

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

SAMUEL L. GUY,

Appellant,

v.

CHRISTINA SCHOOL
DISTRICT and the BOARD OF
EDUCATION OF THE
CHRISTINA SCHOOL
DISTRICT,

Appellee.

C.A. No. N10A-12-003

Submitted: June 17, 2011

Decided: August 8, 2011

*On Appeal from a Decision of the Board of Education of the Christina
School District*
AFFIRMED.

MEMORANDUM OPINION

Samuel Guy, Pro Se Appellant

James McMackin, Esquire, Morris James LLP, Wilmington, DE, Attorney
for the Appellee

JOHN A. PARKINS, JR., JUDGE

Samuel Guy, a mathematics teacher, appeals a decision of the Board of Education of the Christina School District (“Board”) terminating his employment. He claims the Christina School District (“District”) failed to provide appellant notice of the hearing resulting in his failure to appear. Because the Board relied on substantial evidence in finding proper notice was served to appellant’s last known address via certified mail, the decision of the Board is **AFFIRMED**.

I. FACTUAL AND PROCEDURAL HISTORY

Samuel Guy was a mathematics teacher at Bayard Middle School (“Bayard”) in the Christina School District. He is also a member of the Delaware Bar. On October 14, 2010 the District informed Mr. Guy of its intention to terminate his employment for neglect of duty as well as willful and persistent insubordination effective November 13, 2010.¹ Mr. Guy timely requested a hearing which the District received on October 29, 2010, and a Hearing Officer presided over an evidentiary hearing on November 17,

¹ 14 *Del. C.* § 1420 (“the board shall give notice in writing to such teacher of its intention to terminate the services of such teacher at least 30 days prior to the effective date of termination.”); *Id.* (“termination of any teacher’s services during the school year shall be for 1 or more of the following reasons: ...neglect of duty or willful and persistent insubordination.”)

2010.² In Mr. Guy's request for a hearing, he also requested that all future correspondence regarding the matter be directed to a P.O. Box in Wilmington, rather than his residential address.³ Mr. Guy was not present at the hearing. The evidence presented at that hearing is summarized below.

Notice

Josette Tucker, the Director of Personnel for the District, testified that on October 29, 2010, the same day the District received Mr. Guy's request for a hearing, notice was sent to his residence via certified mail.⁴ The notice, which included the date, time, and location of the hearing,⁵ was not returned undeliverable.⁶ Ms. Tucker presented evidence of the return receipt and tracking information.⁷ This address was also the address on file with the District up until and including the day of the hearing according to Ms. Tucker.⁸ In her testimony, Ms. Tucker stated all District employees are required to notify Human Resources of any address changes.⁹

² *Id.* (a teacher being terminated during the school year "shall be given the same opportunity to be heard and right of appeal as provided in §§ 1412, 1413, and 1414..."); *Id.* at § 1413(a) ("in the event that a teacher so notified shall within 10 days after the receipt of the written notice of intent to terminate services request in writing an opportunity to be heard by the terminating board, the board shall set a time for such hearing to be held within 21 days after the date of receipt of said written request...")

³ R. at 186.

⁴ R. at 7.

⁵ R. at 8.

⁶ R. at 191-92.

⁷ *Id.*

⁸ R. at 8.

⁹ R. at 7.

On November 12, 2010, three identical letters including the date, time and location of the hearing were sent to Mr. Guy by the District's attorney, James McMackin.¹⁰ The only variation among the letters was that two were sent to the P.O. Box listed in Mr. Guy's request for a hearing and one was sent to Mr. Guy's then-current address on file with the District.¹¹ One letter to each address was sent certified mail, and one of the letters to the P.O. Box was sent by U.S. Mail.¹² None were returned by the postal service as undeliverable.

Based upon testimony and evidence, the Board concluded District employees are required to update their address with the District, and the District had provided appellant with proper notice of the hearing at his last known address on file.¹³ The Board also found that further evidence showed the District provided additional notice to the P.O. Box although it was never required to do so.¹⁴

Neglect of Duty and Willful and Persistent Insubordination

Although Mr. Guy's issue on appeal is whether proper notice was served, the Court will touch on the underlying facts which lead to his termination. In a matter of seven months, Mr. Guy was suspended on four

¹⁰ R. at 9.

¹¹ R. at 9-10.

¹² R. at 10.

¹³ R. at 206.

¹⁴ *Id.*

separate occasions for a variety of reasons. From the record it appears the procedure at Bayard for suspending a teacher includes a meeting to address the issues of concern with the teacher and a memo summarizing the results of the meeting which advises the teacher of his or her suspension.

