

THE FIRING OF MARY MEDIocre

THE CASE FOR DUE PROCESS AT THE SCHOOL BOARD

BY CHARLES MCKINSTRY

Mary Mediocre¹ has had a 20-year career at several Adventist elementary schools. For the past four years, she had taught grades 4-6 at Valley Adventist School, a three-teacher school, but last spring, her contract was not renewed. She was not dismissed because she lacked specific teaching skills, although parents had expressed dissatisfaction with some of her practices. She lost her job primarily because she did not relate well with others. Parents complained that Mary was gruff and unapproachable, and the other teachers regarded her as unfriendly. Last school year was particularly difficult as Mary had trouble relating with her students, some of whom told their parents they were afraid of her.

As the year progressed, the mothers of several of Mary's students became increasingly concerned. As they began to share their complaints on the telephone and at parent-teacher meetings, their dissatisfaction intensified. By the time they approached the board chairperson, they had decided that personnel changes were necessary. It was February, and staffing decisions for the next school year would

need to be made soon. The board chair invited three of the dissatisfied parents to attend the next board meeting. They provided specific examples that they felt illustrated Mary's failures.

After a lengthy discussion, the board voted not to renew Mary's contract for the following year. No one notified Mary about the board's decision. She heard about it through the grapevine and angrily called the board chair. After being told that a final decision had been made, she began to gather support from her friends and other parents. Soon, the community was split into opposing camps.

Mary demanded to speak to the school board. The board chair reluctantly agreed to let her attend the next meeting. There was no conference representative at the meeting because no one had notified the educational superintendent about this agenda item.

Before Mary was allowed to enter the board room, the chair briefed the members about the situation, advising that they listen to Mary but not interact with her. Mary had brought nine supporters. The chair, not knowing what to do with so many people, at first tried to limit the number allowed to accompany her, but eventually let them in.



In a lengthy and rambling presentation, Mary unloaded her frustrations. At one point, she waved several sheets of paper, claiming they were her last three evaluations and that they had all been positive. Mary made veiled threats about legal action if the board did not continue her employment. The board listened silently. Eventually Mary finished, after which her supporters demanded to address the board. Confused, the board chair asked them to limit their comments to three minutes each, a request they ignored. After three hours, Mary and her supporters finally left.

In the subsequent discussion, alarmed board members sought ways to fend off

this attack. One of the concerned mothers was also a board member, who continued her accusations with several new stories. Another board member asked about Mary's evaluations, but neither the board chair nor the teaching principal had reviewed them.

About midnight, after two hours of discussion, the board voted to ratify the earlier action not to renew Mary's contract. They did so without consulting the school's lone dusty and outdated copy of the union education code.

Sound familiar? This hypothetical story illustrates a common, if perhaps a bit exaggerated, example of board incompetence.

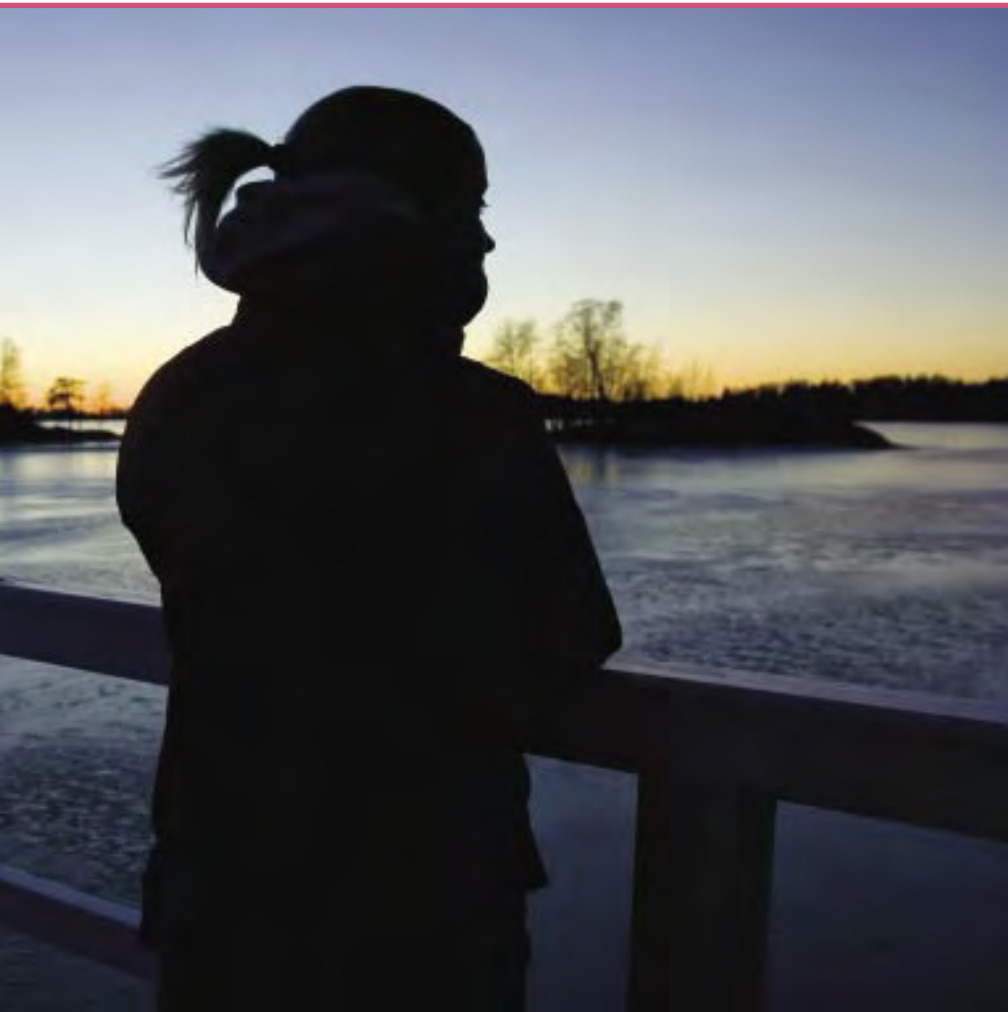
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The Due Process Concept

