

STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

.....

Charles Nelson

v.

Coventry School Committee

.....

DECISION

Held: Mr. Nelson has not demonstrated that his nonrenewal as principal of Coventry High School on April 28, 2004 was arbitrary, unreasonable, or unfair. The Coventry School Committee's decision was a reasonable exercise of its rights under Section 12 of its contract with Mr. Nelson which permitted nonrenewal with written notice from either party.

DATE: November 21, 2005

Travel of the Case

On May 6, 2004 an appeal was filed with Commissioner Peter McWalters on behalf of Charles Nelson. The notice of appeal alleged that the Coventry School Committee's April 28, 2004 decision terminating Mr. Nelson's employment as principal of Coventry High School violated his contractual and statutory rights. Through his counsel, he sought appropriate relief, including damages and attorney's fees under the Equal Access to Justice Act. The undersigned was designated by Commissioner McWalters to hear and decide this appeal. Hearings were scheduled by agreement of the parties and concluded on November 9, 2004. After receipt of the lengthy transcripts in this case, the parties submitted written memoranda, supplementing the arguments made orally at the conclusion of the hearings. The record closed on May 31, 2005 upon submission of the final reply brief in this matter.

Issues:

- ◆ Did Mr. Nelson have a three-year contract initially, or was his two-year contract automatically renewed for one additional "probationary" year under the provisions of Administrative Directive 4117, contained in the Policy Manual of the Coventry School Committee?
- ◆ Was the legal effect of the Superintendent's specification of performance-based reasons for nonrenewing Mr. Nelson's contract to require that the School Committee demonstrate "good cause" for his termination ?
- ◆ Was the Coventry School Committee's decision not to renew Mr. Nelson's contract arbitrary, unreasonable, or unfair ?
- ◆ Was the School Committee required to provide Mr. Nelson with a copy of the stenographic record at the conclusion of the first night of hearing before the Coventry School Committee ?

Findings of Relevant Facts:

- After a competitive selection process, Charles Nelson was chosen for the position of principal of Coventry High School and formally appointed to the position by the Coventry School Committee on May 21, 2002. Tr. Vol. III, pp. 13,19-20; App.Ex. M, May 22, 2002 letter from Robert J. Gerardi to Charles J. Nelson.
- Mr. Nelson entered into an Employment Agreement with the School Committee setting forth many¹ of the terms and conditions of his employment on May 21, 2002. S.C.Ex.1.

¹ Other documents applicable to the employment of the Principal are contained in Appellant's Ex.C, the Policy Manual of the Coventry School Committee. They are policy 2210 "Job Specifications/School Principal" and 4117 AD "Building Administrator Evaluation Instrument".

- There were discussions about the length of the term of Mr. Nelson’s contract, and because he considered the contract’s provisions for a two-year term with a one-year “rollover” to be tantamount to a three-year contract (and therefore acceptable to him), he and his family relocated to Coventry. His wife also gave up the position she held when the family moved to Rhode Island. Tr.Vol. III pp.21; Vol. IV, pp. 61-70.
- Mr. Nelson undertook his duties as principal of the high school on July 1, 2002. On October 21, 2002 the Superintendent sent a memo to all administrators, including Mr. Nelson, informing them that a new “administrator-directed evaluation” would be included as part of the district’s evaluation system. This additional evaluation was to be based on three goals developed by the administrator and approved by his/her supervisor. S.C.Ex. 3.
- Mr. Nelson responded on November 7, 2002 by submitting to Superintendent Kenneth DiPietro an outline of four goals and an action plan to accomplish these goals. S.C.Ex.4.
- At some point toward the end of May of 2003 Superintendent DiPietro met with Mr. Nelson to review his performance for the 2002-2003 school year. The evaluation focused on the criteria set by the district in an “Administrator Evaluation Form” and the goal-based evaluation utilized by the Superintendent. At the meeting, Superintendent DiPietro indicated to Mr. Nelson that his general performance for the school year 2002-2003 “met the standard” with some concerns noted at that time. With respect to his goal-based evaluation he “met the standard” as well. Tr. Vol. I, pp.13-16. S.C. Ex. 5 and 5a.
- Formal documentation of the May, 2003 performance evaluation conducted by Superintendent DiPietro was not generated until December of 2003². It was provided to Mr. Nelson, who signed it on December 12, 2003. The date of Superintendent DiPietro’s signature was not the date he signed it, but rather was intended to indicate that the evaluation “closed out” the school year ending June 30, 2003. Tr. Vol.I, pp.15-16; S.C.Ex. 5 and 5a.
- On or about June 20, 2003 Superintendent DiPietro and Assistant Superintendent Vincent Hawkins met with Mr. Nelson to discuss concerns related to Coventry High School as well as concerns regarding the performance of Mr. Nelson. A written summary of the performance-related concerns was provided to Mr. Nelson at the meeting. Tr. Vol.I pp. 17-18; S.C.Ex.10.
- The document summarized concerns related to Mr. Nelson’s performance in four specific areas. It gave examples or “evidence” of perceived deficiencies in each of these four areas. S.C.Ex.10.
- Assistant Superintendent Hawkins suggested, and Mr. Nelson agreed, that he would receive district support in his improvement efforts by attending a leadership training conference for principals at Harvard Graduate School of Education. Mr. Nelson attended this two-week conference in Cambridge, Massachusetts in the summer of 2003. Tr. Vol. I pp.18, 107-108;Vol.V p.87. S.C. Ex. 6.
- On February 26, 2004 Superintendent DiPietro notified Mr. Nelson in writing that he “intended to recommend the termination of your services as principal of

