

2001

Rosemary Abbott v. Board of Education of the Nebo School District : Brief of Appellant

Utah Supreme Court

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SUPREME COURT
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BRIEF

14409A

OF THE STATE OF UTAH

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BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

Case No. 14,409

ROSEMARY ABBOTT,)
)
Plaintiff-Appellant,)
)
vs.)
)
BOARD OF EDUCATION OF THE)
NEBO SCHOOL DISTRICT, et al.,)
)
Defendants-Respondents.)

BRIEF OF PLAINTIFF-APPELLANT

Appeal from an Order and Judgment of the
Fourth Judicial District Court for Utah County, Utah
The Honorable George E. Ballif, Judge

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FILED

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Clark, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

ROSEMARY ABBOTT,)
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 Plaintiff-Appellant,)
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BRIEF OF PLAINTIFF-APPELLANT

NATURE OF CASE

This is an action for violation of Plaintiff-Appellant's rights created by the Utah Orderly School Termination Procedures Act, Sections 53-51-1 et seq., Utah Code Annotated, 1953, as amended, for breach of contract, and for violation of Plaintiff-Appellant's rights to due process.

DISPOSITION IN LOWER COURT

The case was tried to the court. From a Judgment and Order dismissing the Complaint, Plaintiff appeals.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the judgment and judgment in her favor as a matter of law awarding her damages for her lost salary and other benefits of employment and for an order reinstating her as an employee of Respondent.

STATEMENT OF FACTS

The Appellant, Rosemary Abbott, was and is a teacher holding a certificate to teach public schools in the State of Utah. Following a year of teaching in the State of Texas, Appellant made application to Respondent for a teaching position and was employed at the beginning of the 1973-74 school year to teach one-half day of fifth grade at the Goshen Elementary School and as an aid at the Santaquin Elementary School for the remainder of the day. In January, 1974, she was given a full time contract of employment to teach fifth grade at the Goshen Elementary School. Subsequently, she was given a contract of employment for the 1974-75 school year to again teach the fifth grade at Goshen Elementary School. Stipulated Facts R.20.

On March 27, 1975, the Respondent, through its Superintendent Joe A. Reidhead, caused a letter to be delivered to Appellant which informed her that she would not be offered a teaching contract for the 1975-76 school year. A copy of that letter is attached hereto as Appendix "A". Appendix "A" is the first and only notice Appellant

received regarding the termination of her employment with Respondent. The letter did not contain a written statement of causes or reasons why Appellant would not be offered a teaching contract for the 1975-76 school year, or that Appellant could request an informal conference before the Board of Education or such personnel as the Respondent designated. Thereafter, on at least two occasions, Appellant requested from the Respondent a statement of the reasons for her termination, but her requests were refused by Respondent. Stipulated Facts R.20-21 and Appendix "A".

Following compliance with several steps of the grievance procedure established by the Respondent, Appellant requested a hearing before the Board of Education of the Nebo School District. A hearing was set for May 13, 1975. Prior to the date of the hearing, Appellant requested that the Respondent make and provide her with copies of material in her personnel file. The Respondent refused to make such copies but advised Appellant that she could examine her file. The Appellant, through her representatives, had requested that Mr. William B. Stansfield, Principal at Goshen Elementary School, and Appellant's immediate supervisor, be present at the hearing, but Respondent informed Mr. Stansfield that his presence at the hearing would not be necessary. Mr. Stansfield did not attend the hearing. Stipulated Facts R.21.

Appellant appeared at the hearing in person and was also represented by her legal counsel. At the hearing, Appellant's legal counsel requested that the Board of Education specify its reasons for not offering Appellant a contract of employment for the 1975-76 school year. In response, the Board of Education of the Nebo School District, advised Appellant that it had no obligation under its contract of employment with its educators and that it was not the policy of the Board to provide a statement of reasons why a "qualifying" educator would not be offered a teaching contract for any ensuing year. The Board took the position that the only issues to be considered at the hearing would be her status as a "qualifying" educator and whether or not she had been properly and timely given notice that she would not be offered a teaching contract for the 1975-76 school year as required by her contract. Stipulated Facts R.21.

