

**BEFORE NANCY KEENAN,  
SUPERINTENDENT OF PUBLIC  
INSTRUCTION FOR THE STATE OF  
MONTANA**

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**BOARD OF TRUSTEES,  
ROSEBUD COUNTY  
SCHOOL DISTRICT NO. 19  
COLSTRIP, MONTANA,  
Respondent/Appellant,  
v.  
ELMER R. BALDRIDGE,  
Petitioner/Respondent.**

OSPI 193-91.  
(Third Appeal).

**TERMINATION** — Teacher's behavior was deemed unacceptable in their district by Board of Trustees and teacher was dismissed. On appeal to county superintendent the dismissal was reversed for lack of good cause.

Appeal from the decision of the  
Acting Rosebud County Superintendent of Schools.

Charles F. Moses, for Petitioner/Respondent,  
Billings.

Charles E. Erdmann for Respondent/Appellant,  
Helena.

Reversed.

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**DECISION AND ORDER  
STATEMENT OF THE CASE**

This case has had a lengthy journey through the administrative process. The matter has been before the State Superintendent on three appeals. This is the first appeal in which the facts have been set forth.

In early 1988 a series of events occurred. A letter of complaint from parents precipitated inquiries into Baldrige's classroom behavior by the high school principal. Based upon initial information obtained from student interviews and a meeting with the teacher, the principal recommended suspension of Baldrige with pay pending an investigation.

On April 29, 1988, the Superintendent of the Colstrip School District wrote a letter to the Chairman of the school Board recommending that the trustees dismiss Elmer Baldrige (hereinafter "Baldrige"), a tenured teacher Baldrige pursuant to § 20-4-207, MCA. On May 16, 1988, a special board meeting was held to conduct a hearing on the recommendation. Baldrige and the board were represented at the hearing by legal counsel.

Following the presentation of evidence and arguments, the board voted to accept the superintendent's recommendation to dismiss. This decision was appealed to the Rosebud County Superintendent and on August 22, 1988, a hearing was convened. A motion for continuance was made by Baldrige and was denied. Baldrige gave notice of an appeal of that determination to the State Superintendent of Public Instruction. The hearing was recessed pending the appeal.

On November 30, 1988, the State Superintendent issued an order vacating and remanding the matter for hearing before the Rosebud County Superintendent of Schools. On May 30, 1989, a hearing was commenced. Parties were represented by counsel and the acting county superintendent was assisted by the Rosebud County Attorney. Numerous exhibits were offered at the hearing. Admitted into evidence were the School District's Exhibits 1 through 14 and Baldrige Exhibits A through M.

On November 16, 1989, the acting county superintendent issued her Findings of Fact, Conclusions of Law and Order which ordered that Baldrige be reinstated with pay. This decision was appealed to the State Superintendent. On September 26, 1990, the matter was remanded to the acting county superintendent for further proceedings.

On April 17, 1991, the acting county superintendent issued Findings of Fact, Conclusions of Law and Order. The School District filed the present appeal on May 14, 1991.

**STANDARD OF REVIEW**

The standards for review by the state superintendent are set forth in § 10.6.125, ARM, which reads as follows:

"(1) The state superintendent of public instruction may use the standard of review as set forth below and shall be confined to the record unless otherwise decided.

"(2) In cases of alleged irregularities in procedure before the county superintendent not shown on the record, proof thereof may be taken by the state superintendent.

"(3) Upon request, the state superintendent shall hear oral arguments and receive written briefs.

"(4) The state superintendent may not substitute her judgment for that of the county superintendent as to the weight of the evidence on questions of a fact. The state superintendent may affirm the decision of the county superintendent or remand the case for further proceedings or refuse to accept the appeal on the grounds that the state superintendent fails to retain proper jurisdiction on the matter. The state superintendent may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the findings of fact, conclusions of law and order are:

"(a) in violation of statutory authority of the agency;

"(b) in excess of the statutory authority of the agency;

"(c) made upon unlawful procedure;

"(d) affected by other error of law;

"(e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record;

"(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion;

"(g) because findings of fact upon issues essential to the decision were not made although requested."

