

STATE OF NEW HAMPSHIRE
BOARD OF EDUCATION

Amended

Recommendation of the Hearing Officer

Teacher and H. School Board

Case No. SB-FY-09-006-020

Procedural Background

A request for an hearing before the State Board of Education to appeal Hinsdale School Board's decision to non-renew teacher, M K, was received by the New Hampshire Department of Education on June 5, 2009. A hearing schedule was issued and a Pre-Hearing Conference was held on June 22, 2009. A Motion to Extend the Deadline for filing an answer was approved on July 5, 2009. The hearing on the Appeal of M K went forward on July 24, 2009 and written closing arguments, dated August 3, 2009, were received from the parties.

Hearings

Following preliminary discussions, the one day hearing began post 9:00 a.m. on July 24, 2009. Mr. K presented his case first. He was represented by James Allmendinger, Esq., who offered into evidence exhibits K1 through K3. The H. School Board (School Board) was represented by Paul Apple, Esq., who objected to Exhibit K3, consisting of various statements of approval for the band program. The objection was sustained. School Board exhibits, marked SB A through SB P and the transcript of the H. School Board hearing of May 13, 2009 were admitted into evidence.

Testimony began with M.K., appellant, music teacher who had headed the Music Department for H Middle/High School since 2000. The H School Board followed with three witnesses: John Sullivan, Middle/High School Principal; David Crisafulli, Assistant Superintendent and Wayne Temmen, School Board Chair.

No testimony suggested that Mr. K was non-renewed based on fault. Rather, testimony addressed the validity of the decision to end the music program, especially the band program, at H. Middle/High School based on declining enrollment.

Mr. K. testified that the numbers of students participating in the H. band program were misunderstood (K1-1&2) and that administrative decisions in recent years had led to a drop in band enrollees for credit but that percentages of students, including non-credit, students, participating in the music program were up, rather than down. He testified that the proposed tuition arrangement for band to be provided by B. High School will not serve H. students adequately and will pose degrees of hardship for certain students. A few students will be deprived of a chance to participate in band in the upcoming year. He attested that the change will be more costly to H. than would be allowing him to continue as a teacher in H., though the School Board stated this was not a decision based on finances.

Testimony from School Board witnesses agreed that, considering a period greater than the immediate few years, there has been a gradual decline in interest and participation in the program now to be eliminated in H. One of the changes to be made in preparation for the re-introduction of a band program in the future will be a change in the elementary school feeder program. It must be improved so that there are students ready to move into more advanced instrumental training and performance as they reach middle and high school. Decisions made by the administration in the last few years to increase program enrollment in band had not succeeded and there were too few students in the band program to justify its continuance even while building the feeder program. Declining enrollment was the reason Mr. K. was issued a reduction in force (rff) letter on March 26, 2009 (SB O). Reference was made to exhibits SB A-2 and B, created by the appellant, as illustrations of declining enrollment.

School Board witnesses testified that there would be more performance opportunities for H. students in B.. testified regarding the adequacy of the opportunities available for music students this coming year in B. and a letter was introduced by the School Board to show that the B. option would meet New Hampshire Department of Education standards (SB G).

Discussion

During the hearing, there was no discussion regarding the burden of proof and the application of that burden of proof in this case. In their memoranda both parties alluded to the standard. The Appellant's memorandum argues that the basis of the School Board's decision has been shown erroneous. The School Board addressed the matter and provided citations in support of its position.

Whether the decision of the local school board was the best decision or even a good decision and whether that decision can be avoided are not dispositive. A local school board's decision on the matter of a non-renewal is to be upheld unless an appellant has shown the local board's decision to non-renew is clearly erroneous (RSA 189-14b II).

Organizational structure and program planning are the purview of administrators and the

decisions in question are squarely within that purview (RSA 194-C4 and 5). Reviewing the testimony presented at hearing and the evidence submitted, the Appellant has not convinced that the H. School Board committed clear error in its actions of discontinuing the music program at the H. Middle/High School, tuitioning out its music program, so leading to the non-renewal of the Appellant.

Recommendation of the Hearings Officer

The actions of the local school board have not been shown clearly erroneous, as is necessary when a local school board's decision to non-renew a teacher is to be reversed. For that reason, it is recommended that the State Board of Education uphold the Hinsdale School Board's non-renewal decision.

Signed this 29th day of September, 2009.

Amended October 6, 2009


Gail C. Morrison, Hearing Officer

10-6-09