A document bearing the date of August 3, 1974, entitled "An Agreement between the Board of Education of the Nebo School District and the Nebo Education Association" (hereinafter "Agreement"), contained the personnel and employment policies in effect for the period August 3, 1974 through May 31, 1975, was duly negotiated between the Respondent and its educators. The Agreement was incorporated by reference into the employment contract of the

Appellant and all other educators employed by Respondent. Pursuant to the provisions of the Agreement, Appellant was during the time of her employment with Respondent a "qualifying" educator.

Stipulated Facts R.22.

Section 18-3-4 of the Agreement provides in relevant part:

. . . the aggrieved party may request, through the superintendent, a hearing before the Board. The Board shall review the grievance at the earliest possible Board meeting after receipt of the request. The Board will act upon such request with (within?) 40 calendar days. The Board may grant, or refuse the grievance or may submit it to arbitration. The Board's decision will be final. Plaintiff's Exhibit No. 14.

Section 18-5-5 of the Agreement provides in relevant part:

Prior to the Level Three hearings (Section 18-3-4 above), all parties of interest shall make available to the parties involved and their representatives, all pertinent information not privileged under the law, in their possession or control and which is relevant to the issues raised by the grievance. Plaintiff's Exhibit No. 14.

In the present case, the Respondent refused to state its reasons for terminating the Appellant, refused to permit Mr. Stansfield to be present at the hearing and refused to permit Appellant to copy the contents of her personnel file or to provide copies to Appellant's counsel. Stipulated Facts R.21.

Appendix "A" of the Agreement provides in relevant part:

I. Procedures for Evaluation - Qualifying Educators.

1. By January 15th of each year, the principal will submit an evaluation of all qualifying educators assigned to his school provided they have been employed for at least two months.

2. On April 1 of each year, the principal will submit a second evaluation for:

a. All qualifying educators whose status has changed significantly since January.

b. All educators whose evaluations were "less than satisfactory" in January.
Plaintiff's Exhibit No. 14.

Evaluations of Appellant were conducted by January 15th for the 1973-74 and 1974-75 school years, but no evaluation was conducted by the principal (or anyone else) after the January, 1975 evaluation even though the principal knew that there would be a change in Appellant's position. T. 30. See Appellant's evaluations attached hereto as Appendixes "B-1", "B-2" and "B-3". The record shows that Appellant's January, 1975 evaluation did not show Appellant to be an educator whose performance was "less than satisfactory".

Section 7-1 of the Agreement provides:

Evaluations of an educator's performance based on established district standards shall be conducted in accordance with accepted professional personnel practices. The educator will be fully informed by the principal as to how such evaluation shall be conducted.

Section 7-2 of the Agreement provides:

Educators will be given a copy of any evaluation report and will discuss such report with the person preparing it before it is submitted to the district office for inclusion in the educator's permanent file. After such review, the educator shall affix his signature to indicate that he is aware of the contents of the report. Such signature does not necessarily indicate agreement with the content of such material.

In the present case, Mr. Stansfield testified that Appellant was evaluated many times, but that she signed only three evaluations and was not informed about the other evaluations. T. 31. Further, Appellant was not evaluated after January, 1975. Even then, Appellant's evaluations did not show her performance to be less than satisfactory. The formal evaluations of Appellant show her to be a satisfactory teacher. See Appendixes "B-1", "B-2" and "B-3".

Section 5-6 of the Agreement provides:

Unless a contract of employment shall expressly provide otherwise, a qualifying educator shall be deemed to be employed for a period of one school year. Each qualifying educator may deem himself to be re-employed for the succeeding year unless otherwise notified to the contrary by the Board of Education in the manner hereinafter provided.

Appellant submits that as she was not notified or evaluated in the manner required in the Agreement, she had both a "property" interest and contractual right to be re-employed for the 1975-76 school year.

Appellant submits that Respondent has an employment practice of hiring and retaining its qualifying educators. The following table* shows the number of qualifying educators hired by the Respondent for its school years 1970-71 through 1974-75 together with the number of qualifying educators dismissed by the Respondent for cause.