The first suspension took place on April 28, 2010.¹⁵ Mr. Guy had refused to submit his Professional Portfolio Binder which tracked his students' work and progress after missing the first two scheduled meetings to discuss the binder.¹⁶ He also refused to complete a survey and training in order to administer the 2010 DCAS test to his students.¹⁷ Every teacher was given a 73 minute planning period to fill out the survey and a deadline for completion. Mr. Guy did nothing during the 73 minute period provided and did not complete the survey by the deadline leaving the administration to question whether they would need to find a replacement to administer the test to Mr. Guy's students. Mr. Guy also ordered a math department chairperson, Kendra Gardner, out of his classroom while she was conducting an approved walkthrough.¹⁸ The purpose of the walkthrough was not to evaluate Mr. Guy's teaching, but to offer support for implementation of new strategies if necessary and would not have lasted more than 10-15 minutes.

¹⁵ R. at 169.

¹⁶ R. at 168.

¹⁷ R. at 168-69.

¹⁸ R. at 169.

The memo summarizing the meeting concluded with Mr. Guy's demeanor and his refusal to be an active part of the discussion claiming all the allegations were false. Following the meeting, Mr. Guy refused to sign the memo, even though his signature would have only acknowledged receipt and would not have constituted agreement with its contents.¹⁹

The second suspension occurred on August 25, 2010.²⁰ Mr. Guy failed to appear at two separate meetings to address issues of concern. After Mr. Guy failed to appear, he was called and sent an email which asked him to provide Mr. Patton, the principal, with a date and time over the summer when the meeting could be held. Mr. Guy never responded. In the meantime, Mr. Patton asked the IT department to determine whether he had read his email, whereupon the department discovered Mr. Guy had over 2000 unopened emails even though teachers are required to read emails once a day on working days.²¹ Again, Mr. Guy refused to sign in receipt of the memo.²²

The third suspension occurred less than one month later.²³ All teachers at Bayard are required to have lesson plans in their desk in case of an emergency absence so the teacher's absence does not affect his or her

¹⁹ R. at 29-30.

²⁰ R. at 178.

²¹ R. at 60-61.

²² R. at 67.

²³ R. at 180-81.

students. During Mr. Guy's four day absence, it was discovered he did not have any lesson plans in his desk even though he was warned about the same issue the prior school year.²⁴ Up until the time of his third suspension on September 21, 2010, Mr. Guy had already missed a total of seven days for illness and the three days for his prior suspension. Because of his absences, Mr. Guy's students ultimately received an "I" for the marking period because essentially no learning had yet taken place.²⁵ The memo advising the results of the meeting where these issues were addressed made note of Mr. Guy's refusal to participate and his disrespectful manner, including yelling and claiming the meeting was illegal.

The final suspension occurred on October 6, 2010 for five days.²⁶ Nikia Whitaker, Bayard's Assistant Principal, performed a walkthrough of Mr. Guy's classroom and found Mr. Guy did not have weekly lesson plans as required and what he did show her did not match what he was teaching his students.²⁷ Mr. Guy also failed to provide lesson plans for his previous five day suspension against orders from Mr. Patton. As of his final suspension, less than two months into the 2010 school year, Mr. Guy had accumulated eight sick days and thirteen days of suspension.

²⁴ R. at 35.

²⁵ R. at 81.

²⁶ R. at 182.

²⁷ R. at 139.

The incidents previously mentioned do not represent the entirety of Mr. Guy's neglect of duty and insubordination. Mr. Patton testified to other incidents not included in the suspension memos. At the close of the 2009 school year, every teacher, except for Mr. Guy, cleaned out his or her classroom so custodians could do their job.²⁸ As a result, Mr. Patton cleaned Mr. Guy's room personally and discovered electronics which were not supposed to be in the classroom. Mr. Patton secured the electronics and addressed the issue the following school year in a meeting wherein he told Mr. Guy he could not have outside technology in the classroom unless it was approved by the District.²⁹ Two days later he saw Mr. Guy carrying in speakers and a scanner.³⁰ Mr. Patton did not allow Mr. Guy to carry the equipment into the school; yet soon thereafter, Mr. Patton discovered the electronic equipment in Mr. Guy's room.³¹ After Mr. Patton once again secured the equipment, Mr. Guy went above Mr. Patton and reported the equipment stolen to the superintendent.³² In Mr. Patton's testimony he stated Mr. Guy argued the administration was racist by not allowing technology in the classroom.³³ The equipment was returned to Mr. Guy and

²⁸ R. at 21.