This rule was modeled upon § 2-4-704, MCA, and the Montana Supreme Court has interpreted the statute and the rule to mean that agency (County Superintendent) findings of fact are subject to a clearly erroneous standard of review and that conclusions of law are subject to an abuse of discretion standard of review. *Harris v Bauer*, 230 Mont. 207, 749 P.2d 1068, at 1071, 45 St.Rep. 147, at 151, (1988); *City of Billings v. Billings Firefighters*, 200 Mont. 421, at 430, 651 P.2d 627, at 632 (1982). Further, the petitioner for review bears the burden of showing prejudice by a clearly erroneous ruling. *Terry v. Board of Regents*, 220 Mont. 214, at 217, 714 P.2d 151, at 153 (1986), citing *Carruthers v. Board of Horse Racing*, 216 Mont. 184, 700 P.2d 179, at 181, 42 St.Rep. 729 (1985). Findings are binding on the court and not "clearly erroneous" if supported by "substantial credible evidence in the record." *Id.* This has been further clarified to mean that a finding is clearly erroneous if a "review of the record leaves the court with the definite and firm conviction that a mistake has been committed." *Wage Appeal v. Board of Personnel Appeals*, 208 Mont. 33, 676 P.2d 194, at 198 (1984). A conclusion of law is controlling if it is neither arbitrary nor capricious. *City of Billings*, 651 P.2d at 632.

### DECISION AND ORDER

The decision of the acting county superintendent reversing the decision of the board of trustees is hereby reversed.

### DISCUSSION

Review of this matter is made difficult because the acting county superintendent has ignored the decision of this Superintendent. The previous decision of this Superintendent vacated the acting county superintendent's decision and remanded the matter for further findings in conformance with the opinion. The acting county superintendent was directed to consider all evidence before her and to make a determination as to whether the trustees dismissed Baldrige with or without good cause, OSPI 183-89, decided September 26, 1990. That decision found that Baldrige was accorded all statutory due process rights in the procedures followed by the school district leading up to his dismissal. Although reminded upon remand, the acting county superintendent has failed to meet the mandate of § 10.6.119, ARM, of "findings of fact accompanied by a concise and explicit statement of the underlying facts supporting the findings based exclusively on the evidence and supporting authority or reasoned opinion for each conclusion of law."

### DUE PROCESS

This Superintendent in her previous decision held that the board had complied with statutory requirements of due process. The acting county superintendent in her decision on remand restated her previous finding of fact in the form of a conclusion of law and again found: "#4. The district superintendent and the Colstrip Board of Trustees did not follow due process in the suspension and subsequent dismissal of the Petitioner."

Finding of Fact #3 states:

"That the Respondent School District has a collective bargaining agreement with the Colstrip Faculty Association which states on page 4, Article V, Section 1(6), 'to have any complaint directed against a teacher called to the attention of the teacher in writing within ten (10) days of the receipt of the written complaint. The teacher shall be given adequate time to respond to the written complaint before any action is taken.'"

It appears that Conclusion of Law #4 in the decision on review is based upon the collective bargaining agreement (FF #3). As pointed out in the acting county superintendent's findings, Baldrige received notice of the written complaint within one day. The district, in suspending Baldrige, did not comply with the terms of the collective bargaining agreement when it did not allow time to respond to the written complaint

before suspending Baldrige. Baldrige's suspension with pay is not the basis of this appeal. The basis for the appeal is the dismissal action of the trustees. However, the acting county superintendent fails to distinguish between the suspension with pay and the termination. Baldrige was given notice, adequate time to respond and was given opportunity for hearing on the recommendation for dismissal in accordance with both the collective bargaining agreement and the statute.

The administration and board substantially complied with the statutory mandates. No rights of Baldrige have been prejudiced by the procedural actions. Conclusion of Law #4 is in error.

### GOOD CAUSE

The sole issue before the acting county superintendent on remand was whether the trustees had good cause to dismiss Baldrige. The closest that the acting county superintendent's decision comes to answering that question is Conclusion of Law #3. It states:

"This Acting County Superintendent does not approve of the conduct displayed by the Petitioner on March 30, 1988, but all other accusations heard in hearing were hearsay and interpretations without any previous written documentation in personnel file or on evaluations."

Section 20-4-207, MCA, provides that the trustees of any district may dismiss a teacher before the expiration of his employment contract for immorality, unfitness, incompetence, or violation of the adopted policies of such trustees. Upon appeal of such a decision, the county superintendent, after a hearing, must determine whether the trustees' dismissal was made with or without good cause. The trustees dismissed Baldrige for incompetency, unfitness and violation of the adopted policies of the trustees based upon specific allegations.

