by the Providence school department (Tr.pp. 236-237, 237-263) The proffered evidence was argued to prove Mr. Dame's motive and bias, and particularly his "intensified" motive to conceal the incident (and fabricate the "slipping on water" explanation) because he knew that his employer's past "leniency" and decision not to discipline him placed him on "thin ice with the school administration". See pages 14-17 of the memorandum of the Providence School Board. The excluded evidence was also argued to prove his lack of mistake, i.e. that closing the door on Student H. was not an accident. The hearing officer clearly stated her position that Mr. Dame's prior disciplinary history, including any written warnings, were indeed relevant and would be admitted. A ruling to exclude other evidence of "prior bad acts" was made. Extrinsic evidence of prior bad acts was determined to have insufficient probative value on the issue of intent, motive, or absence of mistake to warrant the extensive time entailed in receiving proof of the truth or falsity of these allegations. (Mr. Dame denied the allegations of prior misconduct at the time of hearing) Also, since the notice from the School Board setting forth the written charges against Mr. Dame did not include the prior misconduct, the prejudice to Mr. Dame that would result from admitting this evidence into the record was found to outweigh any probative value it may have had. See Tr. pp. 229-263. This ruling governed the submission of evidence at the hearing before the Commissioner's designee, and, if incorrect, will undoubtedly be raised on any appeal of this decision.

to the classroom and that this “din” was disturbing to him and his students as they attempted to do their work was not credible. It is inconsistent with the testimony of all the other witnesses who testified as to the circumstances of this incident. Mr. Dame’s testimony that he did not see Student H in the doorway when he closed it *to keep out the noise* was not credible, and was not consistent with the observations of the other witnesses. His argument that Student H’s injuries were the result of an accident should be rejected because the credible evidence shows that this was an intentional act.

Most convincing on the point of Mr. Dame’s intent, argues the School Board, are two facts: Mr. Dame’s attempt to “cover up” the cause of Student H’s injuries, by fabricating the story that he slipped on water and Dame’s admission (actually, his “boasting”) that he had “slammed the door” on Student H to both the school nurse and his teacher assistant. Mr. Dame also boasted to the teacher assistant that he had told the student to lie and say he had slipped on the floor and hit his head. Counsel notes that Mr. Dame did not even deny the encounter described by Student H as occurring about a week after the incident, in which he laughingly asked the student if they were still friends and gave him a dollar. Implicitly counsel argues that the money was an enticement not to continue to be “friends”, but to continue the lie about slipping on water.⁴

In light of the proof that Michael Dame acted willfully and/or with reckless disregard for the safety of this student, caused him serious injury, and then induced him to lie, the School Board submits that termination of Michael Dame is clearly warranted.

Rhode Island Department of Elementary and Secondary Education

The Department of Education submits that ample proof has been submitted of the misconduct alleged in the August 19, 2004 letter of notice to Mr. Dame⁵ and that this misconduct constitutes cause to annul his teaching certificate. The allegations contained in the Department’s August 19 notice (R.I.D.E. Ex. A) are that:

- Mr. Dame used profanity in telling Student H to leave the doorway of Room B-20 because Student H was creating a commotion in the classroom by talking and joking with his friends.
- When Student H failed to obey Mr. Dame’s command that he “get the fuck out”, and returned to the doorway continuing to contribute to a noise level Mr. Dame found disturbing, Mr. Dame saw Student H at the door⁶ went over and pushed it closed, causing the door to strike him on the head and cause him serious injury.

⁴ Counsel for the School Board reiterated her position that evidence of prior misconduct is proof of Mr. Dame’s lack of mistake, motive for fabrication and provided a factual basis for Student H’s fear of Mr. Dame. Arguments with respect to how such prior misconduct evidence *would* support the School Board’s case are included in the Board’s memorandum. As indicated in our findings of fact, this evidence was excluded. Therefore the arguments premised on such evidence are not summarized here and play no role in this decision.

⁵ Which was addressed to his attorney

⁶ The Department takes the position that Mr. Dame actually saw Student H at the door and heard the comments of the students that Student H had returned.

- Mr. Dame fabricated a cause for Student H’s injury and induced him to adhere to this lie in seeking treatment for his injuries and in reporting what had happened.