² The superintendent testified that over the summer his office was flooded and evaluation files had to be reconstructed.

Coventry High School by June 30, 2004”. With this notice the Superintendent also indicated that he wanted to meet with Mr. Nelson to discuss an attached “ follow up performance review” dated February 25, 2004 which summarized Mr. Nelson’s progress (or perceived lack of progress) toward resolution of the four areas of concern noted in the June 20, 2003 document. S.C. Ex.2.

- The February 25, 2004 performance review included the superintendent’s written recommendation that (the School Committee) “discontinue his service as principal of Coventry High School effective June 30, 2004” and noted that the principal’s contract provided for “termination with notice of either party and for cause”. S.C.Ex.2.
- Mr. Nelson declined to meet with Superintendent DiPietro since the Superintendent had already indicated he was making a recommendation that he be terminated. Tr. Vol.III pp. 180-181; Vol.IV pp.122-123, 148;Vol.V pp. 113-116.
- In a follow-up letter to Mr. Nelson dated March 12, 2004 Superintendent DiPietro wrote that after reviewing the situation, he had decided to recommend to the school committee that Mr. Nelson’s contract not be renewed beyond June 30, 2004, based on the reasons set forth in his February 26, 2004 letter and accompanying evaluation. The March 12th letter also informed Mr. Nelson of his procedural rights, including his right to be heard by the Coventry School Committee prior to its final decision. S.C.Ex.8.
- The Coventry School Committee held hearings on March 30, 2004 and April 6, 2004. At the conclusion of the April 6th hearing the Committee voted to approve the Superintendent’s recommendation not to renew Mr. Nelson’s contract. A written decision was signed by all members of the Coventry School Committee on April 28, 2004.³ S.C. Ex.14.
- In its written decision, the School Committee listed seventeen (17) findings of fact, and did not make findings with respect to many of the facts cited by Superintendent DiPeitro as support for his recommendation. S.C. Ex. 2, 8 and 14.
- The “concerns” identified by Superintendent DiPietro in his February 25, 2004 “Follow Up Performance Review” include Mr. Nelson’s (1) failure to follow protocol and directives, (2) bad judgments/poor decisions, (3) weak/counterproductive communication skills, (4) weak leadership.
- Mr. Nelson failed to follow certain directives of Superintendent DiPietro. In school year 2003-2004 he failed to consistently provide the Superintendent with copies of the list of absent students at Coventry High School when the absence list exceeded two pages. Tr.Vol.I pp.53, 97; Vol.III, pp. 119,128; Vol.IV, pp.123-125, 129-130. Mr. Nelson was unable to determine the purpose behind the Superintendent’s request, since he was already transmitting cumulative information on attendance to the central office, and had not received any follow-up on this information by the central office. Tr. Vol.III, pp. 119-137.
- Action plans to implement Coventry High School’s restructuring plan, approved by the School Committee in June of 2003, were not submitted within the time frame

