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IN THE SUPREME COURT OF IOWA

NO. 21-0067

DANNA BRAAKSMA,
Appellant,

vs.

BOARD OF DIRECTORS OF THE
SIBLEY-OCHEYEDAN COMMUNITY SCHOOL DISTRICT,
Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR OSCEOLA COUNTY
THE HONORABLE NANCY L. WHITTENBURG, JUDGE
OSCEOLA COUNTY NO. CVCV020786

APPELLANT'S FINAL BRIEF AND REQUEST FOR ORAL ARGUMENT

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

The following issues are presented on appeal:

I. The District Court erred in affirming the decision of the Board of Directors of the Sibley-Ocheyedan Community School District to terminate the continuing teaching contract of Danna Braaksma because the action violates the Board's policies and the terms of Braaksma's teaching contract.

Authorities

Bd. of Dirs. of Ames Cmty. Sch. Dist. v. Cullinan, 745 N.W.2d 487, 493 (Iowa 2008)
Bd. of Educ. v. Youel, 282 N.W.2d 677, 679 (Iowa 1979)
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II. The District Court erred in affirming the decision of the Board of Directors of the Sibley-Ocheyedan Community School District to terminate the continuing teaching contract of Danna Braaksma because the action violates Iowa law.

Authorities

Bd. of Dirs. of Ames Cmty. Sch. Dist. v. Cullinan, 745 N.W.2d 487, 493 (Iowa 2008)
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III. The District Court erred in affirming the decision of the Board of Directors of the Sibley-Ocheyedan Community School District to terminate the continuing teaching contract of Danna Braaksma because it is unsupported by a preponderance of the competent evidence in the record made before the Board when that record is viewed as a whole.

Authorities
Bd. of Dirs. of Ames Cmty. Sch. Dist. v. Cullinan,
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ROUTING STATEMENT

Pursuant to the criteria set forth in Iowa Rules of Civil Procedure 6.1101(2) and 6.1101(3), the present case, one that requires "the application of existing legal principals," is of a type appropriate for transfer to the Iowa Court of Appeals. This case does not present substantial constitutional questions; conflicts between published cases; issues of first impression; fundamental and urgent issues of broad public importance; lawyer discipline; or substantial questions of enunciating or changing legal principals warranting retention by the Iowa Supreme Court.

STATEMENT OF THE CASE

This case is an appeal of the District Court's ruling to uphold the decision of a public school district to terminate the continuing teaching contract of a non-probationary teacher pursuant to Iowa Code sections 279.15 through 279.19 (2019). Superintendent of the Sibley-Ocheyedan Community School District ("District"), James Craig ("Superintendent Craig"), initiated the termination of teacher Danna Braaksma's ("Braaksma's") continuing teaching contract on November 13, 2019, by delivering to her a Notice and Recommendation to Terminate Contract (the "Notice"). (Braaksma's 2019-20 Teaching Contract, App. 160; Notice of Termination, App. 159). The Notice was issued pursuant to Iowa Code section 279.27 and cited the following reasons for Superintendent Craig's recommendation:

1. An intensive assistance program was provided to Braaksma and Braaksma refused to comply with the program with regard to grading.
2. Failure to teach appropriate to grade level.
3. Failure to meet Teaching Standard 8.
4. Students in Spanish II did not receive appropriate instruction.

(App. 161). On November 18, 2019, Superintendent Craig notified the Sibley-Ocheyedan Community School District Board of Directors ("Board") of his recommendation referenced herein. (App. 161).

Braaksma requested a private hearing before the Board, as is afforded

to her under Iowa Code sections 279.15 and 279.16, on Superintendent Craig's recommendation. (App. 162). The Board held a private hearing on December 16, 2019, and January 8, 2020. Ultimately, the Board voted to terminate Braaksma's continuing teaching contract. A written decision was issued by the Board on January 8, 2020. The Board's written decision made no credibility findings, findings of fact, or conclusions of law. (App. 42).

