

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

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2018 CA 0808

LYNN SEEGER

VERSUS

CENTRAL CITY SCHOOL BOARD AND  
MICHAEL W. FAULK, INDIVIDUALLY AND IN HIS  
CAPACITY AS SUPERINTENDENT OF THE  
CENTRAL CITY SCHOOL BOARD

JUDGMENT RENDERED: DEC 21 2018

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Appealed from the  
19<sup>th</sup> Judicial District Court  
In and for the Parish of East Baton Rouge • State of Louisiana  
Docket Number 631,242 • Section 24

Honorable R. Michael Caldwell, Judge Presiding

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Brian F. Blackwell  
Baton Rouge, Louisiana

Attorney for Appellant,  
Plaintiff – Lynn Seeger

Danielle A. Boudreaux  
Robert L. Hammonds  
Baton Rouge, Louisiana

Attorneys for Appellees,  
Defendants – Central City  
School Board and Michael W.  
Faulk, individually, and in his  
capacity as Superintendent of  
the Central City School Board

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**BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.**

JEW  
JSD  
J

**WELCH, J.**

The plaintiff/appellant, Lynn Seeger, appeals a judgment of the district court on judicial review, affirming a decision of the superintendent of the Central Community School System to terminate her employment as a tenured teacher. We affirm.

**FACTS AND PROCEDURAL HISTORY**

At all relevant times, Ms. Seeger was employed by the School Board as a tenured sixth-grade public school math teacher at Central Middle School under the supervision of co-principals Jason Fountain and Sandy Davis. In a letter dated May 16, 2013, addressed to Superintendent for the School Board, Michael W. Faulk, Co-Principals Fountain and Davis recommended the termination of Ms. Seeger's employment, based on the following charges:

1. Willful neglect of duty
  - a. Employee failed to successfully complete Level I Intensive Assistance [P]lan as directed by March 12[, 2013].
    - i. Learning path to be completed through Educational Impact video series (Group Assignments – CMS2012 and CMSDavis) (Data attached shows assignments not completed[.] )
  - b. Employee failed to successfully complete Level II Intensive Assistance [P]lan as directed by April 17[, 2013].
    - i. Complete any video assignment from Educational Impact sight [sic] that was not completed in the Level I assistance. (Data attached shows assignments not completed[.] )
    - ii. Written self-reflection describing the strengths and weaknesses from the videoed lesson. Reflection to include areas of questioning, student engagement, classroom management, student to student interaction. (Attached self[-]reflection does not address the areas listed above.)
  - c. Employee refused to sign the Level I Intensive Assistance [P]lan when reviewed with administrators on March 18, 2013.

- d. Employee did not follow the CMS policy for reporting an absence from work to administration on February 27, 2013.
  - e. Employee did not follow a directive given by administration regarding showing movies during state testing.
2. Incompetence
- a. Employee failed to successfully complete Level I Intensive Assistance [P]lan as directed by March 12[, 2013].
    - i. Improved student engagement; Increased opportunities for student to student interaction; Improved questioning techniques which increases the rigor of lessons taught. (Documentation provided by Pam Bowers' observation of three different lessons with feedback provided by Ms. Bowers after each lesson.)
    - ii. Increased student engagement in observed lessons[.] (Documentation provided by Pam Bowers' observation of three different lessons with feedback provided by Ms. Bowers after each lesson, walk-through observations conducted by administrative team.[.])

Ms. Seeger was informed that she was being recommended for termination on May 14, 2013.

Thereafter, Superintendent Faulk issued a letter to Ms. Seeger dated May 21, 2013, advising that he was "contemplating [the] dismissal" of Ms. Seeger as an employee of the School Board. Superintendent Faulk stated that the charges alleged by Co-Principals Fountain and Davis against Ms. Seeger constituted allegations of "willful neglect of duty" and "incompetency." The letter advised Ms. Seeger that she had seven days to respond to the allegations, and that upon receipt of the response, Superintendent Faulk would notify Ms. Seeger of his decision regarding her employment with the School Board.