<u>School Year</u>	<u>Teachers Hired</u>	<u>Teachers Dismissed for Cause</u>
1970-71	46	1
1971-72	59	0
1972-73	39	1
1973-74	42	2
1974-75	48	1

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN FINDING THAT THE UTAH ORDERLY SCHOOL TERMINATION PROCEDURES ACT, SECTIONS 53-51-1 ET SEQ., UTAH CODE ANNOTATED, 1953, AS AMENDED, DOES NOT APPLY IN THIS CASE.

Appellant submits that the Utah Orderly School Termination Procedures Act, Sections 53-51-1 et seq., Utah Code Annotated, 1953, as amended (hereinafter "Act"), governs the procedures which Respondent must follow to terminate Appellant. Respondent concedes that it did not comply with the procedures required in the Act, but argues that the Act does not apply in this case. Appellant submits that the Act applies to her for two reasons: (1) the Act requires

*Compiled from the testimony of Joe A. Reidhead. T. 17 and 18.

a fair hearing for all teachers (or educators) who are terminated by a school district; and (2) Appellant had a "reasonable expectation of continued employment in succeeding years."

Section 53-51-2 of the Act provides:

The purpose of this act is to require school districts to adopt orderly termination procedures and to specify standards of due process and causes for termination.

Section 53-51-3 provides in relevant part:

As used in this act:

(2) "Dismissal" or "termination" means:

(a) Any termination of the status of employment of an educator.

(b) Failure to renew the employment contract of an educator who pursuant to the employment practices of the school district has a reasonable expectation of continued employment in successive years.

(3) "Educator" or "teacher" means all teaching and professional personnel of a school district who hold positions requiring certification and valid certificates issued to them by the State Board of Education.

Section 53-51-4 of the Act provides:

The board of education of each school district by contract with its educators or their associations or by resolution of the board shall establish procedures for termination of educators in an orderly manner without discrimination.

Section 53-51-5 of the Act provides in relevant part that "the orderly dismissal procedure adopted by a school district shall provide: (1) Right to a fair hearing."

Section 53-51-6 of the Act provides:

At all hearings, after due notice and demand of the educator, he may be represented by counsel, produce witnesses, hear the testimony against him and cross-examine the witnesses and examine documentary evidence. Hearings may be held before the board or the board may establish a procedure whereby hearing is before examiners

Appellant was a teacher employed by the Respondent.

Respondent determined not to renew Appellant's contract of employment for the 1975-76 school year and so advised her. In response to Respondent's notification to her, Appellant requested a hearing before the Board of Education of Respondent. The Board set a time on its regular agenda to hear Appellant, but Respondent failed and refused both at the hearing and prior thereto to provide Appellant with a statement of its reasons for not renewing Appellant's contract of employment. It further refused to permit Mr. William Stansfield, Appellant's Principal and immediate supervisor, to be present at the hearing, and thereby effectively denied Appellant the opportunity to "hear the testimony against . . . (her) and to cross-examine witnesses and examine documentary evidence." Respondent also refused to produce

and permit Appellant to copy documents contained in her personnel file.

Appellant submits that Respondent's actions, as above stated, denied her minimal due process required by Sections 53-51-5(1) and 53-51-6 of the Act.

Appellant submits that the Utah Orderly School Termination Procedures Act requires that she be given a fair hearing, if requested by her, as a condition precedent to her termination by Respondent. At the hearing, Appellant is entitled to hear the testimony against her, to cross-examine witnesses, to examine documentary evidence and to know the reasons for her termination. As the Respondent failed to afford the Appellant a fair hearing, Appellant is entitled to the relief she seeks.

Secondly, Appellant submits that the Act creates a second category of teachers who are entitled to more than the minimal due process required by Sections 53-51-5(1) and 53-51-6.

