



COURT OF APPEALS NO.: A09-1715

STATE OF MINNESOTA

IN COURT OF APPEALS

Corey Christopher,
Relator,

vs.

Windom Area School Board,
Respondent.

RELATOR'S APPEAL BRIEF

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STATEMENT OF THE CASE

For the school years of 2002 through 2009, Corey Christopher, (hereinafter a/k/a “Coach” and/or “Relator” and/or “Christopher” and/or “Corey”), was the Head Boys Basketball Coach for the school district of Windom Area Schools (hereinafter a/k/a “School Board” and/or “Respondent”). (Trans. p. 79). On or about May 13, 2009, Christopher received a letter dated May 12, 2009, from Superintendent Wayne Wormstadt, a/k/a “Wormstadt”, indicating that the School Board would not be renewing his contract as the Head Boys Basketball Coach. (Trans. p. 80, see also Ex. B). On or about May 20, 2009, Christopher, by and through counsel, requested a hearing pursuant to Minn. Stat. § 122A.33, and also requested the written reasons for his non-renewal. (Trans. 80, see also Ex. C). On or about May 28, 2009, Christopher received the written reasons for his non-renewal as Head Boys Basketball Coach for the 2009 - 2010 school year. (Trans. p. 80, see also Ex. D). On or about August 4, 2009, the School Board held an open hearing to provide Christopher with a reasonable opportunity to respond to the reasons the School Board stated for non-renewing Christopher as the Head Boys Basketball Coach for the 2009 - 2010 school year. (Trans. p. 1 - 107). On August 4, 2009, after brief discussion, the School Board passed a motion to affirm the non-renewal of Christopher as Head Boys Basketball Coach for the 2009 - 2010 school year. (Trans. p. 105 - 106).

On September 18, 2009, Christopher, by and through counsel, filed a Petition for Writ of Certiorari, a Writ of Certiorari, and a Statement of the Case and served the appropriate parties. Christopher does not bring actions regarding his teaching position at Windom Area Schools and states that his teaching contract with Windom Area Schools and his non-renewal of his coaching contract are two separate legal actions involving two separate Minnesota Statutes. (Compare Minn. Stat. § 122A.33 and Minn. Stat. § 122A.40).

Christopher now seeks relief on two issues discussed below and addressed at or prior to the hearing held on August 4, 2009.

LEGAL ISSUES

- I. Whether, the School Board violated Christopher's due process rights and/or Minn. Stat. § 122A.33.

The School Board did not directly address this issue, however, because they did not renew Christopher as Head Boys Basketball Coach, it is the position of Christopher that they ruled that they did not violate Christopher's due process rights and/or Minn. Stat. § 122A.33.

In the Matter of Hahn, 386 N.W.2d 789 (Minn. Ct. App. 1986); Kroll v. Independent School Dist. No. 593, 304 N.W.2d 338 (Minn. 1981); Ganyo v. Independent School District No. 832, 311 N.W.2d 497 (Minn. 1982); Schmidt v. Independent School District No. 1, 349 N.W.2d 563 (Minn. Ct. App. 1984); see also Minn. Stat. § 122A.33.

- II. Whether, the School Board, at the hearing held on August 4, 2009, provided substantial evidence to non-renew Christopher as Head Boys Basketball Coach.

The School Board passed a motion to affirm the non-renewal of Christopher as Head Boys Basketball Coach for the 2009 - 2010 school year.

In the Matter of Hahn, 386 N.W.2d 789 (Minn. Ct. App. 1986); Thompson v. Appleton, 366 N.W.2d 326 (Minn. Ct. App. 1985); Fisher v. ISD No. 622, 357 N.W.2d 152 (Minn. Ct. App. 1984); Beranek v. Joint Independent School District No. 287, 395 N.W.2d 123 (Minn. Ct. App. 1986); see also Minn. Stat. § 122A.33.

DOCUMENTS COMPRISING THE RECORD

The documents which comprise the record on which Relator relies on for his Brief include:

A transcript of the hearing held on August 4, 2009, has been paid for by Christopher and has been received by both parties. (See Certificate as to Transcript Delivery). The School Board also received the original transcript along with exhibits. (See also Certificate as to Transcript Delivery). The transcript along with the exhibits should be submitted by the Respondent pursuant to Minn. R. Civ. App. P. 115.04, subd. 3. For the purposes of the record, the Relator, will cite to the transcript of the hearing held on August 4, 2009, and also to the exhibits entered into as evidence by the Relator.

All of the exhibits entered by Christopher were received by the School Board at the hearing held on August 4, 2009. (Trans. p. 95 - 96). The exhibits included: "Exhibit A", a letter to the School Board from Wormstadt dated May 6, 2009; "Exhibit B", a letter to Christopher from Wormstadt dated May 12, 2009; "Exhibit C", a letter to Kevin Rupp (School District Attorney), a/k/a "Rupp", from Villaume & Schiek, P.A.

dated May 20, 2009; "Exhibit D", a letter to Christopher from Wormstadt dated May 27, 2009; a letter from Rupp to Philip G. Villaume, a/k/a "Villaume", dated May 28, 2009; "Exhibit F", a letter to Christopher from Wormstadt dated June 1, 2009; "Exhibit G", a letter to Rupp from Villaume dated June 4, 2009; "Exhibit H", a letter to Villaume from Rupp dated June 11, 2009; "Exhibit I", a letter to Villaume from Rupp dated July 7, 2009; "Exhibit J", a letter to Rupp from Villaume dated July 15, 2009; "Exhibit K", a letter to Villaume from Rupp dated July 20, 2009; "Exhibit L", Activities Director Evaluations of Christopher dated June 5, 2008, April 11, 2007, and April 2006; "Exhibit M", Windom Coaching Evaluations of Christopher dated May 27, 2008 and April 26, 2007; "Exhibit N", a letter regarding Christopher's performance as Activities Director and Coach signed by Principal Eric Hanson, a/k/a "Hanson" and Christopher dated June 12, 2008; "Exhibit O", resume of Christopher; and "Exhibit P", notes and organizational charts for varsity practice starting in November 2008 through the end of the basketball season in 2009. Rupp did not introduce any exhibits at the hearing held on August 4, 2009 or call any witnesses during the open part of the hearing. Relator reserves the right to supplement the record and/or file a motion to strike.

FACTS

A. Introduction and Background.

Christopher was hired in the Spring of 2001 by Windom Area Schools as an Activities Director, part-time English teacher, and as an Assistant Basketball Coach. (Trans. p. 78 - 80). Christopher started as Windom Area Schools' Head Boys Basketball Coach during the school year of 2002 - 2003. (Trans. p. 79). Christopher's Head Boys Basketball record for the 2008 - 2009 school year was 17 wins and 11 losses, and the team made it to the championship game of the section tournament. (Trans. p. 97).

On or about May 6, 2009, Wormstadt wrote a letter to the School Board recommending the non-renewal of Christopher as Head Boys Basketball Coach for the 2009 - 2010 school year. (Ex. A). Wormstadt's first year as Superintendent for Windom Area Schools was the school year of 2008 - 2009. (Trans. p. 80 - 100). On May 11, 2009, at a regular meeting of the School Board, pursuant to Minn. Stat. § 122A.33, the School Board approved the non-renewal of Christopher as Head Boys Basketball Coach. (Ex. B). On or about May 13, 2009, Christopher received notice that his contract for Head Boys Basketball Coach would not be renewed. (Ex. B).

On or about May 20, 2009, Christopher, by and through counsel, requested a hearing pursuant to Minn. Stat. § 122A.33, and also requested the written reasons for his non-renewal. (Trans. 80, see also Ex. C). On or about May 28, 2009, Christopher received the written reasons for the non-renewal as Head Boys Basketball Coach for the

2009 - 2010 school year. (Trans. p. 80, see also Ex. D).

On August 4, 2009, the School Board held an open hearing to provide Christopher with a reasonable opportunity to respond to the reasons the School Board stated for non-renewing Christopher. (Trans. p. 1 - 107). The School Board, immediately after Christopher's hearing on August 4, 2009, moved to affirm their initial decision to non-renew Christopher. (Trans. p. 104 - 106).

B. The School Board violated Christopher's due process rights and they also did not allow Christopher a "reasonable opportunity" to respond to the reasons for non-renewal as enumerated under Minn. Stat. § 122A.33.

It is the position of Christopher that his due process rights were violated and his right to a "reasonable opportunity" to respond to the allegations pursuant to Minn. Stat. § 122A.33 were violated because: a neutral hearing party was not assigned to hear the case; the School Board failed to properly provide Christopher with the written reasons for his non-renewal prior to the hearing; Christopher did not have the right to confront his accuser(s), i.e. Wormstadt or any of the School Board members who supported the recommendation to non-renew Christopher; Christopher did not have the right to subpoena witnesses in his own defense; and the School Board already hired a new Head Boys Basketball Coach for Windom Area Schools on June 6, 2009, thus a hearing held on August 4, 2009 for Christopher was futile. (Trans. p. 10 - 15, see also Ex. C and Ex. G).