Counsel for the Department argues that a teacher who intentionally causes serious injury to a student is professionally unfit to hold a teaching certificate. Furthermore, the subsequent fabrication of a cause to cover up what he had done presents additional evidence of professional unfitness. Inducing the student to give this false account constitutes coercion and intimidation of Student H. It also jeopardized his receipt of appropriate treatment for his injuries. Mr. Dame’s closing of the door on Student H in the circumstances of this case, in and of itself, warrants the annulment of his teaching certificate. When considered with the other misconduct alleged and proven, annulment of his certificate is “imperative”, the Department submits.

Michael Dame

Counsel for Mr. Dame argues that this incident was an unfortunate accident that has been exaggerated over the passage of time and that the witnesses who testified against Mr. Dame are not telling the truth for various reasons set forth in his memorandum. He points out that Mr. Dame has an otherwise-unblemished disciplinary record in the Providence school department over the fourteen-year period of his employment as a special education teacher. While it is true that Student H was injured because Mr. Dame hit him with the door, Mr. Dame quickly sought to help him and get him to the school nurse for treatment as quickly as possible. This single accident does not rise to the level of just cause for his termination and under all notions of progressive discipline a lesser sanction would certainly be appropriate.

In support of the proposition that Mr. Dame did not intentionally strike Student H with the door of the classroom, counsel points out that criminal assault charges initially filed against Mr. Dame by the police were later dismissed. The dismissal of criminal charges, while not binding on the issue of intentional injury, should give guidance as to whether Mr. Dame intentionally injured Student H. Additional evidence of the absence of intent is Mr. Dame’s testimony that he was on the phone, heard more commotion from the corridor and the students in the classroom state “(Student H) is back”, but he never saw Student H at the door before he pushed it to keep out the noise. Memorandum of Mr. Dame at page 2, citing pages 189-199).

The witnesses who testified that Mr. Dame saw Student H prior to pushing the door closed are not credible, he submits. The principal witness, Student H is not worthy of belief because he is a disruptive student, does not respect his teachers or peers, and lied to cover up his discipline problems. Given this student’s poor character, and inconsistent statements concerning this incident, any reliance on his testimony would be misplaced.

It was he, not Mr. Dame who made up the story about slipping on water so that he would avoid being disciplined for cutting class on May 7th. In addition, the testimony of

the school nurse is not worthy of belief because of her prior inconsistent statements, and untruthful testimony she gave when she testified before the Providence School Board in this matter. Testimony from Mr. Dame's teacher assistant should also be discounted because he has also given inconsistent statements in this matter and has himself used foul language in speaking to students. Taking into account the entire record and evaluating the credibility of the witnesses, counsel argues that there is little evidence that Michael Dame acted intentionally in hitting Student H with the classroom door. The additional allegations that he induced to Student H to lie about the cause of his injuries and that he used profanity in telling him to leave the classroom are also unsubstantiated, it is argued.

On the basis of this record, the decision of the Providence School Board to terminate Mr. Dame should be overturned, and the request of the Department of Education to annul his teaching certificate should be denied.

DECISION

This case involves two matters which have been consolidated for purposes of hearing. For purposes of decision each case will be discussed separately, since the allegations of misconduct made by the Providence School Board and the Department of Education are somewhat different.

The School Board:

First, as to Mr. Dame's appeal from his termination, the allegations of the Providence School Board,⁷ as we understand them to be set forth in the August 8, 2003 notice from the School Department's director of human resources, are that Mr. Dame:

- had inappropriate physical contact with a student (slamming a door that struck the student's head)
- told the student to falsely report an accident at Mount Pleasant High School on May 7, 2003

These factual assertions have been proven by a preponderance of the evidence⁸ on the record at this hearing. When Mr. Dame forcefully closed the classroom door, it was to effectuate his prior direction to Student H that he should "get the fuck out". Persuasive evidence exists that Mr. Dame knew that Student H was in the doorway. In his own testimony, he stated that just prior to his closing the door, the students in the classroom stated "(Student H) is back" Tr. pp. 192-193. Other witnesses, including Student H,

⁷ Mr. Zimmerman's August 8, 2003 notice of the Superintendent's recommendation and reasons was referred to by the Providence School Board in its written decision of October 22, 2003 after its pre-termination hearing. The Board's reasoning and findings after full hearing are not stated in its May 26, 2004, but the Board "affirmed the recommendation of dismissal" based on its conclusion that "Mr. Dame's conduct and actions on May 7, 2003 more than adequately supports the recommendation to terminate his employment".