Braaksma then appealed the Board's termination of her teaching contract pursuant to Iowa Code section 279.18 in the Iowa District Court for Osceola County on January 30, 2020. (App. 39.) Oral arguments were taken on July 17, 2020, and the District Court (Judge Nancy L. Whittenburg) issued a Ruling affirming the decision of the Board to terminate Braaksma's teaching contract. (App. 9.)

STATEMENT OF THE FACTS

Braaksma's employment with the District began during the 1980-1981 school year. (App. 90, p. 186, ln. 18). That year, she was hired as a substitute teacher and continued in this role until the 2001-2002 school year, when she and the District entered into a continuing contract. (App. 90, p. 186, ln. 24 – p. 187, ln. 5). Braaksma served as a contracted High School Spanish teacher since 2001. (App. 90, p. 186, ln. 21 – p. 187, ln. 8). She taught Spanish I through IV and served as the International Club sponsor. (App. 90, p. 187, ln.

8-12). As a 40-year employee of the District, Braaksma was 64 years of age at the time of hearing on her termination. (App. 90, p. 186, ln. 15; App. 105, p. 248, ln. 8).

Principal Stan De Zeeuw ("Principal De Zeeuw") was Braaksma's immediate supervisor during the 2018-2019 and 2019-2020 school years. (App. 50, p. 26, ln. 22). The 2018-2019 school year was Principal De Zeeuw's first year of employment with the District as the seventh through twelfth-grade principal. (App. 49, p. 25, ln. 14-15, App. 50, p. 26, ln. 22-23). This position was his first as an administrator. (App. 50, p. 26, ln. 3-9). Principal De Zeeuw completed his secondary administrative endorsement in the spring of 2017 and evaluator training during the 2017-2018 school year. (App. 50, p. 26, ln. 3-15). New to both the District and the role of administrator, Principal De Zeeuw conducted an evaluation of Braaksma during the 2018-2019 school year, finding her deficient in six out of eight Iowa teaching standards. (App. 50, p. 27, ln. 5-11, p. 29, ln. 16-21; App. 168-177). By October 11, 2019, just over a year after obtaining his administrative licensure, accepting the principalship with the District, and assuming his responsibility to evaluate employees, Principal De Zeeuw recommended to Superintendent Craig that Braaksma's employment be terminated. (App. 51, p. 30, ln. 15-21).

Following Principal De Zeeuw's 2018-2019 evaluation and at a

meeting held on April 25, 2019, Superintendent Bill Boer and Principal De Zeeuw informed Braaksma she was being placed on an intensive assistance plan ("Plan"). (App. 50, p. 29, ln. 22 – p. 30, ln. 6; App. 90, p. 189, ln. 6-8). At the meeting, Principal De Zeeuw read verbatim the document titled, "Plan of Assistance – Assistance Phase." (App. 166-167; App. 91, p. 192, ln. 21-25). Braaksma expressed concerns about the contents of the document, disagreeing with some of the conclusions included within it. (App. 73, p. 118, ln. 25 – p. 120, ln. 4; App. 91, p. 192, ln. 4-6). Braaksma believed she had a right to withhold her signature and refused to sign the Plan document when it was presented to her for her signature. (App. 62, p. 76, ln. 4-8; App. 91, p. 191, ln. 6-24). Despite her feelings about the content of the document, she set forth to work toward meeting the requirements of the Plan. (App. 91, p. 192, ln. 7-12, App. 103, p. 239, ln. 4-13; App. 116, p. 292, ln. 15 – 21).