It is the position of Christopher that the non-renewal by the School Board constituted a deprivation of Christopher's property interest rights as a coach for Windom

Area Schools. (Ex. C and G).

I. Christopher did not have an independent hearing officer decide whether or not the reasons given for the non-renewal of Christopher's coaching contact were supported by the evidence.

On May 20, 2009, Villaume & Schiek, P.A., sent a letter to Rupp (attorney for the School Board) requesting a neutral hearing officer be assigned to the case, and Christopher also stated that the School Board had violated Christopher's due process rights. (Ex. C). Christopher enclosed an executed request for appointment of five neutral hearing officers from the Bureau of Mediation Services in the letter dated May 20, 2009. (Ex. C). On May 28, 2009, the School Board, via a letter from Rupp, declined to appoint an independent hearing officer. (Ex. E).

On June 4, 2009, Villaume & Schiek, P.A., sent a letter to Rupp again objecting that the matter would not be heard before a neutral hearing officer. (Ex. G).

Also the fact that Rupp was advising¹ the School Board, who is the ultimate decision maker in this case, further compounds the issue of a neutral decision maker because opposing Counsel was advising the School Board on how they should rule. It is the position of Christopher that the communications between the School Board and Rupp are similar to ex parte communications because Rupp (as attorney for the School Board) has advised the decision maker, i.e. the School Board, on how they should rule.

¹School Board Chair Barb Jones, "We now go to our school district attorney, Mr. Rupp, to give us our options." (Trans. p. 104).

II. The School Board failed to properly provide Christopher with the written reasons for his non-renewal prior to his hearing.

On or about May 27, 2009, Wormstadt informed Christopher of the reasons for non-renewal. (Ex. D and E). The letter stated in its entirety the following:

This letter is to inform you of the reasons for non-renew as head boys basketball coach for the 2009 - 2010 school year as requested by letter received on May 22, 2009. This decision was based on the following:

1. Lack of clear, organized, and linear boys basketball program for grades 7 - 12.
2. Failure to communicate in a clear and effective manner in his role as the head coach.
3. Mr. Christopher² will be assigned grades 9 and 10 English for the 2009 - 10 school year. He will be returning to the classroom as a full-time teacher for the first time in seven years. Mr. Hanson and I both believe it is with utmost importance that Mr. Christopher gives his full efforts to the classroom above coaching. He will be the only teacher for these two grade levels. With the current state mandated testing in these grades and the fact that all students will pass through his classroom, we feel it is vital that all of Mr. Christopher's efforts are focused on the primary purpose of teaching English.

If you have any further questions do not hesitate to contact me.

(Ex. D).

Shortly after Villaume gave his closing arguments Wormstadt stated³ the following:

Jones: Thank you. We'll go on to the school board suggestion of coaching assignment with the administration input from Superintendent Wormstadt.

²The third reason has nothing to do with Christopher's coaching ability.

³See Section III, Wormstadt would not allow himself to be questioned.

Wormstadt:

12-20-1972. 2425 Douglas Street, Windom, Minnesota. In addition to my years of administrative experience, I have had - I've been an athletic director for four years, 11 seasons of head coaching experience, four seasons as the head basketball coach, 11 seasons as an assistant coach, and two seasons as the assistant basketball coach. There's three reasons to my recommendation, and I'll explain the rational behind each. It's a complication of all these that led to my recommendation on what's best for our school district and the classroom. Lack of a clear, organized, and linear boys basketball program for grades 7 through 12. In order to build a consistency within the program, all levels must be on the same page. It is essential that the head coach build for efficiency a student knowledge, base of the game, and for development of skills. It is this unified program that builds consistency over time, and allows students to be aware of what is expected of them as they progress through all levels of participation. Mr. Christopher has not participated with our junior high program at the seventh and eighth grade level and how it will work with the high school program has not been delivered or shared with them. Foundation of fundamentals, including uniform skill development and common language has not been given to the junior high coaches. This leads to fewer students developing the necessary skills that will transfer easily into the high school program. Long-term successful programs have continued terminology that is the same for all levels. Failure to communicate is the second reason in a clear and effective manner in his role as a head coach. That links directly to Mr. Christopher not communicating with our lower grades, as stated below, and with our fifth and sixth grade community ed program throughout the winter. A situation occurred this year in which Mr. Christopher yelled at an assistant coach while using inappropriate language, the F word, in front of the team during practice, and which the situation led to the assistant coach leaving practice. We do not treat colleagues in classrooms this way, and we will not do so in coaching either. Our third reason is Mr. Christopher will be assigned grades nine through ten English for the 2009/2010 school year. He'll be returned to a classroom as full-time teacher for the first time in seven years. Mr. Hanson and I both believe it's of the utmost importance that Mr. Christopher gives his full efforts to the classroom above coaching. He will be the only teacher for these two grade levels. With the

current state mandated testing in these grades and the fact that all students will pass through his classroom, we feel it's vital that all Mr. Christopher's efforts are focused on the primary purpose of teaching English. These concerns for No. 3 are based on this. First area, classroom setting. Mr. Christopher did not address Mr. Hanson's concerns in classroom environment. After Mr. Hanson spoke to Mr. Christopher three times during the school year, he had not placed any items throughout his room to even distinguished that his room was an English classroom. The ninth grade has a state mandated grade five paragraph essay format. This is a scored test that is used for the proficiency of our students and is compared to other schools in the area and the state. This is important because the State of Minnesota allows classroom teachers to place cues in their classroom. If the cue is placed in the classroom prior to the testing window, it may remain up and help students feel more comfortable during the test and also to give them an additional aid to reference. The simplest things that need to be done, need to be done to help our students. The fellow English teacher in April had to place the essentials of a five-paragraph essay in his classroom on his wall prior to state mandated testing for his essay. Mr. Christopher did not do this. Mr. Christopher also had only one 9th grade English class to prepare for last year. Other assignments were study halls and athletic director. We had conversations before that teaching came, then athletic director, and then coaching. Throughout the year, Mr. Christopher also had three teacher assistants that he could have directed at any time to help with this format.

Second area, management of the classroom. In April, I entered Mr. Christopher's classroom to ask for a table cover for the teacher recruitment job fair. As I entered the room, students were lying on the floor and sitting on tables talking and not doing any productive work, either related to his class or other classes. Mr. Christopher at the time was texting behind the desk. Mr. Christopher did not notice me until I was standing next to him. Also, Mr. Christopher left his classroom unattended to answer his cell phone in the hallway, which was witnessed by Mr. Hanson, the very following week. These two items do show a lack of classroom management and supervision.

The importance - this is the third area - the importance of our classroom over extracurriculars. Mr. Christopher will be teaching over 130 students in grades nine and ten. He'll be teaching all of our 9th and 10th grade students, and all of the 9th and 10th grade sections.

9th grade students are required to take the state writing test on the five paragraph essay, and the 10th grade students will be taking the reading test. These are state mandated tests that are becoming higher stakes for the district. As a district and as administrator, we must put the classroom before any extracurricular. I believe the education of 130 plus students in English is more valuable than any coaching position in this district.

Today our students are not competing within Cottonwood County, Minnesota, or the United States. We are in a global competition for resources that work in the community as a whole. The importance of our 9th and 10th grade English is key because each child needs to be able to read, write, and comprehend in a high level in today's world. We already have had one family decide their students will take online courses in English, and three other are considering having their students take online courses because of the current situation of Mr. Christopher teaching English full-time. Once again, Mr. Christopher has 130 plus students that will go through his classroom next year, and this must take priority over any coaching position that has 20 or 30 students involved.

If we were to have our coaching positions take precedence over teaching and classroom, this district and state would be in rapid decline. I cannot consciously sacrifice teaching for any coaching position. No games or activity if worth a teaching position or the quality of education to our youth. Because of the above-mentioned reasons, I strongly, for the third reason, I am recommending for the non-renewal of Corey Christopher as head boys basketball coaching position. He will be employed next year and will be able to focus on 9th and 10th grade language arts as a teacher. That's all I have.

(Trans. p. 98 - 103).

Christopher disputes the claims alleged by Wormstadt on August 4, 2009, as factually inaccurate and unfounded.

It is important to note that Rupp stated, at the close of the hearing, "Mr. Villaume, might I remind you, after you are done with your session [closing arguments] here you and Mr. Schiek's involvement is done at that point. The board will then participate in its

part of the discussion, but you will not be able to participate anymore.” (Trans. p. 96). In other words, Wormstadt, after the open hearing was completed, gave additional comments in a public forum including the reasons why he was recommending Christopher not be renewed as head coach. (Trans. p. 98 - 104).