³ The written decision indicates that the Committee voted to affirm the Superintendent’s decision not to renew Charles Nelson’s contract, but, consistent with R.I.G.L. 16-12.1-1 et seq. the vote was actually to approve the recommendation of the Superintendent.

established by Superintendent DiPietro. Tr.Vol.I, p. 51-53;Vol.II, pp.53-54; Vol. V, pp. 51-58, 125-131; S.C. Ex. 7; App. Ex. B.

- Mr. Nelson failed to comply with the directive of Superintendent DiPietro to notify him of every serious incident or injury at Coventry High School when he did not report an incident in which a student was severely cut and taken to the hospital. Tr. Vol. I, pp. 60-61; Vol. IV, pp. 112-120.
- Mr. Nelson failed to submit several of the evaluations for nontenured teachers by the deadline set by the district. Evaluations of the teaching performance of two of these teachers were also not performed in an appropriate manner. S.C.Ex.15, 16 and 17; Tr. Vol.I, pp.68-71, 109-120, 132-135; Vol.II, pp.78-88.Vol.IV, pp. 150,158-166, 180.
- Mr. Nelson did not follow the School Committee’s policy on “Student Attendance Expectations” (Policy 5113). This policy requires that the building principal or his designee send a written notice to parents whose children have exceeded fifty (50%) percent of allowable absences and is therefore in danger of denial of credit because of the failure to meet attendance expectations. He did not send out the notice to parents called for by the policy because of his opinion that the policy is invalid and that the sending of such notices is illegal. Tr. Vol.I, pp.63-65, 122-124; Tr.Vol.IV, pp. 35-42, 135-136, 140. S.C.Ex.11 The principal focused on other methods of increasing attendance at the high school which he found more effective. Tr.Vol.III, pp.112-114.
- In November of 2003 the district notified all principals that a standardized test (TerraNova) would be administered in reading/language arts in order to identify areas of weakness and improve student achievement and performance. Grade 11 students at the high school were to be included in this district assessment. Tr. Vol. I, pp. 61-63, 125-129; S.C. Ex. 18 and 19. Mr. Nelson objected to this testing, which he found to be repetitive, unrelated to the curriculum, and of doubtful validity and usefulness. He was concerned that the administration of the test would detract from upcoming state assessments which were more important and a better indication of how students at the high school were performing. Tr. Vol. III, pp. 185-190, 198.Vol.IV, p.30.
- Although he did cause the TerraNova tests to be administered to eleventh graders at the high school, he openly communicated his lack of support for the TerraNova testing. Tr.Vol.III, pp.185-186; 191-198; The results of the TerraNova test were not provided to teachers for their use in the classroom during the 2003-2004 school year.⁴ Tr.Vol.I, pp, 130-131;Vol. III, pp. 191-192; Vol.IV, p.23-26.
- During Mr. Nelson’s two years as principal at Coventry High School, overall attendance improved from eighty-seven (87%) per cent to ninety (90%) per cent. Tr. Vol. III, pp. 113-114, 146; App.Ex. D, E and F.
- In the two years Mr. Nelson served as principal of the high school, Coventry High School improved its state ranking from twenty-sixth (in the 2003 report) to fourth (in the 2004 report) on the chart showing a “value-added” perspective of grade ten

⁴ The Assistant Superintendent, Vincent Hawkins, testified that, through his error, Mr. Nelson was not notified that the test results were in, but that other representatives of the high school were given test scores. Mr. Nelson in his testimony confirmed that two representatives of the high school were provided with the results of the TerraNova testing.

performance. (Administrative notice of “Information Works” published by the Rhode Island Department of Education for years 2003 and 2004.⁵

- Charles Nelson’s performance in 2003-2004 was not formally evaluated pursuant to district criteria set forth on the “Administrator Evaluation Form” or the “Administrator Goals Evaluation Form” developed by Superintendent DiPietro. Vol.IV. p.50;
- At the completion of the first night of hearing before the Coventry School Committee, Mr. Nelson’s attorney requested that the Committee provide a transcript to him, at no cost. This request was denied. Tr.Vol.IV, pp.57-60.