At no point did Principal De Zeeuw invite Braaksma to collaborate with him on the Plan. (App. 84, p. 163, ln. 20-24; App. 87, p. 176, ln. 9-16; App. 90 p. 189, ln. 20-24; App. 91, p. 190, ln. 11-17; App. 103, p. 239, ln. 14 – p. 240, ln. 14; App. 116, p. 292, ln. 15 – p. 293, ln. 8; App. 118, p. 299, ln. 2-17). No member of the administration spoke with Braaksma about the development or content of the Plan. (App. 91, p. 190, ln. 5-17). Prior to the meeting on April 25, 2019, Braaksma was never privy to the contents of the

Plan and she was never asked to give her input on the plan. (App. 103, p. 239, ln. 14-19; App. 118, p. 299, ln. 2-9). After it was presented to Braaksma on April 25, 2019, the Plan was never, in any way, amended. (App. 116, p. 293, ln. 5-8; App. 118, p. 299, ln. 2-17).

The District's intensive assistance policy requires that any employee "not meeting the standards of the District . . . *will be* placed on intensive assistance." (App. 230 (emphasis added)). "[I]n conjunction with his/her principal," the teacher "will *mutually* develop an intensive assistance plan" and "[t]he employee will have *a minimum of 6 months* and a maximum of 12 months to implement changes." (App. 230 (emphasis added)).

The language of Braaksma's continuing teaching contract incorporates the District's intensive assistance policy wherein it states, "official school policies, calendar, and Master Contract are part of this contract." (App. 160). The Plan began immediately following the meeting on April 25, 2019. (App. 91, p. 192, ln. 13-16). From that point and through end of the 2018-2019 school year, Braaksma was not asked by the administration to attend any additional meetings or periodic discussions about the Plan or her progress. (App. 74, p. 124, ln. 15 – p. 125, ln. 9; App. 84, p. 162, ln. 25 – p. 163, ln. 5; App. 91, p. 193, ln. 22 – p. 194, ln. 13). No assistance was offered or provided to Braaksma. (App. 66, p. 92, ln. 12 – p. 93, ln. 5; App. 72, p. 114, ln. 9 – p.

115, ln. 3; App. 74, p. 124, ln. 15 – p. 125, ln. 9; App. 75, p. 129, ln. 12 – 18; App. 85, p. 168, ln. 9-15; App. 91, p. 193, ln. 18 – App. 92, p. 194, ln. 8). The administration made no arrangements for Braaksma to receive the support of a mentor or an instructional coach. (App. 91, p. 193, ln. 25 – App. 92, p. 194, ln. 5). Principal De Zeeuw also did not mentor Braaksma himself. (App. 92, p. 194, ln. 6-8). From April 25, 2019, through the conclusion of the 2018-2019 school year, Braaksma never witnessed Principal De Zeeuw visit her room. (App. 92, p. 194, ln. 9-25). After the Plan was put in place, Braaksma never received any feedback on her performance and progress from Principal De Zeeuw or any other school administrator. (App. 92, p. 195, ln. 1-4; App. 95, p. 208, ln. 13-17.)

The Plan continued into the 2019-2020 school year. On August 21, 2019, Braaksma met with the administration for the second time to discuss the Plan. (App. 102, p. 237, ln. 11-16). Around this same time, Superintendent Craig was beginning his first position as a superintendent, having recently replaced Superintendent Bill Boer. In this meeting, Principal De Zeeuw once again read the Plan document word-for-word. (App. 103, p. 238, ln. 2-5). Braaksma asked for clarification on the bulleted points as they were read to her and she noted points she felt were "duplicated . . . and . . . triplicated." (App. 103, p. 238, ln. 14-25). Braaksma felt she needed to know, "what does

this actually mean?" (App. 104, p. 243, ln. 9-10). Braaksma testified about her belief that the "bulleted document was a picture of what [she] wasn't." (App. 104, p. 244, ln. 4-5).