It is the position of Christopher that the School Board and Wormstadt violated Christopher’s due process rights and Christopher’s reasonable opportunity to respond to the non-renewal of his coaching contract because the comments made by Wormstadt (after the hearing was closed) went well beyond the reasons outlined in the original reasons for non renewal of Christopher as outlined in the May 27, 2009 letter. (Compare Ex. D, with Wormstadt’s statements made after the hearing was closed stated directly above). The reasons stated at the closed part of the hearing by Wormstadt should have been disclosed in their entirety in writing on or about May 27, 2009, so Christopher could properly prepare for the hearing held on August 4, 2009. Essentially, the School Board failed to provide Christopher reasonable notice of the allegations made against him thus violating his due process rights and his right to a “reasonable opportunity” to respond to the allegations pursuant to Minn. Stat. § 122A.33.

III. Christopher did not have an opportunity to question Wormstadt or any member of the School Board regarding the reasons for non-renewal during the hearing held on August 4, 2009, even though Wormstadt was at the hearing.

On June 4, 2009, Villaume & Schiek, P.A., requested that they be allowed to cross-examine any of the School Board members who made the determination to non-

renew Christopher and that Villaume & Schiek, P.A. also be allowed to cross-examine Wormstadt. (Ex. G).

On June 11, 2009, Rupp stated that he would not allow School Board members or Wormstadt to be cross-examined⁴, and Rupp also did not allow Christopher, through his attorneys, to speak with Wormstadt or any School Board members. (Ex. H). On August 4, 2009, Christopher, as his first witness, requested that Wormstadt be a witness, however, that requested was again denied. (Trans. p. 13 and Ex. H). Wormstadt was at the hearing, however he would not allow himself to be cross-examined. (Trans. p. 13 - 14). The following was stated at the hearing:

Villaume: Sure. Our first witness – and we should put this on the record, we will call Superintendent Wormstadt, and Mr. Rupp may want to respond to that.

Rupp: Yeah, Mr. Wormstadt will not testify and be subject to the cross-examination. You have no right to do so. I would like to clarify, however, that item five on the agenda is school board discussion of the coaching assignment. Mr. Wormstadt, who is by law an exofficial member of the school board, might very well talk to the matter at that point, but there's no right to cross-examination in this process.

Villaume: And the record should reflect that Superintendent Wormstadt is present in the hearing room. The record should reflect that we have indicated both in writing and/orally today that we would like to call Superintendent Wormstadt as a witness on behalf of Corey Christopher...

⁴“He [Christopher] does not have the right to cross-examine School Board members, and that will not take place at the hearing...He does not have the right to call Superintendent Wormstadt as a witness, and that will not take place at the meeting.” (Ex. H).

(Trans. p. 15). Further, Villaume stated:

Mr. Christopher requested that the school board produce Wayne Wormstadt who was the superintendent of the school district, because he was the person who made the recommendation to the school board for non-renewal of Mr. Christopher as head basketball coach for the 2009/2010 school year. Please refer to our Exhibit A. This afternoon I have had an opportunity to talk to Mr. Rupp and indicated to him that we would intend to call Superintendent Wayne Wormstadt as a witness in these proceedings. **Mr. Rupp indicated to me, and we should probably make a more extensive record on this, that we do not have the right to do so. It is our position that we do have the right to call him as a witness and examine him as to the underlying reasons that Mr. Christopher's contract has not been renewed.** Mr. Christopher would like to cross-examination [sic] Superintendent Wormstadt for the underlying reasons for the non-renewal of Mr. Christopher as the head basketball coach. However, because the school board and their legal Counsel will not produce Mr. Wormstadt for cross-examination, this violates Mr. Christopher's right to confrontation.

(Trans. p. 12 - 13, see also Ex. H, emphasis added).

IV. Christopher did not have the right to subpoena witnesses to rebut the reasons for non-renewal.

On June 4, 2009, Villaume wrote a letter to Rupp requesting that the School Board issue subpoenas so Christopher could compel witnesses to testify on his behalf at the hearing. (Ex. G). However, on June 11, 2009, Rupp stated that the School Board would not issue subpoenas. (Ex. H).

Christopher wanted to subpoena witnesses to testify at the hearing that were favorable to him, however, he was not allowed to subpoena any witnesses, including former Superintendent Dick Orcutt and another former Superintendent Doug Froke.

(Trans. p. 91 - 92). The following was stated on the record on August 4, 2009:

Villaume: You had requested that former Superintendent Dick Orcutt testify in these proceedings; is that right?

Christopher: Yes.

Villaume: And you had requested that former Superintendent Doug Froke testify in these proceedings; is that correct?

Christopher: Yes.

Villaume: And did you understand that my office was in contact with both of them, and they declined to appear?

Christopher: Yes, I understand.

Villaume: And furthermore, it is your position or was your position that Superintendent Wayne Wormstadt should testify in these proceedings?

Christopher: Yes.

Villaume: And this was your request?

Christopher: Absolutely.

Villaume: Okay. You understand that if we had had a subpoena power, which we do not, they could have been compelled to be witnesses in this proceeding?

Christopher: Yes.

Villaume: Okay. And to testify on your behalf?

Christopher: Yes.

Villaume: Okay. And you believe this Mr. Orcutt and Mr. Froke would have testified favorably for you?

Christopher: Yes.

(Trans. p. 91 - 92).

- V. **The School Board already hired Tony Taylor, a/k/a “Taylor”, as Head boys Basketball Coach for Windom Area Schools on June 6, 2009, thus a hearing held on August 4, 2009 for Christopher was futile.**

Taylor was hired as a full time Social Studies teacher and as the Head Boys Basketball Coach for Windom Area Schools on June 6, 2009. (Trans. 93 - 94).
Approximately six days after Christopher received the reasons for non-renewal, Windom Area Schools hired Taylor as the Head Boys Basketball Coach. This further complicates the School District’s neutrality because they have a vested interest in retaining Taylor as head coach so they would not have to pay Christopher any back pay monies, and/or have other issues relating to potential legal claims.

Christopher stated , “It seems fairly meaningless that we would have this hearing when they have already made their [referencing the School Board] decision as what they were going to do.” (Trans. p. 95).

- C. **There was overwhelming evidence produced at the hearing that Christopher ran a clear, organized, and linear boys basketball program for grades 7 - 12, and that Christopher communicated in a clear and effective manner in his role as a head coach, and that he was an excellent teacher capable of teaching and coaching at the same time.**

On August 4, 2009, sixteen (16) witnesses voluntarily appeared to testify in support of Christopher. (Trans. p. 15 - 72, their testimony will be discussed in detail below). Christopher also testified at the hearing. (Trans. p. 78 - 96). Rupp did not have any witnesses testify on behalf of the School Board and Rupp did not question any of the witnesses, and Rupp did not introduce into evidence any exhibits. (Trans. p. 1 - 107,

Attorney Rupp, "I'm not cross-examining witnesses.").

All the witnesses who testified stated that Christopher was an excellent, organized coach, and that he communicated in a clear and effective manner, and lastly that he was an excellent teacher. (Trans. p. 15 - 93). Not one witness adversely testified against Christopher during the open part of the hearing. (Trans. p. 15 - 93).

Christopher denied all the allegations stated by Wormstadt in his letter dated May 27, 2009. (Trans. p. 80, see also Ex. D; Attorney Villaume: Do you think the three reasons enumerated in Exhibit D, which is the May 27, 2009 letter are valid? Answer Christopher: Absolutely not.). Essentially, Christopher went through all three allegations line by line and stated in detail that all the reasons given for the non-renewal were unfounded. (Trans. p. 78 - 95, see also Ex. L, M, N, O, and P). Christopher's resume was entered into evidence on August 4, 2009. (Ex. O).

I. Witnesses at the hearing.

Sixteen (16) people voluntarily testified on behalf of Christopher on August 4, 2009. (Trans. p. 15 - 78). The following are brief excerpts from the record of the witnesses who testified on August 4, 2009 on behalf of Christopher.

Scott Backer, a/k/a "Backer", is currently retired, however he was the principal at Windom High School when Christopher was Athletic Director and Head Boys Basketball Coach. (Trans. p. 15 - 20). Backer stated the following regarding Christopher's organizational skills, communications skills and teaching skills through his own

observations:

I would consider that [referencing Christopher's organizational skills] a strength...Yeah, he would be considered to be very organized...I would consider him to be very effect as a basketball coach...I would listen in his classes, I would stop by, and there were certain areas in terms of the classroom teaching that I consider him to be very strong. I consider him to be a very effective classroom teacher....Well, again he has some great strengths. He's very charismatic. He's very committed to his profession as a basketball coach and teacher. He's very committed to kids, that's obvious. That was his life. And I think he was very effective in both areas, yes...Well, the one thing, I listened to the three reasons here, and I [sic] somewhat find them interesting. You did mention communication. And again, that's one of the things that I think he's very competent at, is communicator. I think he's one of the best communicators I've ever worked with. Kids like him. I've seen him in many capacities, again as coach and as teacher. And again, in terms of communications, I would consider that to be a very strong area for him as compared to other teachers that I've worked with, I would rank him very high in that area...When I would stop in his practices, he had command of the situation. Kids listened to him. He was very articulate, you know, he had strong [sic] voice. Again, he had a message, he had a purpose to what he was talking about. I would consider that to be a strong area for him.