Positions of the Parties:

Charles Nelson

The decision of the Coventry School Committee on April 6, 2004 to terminate the services of Charles Nelson as principal of the high school was not supported by just cause, argues the Appellant. Mr. Nelson’s initial engagement, despite some ambiguity in his contract, was for a three year period which began on July 1, 2002, and should not have ended, absent sufficient justification, until June 30, 2005. This was the understanding of the parties, counsel argues, even though this may not be clearly conveyed by the language of a document signed in haste. In reliance upon an initial three-year commitment from the Coventry School Committee, Mr. Nelson and his family relocated to Coventry and his wife gave up the position she held at that time. Given evidence of this three-year commitment, it is argued that the School Committee has the burden of proof and that it must prove that “just cause” existed for its decision to terminate Mr. Nelson as of June 30, 2004.

Even if persuasive evidence does not exist as to an initial three-year contract term, School Committee policy 4117 AD, which provides that Administrators shall be evaluated annually according to six criteria set forth on an administrator evaluation form, effectively extended Mr. Nelson’s contract for an additional year starting July 1, 2004. Mr. Nelson received a score of five (5.0) when evaluated by Superintendent DiPietro pursuant to this policy. According to Policy 4117AD a score of five entitles the administrator to a one-year renewal of his/her contract, albeit on a probationary basis. Since Mr. Nelson received his written copy of this evaluation on December 12, 2003, he takes the position that according to the policy, he was then entitled to renewal for the 2004-2005 year. Thus, a vote to end his employment as of June 30, 2004 was a “termination” requiring evidence of “just cause” under R.I.G.L. 16-12.1-2.1. Counsel submits that the evidence here does not rise to the level of just cause for termination.

A third argument is that once the Superintendent relied on performance-based reasons for the employment action being taken, the burden of proof became that of the school committee to establish just cause. The evidence presented by the school committee in this hearing may show professional “differences” between Mr. Nelson and

⁵ The full title of these annual public reports, also referred to as the “state report card” is “Information Works! Measuring Rhode Island Schools for Change.”

Superintendent DiPietro, but not cause for termination. Counsel notes that this was not a case in which the district merely expressed its belief that a better principal than Mr. Nelson was available, a reason which the Commissioner has found to be valid. The “we can do better” reason places no burden of proof on the school committee and requires that the nonrenewed educator prove that there is no basis in fact for the belief that a better-qualified educator could be recruited for the position. In this case, the notice from Superintendent DiPietro cited Mr. Nelson’s perceived professional inadequacies, and gave specific examples in each of four (4) areas of performance. It was only after the fact (at the time of hearing before the School Committee) that the reason of “belief that a more qualified candidate was available” was advanced as a reason for Mr. Nelson “nonrenewal”. Implicitly, counsel argues that this reason was belatedly advanced because it was clear that the reasons previously provided to Mr. Nelson in writing would not establish “just cause”, as required.

From a procedural standpoint, Mr. Nelson takes the position that the process followed by the Superintendent and the School Committee unlawfully abridged his rights. He received only one formal evaluation, not an annual evaluation as called for by School Committee policy. Although his receipt of his written first-year evaluation was delayed, it is the type of evaluation on which nonrenewal decisions must be based. During his second year the process was arbitrary. Mr. Nelson received the evaluation from the Superintendent indicating satisfactory performance on December 12, 2003, but a little over two months later Superintendent DiPietro notified him that his services were being terminated. Upon receipt of the February 26, 2004 letter from Mr. DiPietro indicating such action would be taken by June 30, 2004, Mr. Nelson assumed his termination was imminent. He saw no point in meeting with the Superintendent to discuss a decision that had already been made. His counsel argues in addition that the February 26th notice of termination did not adequately apprise Mr. Nelson of the reasons for his termination because it was ambiguous and, with respect to many of the allegations, based on hearsay. This defective notice ultimately hampered his ability to defend his contractual rights, and his reputation, before the School Committee and before the Commissioner.