Due process² is a legal concept embedded in the United States Constitution, as well as the laws of many other nations. It is based on the idea that fair procedures should be instituted before removing or altering the rights of an individual.³ Due process is a continuum of procedures, not an immutable list. The specific procedures vary according to seriousness of the interests at stake. The process that must be used to convict a person of violating a parking ordinance are much different than what is required before sentencing a person to death for murder.

The United States Supreme Court in a landmark case entitled *Goss v. Lopez*⁴ ruled that public schools must provide the core requirements of due process, i.e., notice and hearing, before suspending students from school. *Notice* means that the person must be told what he or she is accused of; while a *hearing* means the person has the right to hear the evidence presented to the decision maker(s) and to give his or her side of the story. In the academic setting, the discipline or termination of a teacher would require the following due process elements:

1. Following the written policies of the union education code.
2. Notice to the employee, which includes:
 - a. The action being considered.
 - b. A summary of the facts supporting the action.
 - c. Providing the employee access in advance to relevant records and written evidence, including his or her personnel folder.
 - d. Advising the employee of the procedures to be used at the hearing, including his or her right to attend and present evidence.
 - e. Allowing the employee adequate time to prepare for the hearing.
3. A hearing by either the personnel committee or school board, which includes:
 - a. The superintendent or his or her associate chairs the hearing.
 - b. The employee is present while all the evidence is presented.
 - c. The employee is allowed to ask questions.
 - d. The employee is allowed to present evidence, including witnesses.



e. The employee can give his or her side of the story.

f. Non-committee members are excluded. Witnesses are present while they are presenting evidence.

g. The decision is made by unbiased members based on the evidence presented at the hearing. Board member(s) involved in the complaint must disqualify themselves from the deliberation process and from voting.

4. An appeal process to a higher body that allows review rather than simply repeating the hearing.

Putting Due Process Into Practice

Any time an employment status change is being considered, the superintendent or associate must be involved. Notice should be given in writing, stating what action is being considered and why. This letter should be written by the superintendent or his or her associate. Using our example above, Mary's notice would look like this:

Dear Mary:

On March 12, the personnel committee of the school board will review your re-employment for next year. At the last meeting, concerns were raised about your ability to relate well with others. Specifically, it was alleged that (1) you lack warmth toward the students, (2) some students are afraid of you; and (3) some parents believe you are gruff and unapproachable. We listened long enough to realize that this constitutes a serious issue. At that point, we voted to invite you to attend a meeting of the board that will address these issues.

The meeting will be held at 6:30 p.m., January 17, two weeks from now, in the library. We invite you to be present at this hearing so you can participate. You will be allowed to listen to the specific concerns and to ask questions of those who are testifying. After the concerns have been presented, you will be given an opportunity to explain things from your perspective.

Because the school board may consider recommending that the conference end Mary's employment, other due process protections should be used. Mary must

be allowed to participate in a meaningful way in the process. The committee must obtain accurate and balanced information before making a decision. Mary should have prior access to all information to be presented so she can prepare. This would include, for instance, letters or summaries of complaints (if such exist), access to her personnel file (including prior evaluations), and records of prior problems (if any). She should be given a copy of the sections of the education code governing the hearing and change in employment status.

In the letter giving notice to Mary, a summary of this information might look like this:

Because there is the possibility that this could lead to a change in your status as a teacher such as probation or non-renewal of your contract for next year, we want you to have ample opportunity to prepare for the meeting. The teaching principal has your personnel file, which you may review by arranging a time to look through it. We have received two letters of complaint, copies of which are included with this letter.

Even though you already have these policies in your teacher handbook, I am enclosing a copy of the _____ Union Conference Education Code sections that talk about status changes and hearings. Please note that the final decision is made by the conference board of education, not the school board. If there is other specific information that you need, please request it from me.

Tom Fairworthy
Principal, Valley Adventist School

At the hearing, Mary should be allowed to present evidence. In addition to telling her side of the story, she should be allowed to bring people who have specific knowledge about the concerns. If, for instance, Mrs. Smith regularly volunteers as an aide in Mary's classroom, Mary could ask her to come to the hearing. This is not the same as bringing friends who do not have information about the specific concerns. A hearing could easily turn into a parade of persons for and against the individual, which is not its purpose. The notice to Mary should describe this also.