(Trans. p. 16 - 20).

Collin Cowen, a/k/a "Cowen", was a volunteer coach for the last five (5) years assisting at the varsity level with the Respondent. (Trans. p. 20 - 23). Cowen stated the following regarding Christopher's organizational skills and communications through his own observations:

I think he's very well qualified, very intelligent in the field of basketball. I feel he works hard. He always tries to improve. He leaves no stone unturned...He's always done the best of his ability to analyze the personnel and the opponent and prepare the team for the best in each game that we went into. And I think he does a very good job in that area....Very clear [referencing organizational skills]. We go through the game plan, we plan our practice schedules around what we need to do for the game plan for the upcoming games. Directly instituting drills, and directly instituting the times. We are very concerned about the conditioning of the athletes,

of the mental and physical state of the players, and the things that they do during practice, and we prepare ourselves to the best of our ability....I just – I guess I’m very concerned about the fact that nothing was brought up prior to the first initiation of this action after the season had closed, that there was even a thought that he would be removed as coach. And it came up so quickly. I was out of town, I came back, and it was there. And I just – I just am completely confused on the action, and I don’t understand the three reasons.

(Trans. p. 20 - 23).

Michael Hogan, a/k/a “Hogan”, worked with Christopher year round regarding Christopher’s position as Head Boys Basketball Coach and as an Athletic Director, and Hogan ran the commercial printing shop in Windom. (Trans. p. 23 - 26). Hogan stated the following regarding Christopher’s organizational skills and communications through his own observations:

He was very thorough and organized as far as our part, as far as in [sic] putting programs together, as far as working with him....Very organized...Very professional...I just kind of – like Tom [referencing Cowen’s testimony] said too, I wonder about the haste of it. I made that opinion to Mr. Wormstadt when this was going on. I know that it’s – I’m a two-term school board member, former school board member. I know the responsibilities and the indications for the school board, what they feel that needs to be done. But I think in this case there might have been a little bit more zealous work done than needed to be. And I mean, a person that takes a basketball team to the cusp of going to the state tournament, and about a month later is not fit to do it, begs for a reason to me...

(Trans. p. 24 - 26).

Scott Kruse, a/k/a “Kruse”, has known Christopher for approximately five (5) years and has gone with Christopher to scout games and has observed Christopher coach. (Trans. p. 26 - 28). Kruse stated that Christopher would take notes when he scouted other teams and Christopher communicated in a clear and effective manner. (Trans. p. 29 - 30)

("I don't know how much more organized you can get, let's put it that way").

Joan Hunter, a/k/a "Hunter", worked with Christopher from approximately 2001 and she was one of the original School Board members who hired Christopher. (Trans. p. 30 - 31). Hunter stated the following regarding Christopher's organizational skills, communications skills and teaching skills through her own observations:

Very organized. Very intense, like someone mentioned. As a mother that had a son on his basketball team, I didn't always agree with him, but of course that was mother coaching from the bench or from the sidelines rather than on the bench. But otherwise, always organized. We never – as a school board member we never had a problem or anything with his organizational skills....Yes, very much so [referencing Christopher's communication skills]. And very much as an athletic director. He had to handle a lot of programs, and a couple years ago there was a problem that he handled very well with the football team. So he had to communicate both with the parents, with the coaches that he worked with, and with the school board, and always did a very effective job...

(Trans. p. 30 - 33).

Pastor Steven Norby, a/k/a "Norby", has known Christopher since 1983 and Norby was also on the School Board from 2000 to 2007. (Trans. p. 33 - 37). Norby stated the following regarding Christopher's organizational skills and communications skills and teaching and athletic director skills through his own observations:

Well, what I would tell the school board would be that any evaluations that were done by the administration were favorable....and those all should be in his record. And that as a school board member, when I was a school board member from 2000 to 2007, I left all evaluations to the administration, and we sat in on that, and I can't remember if it was Mr. Orcutt or if was Mr. Froke. Again, the record would show who it was but the sub committee for athletics, we sat in on that, and we listened to the evaluations, and we felt comfortable with what was done by the

administrators, and they were all favorable⁵...It was very effective [referencing Christopher's ability to effectively communicate with players and students], from what I experienced...And he was very good at the details....But he did a very good job with the public...Very effective with me as a board member and with the board. Very effective with the public that I could see. Very effective with the players that I could see...

(Trans. p. 33- 37).

Joanne Ray, a/k/a "Ray", worked with Christopher for seven (7) years and currently works as an EBD paraprofessional for the School District for the High School.

(Trans. p. 37 - 39). Ray worked with Christopher in his classroom. (Trans. p. 37). Ray stated the following regarding Christopher's organizational skills, communications skills and teaching skills through her own observations:

He's very intense. He's there for the kids, for the team. When they need something or they want him to tell them what to do, he's there....I think he's very organized [referencing Christopher's teaching ability]. When I went in there, I could see what we were doing that day. It was either on the board or on his desk. I just knew what to do because it was there....Very well organized...He was very – he was in tuned with the kids in the classroom. He got everybody involved. And I work with EBD students, and they are not easily engaged. And he was very good with them. If they couldn't meet his – what he gave the other kids, he was willing to work with them so that they felt like they were succeeding, and that's what they need above all. They need to know they are succeeding, and he was great at that.

(Trans. p. 37 - 39). Ray also stated that Christopher communicated in a clear, precise and effective manner with his students. (Trans. p. 38).

Terry Frovik, a/k/a "Frovik", observed Christopher as a basketball fan and has known Christopher since 2007. (Trans. p. 39 - 42). Frovik stated the following regarding

⁵See Exhibits L - O.

Christopher's organizational skills and communications skills through his own observations:

Very much so [referencing Christopher's organization as a Coach]. I thought that he made – just as an observer, as a fan, and a former basketball player, he made decisions for the team at the right time in the midst of games. I thought his ability as a coach was right at the top....Well, we were excited because they moved through the season and had a couple surprising victories on a few teams that were not expected to lose. And then they made a great run towards the state tournament and fell short by one game. And were very cohesive team. And as an observer, I thought it was an excellent season....Well, as a resident and a basketball fan, I just felt that when a coach is building a program and showing such an impressive year, that it was – if there were issues, it seemed to be a bit precipitous to change the coach when the team was coming to a climax in terms of ability. And as a resident, it was – it was confusing and frustrating for me to hear that a coach kind of moving towards the peak of his career would be dismissed from a basketball point of view without any real merit or decisions for the public to know why this happened.

(Trans. p. 40 - 42). Frovik, at the request of Christopher, also gave several inspirational speeches to the team prior to games. (Trans. p. 40 - 41).

Greg Holt, a/k/a "Holt", has known Christopher since the early 1990's and two of Holt's sons played for Christopher and Holt's two sons are currently on the basketball team. (Trans. p. 42 - 46). Holt also assisted the freshman boys basketball team. (Trans. p. 44). Holt stated the following regarding Christopher's organizational skills and communications skills as a basketball coach through his own observations:

So Corey [referencing Christopher] let me go in any aspect of the program that I wanted to, whether it be on the bench with him during the games. Scouting, he let me be involved with every aspect of the coaching, and if I turned him down, he was okay with that. So he let me do whatever I wanted to as far as on the staff this year....Well, like I say – I'll go back to with scouting. I did have the opportunity to

go scout a couple games. Also, he does have an itinerary⁶ of the day, he'll have it marked down every 10 minutes. And I tried to create my own schedule or my practices to that same schedule, which I very rarely was able to keep. So very good. Good communicator as far as the children. The kids, I should say, did have another opportunity a couple of years ago where we had problems with some of the parents that were disgruntled with the way things were going, the way they were. He took and had a parent meeting, took care of that right away, where people could come and talk. And we visited with that, in that regard. So I have nothing – very good communicator.

(Trans. P. 42 - 46). Holt also stated that Christopher's coaching techniques were consistent from grades 5th through varsity. (Trans. p. 45).

Josh Junker, a/k/a "Junker", worked with Christopher doing statistics and then worked with Christopher for one year as the assistant varsity coach for the 2006 - 2007 school year. (Trans. p. 47 - 52). Junker is also an official and was an official for one of Christopher's games in the 2008 - 2009 school year. (Trans. p. 48). Junker currently is Redwood Area School's Boys Baseball Coach and Assistant Football Coach. (Trans. p. 50). Junker stated the following regarding Christopher's organizational skills and communications skills as a head coach through his own observations:

I felt they were as good [referencing Christopher's organizational skills] – I've worked with a number of different coaches as an assistant coach under them, and his organizational skills were as good as, or as qualified, as I've seen. We were organized. From the beginning of the year, we had early preseason discussions for how we were going to approach the season starting back in September. About what do we have returning, what direction can we go with the program. You know, our preseason basketball poster photography thing was all well planned out, and things that I never ever would have expected to see from a – at least at the high school level, the things that were done. You know, practices were planned down to a T...Communication was never an issue, it was always clear what the

⁶See also Exhibit P.

expectations were both of coaches and of players...Yes, we would [referencing that Christopher's practices were very organized and clear] – I want to say there was at least a half a dozen times throughout the year where we would specifically go to different schools to observe their games. We would put together a game plan, we would go through our initial part of our practice, and then install – these are the players we need to be aware of. Here's how we are going to attack them. Here's the best way we think we can handle it...I try to reflect as a head coach myself now in how did Corey [referencing Christopher] handle it, and how can I use what he did to any situation that would apply in my coaching career....Very effective [referencing Christopher's communications skills as a head coach]...