Section 53-51-5 of the Act provides in relevant part:

(2) If the district intends not to renew (the) contract of employment of an individual entitled to employment in succeeding years according to the district personnel program, notice of such intention shall be given the individual. Said notice shall be issued at least two months before the end of the contract term of the individual, e.g., the school year. The notice in writing shall be served by personal delivery or by certified mail addressed to the individual's last known address. Notice shall be dated and contain a clear and concise statement that the individual's contract will not be renewed for an ensuing term and the reasons for the termination. (Emphasis added.)

(3) In the absence of timely notice, a subparagraph (2) employee is deemed to be re-employed for the succeeding contract term with a salary based upon the salary schedule applicable to the class of employee into which the individual falls. This provision shall not be construed to preclude the dismissal of an employee during his contract term for cause.

(4) At least one month prior to issuing notice of intent not to renew the contract of the individual, he shall be informed of the fact that continued employment is in question and the reasons therefor and given an opportunity to correct the defects which precipitated possible nonrenewal. The individual may be granted assistance in his efforts to make correction of the deficiencies which may include informal conferences and the services of applicable school personnel within the district.

Appellant submits that the employment practices of Respondent created a reasonable expectation of continued employment for all teachers hired by it. The testimony of Joe A. Reidhead,* Superintendent of Respondent, showed that only 2.1% of all teachers hired by Respondent from the 1970-71 through 1974-75 school years were terminated. Furthermore, the Respondent's Agreement provides that "qualifying educators" would be evaluated by January 15th of each year. A copy of Appellant's evaluations are attached hereto as Appendixes "B-1", "B-2" and "B-3". Those

*Table above at page 8.

evaluations show that Appellant was an average teacher employed by the District. It should be noted that her first evaluation dated April 30, 1973, showed Appellant to be below average in three categories. Her second evaluation dated February 8, 1974 showed her to be an average teacher and her third and last evaluation dated January, 1975 showed her to be below average in only one category.

Appendix "A" of Respondent's Agreement, set forth above, provides that educators are to be evaluated during January of each year. Educators whose status has changed, are to be evaluated in "April" of each year. It is admitted by the Respondent that it did not perform the second evaluation in April of 1975 as it should have done pursuant to the terms of its Agreement. T.30.

In Sigmon v. Poe, 381 F. Supp. 387 at p. 392 (D.C.N.C. 1974) the court held:

The defendant, Board of Education, had a practice and the Superintendent issued a directive requiring principals in the fall of the year to report teachers whom they intended to rate as unsatisfactory, and to "be sure that each employee in your school . . . is aware that he or she may make a written response to the complaints, commendations and suggestions." This was not done. Mr. Jaynes' (the defendant's principal) adverse report of October, 1973, in furtherance of his decision not to renew plaintiff's contract, was a secret report never communicated to the plaintiff until late the following spring. The plaintiff had an interest under established procedures in knowing of this adverse action, and the secret report by the principal was a violation of her right to have that knowledge. This is a violation of a property right which entitles her to a due process hearing.

In the instant case, the Respondent, through its Agreement, had agreed with its employees that if evaluations of its educators would be based on established district standards and that the educator would be fully informed by the principal as to how such evaluations were to be conducted. The educators were to be given a copy of the evaluation report and an opportunity to discuss the report with the person preparing it before it was submitted to the district office. The district's Agreement also required the educator to sign the report as an indication that he is aware of the contents of the report. Article 7-1 and 7-2 of the Agreement (text set forth at pp. 6 and 7 above).

Appendix "A" of the Agreement also requires that the principal submit a second evaluation on April 1st of each year for:

- a. All qualifying educators whose status has changed significantly since January.
- b. All educators whose evaluations were "less than satisfactory" in January.

In the instant case, no such evaluation was prepared or submitted. Accordingly, pursuant to the criteria of the Sigmon case, supra, Appellant had a property right and reasonable expectation of continued employment, at least through the following school year.

Accord, Francis v. Ota, 356 F. Supp. 1029 at pp. 1033-1034 (D.Haw. 1973), where the court held that a non-tenured guidance counselor and registrar at a community college had a legitimate expectation of continued employment unless and until the administration deprived him of that expectation in a manner consistent with its established procedures and policies.