Braaksma's questions "agitated" Superintendent Craig, leading him to tell Braaksma to be quiet and not interrupt Principal De Zeeuw's reading. (App. 81, p. 151, ln. 10 – p. 153, ln. 2; App. 106, p. 250, ln. 13 – p. 251, ln. 5; App. 118, p. 299, ln. 10-17). He displayed anger through his tone and volume of his voice and facial expressions. (App. 104, p. 243, ln. 3-20). Braaksma testified that she was never told she would have the opportunity to ask questions following the reading. (App. 103, p. 240, ln. 5-9). She attempted to determine "what should [she] do" and "[h]ow" to do it. (App. 103, p. 240, ln. 15-20). She "didn't get to do that." (App. 104, p. 243, ln. 10). Superintendent Craig told Braaksma he would "ask for her resignation" if she "kept going or kept doing this." (App. 106, p. 250, ln. 1-6). When Braaksma "interrupted again," Superintendent Craig "told her the meeting was over" and that "[s]he needed to leave." (App. 81, p. 152, ln. 11 – p. 153, ln. 2). When Braaksma persisted, Superintendent Craig told her to "get out," (App. 81, p. 153, ln. 6). and "this meeting is over; you are done." (App. 106, p. 250, ln. 14-19).

Later in the day on August 21, 2019, Braaksma met Superintendent Craig in the hallway and they continued to discuss the Plan. During this

conversation, Superintendent Craig asked Braaksma, "[A]re you going to follow the plan or not?" (App. 81, p. 153, ln. 19-20). Braaksma agreed to follow the Plan as presented. (App. 51, p. 31, ln. 20-21; App. 61, p. 70, ln. 4-7; App. 81, p. 153, ln. 9-23; App. 86, p. 171, ln. 12-13; App. 116, p. 292, ln. 21). She kept the Plan document with her at all times so it was available for her to "refer to instantly." (App. 103, p. 239, ln. 12-13).

Following the meeting on August 21, 2019, Superintendent Craig did not interact again with Braaksma until October 11, the date upon which he asked for her resignation. (App. 82, p. 154, ln. 7-8). He never observed her classroom teaching. (App. 83, p. 161, ln. 7-11; App. 86, p. 171, ln. 25 – p. 172, ln. 3; App. 107, p. 255, ln. 5-8).

The school year began and "[a]s school days went on and [she] wasn't seeing anybody," Braaksma "decided [she] should ask the questions that [she] needed answered regarding following the plan correctly." (App. 103, p. 241, ln. 7-10). A "couple of weeks" into the 2019-2020 school year, Braaksma approached Principal De Zeeuw and requested to meet because she "could use some help with" the Plan. (App. 103, p. 241, ln. 18 – App. 104, p. 242, 12). Principal De Zeeuw agreed but failed to follow-up with Braaksma on a meeting date. (App. 104, p. 242, ln. 7-12). Braaksma met Principal De Zeeuw in the hallway sometime later and reminded him of the need for a meeting.

(App. 104, p. 242, ln. 13 – p. 243, ln. 2). The meeting Braaksma requested of Principal De Zeeuw to discuss the Plan further never occurred. (App. 104, p. 244, ln. 20-23). Braaksma never received guidance on how to carry out the Plan. (App. 104, p. 244, ln. 13-16). She received no intermittent deadlines for carrying out the Plan. (App. 104, p. 244, ln. 17-19). She was given no standards by which to judge her progress or benchmarks to achieve in regard to those bulleted items that were not self- evident. (App. 104, p. 245, ln. 24 – App. 105, p. 246, ln. 8). Despite her requests, the administration did not hold any meetings or have any conversations with Braaksma to discuss her progress on the Plan or her need for assistance and clarification. (App. 104, p. 244, ln. 20-23). It was abundantly clear that Braaksma's practice of 40 years did not meet Principal De Zeeuw's expectations, but Braaksma never received input or counsel from the administration as part of the Plan. (App. 104, p. 244, ln. 13 – p. 245, ln. 23). Braaksma testified,

> But that is what I was asking because I knew I had an evaluation coming up. So if you come in to observe, talk to me after so I know what I did right and what I didn't do right. * * * I just didn't understand. Nobody could tell me why. Why do you have me pegged to meet all these bullet points? How did you come to this conclusion? * * * So if you want me to do something different, please answer my questions.

(App. 104, p. 245, ln. 3-23).

