

No. 71194-6-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

SEATTLE SCHOOL DISTRICT NO. 1, Respondent

v.

COLLIN WILLIAMS, Appellant
SUPERIOR COURT
King County No. 13-2-14103-5 SEA

REPLY BRIEF OF APPELLANT

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STAMP: COURT OF APPEALS, DIVISION I, SEATTLE, WA, 11/12/20

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I. ARGUMENT AND AUTHORITY

A. ARGUMENT

1. Collin Williams States error of Law in His Notice of Appeal and in his Brief

In his Notice of Appeal, Collin Williams set forth the following errors:

The Superior Court erred in law and in fact by failing to find that the District wrongfully failed to renew Williams because the review standards used for Williams' annual review did not comply with the standards set forth in the Collective Bargaining Agreement (CBA) in effect at the time that his employment contract was not renewed, nor did the review system comply with the statutory system set forth in RCW 28A.405.100(4)(a).

See Notice of Appeal.

Also in his brief, Mr. Williams set forth three errors of law. See Williams Appellant Brief. Therefore, Mr. Williams did site specific errors in his Notice of Appeal and his brief.

2. The Court of Appeals Makes a De novo review to review of the application of law to the Facts

When reviewing the application of law to the facts, a reviewing court makes a de novo determination of the applicable law. See *Franklin Cy. Sheriff's Office v. Sellers*, 97 Wn. 2d 317, 329, 646 P.2d 113 (1982). A teacher's employment with the District is based upon contract law. See *Kirk v. Miller*, 83 Wn.2d 777, 781, and RCW 28A.405.210. See *Kunin v. Benefit Trust Life Insurance Co.*, 910 F.2d 534, 539 (9th Cir. 1990). In this case, Mr. Williams opted into the new evaluation standards for one year meaning that the agreement was valid for the school year of 2010-2011. That school year ended in June 2011 and therefore the opt-in contract between Mr. Williams and the School District expired when the 2010-2011 school year ended. Therefore, Mr. Williams should have been evaluated under the two-tier system that was in place when he initially signed the

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agreement and under that system he would have been satisfactorily evaluated. This clearly fits under the authority of the *Franklin County* court's holding *supra* that this court has de novo review of whether the law was applied properly to the facts of this case.

3. Mr. Williams Challenged Three Legal findings in his Brief

It is without dispute that Mr. Williams disputed the following three findings in his brief:

- (1) evaluative criteria applied by the District had not been appropriately adopted.
- (2) the Hearing Officer erred in his application of basic contract law.
- (3) the Hearing Officer erred in finding that there was sufficient cause not to renew Mr. Williams' contract because there was no evidence that Williams materially breached his promise to teach.

See Appellant's brief.

These are clearly findings that are being challenged by the Appellant in this appeal.

4. There is Evidence from the Record that the District had not been appropriately adopted the Evaluation Criteria.

As set forth in his original brief, Ms. Oatis testified that the new evaluation system was not fully implemented when Mr. Williams opted-in to it. See *Clerk's Papers Verbatim Report of Proceedings, Volume 1*, at pg 56. Something that has not been fully implemented could also not be not fully or properly adopted. Since, this is true, Mr. Williams' evaluation was based on arbitrary and capricious standards and could not support the Hearing Officer's finding of sufficient cause. An action is arbitrary and capricious if it is a willful and unreasoning and taken without regard to the attending facts or circumstances. *Washington Independent Telephone Ass'n v. Washington Utilities Com'n*, 148 Wn. 2d 887, 905, 64 P.3d 606 (2003). In addition, the court held that it must

ascertain that the procedures in the statute have been followed and to evaluate whether sufficient cause existed for the nonrenewal of a teacher's contract. See *Van Horn v. Highline School Dist.*, 17 Wn. App. 170, 175, 562 P.2d 641 (1977). Finally, RCW 28A.405.100(2)(c) states that the District adopt rules prescribing a common method of calculating the comprehensive summative evaluation under subsection (12). This was not done in this case. One of the raters that rated Mr. Williams said that he needed improvement in seven areas; another rater that rated him stated that he needed improvement in 19 areas. See Bates number 00000267-510 and 00000270-298. The vast difference in the raters' results is evidence that the rating standards being used were arbitrary. This is also evidence of the arbitration and capricious nature of the evaluation system applied to Mr. Williams by the District which had not been fully implemented or adopted as set forth in the above statute and because of that, the District's system was arbitrary and capricious.

5. Reversal is required because the Hearing Officer erred in his application of basic contract law.

A teacher's employment with the District is based upon contract law. See *Kirk v. Miller*, 83 Wn.2d 777, 781, and RCW 28A.405.210. See *Kunin v. Benefit Trust Life Insurance Co.*, 910 F.2d 534, 539 (9th Cir. 1990). The term obligation in contract means that the law binds parties to perform their undertaking. A contract is formed when parties exchange promises to act or refrain from acting in a certain manner. *Washington Federation of State Employees, AFL-CIO, Council 28 AFSCME v. State*, 101 Wn. 2d 536, 549, 682 P.2d 869 (1984) (citing Restatement (second) of Contracts § 1 (1981)). In this case, Mr. Williams opted into the new evaluation standards for one year. Mr.