Ms. Seeger denied the allegations in a response letter dated May 24, 2013. Therein, Ms. Seeger stated that during the evaluation process that led to the recommendation for her termination, "there has been no shortage of slanderous miss-information [sic] provided, unsubstantiated accusations[.] and inaccurate statements failing to include critical factual data and evidence." Ms. Seeger denied

the charges of willful neglect of duty and incompetence, arguing that the Level I Intensive Assistance Plan as directed by Co-Principals Fountain and Davis on March 12, 2013, was based on a “first informal COMPASS rating” which was performed “unannounced” by Co-Principal Fountain on November 28, 2012. Thereafter, Ms. Seeger averred that she received an “ineffective” rating of 1.4; however, she argued that she should have received an “emerging” rating of 2.0, alleging that there were “several items of disagreement, inconsistencies, and inaccurate scoring.”

Following a post-observation meeting held on November 30, 2012 regarding her first COMPASS rating, Ms. Seeger met with Co-Principals Fountain and Davis on February 19, 2013, wherein she was presented with the Level I Intensive Assistance Plan to be completed by March 12, 2013. Ms. Seeger alleged she was “given no option nor the opportunity to be reevaluated to determine if improvement was demonstrated.” Thereafter, Ms. Seeger claimed she met with Co-Principals Fountain and Davis again on March 18, 2013, wherein she was presented with a Level II Intensive Assistance Plan to be completed by April 17, 2013; however, she argued that no recommendations were made by the co-principals at the completion of the Level I Intensive Assistance Plan period.

Ms. Seeger averred that a formal observation was then completed by Co-Principal Davis on March 22, 2013. Upon receipt of her score following that observation, Ms. Seeger “noted several discrepancies throughout the process,” which caused her to believe that she was not awarded the score she should have earned. She further argued that Co-Principal Davis “either ignored or refused to provide credit for areas within each domain that [were] clearly demonstrated.” Ms. Seeger argued that any stated goals for her improvement as provided by Co-Principals Fountain and Davis “were vague[,] and [her] supervisors did not provide [her] with any additional information on what they expected.” Thus, Ms. Seeger

claimed that Superintendent Faulk's decision to terminate her employment was ultimately based on insufficient evidence.

Following receipt of her response, Superintendent Faulk transmitted a second letter to Ms. Seeger, dated July 1, 2013, indicating that he had received her response, and following his review, concluded:

[I]t is my decision to terminate your employment as a teacher in the Central Community School System, effective **July 1, 2013**, for the following reason(s):

1. Willful Neglect of Duty

- a. Your failure to complete Intensive Assistance Plans Level 1 and 2 as directed.
- b. Your failure to complete Learning Path and Educational Impact video assignments as directed.
- c. Your failure to complete assignments required for self[-]review and reflection as directed.
- d. Your refusal to sign the Intensive Assistance Plan Level 1 when reviewed and as directed by your administrators and as a requirement of state law.
- e. Your failure to comply with Central Middle School policy and procedure regarding the reporting of an absence to the site level administration.
- f. Your failure to comply with a directive given by the site level administration regarding the showing of movies during state testing.

2. Incompetency

- a. Your failure to provide proper instruction to your students[.]
- b. Your failure and inability to:
  - i. Increase and improve student engagement.
  - ii. Increase opportunities for student interaction.
  - iii. Improve questioning techniques.

Superintendent Faulk's letter advised Ms. Seeger that she had seven days from receipt of the letter to request a review hearing regarding his decision to terminate her employment, and that upon failure to request review, his decision to

terminate her employment would become final. On July 2, 2013, Ms. Seeger requested a hearing regarding its decision to terminate her employment.

The hearing was held on January 15, 2014, and March 28, 2014, before a tenure hearing panel. Thereafter, the tenure hearing panel issued a recommendation on April 1, 2014. The panel “unanimously determined that the charges related to incompetency were not supported by the evidence presented to the panel.” As to the charge of willful neglect of duty, the majority of the panel determined that the evidence was sufficient to sustain five of the six charges as alleged by Superintendent Faulk in his July 1, 2013 letter—1(a) failure to complete Intensive Assistance Plans Level 1 and 2 as directed; 1(b) failure to complete Learning Path and Education Impact video assignments as directed; 1(c) failure to complete assignments required for self-review and reflection as directed; 1(e) failure to comply with Central Middle School policy and procedure regarding the reporting of an absence to the site level administration; and 1(f) failure to comply with a directive given by the site level administration regarding the showing of movies during state testing.