Finally, as to procedural violations, Mr. Nelson’s attorney submits that under state law he was entitled to a copy of the transcript of the first hearing before the Coventry School Committee at no charge to his client. As a remedy for this violation, he seeks attorneys’ fees pursuant to the Equal Access to Justice Act, R.I.G.L. 42-92-1 et seq.

From a substantive standpoint, Mr. Nelson takes the position that the decision of the School Committee, was arbitrary and capricious. If the Committee is held to a standard of demonstrating just cause for Mr. Nelson’s dismissal, there is nothing which rises to the level of just cause. The factual record does not even establish many of the deficiencies claimed in the February 26, 2004 notice. Mr. Nelson’s performance, if fully and fairly evaluated pursuant to School Committee policy, would be found to be exemplary. He was especially effective in improving student attendance and performance on state assessments. Because the School Committee followed a flawed process, it did not receive an accurate picture of his performance. Its decision is thus arbitrary, unreasonable, and unfair. Mr. Nelson was an excellent principal whose contract should have been renewed.

Coventry School Committee

From the School Committee's perspective, it had a contractual right not to renew Charles Nelson's contract at the end of the 2003-2004 school year. In proceeding to make this decision, the Superintendent in good faith determined that Mr. Nelson was not the best person for the job, and that there would be other candidates for the position that would be a better fit for Coventry High School. This was not a decision the Superintendent reached hastily, but only after concerns were brought to Mr. Nelson's attention in a performance review and formal evaluation at the close of the 2002-2003 school year. Arrangements were made to help Mr. Nelson address these concerns in the summer of 2003 through his attendance at the Harvard principal's program. The improvement hoped for did not occur, other issues developed, and it was clear by February of 2004 that the Superintendent would be recommending Mr. Nelson's nonrenewal to the Coventry School Committee.

The fact that Superintendent DiPietro provided Mr. Nelson with a written list of all the reasons he had for believing that he was not the best person to fill the principal's position does not make this a case in which the School Committee must establish that "just cause" exists for his nonrenewal. This is still a case of nonrenewal and is governed by the legal framework established in Jawor v. Bristol/Warren Regional School District, decision of the Board of Regents dated December 2, 1996. The Jawor decision indicated that nonrenewals of administrators would be held to a standard "akin to that of the non-renewal of a non-tenured teacher". Applying this standard, the School Committee's decision was reasonable, since there was a sound basis for Superintendent DiPietro's belief that he could find a better administrator to fill the position of principal.

Counsel for the School Committee discounts the other arguments that Mr. Nelson raises to transform this case into a "termination" and one in which the School Committee has the burden of establishing just cause. Clearly, the contract was for an initial term of two years, after which time there was only the possibility of renewal on an annual basis. Despite Mr. Nelson's claim that there were discussions of a three-year contract term, and an understanding reached on this point, the two-year term is what is contained in the contract. This provision is binding upon both parties. The claim that the score Mr. Nelson received on the December 12, 2003 evaluation (5 out of a possible 12⁶) qualifies him for an automatic, one- year renewal of his contract is also disputed. According to the School Committee the administrative directive on which this argument is based (4117 AD) is not a policy of the School Committee, but only a non-binding administrative directive issued by the Superintendent at that time (1999). In any event, the terms of the contract supercede any inconsistent language contained in school policy.

The reasons advanced by the Superintendent and the School Committee for non-renewal of Mr. Nelson's contract have been substantiated by the evidence. Not only are the reasons supported in fact, but they are not trivial and are all school-related. Counsel

⁶ Throughout the hearing, there appeared to be no dispute that Mr. Nelson received a score of 5 on the Administrator Evaluation Instrument. If one counts the designation "n/a" for "Multicultural Awareness" as meeting the standard, then this would in fact be accurate.

argues that Mr. Nelson seeks to trivialize all of Superintendent DiPietro's criticisms, but yet it is clear that they support his good-faith belief that better people were available to meet Coventry High School's needs and to function as part of the district's administrative team.