(Trans. p. 48 - 52).

Todd Oye, a/k/a "Oye", was first introduced to Christopher six years ago because he was the new athletic director for the Southwest Conference. (Trans. p. 52 - 53). Oye was in constant contact with Christopher regarding a wide variety of issues. Oye stated the following regarding Christopher's organizational skills and communications skills through his own observations:

Yeah, very organized. One thing you noticed as activities director when teams come in is if – I use the word control. If the kids are running all over the place, if – how they are dressed, how they act. Windom was one of the schools in the conference that many times came in shirt and ties, were dressed the same. When given instructions, which locker rooms to report to, the teams, you know, they would report right to where they were supposed to....Once again, as a head coach, really just observing in a game situation, he seemed like he was always in control. I've heard the word 'intense', but as an activities director when you watch coaches, there's a fine line between intense and staying in control. He seemed like he was always in control of his team on the bench. As far as Xs and Os, I can't go into that anymore. But he seemed like he was in control and communicated well....You know, just as activities director, you can kind of tell what coaches in the conference come and scout games, and I would say the Windom staff would by far outnumber the number of games attended just for a scouting purpose. So you know, they put a lot of time and effort into that. Probably just calling for advice as far as a game, and I know this year they played in a subsection champion game and championship game. Also, being a head coach myself, he would ask my advice

about practice for the week, when to pick up the tempo, and when to give days off. I thought he was very thorough in that regard.

(Trans. p. 52 - 55).

Todd Tinklenberg, a/k/a "Tinklenberg", was the Head Boys Basketball Coach for fourteen (14) years at Pipestone and would routinely coach against Christopher. (Trans. p. 55 - 56). Tinklenberg stated the following regarding Christopher's organizational skills and communications skills through his own observations:

Well, we wouldn't communicate on a weekly basis, but during the basketball season – he's the only coach that I know that puts together a little pre-game article in each program on the team they are going to play. You know, and they'll call a week ahead of time and ask you which players are hot and who we need to look for for being the leading scorer in Pipestone and things like that. And he'll put together a little article for the game in each program. And very organized that way, always very courteous, very polite, very professional in how we dealt with that. He is the one [sic] few coaches that puts and dedicates as much time as he does in preparing for each game as anybody I've ever seen. He probably scouts five or six Pipestone games a year. And I love seeing his assistant, Tom Collins' [sic, should be "Cowen"] face in the crowd every week. But he's very prepared. I think he probably knows my playbook better than my kids...Absolutely, very organized...You know, I've had the privilege of coaching against him, but also observing him, you know, when I come and scout his games, when he's playing in the subsection final or the section finals. And he's got outstanding communication skills with his kids. Obviously, when you are playing against us, you know, call a time out, and you'll know when he communicates well is when his kids go out and do what they are supposed to do, and they can score or, you know, put on a press and, you know create some havoc for us. So he has outstanding communication skills with his players and his coaches....You know, it would be a shame if we lost a coach of Corey's [referencing Christopher] caliber. You know he's probably one [sic] the top coaches – him and I, we just thrive on that – the game that we have to face each other in. You know, we just – intensity picks up, and we want to beat each other and, you know, he's one [sic] the top coaches in this area.

(Trans. p. 55 - 58).

Denise Wirtz, a/k/a "Wirtz", had a son who played for Christopher and her son graduated in 2007. (Trans. p. 58). Wirtz stated the following regarding Christopher's organizational skills and communications skills through her own observations:

Very organized. At the beginning of the season, we were always given a schedule as to when the games and practices were, and we never had a problem...So his skills as a coach, tremendous...Just as, you know, as a parent watching Corey [referencing Christopher] coach from the stands, granted, like Joan Hunter said, I didn't always agree with what he was doing, but I'm sure he feels the same way, that sometimes he doesn't always agree with the way we parent our children either. I don't believe that the board made a very good decision in letting him go as a basketball coach. I think it was just too hastily done.

(Trans. p. 59 - 61). Wirtz also describe Christopher as a very clear, organized and linear basketball coach, and also stated that Christopher was an effective communicator.

(Trans. p. 59 - 60).

Thomas Zimmerman, a/k/a "Zimmerman", was Christopher's neighbor, friend, and had two sons go through the basketball program. (Trans. p. 61 - 62). Zimmerman's sons graduated in 2004. (Trans. p. 61). Zimmerman stated the following regarding Christopher's organizational skills and communications skills through his own observations:

Yeah, they have – as far as organizational skills and the way the practices and so forth were run, there was never a complaint. They were always ready to go to practice, they always knew what was expected of them, they knew how practices were going to be run. And we, as parents, have – we always knew when they were going to be completed...Yes [when asked if Christopher's basketball program was consistent from the beginning]. My sons were freshman when Corey [referencing Christopher] came, and Corey was their coach, assistant basketball coach, at the time. So the first year Corey came here – I've got a set of twin boys, so they were in his program when he first came. And they were very excited once they got to

know Corey and the way the season progressed as his freshman year. And then when he was given the job as head basketball coach for the sophomore, junior, and senior years, they were very happy with it, with the way he coached....He communicated very clearly and effectively with my sons. Sometimes I didn't necessarily like what he was telling them, but there was no doubt on where – what instructions they were being given, how they were being coached, and what was expected of them....All I want to say as far as Corey in his capacity as a basketball coach, he puts in as much time as anybody I've seen put in. You've heard about his going and scouting....Like I say, the time that he puts in, basketball is his love. I mean, that's who Corey is....So I'm just impressed, have always been impressed with the amount of time he's been willing to put in for that.

(Trans. p. 61 - 65).

Zimmerman also stated that his kids had Christopher as a teacher and stated the following regarding his sons' experiences with Christopher as a teacher:

Their description of him as teachers [sic] was they engaged – Mr. Christopher engaged them in conversations, and it – they would come home and they would talk about the conversations and the topics that he was teaching and instructing them on and they dialogue, the conversations, the way that they were being challenged and getting them to think maybe outside of the box. They really enjoyed his class.

(Trans. p. 63).

Trent Sukalski, a/k/a "Sukalski", has been the Head Boys Basketball Coach for Jackson for three (3) years and Sukalski has coached against Christopher for the last ten (10) years. (Trans. p. 65 - 66). Sukalski has coached his kids against Christopher and Sukalski talks with Christopher on a weekly basis during the regular season. (Trans. p. 66). Sukalski stated the following regarding Christopher's organizational skills and communications skills through his own observations:

Without a doubt [when asked if Christopher managed a clear, organized and linear basketball program for grades 7 through 12]. Corey [referencing Christopher] is extremely organized. When I – as I came to Jackson about what, three years ago now, going on my fourth year, Corey organized our summer basketball league. We have about eight schools that participate in a Tuesday night varsity basketball league. Corey spearheaded that he organized it. Set up a schedule. He did all that stuff. So Corey is tremendously organized....Oh, yeah. Corey scouts – I even gave him a hard time about this, as Coach Tinklenberg said, I think he knows our plays better than our kids do. As a matter of fact, I gave him a hard time this year, I said, ‘Haven’t you scouted us enough this year?’ I went and talked to him before a game he was scouting, and he said, ‘Well, you never know.’ He doesn’t leave any stone unturned. I think he’s extremely organized that way...Tremendous communicator, very good....I thought he did an excellent job as athletic director for Windom area schools being competitor, first at Marshal and now at Jackson, he is very organized and communicated very well....I would say top notch. I think tremendous and organized, and tremendous communicator, tremendous coach. I think Windom area is losing a very, very good coach...I think he’s – like Coach Tinklenberg said he’s one of the better coaches we have around here, yep.

(Trans. p. 65 - 68).

Robert Nangle, a/k/a “Nangle”, has been the athletic director for Pipestone for the last thirty six (36) years and has known Christopher since 2001. (Trans. p. 69). Nangle stated the following regarding Christopher’s organizational skills and communications skills through his own observations:

As boys basketball coach, from my aspect, he always came, I thought very prepared. I thought his demeanor on the court was excellent, he was intense as he should be, and yet knew how to control himself. I thought he controlled his players very, very well...He seemed organized to me, but I don’t get into the Xs and Os....As an athletic director, he’s very excellent as far as I’m concerned...I thought he was very organized. We’ve had a few over the years that are not, and Corey [referencing Christopher] is one of the better ones....But from my aspect, when he came into Pipestone, very organized, very communicative with the kids. They knew what they were doing.

(Trans. p. 69 - 72).