Based on the recommendation of the panel, Superintendent Faulk affirmed his decision to terminate Ms. Seeger’s employment with the School Board in a letter transmitted to her, dated April 15, 2014. Thereafter, Ms. Seeger sought judicial review of Superintendent Faulk’s decision to terminate her employment based on the recommendation of the tenure hearing panel in accordance with La. R.S. 17:443.<sup>1</sup> Following a hearing held on December 18, 2017, the district court

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<sup>1</sup> Prior to filing her petition for judicial review, Ms. Seeger filed a petition for declaratory and injunctive relief on June 4, 2014, wherein she sought a judgment declaring 2012 La. Acts No. 1, §3 (eff. July 1, 2012), as amending La. R.S. 17:443, unconstitutional. See Docket No. 631,066, Div. D, 19<sup>th</sup> Judicial District Court, Parish of East Baton Rouge, State of Louisiana. Ms. Seeger’s declaratory and injunctive action was dismissed by the district court on December 12, 2016. Furthermore, we note that in **LaPointe v. Vermilion Par. Sch. Bd.**, 2015-0432 (La. 6/30/15), 173 So. 3d 1152, 1159-63, the supreme court ruled that the procedures for terminating tenured teachers adopted pursuant to 2012 La. Acts No. 1, §3 were constitutional. Furthermore, 2014 La. Acts No. 570, §1 (eff. June 9, 2014), dramatically revised the provisions of 2012 La.

affirmed the decision of Superintendent Faulk to terminate Ms. Seeger's employment in a judgment signed on January 31, 2018.

Ms. Seeger now appeals, arguing that Superintendent Faulk's decision to terminate her employment was not supported by competent evidence, and further, that his decision to terminate her employment was arbitrary or capricious.

## DISCUSSION

### Standard of Review

The issue before us is whether Superintendent Faulk's decision to terminate Ms. Seeger's employment was supported by substantial evidence and whether it was an arbitrary decision and therefore, an abuse of his discretion. Both the district court and the court of appeal sit as an appellate court in reviewing decisions of the School Board. La. R.S. 17:443; **Wise v. Bossier Par. Sch. Bd.**, 2002-1525 (La. 6/27/03), 851 So. 2d 1090, 1095 n.5. The appellate standard of review was discussed in **Bernard v. Avoyelles Par. Sch. Bd.**, 93-534 (La. App. 3<sup>rd</sup> Cir. 2/16/94), 640 So. 2d 321, 324, as follows:

Where an administrative agency or hearing body is the trier of fact, the reviewing court will not review the evidence before such a body except for the following purposes: (1) to determine if the hearing was conducted in accordance with the authority and formalities of the statute; (2) to determine whether or not the fact findings of the body were supported by substantial evidence; and, (3) to determine whether or not the hearing body's conclusions from these factual findings were arbitrary or constituted an abuse of the hearing body's discretion.

The criterion for judicial review of a school board's action is **whether there is a rational basis for the board's determination which is supported by substantial evidence**. The reviewing court must neither substitute its judgment for the judgment of the school board nor interfere with the board's good faith exercise of discretion. Thus, the court's inquiry must be limited to a determination of **whether the action of the school board was in accordance with the authority and formalities of the tenure law, was supported by**

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Acts No. 1, §3. Therefore, we pretermitt any further discussion regarding the constitutionality of 2012 La. Acts No. 1, §3.

**substantial evidence, or, conversely, was an arbitrary decision and therefore, an abuse of discretion.**  
[Citations omitted; emphasis added.]

“Substantial evidence” has been defined as evidence of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions. In conducting such an examination, the district court *must* give great deference to the school board’s findings of fact and credibility. Reasons for dismissal are largely in the sound discretion of the school board. Thus, the school board’s judgment should not be reversed in the absence of a clear showing of abuse of discretion. Generally, an abuse of discretion results from a conclusion reached capriciously or in an arbitrary manner. The word “arbitrary” implies a disregard of evidence or of the proper weight thereof. A conclusion is “capricious” when there is no substantial evidence to support it or the conclusion is contrary to substantiated competent evidence. **Wise**, 851 So. 2d at 1094.

### **The Teacher Tenure Law**

The Teacher Tenure Law (“TTL”), La. R.S. 17:441-445, defines the status of Louisiana’s public school teachers and outlines the procedures a superintendent must follow to discharge them. The TTL gives to Louisiana’s public school system teachers tenure in office and arms these permanent teachers with a shield protecting them against discharge, suspension, or demotion for causes other than those provided by statute. The motivation of the TTL is the protection of teachers against political vengeance and reprisals. Its provisions are liberally construed by Louisiana courts in favor of teachers, as they are its intended beneficiaries. **Rousselle v. Plaquemines Par. Sch. Bd.**, 93-1916 (La. 2/28/94), 633 So. 2d 1235, 1241. Under the TTL, a “teacher” is an employee of a parish school board who holds a teacher’s certificate and whose legal employment requires such teacher’s certificate. See La. R.S. 17:441(1)(a); **Rousselle**, 633 So. 2d at 1242.