After the Plan was put in place, Braaksma is aware of two occurrences of Principal De Zeeuw observing her classroom, each time lasting "five minutes or less." (App. 107, p. 255, ln. 5-14). No formal observation was ever performed and Braaksma was given a very limited opportunity to show improvement and compliance with the Plan. (App. App. 107, p. 255, ln. 13-14). Principal De Zeeuw testified he informally observed Braaksma "eight to ten" times after placing her on intensive assistance. (App. 56, p. 51, ln. 14). His description of these observations was they were "very informal," "brief pop-ins," and "[s]ome were from outside just looking in watching what was going on." (App. 71, p. 112, ln. 24 – p. 115, ln. 3). His notes reflect only four occasions of observation – twice during the week of August 26, 2019, and then again on September 9 and 17, 2019. (App. 164-165). Each of these "informal walk-throughs" lasted five to ten minutes each. (App. 67, p. 94, ln. 19-20). Principal De Zeeuw recorded no other observations but acknowledged that if he witnessed something "detrimental" he would have recorded it and put it in a file. (App. 67, p. 95, ln. 10-17). It is important to note that no negative comments are reflected in Principal De Zeeuw's notes recording the observations of the week of August 26 or on September 9 and 17, 2019. (App. 164-165).

A third conversation with Principal De Zeeuw was initiated by

Braaksma in the supply room regarding her Plan on October 11, 2019. (App. 107, p. 257, ln. 11 – App. 108, p. 258, ln. 25). She testified, "I told him . . . we have less than a week until my pre- observation [sic] meeting," and

> [w]e're running out of time to get together to – so that I can ask questions about, what does this mean? What am I not doing according to this one? And I guess based on these two five- minute walk-throughs I wanted to ask, you know, have you seen any growth based on getting those grades in 15 minutes early right away the first time?

(App. 107, p. 257, ln. 20 – App. 108, p. 258, ln. 9). Principal De Zeeuw, however, provided no substantive response, which caused Braaksma to walk to Superintendent Craig's office to speak with him. (App. 108, p. 258, ln. 14). Braaksma discussed her upcoming pre-observation meeting and the formal evaluation process with Superintendent Craig and expressed concern that Principal De Zeeuw had still not committed to meeting with her regarding the Plan. (App. 108, p. 259, ln. 2-5). Superintendent Craig requested Braaksma do him "a favor" and meet him back at his office at 3:30 p.m. (App. 107, p. 256, ln. 7-8; App. 108, p. 259, ln. 13-14).

Braaksma returned to Superintendent Craig's office at 3:30 p.m. on October 11, 2019, as he had requested. (App. 108, p. 259, ln. 15-17). Superintendent Craig then directed her to the board room, where Principal De Zeeuw was seated and waiting. (App. 108, p. 259, ln. 19-23). Principal De

Zeeuw was silent and Superintendent Craig began the conversation, saying, "We've done as much as we can with you or we've gone as far as we can with you." (App. 108, p. 260, ln. 2-8). Superintendent Craig continued by saying, "I have an opportunity for you here." (App. 108, p. 261, ln. 5-7). He slid a separation agreement across the table to Braaksma and began to read the document to her. (App. 108, p. 261, ln. 6-9). Acceptance of the separation agreement would have required Braaksma to resign. (App. 108, p. 261, ln. 6-7). When he concluded reading the document, Superintendent Craig repeatedly asked Braaksma if she would sign it. (App. 109, p. 263, 6-12). Braaksma refused to accept the settlement offer immediately due to her concerns about "giving up all [her] rights" and the need to talk with her family and an attorney for counsel. (App. 109, p. 262, ln. 19-24; App. 109, p. 263, ln. 12-16).