Appellant submits that, based upon the employment practices and policies of the Respondent, she had a reasonable expectation of continued employment on either of the following grounds:

- A. Respondent did not evaluate Appellant's performance in the manner required of it by its own Agreement and it failed to perform the second evaluation by April 1st as required by Appendix "A" of the Agreement, or

B. Respondent terminates only approximately 2.1% of its probationary teachers.

Because Respondent has created in Appellant a reasonable expectation of continued employment, Respondent must comply with the requirements of subsections (2), (3) and (4) of Section 53-51-5 of the Act. It is admitted by Respondent that it has not complied with the provisions of the Act.

Accordingly, Appellant is entitled to the relief which she requests.

POINT II

THE COURT ERRED IN HOLDING THAT RESPONDENT WAS NOT IN BREACH OF THE CONTRACT OF EMPLOYMENT WITH APPELLANT (THE AGREEMENT).

Appellant submits that Respondent is in breach of its Agreement with Appellant for the reasons that it:

- (a) Terminated her without affording her a fair hearing;
- (b) Failed and refused to provide her with pertinent information in its possession and control;
- (c) Failed to conduct the evaluations of Appellant in the manner required of it by the Agreement; and
- (d) Failed and refused to comply with the Agreement with respect to conducting evaluations of Appellant.

In Point I above, Appellant has set forth her arguments with respect to Respondent's failure to follow the provisions of the Agreement with respect to the method for conducting evaluations of her performance. The record clearly shows that Respondent did not comply with Sections 7-1 and 7-2 of the Agreement. Nor did the Respondent comply with the provisions of Appendix "A" of the Agreement.

Section 18-5-5 of the Agreement requires Respondent to make available to Appellant and her representatives "all pertinent information not privileged under law, in their possession or control and which is relevant to the issues raised by the grievance." It is admitted that the Respondent refused to permit Appellant to make copies of the information contained in her file, although it did permit her to look at the file. Appellant had also requested that Mr. Stansfield, Appellant's principal and supervisor, attend the hearing, but Respondent directed Mr. Stansfield not to attend the meeting.

As Respondent is in breach of its Agreement with Appellant, Respondent should be ordered to pay Appellant damages and to reinstate her until such time as it complies with the terms of the Agreement.

POINT III

THE COURT ERRED IN HOLDING THAT APPELLANT HAD NO PROPERTY RIGHT TO BE PROTECTED BY DUE PROCESS.

The Fourteenth Amendment to the Constitution of the United States provides that no state shall . . . "deprive any person of life, liberty, or of property, without due process of law"

Article 1, Section 7 of the Constitution of Utah provides:

No person shall be deprived of life, liberty or property, without due process of law.

Appellant submits that both the law and facts set forth in Points I and II above, afford Appellant a property right of which she may not be deprived without due process of law.

In Christiansen v. Harris, 109 Utah 1, 163 P.2d 314 (1945), this court held that the essential elements of due process are:

- (a) The existence of a competent person, body, or agency authorized by law to determine the question;
- (b) An inquiry into the merits of the question by such person, body or agency;
- (c) Notice to the person of the inauguration and purpose of the inquiry and the time at which such person should appear if he wishes to be heard;

- (d) Right to appear in person or by counsel;
- (e) Fair opportunity to submit evidence, examine and cross-examine witnesses; and
- (f) Judgment to be rendered on the record thus made.

In the case of the Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972), Mr. Roth, an untenured teacher employed by Wisconsin State University, sought an order of the Federal Courts enjoining the University from terminating his employment for the reason that he had requested and had been denied a statement of the reasons for the University's decision not to rehire him for another year. Mr. Roth had also requested and had been denied a hearing regarding his termination. The Court held that absent a showing by the Plaintiff of a "property" or "liberty" interest, the University need not provide Mr. Roth a statement of its reasons for not renewing his contract or to afford him an opportunity for a hearing. In the Roth case, supra, the Court set forth certain standards relevant to this case. The Court held:

To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. It is the purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. It is a purpose of the constitutional right to a hearing to provide an opportunity for a person to vindicate those claims.

Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law -- rules or understandings that secure certain benefits and that support claims of entitlement to those benefits. 408 U.S. 577.

In Perry v. Sindermann, 408 U.S. 593 (1972), the court was concerned with a college teacher employed in a state college system under a series of one year contracts for a period of ten years. Following the 1968-69 school year, the governing board voted not to offer him a new contract for the following year. He was given no reason for the nonrenewal of his contract nor with an opportunity to challenge any basis for the nonrenewal. Using the criteria developed in Roth, supra, the court found that Mr. Sindermann had a property interest to be protected by due process. The court held:

A written contract with an explicit tenure provision clearly is evidence of a formal understanding that supports a teacher's claim of entitlement to continued employment unless sufficient "cause" is shown. Yet, absence of such an explicit contractual provision may not always foreclose the possibility that a teacher has a "property" interest in re-employment Explicit contractual provisions may be supplemented by other agreements implied from "the promisors words and conduct in light of the surrounding circumstances . . . and (t)he meaning of (t)he promisors words and acts is found by relating them to the usage of the past. 408 U.S. 601-602.

In the instant case, the Utah Orderly School Termination Procedures Act requires that Respondent give Appellant a "fair hearing" and a statement of reasons for the nonrenewal of her contract of employment. The Act sets forth the elements of a fair hearing with which Respondent must comply.

Appellant further submits that even if the Utah Orderly School Termination Procedures Act does not apply in this case, she had a protected property interest because of the policies and practices of the Respondent with respect to:

A. Respondent's duties to evaluate Appellant's performance as an educator, which evaluations were not conducted in the manner required by the provisions of the Agreement. In Francis v. Ota, 356 F. Supp. 1029 at pp. 1033-1034 (D.C.Haw. 1973), the court held that the failure of the college to follow its own established procedures created in the school teacher a "legitimate expectation of future employment."

B. Respondent's practice of renewing the employment of its probationary teachers. Accord, Lusk v. Estes, 361 F. Supp. 653 (N.D.Tex. 1973), wherein the court held that a teacher had a "property" interest where he was justified in expecting continued employment in light of the practices and policies of the school.

Appellant submits that she had a protected property interest for the reasons suggested in Points I and II of this Brief. The foregoing decisions of the courts of the United States show that she had been denied the due process required by the Fourteenth Amendment to the Constitution of the United States.

Appellant urges this Court to find that she has also been denied due process under Article 1, Section 7 of the Constitution of Utah. See Untermeyer v. State Tax Commission, 102 Utah 214, 129 P.2d 881 (1942), wherein this court held that the decisions of the United States Supreme Court are highly persuasive as to the application of Article 1, Section 7 of the Constitution of Utah. Even if this Court finds that the Utah Orderly School Termination Procedures Act is not applicable to Appellant, nevertheless, Appellant is entitled to due process because of the Respondent's failure to comply with its own Agreement and because of the practices and policies of the Respondent. Appellant suggests that the elements of due process which should be afforded her are found in Christiansen v. Harris, supra.

It is respectfully submitted that the Utah Orderly School Termination Procedures Act and the policies and practices of the Respondent have created in the Appellant a protected "property" interest which requires due process before Respondent may lawfully terminate Appellant's employment. Until such time as she is afforded the due process, Appellant should be awarded damages for loss of salary and Respondent should be ordered to reinstate Appellant as a teacher and educator at a salary together with such benefits as she would have had had she not been improperly terminated by Respondent.

CONCLUSIONS

1. The Utah Orderly School Termination Procedures Act, Sections 53-51-1 et seq., 1953, as amended, requires the Respondent School District to provide in its policies for orderly termination of its teachers, an opportunity for a fair hearing. The elements of the fair hearing are set forth at Section 53-51-6, Utah Code Annotated, 1953, as amended. Respondent has failed to comply with the hearing requirements of that Act.