Tyrone Wacker, a/k/a "Wacker", was a coach, teacher and athletic director for Jackson High School for the last twenty five (25) years. (Trans. p. 72). Wacker has known Christopher since he was in the 5th or 6th grade. (Trans. p. 73). Wacker stated the following regarding Christopher's organizational skills and communications skills through his own observations:

His dedication is second to none to youth, to kids, the reasons why you hire people...He surrounded himself with people that know more than he does to make a better coach. I don't know what more you can ask....I think, you know – for fear of saying something wrong, I don't know what you people want. The guy sacrifices his life for education and kids. It's all he knows. It's all he care about. The devastation that you put on his family is second to none...You got someone here that really cares for this. It's his life. And for it to come up in the last minute and all of a sudden he's fired, how do you think this is right? It's very upsetting to me as a person that's dedicated my own life to kids and school and different things like that. The pitfalls a coach can take are second to none, especially in the year 2009. You have to help protect and guide these coaches. You got a throwback here, just like the old days. Kind of like Nangle and I, we go way back. Coaches that are dedicated to kids as much as he is, you have to protect people like that. And you bring them in and you sit them down and you say, 'You got to do this different.' You just don't fire him. That's illegal. That's brutal. I've been in his position, and there's some times I had it coming; and there's some times I didn't. And I always won the battles that I didn't have it coming. You got a gem here. He's completely dedicated to this school, and it's hard for me to say from me being from Jackson. If you've ever been to a Jackson/Window basketball game, it's second to none as far as intensity. And I apologize if I said anything that would hurt your feelings at all, but there's a real guy sitting there with real feelings, and I know how dedicated he is to this school and these kids. Hopefully it works out for him.

(Trans. p. 73 - 77).

II. All evaluations of Christopher were positive.

All evaluations conducted by Window Area Schools regarding Christopher were positive. (Trans. p. 83 - 91, see also Ex. L, M, N).

The last time Windom Area Schools conducted a teaching evaluation on Christopher was the school year of 2002 through 2003. (Trans. p. 92 - 93). However, prior to 2002 through 2003, Christopher had approximately fifteen (15) to eighteen (18) teaching evaluations and all were positive teaching evaluations. (Trans. p. 93).

On May 27, 2008, Christopher received a coaching evaluation that was executed by Principal Hanson. (Ex. M). Christopher in the twenty eight (28) areas for review, received "effective" in all twenty eight (28) areas. The evaluation also stated that Christopher should "be recommended for reassignment". (Trans. p. 83 - 85, see also Ex. M). Amongst other positive reviews the coaching evaluation stated that Christopher was effective in planning his practices and that Christopher had effective organizational skills. (Trans. p. 83 - 85, see also Ex. M).

On April 26, 2007, Christopher received a coaching evaluation that was executed by Principal Roubinek. (Ex. M). Again, Christopher received "effective" in all areas up for review. (Trans. p. 84 - 85, see also Ex. M). The evaluation also stated that Christopher should "be recommended for reassignment". (Ex. M). There were no other coaching evaluations conducted by Windom Area Schools regarding Christopher. (Trans. p. 85).

On June 5, 2008, Christopher received an Activities Director evaluation that was executed by Principal Hanson. (Trans. p. 87 - 88, see also Ex. L). The evaluation stated that Christopher meets "expectation at an expected level of performance." (Trans. P. 87 - 88, see also Ex. L).

On April 11, 2007, Christopher received another Activities Director evaluation that was executed by Principal Roubinek. (Trans. p. 88 - 89, see also Ex. L). Again, the evaluation stated that Christopher meets “expectation at an expected level of performance.” (Trans. p. 88 - 89, see also Ex. L).

In April of 2006, Christopher received another Activities Director evaluation that was executed by then Superintendent Froke. (Trans. p. 88 - 89, see also Ex. L). Again, the evaluation stated that Christopher meets “expectation at an expected level of performance.” (Trans. p. 88 - 89, see also Ex. L).

On June 12, 2008, Principal Hanson wrote a letter to Christopher stating “[t]he reviews in the past have been positive....Overall, I have been pleased with how things have gone this year.” (Trans. p. 89 - 90, see also Ex. N).

All evaluations conducted by Windom Area Schools are in direct contradiction to the three reasons Wormstadt stated for the non-renewal.

III. The Respondent never conducted any type of investigation regarding Christopher.

It is also important to note that Wormstadt never interviewed Christopher about the three reasons identified in Wormstadt’s May 27, 2009 letter. (Trans. p. 94 - 95). Further, no person from the School District or the School Board contacted Christopher regarding the three reasons identified in Wormstadt’s May 27, 2009 letter. (Trans. p. 95).

Wormstadt never performed a coaching evaluation on Christopher. (Trans. p. 85 - 86). The School Board, prior to making the decision to non-renew Christopher, never

reviewed the coaching evaluations. (Trans. p. 85 - 86).

IV. Miscellaneous.

Exhibit P consisted of daily notes and organizational charts for varsity practice starting in November 2008 through the end of the basketball season in 2009. (Ex. P).

The organizational charts are a breakdown of every practice for the varsity, showing that Christopher was organized and was prepared for practices. (Ex. P).

STANDARD OF REVIEW AND LEGAL ARGUMENTS

A. STANDARD OF REVIEW.

Reversal or remand of an administrative decision is only justified if the agency's action is unsupported by substantial evidence on the record as a whole. Gibson v. Civil Service Board, 171 N.W.2d 712, 715 (Minn. 1969).

When interpreting Federal and State Constitutional and statutory issues the reviewing courts employ a de novo standard of review. State v. Shattuck, 704 N.W.2d 131, 135 (Minn. 2005) (federal); Olson v. Synergistic Tech. Bus. Sys., Inc., 628 N.W.2d 142, 148 (Minn. 2001) (state).

B. THE SCHOOL BOARD'S PROCEDURES FOR NON-RENEWING CHRISTOPHER VIOLATED CHRISTOPHER'S DUE PROCESS RIGHTS PURSUANT TO U.S. CONST. NO. 14 AND MINN. CONST. ARTICLE 1, SECTION 7, AND THE SCHOOL BOARD'S PROCEDURES ALSO VIOLATED MINN. STAT. § 122A.33 BECAUSE THEY DID NOT PROVIDE FOR A NEUTRAL HEARING OFFICER TO HEAR THE CHARGES AND MAKE A FAIR AND IMPARTIAL DECISION, THE SCHOOL BOARD FAILED TO PROPERLY PROVIDE CHRISTOPHER WITH THE WRITTEN REASONS FOR NON-RENEWAL, CHRISTOPHER DID NOT HAVE THE RIGHT TO CONFRONT HIS ACCUSERS, CHRISTOPHER DID NOT HAVE THE RIGHT TO SUBPOENA WITNESSES IN HIS OWN DEFENSE, AND THE SCHOOL BOARD ALREADY HIRED A HEAD BOYS BASKETBALL COACH FOR WINDOM AREA SCHOOLS ON JUNE 6, 2009, THUS A HEARING FOR CHRISTOPHER HELD ON AUGUST 4, 2009 WAS FUTILE.

Minn. Stat. § 122A.33, subd. 3 states (emphasis added):

Notice of nonrenewal; opportunity to respond. A school board that declines to renew the coaching contract of a licensed or nonlicensed head varsity coach must notify the coach within 14 days of that decision. If the coach requests reasons for not renewing the coaching contract, the board must give the coach its reasons in writing within ten days of receiving the request. **Upon request, the board must provide the coach with a reasonable opportunity to respond to the reasons at a board meeting.** The hearing may be opened or closed at the election of the coach unless the board closes the meeting under section 13D.05, subdivision 2, to discuss private data.

A public employee has due process protections granted under the United States and Minnesota Constitutions. U.S. Const., Amend. 14; Minn. Const., Art. 1, § 7. Well-established law declares that a public employee, such as a coach, with a constitutionally protected property interest in employment and that public employees are entitled to a formal post-termination evidentiary hearing. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 542 (1985); Pelerin v. Carlton County, 498 N.W.2d 33, 36 (Minn. Ct. App. 1993); Conlin v. City of St. Paul, 418 N.W.2d 741, 744-45 (Minn. Ct. App. 1988), review

denied; In the Matter of Hahn, 386 N.W.2d 789, 792 (Minn. Ct. App. 1986)

It is the position of Christopher that the non-renewal by the School Board constitutes a deprivation of Christopher's property interest. At a minimum, the School Board did not provide for a "reasonable opportunity" to respond pursuant to Minn. Stat. § 122A.33.

"The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)). Though opportunity to be heard at meaningful time and in meaningful manner is a fundamental due process requirement, due process is flexible, calling for procedural protection demanded by particular situation. Complaint Concerning Kirby, 354 N.W.2d 410 (Minn. 1984).

Generally, procedural due process protections include:

reasonable notice, a timely opportunity for a hearing, the right to be represented by counsel, **an opportunity to present evidence and argument, the right to an impartial decisionmaker**, and the right to a reasonable decision based solely on the record.