On October 14, 2019, Braaksma reported to work without the signed separation agreement, understanding she was still under contract to perform her duties. (App. 109, p 263, ln. 18-25). She was provided a letter by Superintendent Craig informing her she was being placed on administrative leave. (App. 109, p. 264, ln. 1 – p. 266, ln. 25; App. 216). Upon her refusal to resign, Superintendent Craig instituted the teacher termination proceeding. (App. 159). Braaksma's Plan had been in effect for just over two and one-half

(contracted) months. (App. 91, p. 190, ln. 18 – p. 191, ln .5; App. 92, p. 195, ln. 10-19).

Contrary to the administration's portrayal of Braaksma, she testified she is a hard-working employee, who stays beyond contracted work hours and often resumes work at home in the evenings and on weekends. (App. 99, p. 225, ln. 16 – App. 100, p. 226, ln. 10). Braaksma testified that she had not received any complaints from students or parents about her teaching practices. (App. 106, p. 253, ln. 17-23). She was unaware that her teaching practices had changed over the years and she "[a]lways" participated in professional development." (App. 106, p. 253, ln. 24 – App. 107, p. 254, ln. 8).

ARGUMENT

I. THE DISTRICT COURT ERRED IN AFFIRMING THE DECISION OF THE BOARD OF DIRECTORS OF THE SIBLEY-OCHEYEDAN COMMUNITY SCHOOL DISTRICT TO TERMINATE THE CONTINUING TEACHING CONTRACT OF DANNA BRAAKSMA BECAUSE THE ACTION VIOLATES THE BOARD'S POLICIES AND THE TERMS OF BRAAKSMA'S TEACHING CONTRACT.

A. Preservation of Error

Upon the filing of a written decision by the Board terminating Braaksma's continuing teaching contract, Braaksma timely appealed pursuant

to Iowa Code section 279.18. On appeal to the District Court, Braaksma sought a determination as to whether her termination violated board policy and the terms of her continuing teaching contract and the District Court affirmed the Board's decision. (App. 34-36). Therefore, error has been preserved on this issue.

B. Scope and Standard of Review

A court's review of a school board's decision to terminate a teacher's continuing contract "is for correction of errors at law." *Bd. of Dirs. of Ames Cmty. Sch. Dist. v. Cullinan*, 745 N.W.2d 487, 493 (Iowa 2008) (citing *Walthart v. Bd. of Dirs.*, 694 N.W.2d 740, 744 (Iowa 2005)). Upon review of the termination of a teacher's contract under Iowa Code section 279.15, the court will "make anew the judicial determinations" required by Iowa Code section 279.18. *Bd. of Educ. v. Youel*, 282 N.W.2d 677, 679 (Iowa 1979). The court "may affirm the board's decision or remand to the board for further proceedings upon conditions determined by the court" and

> shall reverse, modify, or grant any other appropriate equitable or legal relief from the board decision, including declaratory relief, if substantial rights of the petitioner have been prejudiced because the action is any of the following:
> a. In violation of constitutional or statutory provisions.
> b. In excess of the statutory authority of the board.
> c. In violation of a board rule or policy or contract.

> d. Made upon unlawful procedure.
> e. Affected by other error of law.
> f. Unsupported by a preponderance of the competent evidence in the record made before the board when that record is viewed as a whole.
> g. Unreasonable, arbitrary, or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

IOWA CODE § 279.18. "The court is limited on review to the record made before a school board." *Walthart,* 694 N.W.2d at 744.

C. Analysis

At the time of her termination, Braaksma and the Board were parties to a teaching contract pursuant to the requirements of Iowa Code section 279.13. "[S]chool boards and teachers are authorized to enter into employment contracts." *Ferree v. Bd. of Educ.*, 338 N.W.2d 870, 871 (Iowa 1983); IOWA CODE § 279.12. Iowa Code section 279.13(1)(a), a statutory provision governing employment contracts with public school teachers, requires a contract with a teacher to state the number of contract days, annual compensation, and "any other matters as may be mutually agreed upon." Braaksma's 2019-2020 teaching contract set forth the number of contract days, her annual compensation, and, among other terms, incorporated "official school policies" and made them "part of" her teaching contract. (App. 160).