2. Appellant had a "reasonable expectation of continued employment" within the meaning of the Utah Orderly School Termination Procedures Act, supra, for the reasons that:

(a) Only 2.1% of all teachers hired by the Respondent from the 1970-71 through 1974-75 school years were terminated.

(b) Respondent's evaluations of Appellant showed her to be an average teacher. The Agreement required Respondent to evaluate Appellant, if it were determined that her status had changed, by April 1, 1975. That evaluation was never performed. Many of the "informal" evaluations of the Appellant were done in secret and without Appellant's knowledge contrary to the requirements of Respondent's Agreement with Appellant.

3. Respondent breached its Agreement with Appellant in that it:

(a) Terminated Appellant without affording her a fair hearing,

(b) Failed and refused to provide Appellant with pertinent information in its possession and control which Appellant considered relevant to her case,

(c) Failed to conduct the evaluations of Appellant in the manner required of it by the Agreement, and

(d) Failed and refused to comply with the provisions of the Agreement with respect to conducting the evaluations of Appellant's performance as a teacher.

4. The Utah Orderly School Termination Procedures Act, supra, and the Agreement created in the Appellant a "property" right of which the Appellant may not be deprived without due process of law under the provisions of the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 7 of the Constitution of Utah.

5. Appellant should be awarded damages for her lost salary and other benefits and reinstated as a teacher employed by Respondent until such time as she is afforded due process by Respondent.

Respectfully submitted,



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BOARD OF EDUCATION

Dr. Vernon J. Tipton, *President*
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Hugh Hjorth

APPENDIX "A"

Dr. Joe A. Reidhead, *Superintendent*
Errol J. Smith, *Clerk-Treasurer*
Boyd Goodrich, *Instruction*
Omar M. Hansen, *Operations*



NEBO SCHOOL
DISTRICT

OFFICE OF ADMINISTRATION

50 SOUTH MAIN STREET • SPANISH FORK, UTAH 84660 • PHONE 798-3586 - 489-5152

March 27, 1975

Ms. Rosemary S. Abbott
40 North 800 East
Spanish Fork, Utah 84660

Dear Ms. Abbott:

Pursuant to an Agreement between the Nebo Board of Education and the Nebo Education Association, and according to Article 5 - 6, I am hereby notifying you on this 27th day of March, 1975, that you will not be offered a teaching contract for the coming school year of 1975-76.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Joe A. Reidhead". The signature is written in dark ink and is positioned above the printed name and title.

Joe A. Reidhead
Superintendent

JAR/cb

cc: Principal Boyd Stansfield
Nebo Education Association

P-1

NEBO SCHOOL DISTRICT

Name of Teacher Rosemary Abbott Period Covered Aug. 1973 to Feb. 1974
 School Dashwood Grade or Subjects Taught 5th Grade

	Superior	Very Good	Average	Below Average	Unsatisfactory	
PERSONAL TRAITS						Principal Comment: Is getting settled and with some further assistance will be a good teacher. Would like to see her placed in a primary grade. Teacher Comment:
General Appearance						
Voice: Quality and Articulation . .						
Poise						
Dependability						
Industry						
Judgment						
Sense of Humor						
Resourcefulness						
Genuine Liking for Students						
SCHOLARSHIP						
Mastery of Subject Matter						
Correct and Fluent English						
General Educational Background . .						
Knowledge of Source Materials . . .						
TEACHING METHODS						
Org. of Learning Experiences						
Motivation of Student Interest . . .						
Provides differentiated assignments						
Creativity						
Awareness and Use of Life Situations						
Stimulation of Critical Thinking . .						
Use of Resources and Media						
Evaluation of Student Progress . . .						
Provides for Pupil-Pupil Interaction						
CLASS MANAGEMENT						
Organization of Routine Details . . .						
Control of Classroom Situation . . .						
"Emotional Climate"						
Adaptability						
PROFESSIONAL ATTITUDE						
Support of Fellow Teachers						
Attitude Toward Teaching Profession						