Williams disputes that the opt-in form is valid because it was signed after the date stated on the form it was only valid for the school year of 2010-2011 as set forth on the form itself. That school year ended in June 2011 and therefore the opt-in contract between Mr. Williams and the School District expired when the 2010-2011 school year ended. Therefore, Mr. Williams should have been evaluated under the two-tier system that was in place when he initially signed the form and under that system he would have been satisfactorily evaluated. Now the District states that there was no agreement between Mr. Williams and the District for him to opt into the new evaluation standards. If there was no agreement between the District and Mr. Williams, then Mr. Williams whole evaluation was improperly conducted by the District and he should have been evaluated under the old system. The District can not have it both ways. Either there was an agreement for Mr. Williams to be evaluated under the new evaluation system or not. But in either case, the agreement had expired after the 2010-2011 school year and after that he should have been evaluated under the old two-tier system.

Finally, Mr. Williams was a level 2 classroom teacher with more than 5 years of experience and the statute requires that he could only be non-renewed if he was on probation for two consecutive years and he was not on probation for two consecutive years therefore his contract should have been renewed. See RCW 28A.405.100(4)(a)(ii).

6. There was not sufficient cause not to renew Mr. Williams' contract because there was no evidence that Williams materially breached his promise to teach and that any Deficiencies were Remediable.

In *Francisco v. Board of Directors of the Bellevue Schools District No. 405*, 85 Wn.2d 575, 537 P.2d 789 (1975) The Bellevue School Board discharged Francisco for

three reasons: 1) insubordination; 2) refusal to teach basic skills, and; 3) refusal to cooperate with team teachers in implementing the school program. The superior court found, among other things, that Francisco (teacher) was making efforts to comply with traditional teaching form required by the principal. The court concluded that respondent had not engaged in a “deliberate and willful refusal to comply with reasonable lawful direction.” According to the Collective Bargaining Agreement (CBA) and according to Administrative Hearing’s Officer’s findings, the District can only terminate Mr. Williams if they show “sufficient cause” to do so. The term “sufficient cause” has been limited by court interpretation to prohibit discharge for “remediable teaching deficiency” unless school authorities comply with the requirements of the applicable statute. See *Clarke v. Shoreline School Dist. No. 412*, 106 Wn. 2d 102, 113, 720 P.2d 793 (1986); and it was ultimately determined that “sufficient cause” for a teacher’s discharge exists as a matter of law where the teacher’s deficiency is unremediable and (1) materially and substantially affects the teacher’s performance; or (2) lacks any positive educational aspect or legitimate professional purpose. See *Clarke* at 113-114 (citations omitted). In such cases, the teacher is deemed to have materially breached his promise to teach. *Clarke* at 114.

In this case, Mr. Williams made efforts to comply with the requirements of his support plan and the wrongly implemented Performance Improvement Plan. Mr. Williams for example had detailed lesson plans, measurable purpose statements, changed the physical space in his room from the years of the traditional rows to table groups. Mr. Williams had partner sharing and discussions. See Bates 00000270 through 00000298. Also see specifically Bates 00000367 Pre- Observation Conference Summary, Bates

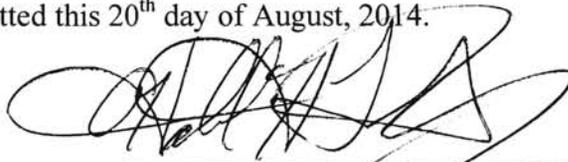
00000368 Classroom Observation Summary through 00000370 Post Observation Conference Summary. Also see specifically Bates 00000377 Pre-Observation Conference Summary, Bates 00000378 Classroom Observation Summary though 00000380 Post Observation Conference Summary. Also see specifically Bates 00000393 Pre-Observation Conference Summary, Bates 00000394 Classroom Observation Summary through 00000397 Post Observation Conference Summary. Also see Bates 00000406 Pre-Observation Conference Summary, Bates 00000406 Classroom Observation Summary through 00000409, and Bates 00000409 Post Observation Conference Summary. Reading those specific exhibits captures some of the actual moments of Mr. Williams' teaching.

Mr. Williams, who was never rated unsatisfactory in his performance, improved his teaching in regards to table groups and A/B partner sharing. Mr. Williams maintained order and conducted the lessons as evidenced in the specific Bates examples listed above. There is no evidence that Mr. Williams' teaching deficiencies were not remediable, in fact the Hearing Officer shows that he was making progress on his performance improvement plan. See Findings of Fact, Conclusions of Law and Final Decision at 6. Mr. Williams did not materially breach his promise to teach as to excuse the District in its promise to employ and therefore the hearing officer's decision should be overturned.

II. CONCLUSION

For the reasons stated, this Court must overturn the Hearing Officer's decision, renew Mr. Williams' contract because there was not sufficient cause not to renew it because he had remediated and improved his teaching and he did not materially breach his promise to teach.

Respectfully Submitted this 20th day of August, 2014.

A handwritten signature in black ink, appearing to read 'Harold H. Franklin, Jr.', written over a horizontal line.

Harold H. Franklin, Jr.,
WSBA #20486
Attorney for the Appellant

DECLARATION OF SERVICE

I, Harold H. Franklin, Jr., being first duly sworn declare and state as follows:

On August 20, 2014, I served a true and correct copy of the Appellant's
reply brief on the following:

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This statement is based on personal knowledge and made under the penalty of
perjury under the laws of the state of Washington.

DATED in Renton, WA this 20th day of August, 2014.

/s/Harold H. Franklin, Jr.
Harold H. Franklin, Jr.
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Attorney for the Plaintiff

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