

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

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Kelly McKenney

Vs.

Barrington School Committee

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**DECISION**

The appellant in this matter is a tenured teacher who has been dismissed from her employment by the Barrington School Committee. The appeal is denied and dismissed and an independent decision is hereby made that the Appellant has been dismissed for good and just cause from her position as a teacher in the Barrington School System.

DATE: August 28, 2013

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

Kelly McKenney (hereafter “McKenney”), the appellant in this matter, is a tenured teacher who has been dismissed from her employment by the Barrington School Committee (hereafter “Barrington”). Jurisdiction to hear this matter is present under R.I.G.L. 16-39-1, R.I.G.L. 16-39-2 and R.I.G.L. 16-13-4 (a).

## **Positions of the Parties**

### **The Barrington School Committee**

Barrington alleges that good and just cause exists for dismissal of the appellant in that:

1. In January 2011, McKenney posted a “study guide” on her portion of the school website that provided such particularized direction about a forthcoming examination that it compromised the integrity of the examination. Thereafter, on or about January 26, 2011, she, in a meeting with the school principal, defended her actions in a manner that was dishonest.
2. On June 17, 2011, she assisted two students by coaching them to respond with the correct answers on a World History final examination. While doing so, she left several other students in another portion of the building unattended and without appropriate supervision.<sup>1</sup>

### **The Appellant Teacher**

With regard to Barrington’s allegations, the appellant teacher contends that:

1. There was no policy in the School District forbidding a teacher from preparing his/her own Power Point presentation to assist students for examinations. Nor had McKenney ever been advised in writing or orally that she was not permitted to prepare such a presentation. She prepared the presentation over the summer before the start of the school year because it was her first year teaching this particular history course. She went through the core syllabus and the textbook and culled out key points in the curriculum, which was the process utilized in preparing the mid-term examination. However, she noted that she had not even seen the midterm examination at the time she prepared the Power Point. The District permits the posting of information related to class work such as Power Points, directions, and project guidelines. All students in Barrington enjoyed access to the website where McKenney posted the Power Point presentation in advance of the midterm examination.
2. The coaching she provided to the two students taking the final examination did not equate by any standard to cheating and, in fact, she reasonably believed such coaching to be required by School Committee policy.

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<sup>1</sup> Joint Exhibit 1.

## **Findings of Fact**

1. Kelly McKenney, the appellant teacher, became employed as a teacher by the Barrington School Committee in September of 2002.<sup>2</sup>
2. She spent the next ten years in the Barrington School District teaching United States and World History courses to high school students. She earned top evaluations for her teaching and incurred no disciplinary record.<sup>3</sup>

## **THE STUDY GUIDE**

3. During the 2010-2011 school year, there were ten members of the Social Studies Department at Barrington High School. Geri McCarthy was head of the Department. Kelly McKenney was a member of this department and served as a social studies teacher.
4. Team leaders in the department would use common planning time and other professional time to facilitate the development of common assessments and common review guides. Teachers would work cooperatively to develop common review guides.
5. Members of the social studies department prepared a United States History midterm examination that was to be administered in January of 2011.<sup>4</sup> A review guide for this examination was prepared and distributed to students one week before the midterm examination.<sup>5</sup>
6. On or about January 25, 2011, a team leader in the Social Studies Department was advised that Kelly McKenney had posted a study guide for this examination in the form of a power point document that McKenney herself had prepared, and that this study guide had been placed on McKenney's portion of the school website.<sup>6</sup> All students at the high school would have had access to this material. Members of the team do not typically outline or direct the instructional practices that a teacher uses to prepare students for examinations.
7. Team members felt that this study guide was too specific in pointing out answers to questions that would be on the examination.<sup>7</sup> Geri McCarthy, the chairperson of the social studies department, was notified about this study guide and the concerns relating to it. On the date of the examination, McCarthy and another teacher approached Mr. Hurley,

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<sup>2</sup> Tr. Vol. II, page 145, line 22.

<sup>3</sup> Tr. Vol. II pg. 147-148, Petitioner's Exhibit C.

<sup>4</sup> School Committee Exhibit 3.

<sup>5</sup> School Committee Exhibit 1.

<sup>6</sup> School Committee Exhibit 2.

<sup>7</sup> Tr. Page 36. Tr. 5.

the principal of the school, to share their concern that this power point study guide undermined the examination. These concerns were summarized in a document submitted to the principal.<sup>8</sup>

8. Some team members wanted to void the examination as a result of the dissemination of this power point study guide, but a decision was made to uphold the results of the examination.<sup>9</sup>
9. After the examination McKenney submitted a copy of the study guide that she had prepared to Mr. Hurley.<sup>10</sup> The study guide contained some immaterial differences between what was submitted to the principal and the study guide that McKenney actually posted on the school website.
10. There are no written rules or regulations about the dissemination of materials by teachers for use by students in preparing for examinations.
11. The policy of the Barrington School Committee is that teachers should function as part of a professional learning community (PLC) that, inter alia, requires teachers to take a collaborative approach to teaching and the development of assessments and evaluations.<sup>11</sup>
12. No discipline was imposed concerning this matter at the time, and McKenney simply received a letter indicating that study guides should be prepared in a collegial fashion.
13. The study guide that McKenney prepared was too specific in its coverage and that this specificity in coverage contradicted the academic premises upon which the official study guide was based. Nonetheless, McKinney's actions are not found to be malicious or insubordinate since teachers had been permitted to take their own approaches in preparing their students for examinations. Furthermore, there were no guidelines prohibiting what McKenney did here.
14. The record shows that McKenney submitted to the school principal a copy of her power point study guide which varied marginally with redactions at several sections from the study guide posted on the school website. A computer analysis showed that it was likely that these changes to this document were made after the examination and on the day she presented this slightly redacted version of the power point study guide to the principal. Though raising concern, these minor changes do not reasonably lead to the conclusion that McKenney was trying to deceive the principal about the fundamental content of the power point study guide posted on the school website.