As to the claim that the School Committee was obligated to provide Mr. Nelson with a free, expedited copy of the transcript following the first night's hearing, counsel for the Committee notes that there is no authority for this proposition, statutory or otherwise. Noting the differences in the teacher tenure law, which requires that a complete record of the hearing be furnished to the teacher involved, there is no corresponding language in the School Administrators' Rights statute (R.I.G.L. 16-12.1-1). This statute requires only that the complete record of the school committee hearing be kept and forwarded to the Commissioner in the event of an appeal. In this specific instance, as well as in the overall process utilized with respect to Mr. Nelson's non-renewal, the process was fair and in compliance with the statute.

DECISION

We uphold the decision of the Coventry School Committee to non-renew the contract of Charles Nelson for the year 2004-2005. It is clear from the factual findings in this case that the nonrenewal decision of the Committee was reasonable. The April 28, 2004 written decision of the Coventry School Committee (S.C.Ex. 14) cites several findings and conclusions reached by the Committee. The record on appeal at the Commissioner's level establishes the facts on which the School Committee relied in determining that it would exercise the option not to renew Mr. Nelson's contract. Although we may not agree with all of the conclusions reached by the School Committee with respect to these facts, they do establish that Mr. Nelson failed to follow protocol and directives of the School Committee and Superintendent and that this happened on more than one occasion. The failure to follow protocol and directives, especially those designed to implement initiatives of the Superintendent and policies of the School Committee is a legitimate reason for non-renewal. It is clearly related to the education process. It is not trivial and establishes the reasonableness of the action taken by the Coventry School Committee.

The other conclusions reached by the School Committee⁷ with respect to Mr. Nelson's exercise of judgment, weak communication skills and weak leadership are not the same conclusions we would reach based on this evidence. On this record, we would conclude that there was a lack of follow up on important details of school administration. Mr. Nelson's resistance to administrative directives, especially with respect to the standardized testing and the implementation of the policy on excessive absences⁸

⁷ In its April 28, 2004 decision in Paragraph 8 the Committee notes that the Superintendent testified regarding his observations of Mr. Nelson's exercise of bad judgment, poor decisions, weak/counterproductive communication skills and weak leadership. Implicit is that the School Committee agreed with Superintendent DiPietro's conclusions.

⁸ The wisdom of both of which he questioned as an educator

demonstrated his attempt to exercise his own leadership, rather than to follow the decisions of his supervisors. Unfortunately, his position as principal called for a certain amount of team support and required that he question these policies and decisions in a more professional way. The prerogative of the Superintendent and the School Committee was to employ a principal who not only shared their priorities for Coventry High School, but who was willing to follow direction on how these priorities were to be accomplished.

We are unpersuaded that Mr. Nelson had a three-year contract initially, or that his December 12, 2003 evaluation by Mr. DiPietro extended his contract for an additional year. The language of the contract is unambiguous with respect to the two-year term. The evaluation was an assessment of his performance for the year ending June 30, 2003. He was not evaluated again, according to the School Committee's criteria and instrument (and, more important to the argument Mr. Nelson advances, the scoring system) during the second year of his two-year contract. If he had been so evaluated and received a score which qualified him for automatic renewal, his argument would have more merit. He was not "terminated" and was not entitled to proof of just cause to support the Committee's decision.

The process followed in effectuating Mr. Nelson's nonrenewal was flawed, but not to the extent that his rights to due process, or his statutory rights under R.I.G.L. 16-12.1 et seq. were violated.

First, with respect to notice of what action was being contemplated by Superintendent DiPietro, on February 26, 2004 the Superintendent indicated his intent to recommend the *termination* of his services as principal *by* June 30, 2004. The same letter (S.C.Ex.2) notes that "with advanced (sic) notice of either party and/or for cause the contract can be terminated". The attached "performance review" contained a recommendation to "discontinue his service as principal of Coventry High School effective June 30, 2004". It was not until a later communication, dated March 12, 2004 (S.C.Ex.8) that Mr. Nelson was notified that the recommendation would be that of nonrenewal, rather than termination. It was at this point that the action being contemplated was clarified sufficiently to comply with due process, and the notice requirements set forth in R.I.G.L. 16-12.1-3. Prior to that point, the language used by the Superintendent, especially references to the contract's provision for termination "for cause" failed to adequately notify Mr. Nelson as to what action was being taken. The March 12, 2004 letter satisfied this requirement by clearly notifying him that the recommendation was for nonrenewal of his contract.⁹

Section 16-12.1-3 requires that the administrator be provided with:

a concise, clear, written statement...of the bases or reasons
for the suspension, dismissal or nonrenewal

⁹ We reject the argument that ongoing reliance on the performance-based reasons cited in the Superintendent's February 25, 2004 "performance review" transforms Mr. Nelson's nonrenewal into a termination. These are simply the performance-based reasons on which the Superintendent continued to rely in making his nonrenewal recommendation.