²⁹ R. at 22-23.

³⁰ R. at 23.

³¹ R. at 23-24.

³² R. at 124.

³³ R. at 33.

ordered out of the school; however, Mr. Patton later discovered the equipment belonged to the District, not Mr. Guy. It took another nine months for Mr. Guy to return the equipment after repeated demands from Mr. Patton.³⁴

Mr. Patton was understandably frustrated with Mr. Guy. During the hearing, Mr. Patton noted that Mr. Guy's "constant disrespect" and failure to give an opportunity to remedy any situation "puts you in a position where you don't have any other options because you can't even have a coherent conversation to try to resolve an issue that might be something that you could work out."³⁵

³⁴ R. at 31-32.

³⁵ R. at 73.

On appeal from a board of education, this Court may only determine whether there is substantial evidence to support the board's findings.³⁶ Substantial evidence has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."³⁷ This Court may not substitute its own judgment for that of the board if there is substantial evidence to support the board's findings.³⁸

III. DISCUSSION

Mr. Guy's argument is perfunctory in the extreme. It reads, *in its entirety*:

A written request for an opportunity to be heard was filed in accordance with 14 *Del. Code* § 1410 including written notification of how to contact Appellant. The address provided was P.O. Box 25464, Wilmington, DE 19899. Josette Tucker, Director, Human Resources on behalf of Christina purposefully used another address for purposes of ensuring the wrongful violation of important procedural and substantive rights as part of an organized effort to terminate Appellant. Appellant was not provided notice of the proceedings.³⁹

Mr. Guy does not cite any case law in his argument.

³⁶ 14 *Del. C.* § 1414 ("The Court shall decide all relevant questions of law and all other matters involved, and shall sustain any board action, findings and conclusions supported by substantial evidence.").

³⁷ *Bd. of Educ. v. Shockley*, 155 A.2d 323, 327 (Del. 1959).

³⁸ *Shockley*, 155 A.2d at 327-28 (reasoning "the Board sees and hears the witnesses and is therefore better able to determine the credit and weight to be given their testimony").

³⁹ Appellant's Opening Br. 4.

Mr. Guy's reply brief provides no additional enlightenment.

Although the Board pointed to the evidence showing that Mr. Guy received notice of the hearing, Mr. Guy chose to ignore the evidence entirely in his reply. In his reply brief, Mr. Guy delineates for the first time a standard of review, albeit the wrong one. Mr. Guy contends that this Court may conduct a *de novo* review because the issue here is ostensibly a question of law.⁴⁰ He is wrong. The issue here is a question of fact: did Mr. Guy receive notice of the hearing?

The governing statute requires all communication regarding a teacher's termination be sent by certified mail.⁴¹ There is substantial evidence the District complied. The District provided evidence that notice of the hearing was sent by certified mail to Mr. Guy's last known address on file with the District and not returned undeliverable.⁴² The Hearing Officer found notice of the hearing was sent in accordance with the District's Rules of Procedure and deemed received at least fifteen days prior to the scheduled

⁴⁰ Curiously, even though Mr. Guy contends the issue now before this Court is a question of law, he cited no legal authorities in his argument.

⁴¹ 14 Del. C. § 1402 ("All formal communications between the teacher and the terminating board provided for in this chapter shall be by certified mail, with a return receipt requested.").

⁴² *Straley v. Advanced Staffing, Inc.*, 2009 WL 1228572, at *3 (Del. Super.) ("...in Delaware there is a rebuttable presumption that mail has been received by the party to whom it was addressed if it is correctly addressed, stamped, and mailed. This presumption may be rebutted by evidence that notice was never received.").

hearing on November 17, 2010 as evidenced by return receipts and tracking information.

The Hearing Officer's findings are supported by substantial evidence. The Hearing Officer found Ms. Tucker's testimony credible and relied, in part, on her testimony as well as on exhibits of a return receipt of the notice sent and tracking information showing delivery of notice on November 1, 2010. The Hearing Officer also found the District provided further notice of the hearing to his last known address and the P.O. Box even though it was not required to do so. Therefore, Mr. Guy's argument claiming Ms. Tucker purposefully used a different address than he requested in a letter to violate his due process rights falls short.

IV. CONCLUSION

For the reasons set forth above, the decision of the Board of Education of the Christina School District is **AFFIRMED**.

John A. Parkins, Jr.
Superior Court Judge