The District concurrently maintained an Intensive Assistance Policy

permitting the termination of a teacher who was "not meeting the standards of the District" after the teacher was "placed on intensive assistance." (App. 230). This policy also required the teacher, "in conjunction with his/her principal," to "mutually develop an intensive assistance plan" and assured them "a minimum of 6 months and a maximum of 12 months to implement changes." (App. 230). The policy permitted the teacher be "[r]ecommended for termination effective immediately or at the end of the year" *after* these conditions were met. (App. 230). The District's Intensive Assistance Policy provides as follows:

> Intensive Assistance: In the event an employee is not meeting the standards of the District, the employee will be placed on intensive assistance and, *in conjunction with his/her principal, will mutually develop an intensive assistance plan*. The employee will have *a minimum of 6 months* and a maximum of 12 months to implement changes at which time the employee will be:
>
> a. Returned to the 3 year (sic) cycle if successfully completed the intensive assistance;
>
> b. Recommended for termination effective immediately or at the end of the year;
>
> c. Continue the contract for a period not to exceed one year and the contract shall not be subject to termination provisions in 279.15.
>
> A teacher who previously participated in an intensive assistance program shall not be entitled to participate in another intensive assistance program relating to the same standards or criteria.

(App. 230 (emphasis added)).

The District failed to carry out the Intensive Assistance Policy, and, thereby, violated the terms of Braaksma's teaching contract. The administration acknowledged at the hearing that Braaksma was not given the "minimum of 6 months . . . to implement changes." (App. 62, p. 74, ln. 12 – p. 76, ln. 3; App. 84, p. 165, 5-22). Braaksma's Plan began on April 25, 2019, and Superintendent Craig asked for her resignation on October 11, 2019. (App. 75, p. 129, ln. 9-11; App. 166). Braaksma was asked to leave the District on October 14, 2019, and was never allowed to return. (App. 17; App. 72, p. 116, ln. 13-15; App. 216).

In further violation of the terms of the Intensive Assistance Policy, Braaksma was never allowed to collaborate with Principal De Zeeuw on the Plan. (App. 84, p. 163, ln. 20-24; App. 87, p. 176, ln. 9-16; App. 90 p. 189, ln. 20-24; App. 91, p. 190, ln. 11-17; App. 103, p. 239, ln. 14 – p. 240, ln. 14; App. 116, p. 292, ln. 15 – p. 293, ln. 8; App. 118, p. 299, ln. 2-17). Braaksma's questions and comments on the plan were rebuffed. (App. 103, p. 238, ln. 20 – p. 241, ln. 1; App. 104, p. 244, ln. 1-12). As Braaksma attempted to discuss the plan, Superintendent Craig became "agitated" and told Braaksma to be quiet and to not interrupt Principal De Zeeuw. (App. 81, p. 152, ln 11-14; App. 103, p. 239, ln. 20 – p. 241, ln. 1; App. 118, p. 299, ln. 10-17). When Braaksma

"interrupted again," Superintendent Craig "told her the meeting was over" and that "[s]he needed to leave." (App. 81, p. 152, ln. 22 – App. 153 ln. 2). When Braaksma persisted, Superintendent Craig told her to "get out," and "this meeting is over; you are done." (App. 81, p. 153, ln. 6; App. 106, p. 250, 2-19). Braaksma testified that she was never told she would have the opportunity to ask questions following Principal De Zeeuw's reading of the Plan. (App. 103, p. 240, ln. 5-20). Not a single amendment was made to the Plan after it was presented to Braaksma. (App. 118, p. 299, ln. 2-17).

The District Court found a violation of the intensive assistance policy when "the school district did not give Braaksma the minimum of six months and a re-evaluation prior to putting her on leave. . . ." (App. 36). The District Court also found the District's intensive assistance policy was incorporated into Braaksma's teaching contract. (App. 36). Nonetheless, the District concluded that Iowa Code section 279.27 allows a school district to discharge a teacher "at any time during the contract year for just cause" and the termination "is not predicated on a completion of an intensive assistance plan." (App. 36).