Louisiana Revised Statutes 17:443(B)<sup>2</sup> governs the dismissal of tenured employees of local public school boards and provides, in pertinent part:

(1) A teacher with tenure shall not be removed from office except upon written and signed charges of poor performance, willful neglect of duty, incompetency, dishonesty, immorality, or of being a member of or contributing to any group, organization, movement, or corporation that is by law or injunction prohibited from operating in the state of Louisiana, and then only if furnished with a copy of such written charges and given the opportunity to respond. The teacher shall have seven days to respond, and such response shall be included in the teacher's personnel file. At the end of this seven-day time period, the superintendent may terminate the teacher's employment. A teacher shall not be terminated for an "ineffective" performance rating until completion of the grievance procedure established pursuant to R.S. 17:3883(A)(5) if a grievance was timely filed. Within seven days after dismissal, a teacher may request and upon request shall be granted a hearing by a panel composed of a designee of the superintendent, a designee of the principal or the administrative head of the state special school in which the teacher was employed, and a designee of the teacher. In no case shall the superintendent, the principal or state special school administrative head, or teacher designate an immediate family member or any full-time employee of the school system by which the teacher was employed who is under the supervision of the person making the designation. Such hearing may be private or public, at the option of the teacher, and shall begin within seven business days after receipt of the teacher's request for such hearing. The teacher shall have the right to appear before the tenure hearing panel with witnesses on his behalf and with counsel of his selection, all of whom shall be heard by the panel at the hearing. For the purpose of conducting hearings hereunder, the panel shall have the power to issue subpoenas to compel the attendance of all witnesses. Nothing herein contained shall impair the right to seek supervisory review from a court of competent jurisdiction.

(2) The tenure hearing panel shall submit its recommendation to the superintendent, and the superintendent may choose to reinstate the teacher. If the superintendent does not reinstate the teacher, the superintendent shall notify the teacher of his final

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<sup>2</sup> We use the version of La. R.S. 17:443(B) in effect at the time of Ms. Seeger's termination, prior to its amendment by 2014 La. Acts No. 570, §1 (eff. June 9, 2014). See **Segura v. Frank**, 93-1271, 93-1401 (La. 1/14/94), 630 So. 2d 714, 725, cert. denied, 511 U.S. 1142, 114 S. Ct. 2165, 128 L. Ed. 2d 887 (1994).

determination, in writing, and such teacher may, not more than sixty days from the postmarked date of such written notification, petition a court of competent jurisdiction to review whether the action of the superintendent was arbitrary or capricious. The court shall have jurisdiction to affirm or reverse the action of the superintendent in the matter. The record on review shall be limited to evidence presented to the tenure hearing panel, and the court shall review the matter not later than ten days after the petition has been filed. If the action of the superintendent is reversed by the court and the teacher is ordered reinstated and restored to duty, the teacher shall be entitled to full pay for any loss of time or salary he may have sustained by reason of the action of the superintendent.

### **Incompetence**

The tenure hearing panel “unanimously determined that the charges related to incompetency were not supported by the evidence presented to the panel.” The district court agreed, stating, “the incompetence charge was in effect negated by the tenure hearing committee.” We agree with the district court that there was not sufficient evidence in the record to uphold the charge of incompetence.

### **Willful Neglect of Duty**

Ms. Seeger was charged with willful neglect of duty based on six charges as alleged by Superintendent Faulk in his July 1, 2013 letter. The tenure hearing panel determined that the evidence was sufficient to sustain five of those six charges. The district court likewise found that there was “competent evidence” in the record to uphold the charge of willful neglect of duty. We agree.

### **Charges 1(a), 1(b), and 1(c)**

The first three charges are interrelated, as all involve directives given to Ms. Seeger by Co-Principals Fountain and Davis that the Intensive Assistance Plans were to be completed by the deadlines stated therein. The record supports the findings that Ms. Seeger: 1(a) failed to complete the Intensive Assistance Plans Levels 1 and 2; 1(b) failed to complete the Learning Path and Education Impact

video assignments as directed in the Intensive Assistance Plans; and 1(c) failed to complete assignments required for self-review and reflection.