Humenansky v. Minnesota Bd. of Med. Exam'rs, 525 N.W.2d 559, 565 (Minn. Ct. App. 1994) (citing Goldberg v. Kelly, 397 U.S. 254, 267-68 (1970)), review denied (emphasis added).

To ensure the fairness of termination proceedings, the Minnesota Supreme Court and the Minnesota Court of Appeals, have held that absent unusual or extenuating circumstances, a neutral hearing examiner should be appointed in all cases. Ganyo v.

Independent School District No. 832, 311 N.W.2d 497, 499, n. 2 (Minn. 1982) (citations omitted); see also Pinkney v. Independent School District No. 691, 366 N.W.2d 362, 365 (Minn. Ct. App. 1985); Kroll v. Independent School Dist. No. 593, 304 N.W.2d 338, 345 n. 3 (Minn. 1981); Schmidt v. Independent School District No. 1, 349 N.W.2d 563, 568 (Minn. Ct. App. 1984) (mandated the employment of a hearing officer, absent unusual or exceptional circumstances).

The one serious concern to the judicial legitimacy of findings in a teacher termination proceeding, much like the School Board's decision to non-renew Christopher's coaching contract, is that the school board occupies the rather incongruous tripartite role of "prosecutor, judge, and jury." Kroll, supra. The Minnesota Supreme Court has found that a board's three part role as prosecutor, judge and jury tainted a teacher's right to be heard in a meaningful and impartial manner, and the Minnesota Supreme Court also noted that "employing an independent hearing examiner should alleviate the problem." Schmidt, supra.

In Hahn, a coach was terminated from his coaching contract under Minn. Stat. § 125.121⁷. In the Matter of Hahn, 386 N.W.2d 789, 792 (Minn. Ct. App. 1986). On May

⁷Minn. Stat. § 121.121 has been renumbered under Minn. Stat. § 122A.58. Minn. Stat. § 122A.58 deals with termination of a coach as opposed to a non-renewal. Minn. Stat. § 122A.58, states: "Termination; hearing. Before a district terminates the coaching duties of an employee who is required to hold a license as an athletic coach from the commissioner of education, the district must notify the employee in writing and state its reason for the proposed termination. Within 14 days of receiving this notification, the employee may request in writing a hearing on the termination before the board. If a hearing is requested, the board must hold a hearing within 25 days according to the hearing procedures specified in section 122A.40, subdivision 14, and the termination is final upon the order of the board after the hearing." Minn. Stat. § 122A.40,

15, 1985, the School District notified Hahn in a letter that he had not been renewed for his coaching contract. Id. at 790. Hahn then requested a hearing under Minn. Stat. § 125.121. Id. Although the School District did not agree that Hahn had a right to a hearing or a neutral hearing person, the School District granted Hahn a hearing and a neutral hearing officer. Id. The neutral hearing officer's recommendation was that the School District relieve Hahn of his coaching duties. Id. The School District accepted the hearing officer's recommendation and reaffirmed its decision refusing to renew the coaching contract of Hahn. Id.

In Hahn, a case involving the non-renewal of a coaching contract, the Court of Appeals stated the following regarding a neutral hearing officer:

subdivision 14, does provide some due process rights including, "At the hearing, the board and the teacher may each be represented by counsel at each party's own expense, **and such counsel may examine and cross-examine witnesses and present arguments.** The board must first present evidence to sustain the grounds for termination or discharge and then receive evidence presented by the teacher. Each party may then present rebuttal evidence. Dismissal of the teacher must be based upon substantial and competent evidence in the record. All witnesses shall be sworn upon oath administered by the presiding officer of the board. **The clerk of the board shall issue subpoenas for witnesses or the production of records pertinent to the grounds upon the request of either the board or the teacher.** The board must employ a court reporter to record the proceedings at the hearing, and either party may obtain a transcript of the hearing at its own expense." (Emphasis added). However, these same due process rights are not enumerated under Minn. Stat. § 122A.33, which deals with non-renewal verses termination of a coaching contract. The non-renewal statute regarding a coaching position was enacted into law in 1991. Chapter 265, H.F. No. 700, Article 9, § 56. It appears that prior to 1991, the law did not make a distinction between non-renewal and termination regarding a coaching contract. It also appears that no case law in Minnesota has ever cited to Minn. Stat. § 122A.33 for any purpose.

To ensure the fairness of termination proceedings, the supreme court has held that absent unusual circumstances, **a hearing examiner should be hired in all cases.** Ganyo v. Independent School District No. 832, 311 N.W.2d 497, 499, n. 2 (Minn. 1982) (citations omitted). Moreover, a neutral hearing officer should be appointed. Pinkney v. Independent School District No. 691, 366 N.W.2d 362, 365 (Minn. Ct. App. 1985). Here there was an independent hearing examiner and relator's counsel made no offer of proof showing bias. See Bates v. Independent School District No. 482, Little Falls, 379 N.W.2d 239 (Minn. Ct. App. 1986).

Id. at 792 (also indicating a deprivation of a property right) (emphasis added).

The Minnesota Court of Appeals in 1986 (prior to the enactment of Minn. Stat. § 122A.33), recognized that a neutral hearing officer, when dealing with a non-renewal of a coaching contract, is mandated to ensure a fair hearing. On May 20, 2009, Villaume & Schiek, P.A., sent a letter to Rupp requesting a neutral hearing officer be assigned to the case. Christopher enclosed an executed request for appointment of five neutral hearing officers from the Bureau of Mediation Services in the letter dated May 20, 2009. On May 28, 2009, the School Board, via a letter from Rupp, declined to appoint an independent hearing officer.

On June 4, 2009, Villaume & Schiek, P.A., sent a letter to Rupp again objecting that the matter would not be heard before a neutral hearing officer. The letter stated, "If the School Board does not allow a neutral hearing officer, the School Board will simply 'rubber stamp' the reasons previously stated."

Also the fact that Rupp was advising the School Board, who is the ultimate decision maker in this case, further compounds the issue of a neutral decision maker because opposing Counsel was advising the School Board on how they should rule. It is the

position of Christopher that the communications between the School Board and Rupp are similar to ex parte communications because Rupp (as attorney for the School Board) has advised the decision maker, i.e. the School Board, on how they should rule.

Due process problems are further compounded when school administration is involved in all phases of the proceedings and when the School District's attorney presents the case, and advises the School Board on legal rulings. See Schimdt, supra. In this case, Rupp, the same person that is representing the School Board, was advising the School Board on legal matters regarding the Relator's non-renewal. Essentially, the School Board had the tripartite role of "prosecutor, judge, and jury." See Kroll, supra.

Relator did not want this matter re-heard before the School Board in light of the fact that the School Board had already made a decision to non-renew Christopher, thus they would simply "rubber stamp" his non-renewal at a later date. It is Relator's position that his due process rights and his "reasonable opportunity" to respond were violated because he was not provided his right to a non-renewal hearing **before a neutral decision maker**. (Emphasis added). Due process and Minn. Stat. § 122A.33 mandate that a non-judicial hearing be heard before a fair and neutral hearing officer.

Moreover, the School Board has an inherent bias because if the School Board was to reinstate Relator, they would potentially have to award Relator thousands of dollars in back pay and other lost wages, and/or have other issues relating to potential legal claims. In other words, the School Board controls the monies that are potentially available to Relator, thus they have a self interest in the outcome.

The School Board further violated Christopher's due process rights and rights enumerated under Minn. Stat. § 122A.33 because the School Board failed to properly provide Christopher with the written reasons for his non-renewal **prior** to his hearing which was held on August 4, 2009. (Emphasis added). On or about May 27, 2009, Wormstadt informed Christopher of the reasons for non-renewal. However, after the hearing occurred Wormstadt stated other reasons⁸ for the non-renewal. These reasons stated by Wormstadt on August 4, 2009, should have been reduced to writing and given to Christopher prior to the hearing.

It is the position of Christopher that Wormstadt violated Christopher's due process rights and Christopher's reasonable opportunity to respond to the non-renewal of his coaching contract because the comments made by Wormstadt on August 4, 2009, went well beyond the reasons outlined in the original reasons for non renewal of Christopher as outlined in the May 27, 2009 letter. (Compare Ex. D, with Wormstadt's statements made after Villaume & Schiek, P.A. presented evidence on behalf of Christopher). The reasons stated by Wormstadt on August 4, 2009, should have been disclosed in their entirety in writing on or about May 27, 2009, so Christopher could properly prepare for the hearing held on August 4, 2009. Essentially, the School Board failed to provide Christopher reasonable notice of the allegations made against him thus violating his due process rights

⁸In a letter dated June 1, 2009, Rupp stated, "The reasons provided for Mr. Christopher's non-renewal in the letter signed by Mr. Wormstadt were the School Board's reasons. In fact, the School Board ratified that letter at a meeting held on June 8, 2009." (Ex. H, see also Ex. A).

and his right to a “reasonable opportunity” to respond to the allegations pursuant to Minn. Stat. § 122A.33.