⁸ Although the burden of proof is a preponderance of the evidence, the weight of the evidence here would more accurately be described as "clear and convincing".

testified credibly and established Mr. Dame's awareness, recognition, anger and aggression as he approached the door and forcefully closed it on Student H. His contention that he did not see Student H before he closed the door did not ring true. Mr. Dame's testimony that he closed the door to keep out noise from the corridor was contradicted by the fact that the noise stemmed from inside, not outside, the classroom. Not one witness verified Mr. Dame's assertion that the students in B-20 were working and being distracted by noise from the corridor. It was clearly Student H, and his presence in the doorway, that caused Mr. Dame to close the door. It was this intentional act, and not an accident, about which he boasted to both his teacher assistant and the school nurse later that same day.

The allegation that Mr. Dame told Student H to lie about what had happened has also been proven by a preponderance of the evidence, in fact clear and convincing evidence. It is not just Student H's firm and convincing testimony on this point that is persuasive. Confirmation of this fact is found in the testimony of Mr. Dame's teacher assistant, to whom Mr. Dame clearly admitted what he had done shortly after the incident. It is improbable that a student's desire to avoid the penalty for cutting class would give him a motive to lie about such a serious incident observed by numerous other witnesses. This fact weighs against Mr. Dame's version of how and why the "slipping on water" story was created. Mr. Dame's attempt to conceal his misconduct by coercing Student H. to tell this lie, even though effective for only a short time, compounds the seriousness of this incident.

The intentional act of slamming a door on a student, and fabricating a lie to cover up this misconduct is just cause for Mr. Dame's termination. Even as a first offense, it is the type of conduct that is irremediable, and places students in harm's way. The School Board's decision to terminate is warranted given its obligation to protect students' welfare and safety.

The Department:

The revocation of Mr. Dame's teaching certificate is based on allegations that go beyond those supporting his termination. The recommendation of the Department of Education is based on Mr. Dame's:

- use of profanity and closing a door on (Student H), resulting in serious injury...on May 7, 2003 at Mount Pleasant High School, Providence, Rhode Island
- fabrication of the cause of the above-mentioned injury to (Student H) on May 7, 2003 and...subsequent inducement of (Student H) to adhere to the fabricated cause of the injury

Thus, the Department asserts that in addition to closing the door on Student H, and fabricating a lie to cover up his misconduct, Mr. Dame caused Student H serious injury, used profanity in telling him to get out of the classroom and later induced him to stick with the "slipping on water" story. As indicated in our Findings of Fact, Mr. Dame used profanity in telling Student H to leave the classroom. Student H's noisy interaction with students in the classroom does not excuse Mr. Dame's use of profanity. His use of this

language in front of an entire classroom of students is an indication of his lack of respect for students and demonstrates his professional unfitness.

The seriousness of Student H's injuries was not contested in this case. This dimension of Mr. Dame's misconduct adds to the gravity of the incident. The serious nature of the injuries, taken with the fabrication of their cause, created a greater risk to Student H's health and safety. This incident is an obvious breach of Mr. Dame's professional responsibility as a teacher.

Finally, as to the subsequent inducement of Student H to adhere to the fabricated cause of the injury—we understand this to refer to the occasion one week after the incident when Mr. Dame inquired as to whether he and Student H were "still friends" and gave him a dollar. It is clear that Mr. Dame sought to communicate to Student H that he should continue to lie about how he had been injured at a time when an investigation was ongoing and the truthfulness of the story was being cast into doubt by reports from the school nurse and Mr. Dame's teacher assistant. Encouraging a student to lie is in derogation of the explicit statutory obligation of teachers to "implant and cultivate principles of morality and virtue in the minds of students". (R.I.G.L. 16-12-3) The fact that Mr. Dame sought to have Student H. persist in the fabrication that he had slipped on water is evidence that Mr. Dame did not seek to implant and cultivate the basic principle of telling the truth. This misconduct confirms his unfitness to teach.

The allegations of cause to annul Mr. Dame's teaching certificate have been proven by clear and convincing evidence. The conduct of Mr. Dame demonstrates professional unfitness that is inimical to students' health, welfare and safety.

For the foregoing reasons, Mr. Dame's appeal from his termination is hereby denied and his teaching certificate is hereby revoked for cause.

For the Commissioner,

Kathleen S. Murray
Hearing Officer

APPROVED:

Peter McWalters, Commissioner

August 17, 2005
Date