PLEASE NOTE ANY SPECIAL ABILITIES _____

INDICATE CHARACTERISTICS WHICH INTERFERE WITH SUCCESS _____

TEACHER GENERALLY LIKED BY PUPILS? yes BY PARENTS? yes

Teacher's Signature Rosemary A. Abbott Principal's Signature W. Stansfield

NEBO SCHOOL DISTRICT

of Teacher Rosemary Abbott Period Covered _____ to _____
1 Goshen Grade or Subjects Taught 5th

	Superior	Very Good	Average	Below Average	Unsatisfactory		
PERSONAL TRAITS							
General Appearance		✓	✓			Principal Comment: <i>Made progress with a difficult class but needs to make a decided improvement in organizing.</i>	
Voice: Quality and Articulation . .			✓✓				
Poise			✓	✓			
Dependability		✓	✓				
Industry			✓✓				
Judgment			✓✓				
Sense of Humor		✓	✓				
Resourcefulness			✓✓				
Genuine Liking for Students			✓✓				
SCHOLARSHIP							
Mastery of Subject Matter			✓✓				
Correct and Fluent English			✓✓				
General Educational Background . .			✓✓				
Knowledge of Source Materials . . .			✓✓				
TEACHING METHODS							
Org. of Learning Experiences			✓	✓		Teacher Comment:	
Motivation of Student Interest . . .			✓✓				
Provides differentiated assignments			✓✓				
Creativity			✓✓				
Awareness and Use of Life Situations		✓	✓				
Stimulation of Critical Thinking . .			✓✓				
Use of Resources and Media			✓✓				
Evaluation of Student Progress . . .			✓✓				
Provides for Pupil-Pupil Interaction		✓					
CLASS MANAGEMENT							
Organization of Routine Details . . .			✓	✓			
Control of Classroom Situation . . .			✓✓				
"Emotional Climate"			✓✓				
Adaptability			✓✓				
PROFESSIONAL ATTITUDE							
Support of Fellow Teachers		✓					
Attitude Toward Teaching Profession		✓					

PLEASE NOTE ANY SPECIAL ABILITIES _____

INDICATE CHARACTERISTICS WHICH INTERFERE WITH SUCCESS _____

TEACHER GENERALLY LIKED BY PUPILS? yes BY PARENTS? yes

Teacher's Signature Rosemary Abbott Principal's Signature L. B. Stanfield

NEBO SCHOOL DISTRICT

Name of Teacher Rosemary Abbott Period Covered Aug. 1974 to Jan. 1975
 School Goshen Grade or Subjects Taught 5th Grade

	Superior	Very Good	Average	Below Average	Unsatisfactory	
PERSONAL TRAITS						Principal Comment: <i>Seems to be doing a good job in the classroom. Can improve in her organization of class activities.</i>
General Appearance			✓			
Voice: Quality and Articulation . .			✓			
Poise			✓			
Dependability			✓			
Industry			✓			
Judgment			✓			
Sense of Humor			✓			
Resourcefulness			✓			
Genuine Liking for Students			✓			
SCHOLARSHIP						
Mastery of Subject Matter			✓			
Correct and Fluent English			✓			
General Educational Background . .			✓			
Knowledge of Source Materials . . .			✓			
TEACHING METHODS						
Org. of Learning Experiences				✓		
Motivation of Student Interest . . .			✓			
Provides differentiated assignments			✓			
Creativity			✓			
Awareness and Use of Life Situations			✓			
Stimulation of Critical Thinking . . .			✓			
Use of Resources and Media			✓			
Evaluation of Student Progress . . .			✓			
Provides for Pupil-Pupil Interaction			✓			
CLASS MANAGEMENT						
Organization of Routine Details . . .			✓			
Control of Classroom Situation . . .			✓			
"Emotional Climate"			✓			
Adaptability			✓			
PROFESSIONAL ATTITUDE						
Support of Fellow Teachers			✓			
Attitude Toward Teaching Profession			✓			

Teacher Comment:

EASE NOTE ANY SPECIAL ABILITIES _____

INDICATE CHARACTERISTICS WHICH INTERFERE WITH SUCCESS None

TEACHER GENERALLY LIKED BY PUPILS? yes BY PARENTS? yes