On remand, the acting county superintendent added the following findings of fact:

"7. That the Petitioner was known to be 'a thorn in the side' of the district superintendent and the board of trustees because he often challenged the discrimination against Native American students and because he chaired the CFA grievance committee in a number of successful complaints.

"8. That the students who testified for the Respondent side seem to be part of a 'clique' of friends, two of whom are children of school board members. This in addition to the conduct of the daughter of the complaining parents seems to make their testimony somewhat skeptical.

"9. That the Petitioner has an excellent reputation as a teacher and has had only one negatory comment on an evaluation which stated that he should be more 'tactful in his correspondence with the superintendent'."

As stated in the September 26, 1990 decision of this Superintendent, the statements made by the students who testified were derived from their own personal knowledge and perceptions and was, therefore, direct evidence to be considered by the hearing officer. Upon remand the acting county superintendent ignored this directive and persists in terming the 'accusations heard' as 'hearsay'.

A review of the transcript of testimony demonstrates that the incidents cited by the district superintendent did occur. It remained to be determined whether they were sufficient to reach a standard of good cause for dismissal.

"1. The glove incident. This was an incident that occurred in three classes involving Baldrige's use of a rubber glove with a joke directed at female students. Students interpreted it to have gynecological inferences. The testimony by Baldrige before the board of trustees and before the county superintendent is inconsistent. Baldrige does not deny the incidents. (R Exhibit 2, p. 143)

"2. 'Stop, drop and blow.' This incident involved a comment made by Baldrige to a student about another student. Baldrige admitted the incident in the hearing before the county superintendent. (R Exhibit 2, pp. 143 & 144)

"3. Offer to pay \$20 to make another student cry. Baldrige admitted making the statement and termed it a joke.

"4. Joke using terms 'quizzzy' and 'testes' with sexual connotations. Baldrige admitted telling the joke in classes. (Tr., p. 422)

"5. The incident alleged by a student where Baldrige indicated that he was 'hung' was denied by Baldrige in the hearing before the county superintendent. At the school board hearing he testified that he had no memory of the incident but did not believe the student testifying would lie. (R Exhibit 2, p. 146)

"6. Use of the term 'prick' was denied at the county superintendent hearing and admitted at the school board hearing. (R Exhibit 2, p. 148.)

"7. Giving students 'the finger' or 'flipping off students.' This was denied in testimony before the county superintendent in contradiction of testimony before the board. (R Exhibit 2, page 148)

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"8. Statements by Baldrige to a female student regarding the sight of blood and that 'she must have a rough month' were admitted by Baldrige and recognized as inappropriate and deserved an apology. (Tr. p. 430)

"9. Baldrige distributed copies of the letter from the principal to his class and discussed the matter with them. He also taped portions of the discussion."

The statutory grounds for dismissal relate to core requirements of fitness and in a district's interest in eliminating unfit professionals from its schools:

"The calling of a teacher is so intimate, its duties so delicate, the things in which a teacher might prove unworthy or would fail are so numerous that they are incapable of enumeration in any legislative enactment. \*\*\* His habits, his speech, his good name, his cleanliness, the wisdom and propriety of his unofficial utterances, his associations, all are involved. His ability to inspire children and to govern them his power as a teacher, and the **character** for which he stands are matters of major concern in a teacher's selection and retention." *Board of Trustees v. Stubblefield*, 16 Cal. App. 3d 820, 94 Cal. Rptr. 318, at 321 (1971)."

Courts have differed in their conclusions regarding the gravity of alleged misbehavior. Each case must be assessed on its own facts and reflect differing local community attitudes and environments. Valente, *Education Law*, 1985. The Montana Constitution,

Article X, Section 8, provides:

"The supervision and control of schools in a school district shall be vested in a board of trustees to be elected as provided by law."

The Montana Supreme Court has often affirmed the premise of local control and the Legislature, in leaving "good cause" undefined, must have intended that the standards be applied at the local level based upon local standards.

The Colstrip Board of Trustees after hearing decided that the behavior exhibited by Baldrige was not acceptable in their district. The County Superintendent, charged with determining if that decision was made with or without good cause, reversed the trustees' decision and reinstated Baldrige.

Conclusions of Law #3 and #4 are arbitrary and capricious. Therefore, the decision of the acting county superintendent contains no conclusion of law which supports her decision to reverse the decision of the board of trustees. The acting county superintendent has abused her discretion.

DATED this 10th day of January, 1992.

/s/ NANCY KEENAN  
 Superintendent of  
 Public Instruction