At the hearing, you will be present when any evidence is given regarding your employment. You will be allowed to ask questions and given time to present your side of the story. If there are people you believe have relevant information about these issues, you may ask them to speak to the committee. These persons should have specific knowledge about the issues to be discussed, not just individuals who want to advise the committee what it should do. They will be invited in at the appropriate time. Please call me by the 15th to confirm that you plan to attend. At that time, we can discuss how the meeting will proceed. I plan to be present and to chair the meeting.

Employment decisions are made by the conference board of education after reviewing recommendations from the local school board. The conference superintendent or his or her associ-



ate must be present at any school meeting where employment recommendations are made.

Conducting the Hearing

Planning the hearing requires the balancing of competing interests. The chair must ensure due process procedures for the employee while keeping the meeting focused on obtaining evidence, not just the polarized opinions of supporters and detractors. The committee may set reasonable guidelines for the meeting, including time limits. The hearing should be chaired by the conference superintendent or his or her associate.

A summary of a hearing might look like this:

1. The chair arranges for Mary and any witnesses to remain in a private room until the meeting begins. When a quorum is present, the chair briefly informs them of the agenda. They do not discuss the evidence at this time.

2. The chair announces that the hearing has begun, and Mary is invited into the meeting. Only members of the committee are allowed to be present. If others have come to address the personnel committee, they must wait in another area until called.

3. The chair confirms that Mary has received the letter giving notice of the hearing and explaining due process protections.

4. The chair summarizes the procedure to be used for the meeting.

5. The person who has been designated to present the evidence against Mary is asked by the chair to speak first. In schools with a principal, this is the principal. In schools without a principal, it can be another board member. This person describes the complaints and concerns that have arisen, being careful to be as factual as possible. Witnesses, if any, are called in, one at a time. No documents are presented that Mary has not reviewed in advance.

6. After each presentation, Mary is given a chance to ask questions. The committee members may also ask questions.

7. After all the evidence has been presented, Mary is allowed to present evidence and to speak on her own behalf.

8. After all the evidence has been given and Mary has addressed the committee,

she is dismissed from the room. *No additional evidence may be presented in Mary's absence.* The committee discusses all the evidence and reaches a recommendation regarding Mary's employment.

9. Mary is told orally of the decision of the committee by the chair after which a letter is sent to her summarizing the decision and explaining the procedure for appeal. The chair reminds the members that board deliberations and actions are not to be discussed outside of the meeting room.

If the committee recommends a status change, the recommendation of the personnel committee must be presented to the school board and then forwarded to the conference board of education. A second hearing is not necessary by the school board. Repeating the hearing undermines the work of the smaller committee and may produce confusion. In schools where the board is small or is inclined to revisit all decisions, the original hearing should be scheduled at the school board meeting.

If the school board votes a change in a teacher's status, the education code provisions regarding review by the conference board of education should be followed. Only the conference board of education has the jurisdiction to make final employment decisions. Ideally, the union education code clearly delineates the role of the conference in such cases. The review by the board of education should not be a repeat of the original hearing. The board of education should review the process followed by the school to ensure that it was fair and that proper procedures were followed.

The board of education should review a summary of the evidence to ensure that there is substantial evidence to support the decision. The review should ensure that the vote complies with the education code provisions regarding an employment status change. It should also consider whether the decision was made in an unbiased manner or as the result of pressure. If the decision passes these tests, the conference board of education should approve the recommendation of the local school board. The conference board of education should guard against substituting its judgment for that of the local

board, which listened to live testimony.

In Summary

Treating teachers fairly is in everyone's best interest. By using appropriate procedures, the school board is more likely to get accurate and complete information, and thus to arrive at a good decision. The procedures help protect against a poorly informed judgment in the heat of emotion. If the decision goes against the teacher, he or she may not like the outcome but appreciate receiving a fair hearing. Fair-minded onlookers will appreciate the careful process and hopefully give the school the benefit of the doubt. Employee morale is enhanced because teachers know they are protected against unfounded and precipitous board actions. If the issue ends up in litigation, the school is in a much stronger position because of having followed due process procedures. Most important of all, in its decision making, the school has met the higher demands of the law of righteousness. ✍



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NOTES AND REFERENCES

1. The scenario and people named in this article are fictional. It is based on the laws of the U.S. School boards in other countries should consult legal advice and local laws to determine how to proceed.

2. Due process is required before government can take a person's life, liberty, or property according to the fifth and 14th amendments to the U.S. Constitution.

3. As a technical matter, due process applies to the actions of government, not private individuals or businesses. As a practical matter, employees are employed by contract. Contracts contain an implied covenant of good faith and fair dealing that resembles due process. For simplicity's sake, the term *due process* will be used in this article. Although the implied covenant of good faith and fair dealing may not be as clearly defined as due process, the church as an employer should provide fair procedures to its employees. In doing so, schools do well to model the requirements of due process.

4. 419 U.S. 565.