The School Board further violated Christopher’s due process rights and rights enumerated under Minn. Stat. § 122A.33 because the School Board did not allow an opportunity to question Wormstadt, the person who made the initial recommendation to the School Board to non-renew Christopher. Christopher did not have an opportunity to question Wormstadt or any member of the School Board regarding the reasons for non-renewal at the beginning of the hearing held on August 4, 2009, even though Wormstadt was at the hearing.

On June 4, 2009, Villaume & Schiek, P.A., requested that they be allowed to cross-examine any of the School Board members who made the determination to non-renew Christopher and that Villaume & Schiek, P.A. also be allowed to cross-examine Wormstadt.

On June 11, 2009, Rupp stated that he would not allow School Board members or Wormstadt to be cross-examined, and Rupp also did not allow Christopher, through his attorneys, to speak with Wormstadt or any School Board members. On August 4, 2009, Christopher, as his first witness, requested that Wormstadt be a witness, however, that requested was again denied. Wormstadt was at the hearing, however he would not allow himself to be cross-examined.

The School Board further violated Christopher’s due process rights and rights enumerated under Minn. Stat. § 122A.33 because Christopher did not have the right to

subpoena witnesses to rebut the reasons for non-renewal. On June 4, 2009, Villaume wrote a letter to Rupp requesting that the School Board issue subpoenas so Christopher could compel witnesses to testify on his behalf at the hearing. However, on June 11, 2009, Rupp stated that the School Board would not issue subpoenas. Christopher wanted to subpoena witnesses to testify at the hearing that were favorable to him, however, he was not allowed to subpoena any witnesses, including two former Superintendents.

The School Board further violated Christopher's due process rights and rights enumerated under Minn. Stat. § 122A.33 because the School Board already hired Taylor, as Head boys Basketball Coach for Windom Area Schools on June 6, 2009, thus a hearing held on August 4, 2009 for Christopher was futile.

Taylor was hired as a full time Social Studies teacher and as the Head Boys Basketball Coach for Windom Area Schools on June 6, 2009. Approximately six days after Christopher received the reasons for non-renewal, Windom Area Schools hired Taylor as the Head Boys Basketball Coach. This further complicates the School District's neutrality because they have a vested interest in retaining Taylor as head coach so they would not have to pay Christopher any back pay monies, and/or have other issues relating to potential legal claims.

Based on the reasons stated, the Relator requests the Court of Appeals to immediately reinstate the Relator as Head Boys Basketball Coach for Windom Area Schools, with full back pay and benefits. In the alternative, the Relator is requesting that the Court of Appeals reverse and remand this matter for further proceedings consistent

with the requests made above.

C. THE SCHOOL BOARD'S DECISION TO NON-RENEW CHRISTOPHER AS HEAD BOYS BASKETBALL COACH WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE BECAUSE THE SCHOOL BOARD DID NOT PROVIDE EVIDENCE AT THE HEARING OF AUGUST 4, 2009 THAT CHRISTOPHER FAILED TO PERFORM HIS JOB DUTIES AND RESPONSIBILITIES AS HEAD BOYS BASKETBALL COACH AND THUS THERE WAS NO EVIDENCE PRODUCED THAT THE SCHOOL BOARD SHOULD NOT RENEW CHRISTOPHER.

A school board acts in an administrative capacity and the Court of Appeals will not disturb its decision unless it is fraudulent, arbitrary, unreasonable, not supported by substantial evidence on the record, not within the board's jurisdiction, or is based on an erroneous theory of the law. Fisher v. ISD No. 622, 357 N.W.2d 152, 154 (Minn. Ct. App. 1984).

It is the position of Christopher, that the School Board failed to establish by substantial evidence on the record that there were legitimate reasons to non-renew Christopher's coaching contract.

The School Board, during the August 4, 2009 hearing presented no witnesses and did not admit any exhibits as evidence against Relator during the open part of the hearing. In fact, the School Board's attorney stated that the School Board would not be calling any witnesses or introducing any exhibits or cross examining any witnesses. The Relator did not have an opportunity to cross examine any witnesses because the School Board and/or School Board's attorney failed to produce any live testimony.

According to Beranek, “A school board should not have to find support for its determination in hearsay.” Beranek v. Joint Independent School District No. 287, 395 N.W.2d 123, 127 (Minn. Ct. App. 1986). It should also be noted that the School Board did not have an opportunity to judge Wormstadt’s demeanor while testifying on cross-examination.

The general rule is that when a governmental body makes a decision without an explanation, the decision is arbitrary and capricious, and the decision should be reversed. In re Livingood, 594 N.W.2d 889, 895 (Minn. 1999) (In Livingood, the Supreme Court held that the county board’s improper denial of appellant’s request for a conditional use permit required reversal directing the county to issue the permit).

In Thompson, the de facto Chief of Police, Thompson was terminated by the City Council. Thompson v. Appleton, 366 N.W.2d 326, 328 (Minn. Ct. App. 1985). **After a five hour hearing, and live testimony from two witnesses in support of adverse action, and after considerable deliberations**, the City Council concluded that there were instances of misconduct that Thompson be terminated because they demonstrated his “lack of self control, a propensity toward unwarranted violent conduct, and abuse of authority and position.” Id. (Emphasis added). In this case, the School Board or School Board’s attorney provided absolutely no live testimony or exhibits, and the School Board only deliberated for a very brief period of time and then issued a decision to non-renew.

Furthermore, all witnesses, including Christopher, stated that Christopher ran a clear, organized, and linear boys basketball program for grades 7 - 12, and that

Christopher communicated in a clear and effective manner in his role as a head coach, and that he was an excellent teacher capable of teaching and coaching at the same time.

All evaluations of Christopher were positive.

The Respondent, including Wormstadt, never conducted any type of investigation as to whether Christopher was performing in a negative fashion. Wormstadt never interviewed Christopher about the three reasons identified in Wormstadt's May 27, 2009 letter. Further, no person from the School District or the School Board contacted Christopher regarding the three reasons identified in Wormstadt's May 27, 2009 letter. Wormstadt never performed a coaching evaluation on Christopher. The School Board, prior to making the decision to non-renew Christopher, never reviewed the coaching evaluations.

Exhibit P consisted of daily notes and organizational charts for varsity practice starting in November 2008 through the end of the basketball season in 2009. The organizational charts are a breakdown of every practice for the varsity, showing that Christopher was organized and was prepared for practices.

Lastly, because Taylor has a full time job as a Social Studies teacher his job duties and responsibilities as a head coach and teacher would be identical to Christopher's job duties and responsibilities as a teacher and a head coach. (Trans. p. 93 - 94). Therefore, the third reason, which does not address any coaching issues, would be the same for

Taylor⁹ as a full time Social Studies teacher as it would have been for Christopher as a full time English teacher.

The decision of the School Board was not support by substantial evidence because the School Board or School Board's attorney presented absolutely no live testimony or exhibits at the hearing of August 4, 2009. Moreover, Relator presented evidence that specifically rebutted all the alleged reasons for the non-renewal outlined in Wormstadt's May 27, 2009 letter.

The Relator requests the Court of Appeals to immediately reinstate the Relator as Head Boys Basketball Coach, with full back pay and benefits because the Respondent failed to prove by substantial evidence that the Relator should be non-renewed. In the alternative, the Relator is requesting that the Court of Appeals reverse and remand this matter for further proceedings.

⁹Wormstadt stated, "If we were to have our coaching positions take precedence over teaching and classroom, this district and state would be in a rapid decline. I cannot consciously sacrifice teaching for any coaching position. No games or activity is worth a teaching position or the quality of education to our youth." It is Christopher's position that the third reason (along with the other two reasons) given by Wormstadt lacks any credibility because Taylor, as a full time Social Studies teacher, would have the same responsibilities as Christopher, however, Taylor was still hired as a coach.

CONCLUSION

For all of the foregoing reasons and conclusions, Christopher respectfully requests the Court of Appeals immediately reinstated him as Head Boys Basketball Coach for Windom Area Schools, with full back pay because the School Board violated Christopher's due process rights and they also violated his rights to reasonably respond to the allegations to non renew. The School Board also failed to provide substantial evidence that Christopher should not be renewed as head coach. In the alternative, Christopher requests the Court of Appeals to remand the case for further proceeding, including Christopher's right to have a neutral hearing officer, provide Christopher with the complete written reasons for non-renewal prior to a hearing, allow Christopher the right to confront his accusers, and allow Christopher to subpoena witnesses in his own defense.

Respectfully Submitted,

Dated: October 16, 2009

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COURT OF APPEALS NO.: A09-1715

STATE OF MINNESOTA
IN COURT OF APPEALS

Corey Christopher,

Relator,

vs.

**CERTIFICATE OF BRIEF
LENGTH**

Windom Area School Board,

Respondent.

I hereby certify that this brief conforms to the requirement of Minn. R. Civ. App. P. 132.01, subs. 1 and 3, for a brief produced with a proportional font. The length of this brief is 13,975 words. This brief was prepared using Corel WordPerfect, Times New Roman font face size 13.

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