

71194-6

71194-6

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

---

**BRIEF OF APPELLANT**

---

HAROLD H. FRANKLIN JR. WSBA No.20486  
Attorney for APPELLANT  
Attorney at Law  
459 Seneca Ave NW  
Renton, WA 98057

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2014 MAR 23 AM 10:13

## TABLE OF CONTENTS

	page
Introduction	
I. Assignment of Error	4
II. Statement of the Case	4-6
III. Statement of the Issue	6
IV. Argument and Authority	6-10
V. Conclusion	10

## TABLE OF AUTHORITIES

### Table of Cases

<i>Clarke v. Shoreline School Dist. No. 412</i> , 106 Wn. 2d 102, 720 P.2d 793 (1986)	9
<i>Francisco v. Board of Directors</i> , 85 Wn.2d 575, 537 P.2d 789 (1975)	8
<i>Franklin Cy. Sheriff's Office v. Sellers</i> , 97 Wn. 2d 317, 646 P.2d 113 (1982)	6
<i>Kirk v. Miller</i> , 83 Wn.2d 777, 522 P.2d 843 (1974)	8
<i>Pryse v. Yakima School District No. 7</i> , 20 Wn. App. 16, 632 P.2d 60 (1981)	6, 7

### FEDERAL CASE

<i>Kunin v. Benefit Trust Life Insurance Co.</i> , 910 F.2d 534 (9th Cir. 1990)	8
---	---

### STAUTES, RULES AND OTHERS

RCW 28A.405.340	6
Rap 2.5(a)	6

## I. ASSIGNMENTS OF ERROR

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

## II. STATEMENT OF THE CASE

The Mr. Williams was an employee of the Seattle School District (District) in various capacities, most recently and longest as a teacher, for 20 plus years. He began teaching at Denny International Middle School (Denny) in 1991 as a Language Arts teacher for the 6th and 8th grades. In 2010, Mr. Williams began teaching Social Studies, Washington State History and World Geography for which he received the necessary certifications. Article XI of the collective bargaining agreement (CBA) for 2010-2013 between the Seattle School District and the Appellant's union provided that a new teacher evaluation program would be phased in over three years-- the Professional Growth & Evaluation system (PG&E). This system was to replace the prior evaluation system which was known as the Performance Evaluation System and Professional Growth. Under PG&E's comprehensive Evaluation process, teachers are evaluated under four criteria: Planning and Preparation, Classroom Environment, Instruction, and Professional Responsibility. Teachers can receive 1 of 4 ratings in each of the categories: Unsatisfactory, Basic, Proficient, and Distinguished {listed from lowest to highest}.

Under the CBA, Mr. Williams was not initially among the class of employees automatically subject to the comprehensive evaluation process, but was subject to a more general annual evaluation.

In the record, there is a form signed by Mr. Williams, however, the form was signed after the due date that appeared on the form. See Bates 00000836. Furthermore, if the form Mr. Williams signed is valid, it only covered the 2010-2011 school year. See Bates 00000836. Using the new PG&E comprehensive evaluation system in May 2011, Mr. Williams was evaluated by Chanda Oatis, then the Assistant Principal of Denny. During his 2011 annual evaluation, Mr. Williams did not obtain the required proficient ratings in all of the evaluative criteria, and a Performance Improvement Plan was implemented. The Performance Improvement Plan is used to point out areas where improvement is and to suggest methods to be employed which will demonstrate the necessary improvement. According to the option form referenced above, Mr. Williams should have then been placed back under the former evaluation criteria system. However, in October of 2011, after Mr. Williams option into the PG& E program expired, Ms. Oatis, the initial evaluator, took another job and Mr. Artise Burton assumed the task of evaluating Mr. Williams. On January 13, 2012, Interim Superintendent Dr. Susan Enfield notified Mr. Williams that he would be placed on 60 day probation to remediate his deficiencies in all four domains. However, as stated above, the option Mr. Williams signed had expired with the end of the 2010-2011 school year. Under Mr. Burtons' evaluation, Mr. Williams again failed to achieve proficient ratings. Another evaluator, Ruth Bartron, was assigned to evaluate Mr. Williams in February of 2012, and Mr. Williams was again unsuccessful at achieving a proficient rating. This evaluator also

