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TERMINATION

Court upholds tenured teacher's termination despite procedural error

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A school district terminated a tenured elementary-school teacher on the charge that he physically and abusively disciplined his students. The teacher filed suit, challenging the dismissal on the grounds that the charges against him were presented to the school board orally rather than in writing, in violation of the California Education Code. The trial court found that the procedural error did not harm the teacher and upheld his termination. The California Court of Appeal agreed.

Students complain of physical and verbal abuse by teacher

Vince DeYoung worked as a tenured teacher in the Hueneme Elementary School District. He taught a combination class of second- and third-grade English learners whose first language was Spanish. In March 2010, he allegedly became angry and frustrated with students who were talking and laughing during a classroom movie. He grabbed some of the students, told them to "shut up," called them "stupid," struck one student in the foot with a chair, hit three students on the top of the head with a yardstick or metal desk leg, and threw a pencil at other students. The students told their parents, who complained to the school principal.

School officials discussed the matter with DeYoung and his union representative the next day and several more times over the following month. DeYoung admitted raising his voice but denied hitting any of his students or throwing a chair.

In April 2010, the school district's assistant superintendent, after meeting with DeYoung, orally informed the district's board of trustees of the charges. In May, the district sent a letter to DeYoung detailing the charges and placed him on administrative leave. After school started in September, the district held a hearing at which DeYoung and his counsel were allowed to respond to the district's proposed action to dismiss him. DeYoung admitted that he had used poor judgment, had used the word "stupid," and had thrown a pencil at a student.

During a closed meeting in October 2010, the board of trustees voted to dismiss DeYoung and sent him a letter advising him of the decision and outlining the specific charges. In December, the district served him with an "amended written accusation" proposing to dismiss him based on "evident unfitness for service," "refusal to obey school rules," and "immoral conduct."

DeYoung requested a hearing before a "commission on professional competence," which is a three-member tribunal composed of one credentialed teacher chosen by the school board, a second credentialed teacher chosen by the teacher facing dismissal, and an administrative law judge, who serves as a voting member and chair of the commission. He asked the commission to dismiss the administrative proceeding because the board of trustees had failed to formulate or consider written charges before initiating his dismissal, in violation of Education Code Section 44934.

The commission denied the request, conducted a four-day evidentiary hearing (at which DeYoung was represented by a lawyer), and unanimously upheld his dismissal, finding that his testimony was not credible. DeYoung filed a petition in the trial court to overturn the commission's decision. The trial court denied the petition, and he appealed.

Procedural safeguards for tenured teachers

A tenured teacher has a vested right to his position and may not be deprived of it without due process of law. The Education Code prescribes extensive procedures to be followed when a school district wishes to dismiss, suspend, or otherwise discipline a tenured teacher. A school district's governing board may give notice of intent to dismiss a tenured teacher upon consideration of written charges. After the school board votes to dismiss, the teacher must be given notice by "written accusation."

The teacher may request a hearing before a commission on professional competence. If he requests such a hearing, the school board must either rescind its action or schedule an evidentiary hearing before the commission, at which the teacher has the right to be represented by legal counsel. At the conclusion of the hearing, the commission must issue one of three dispositions: dismiss the teacher, suspend him for a specific period

without pay, or rule that he should not be suspended or dismissed.

Dismissal upheld despite minor procedural error

In this case, it was undisputed that the board of trustees voted to dismiss DeYoung based on charges presented to it orally rather than in formal written charges, as required by Section 44934 of the Education Code. The legal question before the court of appeal was whether the school district's procedural error constituted a substantive or prejudicial (harmful) violation of DeYoung's due process rights.

The court of appeal reviewed the evidence and agreed with the trial court that the school district's error was minor because "the charges brought against [DeYoung] were clear from the start, and never changed." He was not prejudiced because he at all times knew the nature of the charges against him, was represented by competent legal counsel, participated in the discovery (fact-finding) process, and was afforded a full evidentiary hearing. Also, the school district eventually drafted written charges that were consistent with the initial oral presentation made to the board.

For all those reasons, the court of appeal found that the lack of initial written charges was not substantive

and did not prejudice DeYoung and that the process leading to his dismissal was consistent with his constitutional due process rights. *DeYoung v. Hueneme Elementary School District* (Court of Appeal, 2nd Appellate District, 7/30/14).

Bottom line

As public employees, tenured teachers have vested interests in their jobs and are protected by substantive constitutional and procedural due process rights. In furtherance of those rights, the California Legislature has created an elaborate and lengthy set of requirements a school district must meet if it wishes to dismiss a teacher.

The school district in this case tripped over one of those requirements. The court, however, took the next analytical step and asked whether the procedural mistake defeated the underlying purpose of the rules, which is to help ensure that a teacher is provided fair notice of the charges against him and a full opportunity to oppose them. In this case, despite the error, the process afforded the teacher met constitutional standards, leading the court to raise form over substance and uphold his dismissal.

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