Mr. DiPietro's March 12, 2004 notice of nonrenewal incorporates the reasons stated in the February 26, 2004 letter and accompanying performance evaluation. The letter states that the recommendation is "based on (Mr. DiPietro's) review of (Mr. Nelson's) limited progress towards resolution of concerns identified last June" (S.C.Ex.2). The last paragraph mentions deficient "leadership skills". The attached performance review includes a two-column list of summary concerns identified on June 20, 2003 (the left column) and on February 25, 2004 (the right column). While it is clear that the same four ongoing areas of concern were at issue, it is not clear from the notice whether the "examples of evidence" cited on both dates would be at issue in the hearing. Mr. Nelson was therefore required to prepare to rebut all of the examples – or evidence – contained in the attachment. It would appear from the findings and conclusions of the Coventry School Committee that their focus was on the "evidence" cited in the February 25, 2004 performance review.¹⁰ The hearing at this level was not restricted and the record here includes testimony with respect to evidence cited in both reviews.

Although counsel for Mr. Nelson raised the issue of the general vagueness of the notice, especially with respect to certain incidents cited in the 2004 review, he was fully prepared to rebut the allegations contained in the entire document. We thus find no evidence of prejudice resulting from the ambiguity as to whether all of the "examples" would be presented or just those referenced in the February 25, 2004 performance review.

The notice to Mr. Nelson could have been more concise with respect to the reasons for the Superintendent's recommendation. In addition to identifying four "areas of concern", there are numerous examples provided in each of the four areas.¹¹ The "kitchen sink" approach utilized by Mr. DiPietro brought into issue what would appear to be almost every point on which a principal and a superintendent could potentially disagree.¹² With respect to Mr. Nelson's argument that the notice was legally defective, we find that it sufficiently notified him of all of the matters that the Superintendent sought to place before the School Committee as evidence. The examples relied on in the April 28, 2004 School Committee decision are much more limited than those identified for the Superintendent's recommendation. In our de novo review, the grounds referenced here have been limited to those relied on by the Coventry School Committee.¹³ Given that the grounds stated in the notice went well beyond these reasons, the notice to Mr. Nelson was legally adequate.

Although it is troubling that Mr. Nelson was not evaluated pursuant to School Committee policy according to the criteria established by the Committee, and that such an evaluation played no part in the School Committee's decision on renewal of his contract, there is still sufficient evidence in this record that the Committee's decision was

¹⁰ The Committee did, however, add as a basis for its decision on nonrenewal the opinion of Superintendent DiPietro that he could find another person who could do a better job for the district and be a better fit for Coventry.

¹¹ And, the document notes at the end that this is just a "partial list."

¹² The clash of administrative authorities was evident from matters of general educational philosophy down to daily administrative details.

¹³ We have not considered a ground which was the only ground possibly omitted from Superintendent DiPietro's notice- his opinion that a better – qualified candidate was available to fill this position. This reason, relied on by the School Committee was not included in the February 26, 2004 notice.

reasonable. In some cases procedural irregularities may skew the decision making process to such an extent that it works for an arbitrary and unfair decision. Based on this record it has not been shown that the School Committee's decision would have been altered, or rendered unreasonable, by an evaluation for year 2003-2004, even if such evaluation had contained the positive evidence of his performance which has been placed on the record in this hearing.

For the foregoing reasons, Mr. Nelson's appeal from his nonrenewal by the Coventry School Committee is denied.¹⁴

Kathleen S. Murray, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

November 21, 2005
Date

¹⁴ We should note that we have found no merit to the argument that his procedural rights were further violated when he was denied a copy of the transcript following the first night of hearing by the School Committee. The authority cited for this proposition does not support this position.