continued to evaluate Mr. Williams under the criteria that he was no longer under because his option had already expired. On May 7, 2012, Mr. Williams was notified by Interim Superintendent Dr. Enfield, that his contract with the District would not be renewed for the 2012 - 2013 school year, stating that Appellant failed to make suitable improvement during his probationary period. Specifically, Mr. Williams did not receive performance ratings of proficient or above in each of the four domains as required for a teacher with his years of experience. Mr. Williams transmitted a Notice of Appeal and he had a hearing which was held on November 19<sup>th</sup> and 20<sup>th</sup> 2012. The hearing officer, Judge Terry Lukens (ret.), after taking testimony and admitting exhibits, issued several findings of fact and conclusions of law and ruled that the District was not required to reinstate Mr. Williams' contract. Mr. Williams timely appealed Judge Lukens' decision and listed eleven issues to which he assigned errors. The Superior Court affirmed the Hearing Officer's ruling and this appeal was filed on November 26, 2013.

### III. STATEMENT OF ISSUE

Whether this Court should overturn the Hearing Officer's decision and reinstate Mr. Williams' contract when there is not sufficient cause to not renew his contract?

### IV. ARGUMENT AND AUTHORITY

#### A. STANDARD OF REVIEW

This Court may overturn a hearing officer's decision if substantial rights of the employee may have been prejudiced because the decision was flawed based on the following reasons:

1. In violation of a constitutional provision;
2. In excess of statutory authority of jurisdiction of the hearing officer;

3. Made upon unlawful procedures;
4. Affected by other erroneous law;
5. Clearly erroneous in view of the entire record as admitted and the public policy of the statute; or
6. Arbitrary and capricious

RCW 28A.405.340. See also *Pryse v. Yakima School District No. 7*, 20 Wn. App. 16, 632 P.2d 60 (1981). Also, RAP 2.5 states that an appellant may raise the following claimed errors for the first time in the Appellate Court; (1) Lack of trial court jurisdiction; (2) Failure to establish facts upon which relief can be granted and (3) Manifest error affecting a constitutional right. RAP 2.5 (a).

The Appellate Court also reviews a hearing officer's findings under the clearly erroneous standard. See *Pryse* at 22. Furthermore, 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).

## B. ARGUMENT

1. Reversal is required because the evaluative criteria applied by the District had not been appropriately adopted.

Ms. Oatis testified that 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. 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. The Hearing Officer states that Mr. Williams waived this claim because he opted into the evaluation system. See Findings of Fact, Conclusions of Law and Final Decision

at 7. However, as noted above, the form in which Mr. Williams signed to opt into the new evaluative system was signed after the date required for it to be signed. Specifically the form states that it had to be signed by October 15, 2010 and the form was not signed by either party until after that date on November 4, 2010 and therefore his option into that system was not valid. See Bates 00000836. Therefore the Hearing Officer's decision must be overturned because the opt-in form was not valid.

2. 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 (9<sup>th</sup> Cir. 1990). 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, however, assuming arguendo that the form was valid, it was only 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 form and under that system he would have been satisfactorily evaluated.

3. Reversal is required because 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.

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

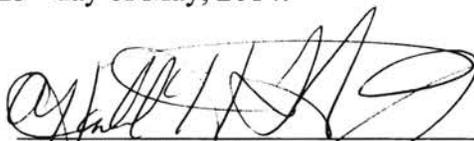
00000368 Classroom Observation Summary through 00000370 Post Observation Conference Summary. Also see specifically Bates 00000377 Pre-Observation Conference Summary, Bates 00000378 Classroom Observation Summary through 00000380 Post Observation Conference Summary. Also see specifically Bates 00000393 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.

V. 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 23<sup>rd</sup> day of May, 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 Appellants