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<sup>8</sup> School Committee Exhibit 4.

<sup>9</sup> Tr. Page 68.

<sup>10</sup> School Committee Exhibit 7.

<sup>11</sup> Tr. Page 79.

## THE MAKEUP EXAMINATION

15. On June 17, 2011, two of McKinney's students were taking a social studies makeup examination in the school library. McKinney, as permitted by school policy, was present to give encouragement while proctoring the examination to these students.
16. McKinney was so specific in the directions she gave to these students that her actions were equivalent to giving the students the required answers and therefore constituted cheating. Though there is much discussion on the record before us as to whether these students had personal literacy plans or 504 plans that would have justified providing extra help, as well as whether a draft policy requiring accommodations for all Barrington students was reasonably believed by teachers to be official School Committee policy,<sup>12</sup> these considerations are irrelevant. Whether accommodations were appropriate in this instance, the rendering of an accommodation could not properly be taken as permission to encourage and facilitate cheating. The question before us is simply whether McKinney fostered and facilitated student cheating on the examination in question.
17. McKinney testified in effect that she was interacting with these two students in a way permitted and encouraged by a School Committee policy and, moreover, that she was doing no more than clarifying and contextualizing the questions that the two students needed to answer.
18. Two other teachers present in the examination room saw matters differently. According to their testimony, they saw and heard McKinney coach and direct the students in a way that indicated the correct answer to some of the questions. The testimony was that at times she simply pointed to the correct answer, and one of these teachers testified:

*“[McKinney] would go through the question and would preface the prompt with context, like historical context about the question, and then they would go through the answer choices, and the student would guess, but when – if the student answered incorrectly the first time, she would nonverbally communicate that that answer was incorrect by inclining her head or raising her eyebrows, and they would go through each of the answers in that way until they guessed incorrectly it was narrowed down to two, and at that point, if the student had guessed correctly, there would be some affirmative body language, and if they guessed incorrectly, it would be either a nonverbal like well, you choose or she would say, you know, you decide.”<sup>13</sup>*

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<sup>12</sup> This document marked “draft” was submitted as the Appellant teacher’s Exhibit A.

<sup>13</sup> Tr. page 127.

19. We find that McKenney, perhaps out of misguided sympathy for the two students who were at academic risk if they failed the exam, facilitated and fostered through her actions student responses that undermined the academic integrity of the examination that the two students were taking.
20. McKinney was scheduled to teach an anthropology course at the time of the makeup examination and, rather than secure coverage for this class, McKenney emailed her superior to communicate that no coverage was necessary due to the fact that all the students were non-attending seniors. In fact some of the students were juniors who would be required to attend class and, as it turned out, McKenney herself secured coverage for the juniors in the class. Though the email may have been inaccurate, there was no intent to deceive and the juniors were subject to appropriate supervision.

### **Conclusions of Law**

This matter is before the Commissioner for a *de novo* decision as to whether good and just cause exists for the dismissal of the appellant tenured teacher.<sup>14</sup> The burden of proof is on the School Committee to establish by a preponderance of the evidence the existence of such good and just cause.<sup>15</sup>

### **Discussion**

1. We find that while the power point study guide was prepared in a way that was not supportive of the learning community philosophy of the Barrington school system, there was no wrongful intent on the part of McKenney to try to subvert this policy or to gain an unfair advantage for her own students who would be taking the examination. While McKenney's dissemination of this study guide properly called for corrective action by school authorities, the dissemination of this study guide alone does not establish good and just cause to terminate McKenney's employment. As indicated above, while we have concerns about the marginal changes to the power point study guide made before McKenney submitted it to the principal, these changes are not viewed as an attempt to intentionally deceive the principal about the import of the study guide as posted on the school website. Accordingly, we do not find good cause for McKenney's dismissal based upon this conduct.
2. We find that McKenney, perhaps out of misguided sympathy for the two students who were at academic risk upon failing the exam, facilitated and fostered through her actions student responses that undermined the academic integrity of the examinations being taken by the two students.

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<sup>14</sup> *Slattery v. Cranston*, 116 R.I. 252, at 263 (1976).

<sup>15</sup> *Audi v. Baillargeon*, 121 R.I. 455 (1979); see: R.I.G.L. 16-13-3.

3. While we are aware of McKenney's excellent record as a teacher and her devotion to the education of her students, we must conclude that her actions in undermining the academic integrity of a significant student evaluation establishes good and just cause in support of her dismissal as a tenured teacher.

**Conclusion**

This appeal is denied and dismissed and an independent decision is made that Appellant McKenney is hereby dismissed for good and just cause from her position as a teacher in the Barrington school system.

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Forrest L. Avila, Hearing Officer

Date: August 28, 2013

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Deborah A. Gist, Commissioner