Regarding charge 1(b), the evidence shows that as part of her Intensive Assistance Plans, Ms. Seeger was required to complete two groups of assignments (including watching videos and completing corresponding writing assignments) on the Education Impact website by the dates listed on the plans. The evidence presented at the tenure panel hearing showed that Ms. Seeger failed to complete the assignments required by the Level 1 and 2 Plans. Furthermore, Ms. Seeger admitted during the panel hearing, as well as in her brief on appeal, that she failed to complete the Learning Path and Education Impact video assignments as directed by the plans.

Regarding charge 1(c), the Level 2 Plan required Ms. Seeger to video herself teaching a lesson and afterwards, watch the video and “write a self-reflection about the strengths and weaknesses” from the video lesson. The self-reflection writing assignment required Ms. Seeger to address six areas: strengths, weaknesses, areas of questioning, student engagement, classroom management, and student-to-student interaction. However, the evidence established that Ms. Seeger’s self-reflection writing assignment addressed only four of the six required components and did not address, to any extent, her strengths and weaknesses.

Accordingly, the evidence established that Ms. Seeger failed to complete the Intensive Assistance Plans Levels 1 and 2, charge 1(a). The plans provided activities to strengthen performance; the assistance, support, and resources to be provided; the anticipated improvement objectives; and the criteria for evaluation. The directives were clear and unambiguous and the expected completion dates were set forth with specificity. As to the Level 1 Plan, the evidence established that Ms. Seeger failed to complete the Learning Path and the Education Impact video assignments and failed to attend two “Thirsty Thursday” sessions as directed

by the March 12, 2013 deadline. As to the Level 2 Plan, the evidence established that Ms. Seeger failed to complete the remaining assignments from the Education Impact website that she failed to complete in Level 1, and she failed to complete the written self-reflection as directed by the April 17, 2013 deadline.

**Charge 1(e)**

The evidence established that the Central Middle School Policies and Procedures Handbook required a teacher to notify the administration in advance of an absence by entering their absence into “the SEMS system” as well as by “verbally notifying Mrs. Davis or Mr. Fountain,” whose cell phone numbers were provided to teachers. The evidence showed that Ms. Seeger failed to verbally notify either principal in advance of her absence as required by the handbook, a copy of which she had received. Furthermore, Ms. Seeger admitted in her May 24, 2013 response letter to Superintendent Faulk, as well as during the panel hearing and in her brief on appeal, that she failed to comply with Central Middle School policy and procedure regarding the reporting of an absence to the administration.

**Charge 1(f)**

The evidence established that the co-principals had informed Central Middle School teachers that they were prohibited from showing movies in their classrooms prior to seventh period on state testing days. That directive was included in an email sent by Co-Principal Fountain to all teachers the day before the commencement of testing, as well as in a “Monday memo,” which was required reading for all teachers. Ms. Seeger did not see the email nor the “Monday memo.” She showed a movie prior to seventh period on a state testing day. Furthermore, Ms. Seeger admitted in her May 24, 2013 response letter to Superintendent Faulk, as well as during the panel hearing and in her brief on appeal, that she failed to comply with the principals’ directive concerning the showing of movies during statewide testing.

### **Conclusion**

Based on our review of the record, there was a rational basis for Superintendent Faulk's determination that Ms. Seeger was guilty of willful neglect of duty that is supported by substantial evidence. While the superintendent's termination decision was based on multiple allegations against Ms. Seeger, there is no requirement that *all* allegations must be proven before termination may be imposed or sustained. A tenured teacher may be terminated upon finding willful neglect of duty *on any one single charge* against the teacher. See Wise, 851 So. 2d at 1095. As the reviewing court, we are required to grant great deference to the School Board's conclusion and resulting sanction, if any. **Bernard**, 640 So. 2d at 326-27. As stated by the district court on judicial review, "deference needs to be given to the decision of the administrative agency, and ... I cannot substitute my opinion for that of the administrative board, or in this case[,] the superintendent." Accordingly, we conclude that Superintendent Faulk's decision to terminate Ms. Seeger's tenured employment with the Central Community School System based on willful neglect of duty was supported by substantial evidence and was not an arbitrary decision and therefore, not an abuse of the superintendent's discretion.

### **DECREE**

We affirm the January 31, 2018 judgment of the district court on judicial review, affirming the Central Community School System's termination of Lynn Seeger. All costs of this appeal are cast to the plaintiff/appellant, Lynn Seeger.

**AFFIRMED.**