The District Court has erred in finding Braaksma's termination, carried out in violation of board policy and her employment contract, was lawful. "'[J]ust cause' cannot include reasons which are arbitrary, unfair, or generated

out of some petty vendetta." *Briggs v. Bd. of Dirs. of Hinton Cmty. Sch. Dist.*, 282 N.W.2d 740, 743 (Iowa 1979). The District failed to comply with its own intensive assistance program policy, depriving Braaksma of substantial rights under the policy and those guaranteed by the terms of her teaching contract. A termination in violation of the terms of a board policy or contract should be reversed. IOWA CODE § 279.18(2); *Shenandoah Educ. Ass'n v. Shenandoah Cmty. Sch. Dist.*, 337 N.W.2d 477, 482 (Iowa 1983) ("the decisions of the adjudicator and the trial court must be reversed because the board's action to terminate . . . violated the negotiated agreement"); *In re Sac City Bd. of Educ. v. Schermerhorn*, 340 N.W.2d 789, 792 (Iowa Ct. App. 1983) (reversing teacher's termination in violation of terms of collective bargaining agreement and reinstating teacher's contract); *Rankin v. Bd. of Educ.*, 337 N.W.2d 886, 889 (Iowa Ct. App. 1983) (reversing a teacher's termination where board's action was an attempt "to avoid the requirements of the bargained contract with regard to the retention of tenured teachers.").

II. THE DISTRICT COURT ERRED IN AFFIRMING THE DECISION OF THE BOARD OF DIRECTORS OF THE SIBLEY-OCHEYEDAN COMMUNITY SCHOOL DISTRICT TO TERMINATE THE CONTINUING TEACHING CONTRACT OF DANNA BRAAKSMA BECAUSE THE ACTION VIOLATES IOWA LAW.

A. Preservation of Error

Upon the filing of a written decision by the Board terminating Braaksma's continuing teaching contract, Braaksma timely appealed pursuant to Iowa Code section 279.18. On appeal to the District Court, Braaksma sought a determination as to whether her termination violated Iowa law and the District Court affirmed the Board's decision. (App. 34). Therefore, error has been preserved on this issue.

B. Scope and Standard of Review

A court's review of a school board's decision to terminate a teacher's continuing contract "is for correction of errors at law." *Bd. of Dirs. of Ames Cmty. Sch. Dist. v. Cullinan*, 745 N.W.2d 487, 493 (Iowa 2008) (citing *Walthart v. Bd. of Dirs.*, 694 N.W.2d 740, 744 (Iowa 2005)). Upon review of the termination of a teacher's contract under Iowa Code section 279.15, the court will "make anew the judicial determinations" required by section 279.18. *Bd. of Educ. v. Youel*, 282 N.W.2d 677, 679 (Iowa 1979). The court "may affirm the board's decision or remand to the board for further proceedings upon conditions determined by the court" and

> shall reverse, modify, or grant any other appropriate equitable or legal relief from the board decision, including declaratory relief, if substantial rights of the petitioner have been prejudiced because the action is any of the following:
> a. In violation of constitutional or statutory provisions.
> b. In excess of the statutory authority of the board.
> c. In violation of a board rule or policy or

> contract.
> d. Made upon unlawful procedure.
> e. Affected by other error of law.
> f. Unsupported by a preponderance of the competent evidence in the record made before the board when that record is viewed as a whole.
> g. Unreasonable, arbitrary, or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

IOWA CODE § 279.18. "The court is limited on review to the record made before a school board." *Walthart,* 694 N.W.2d at 744.

C. Analysis

Iowa Code Chapter 284 provides a comprehensive "student achievement and teacher quality program to promote high student achievement." IOWA CODE § 284.1. Iowa Administrative Code 281-83.1 states the "goal" of the teacher quality program "is to enhance the learning, achievement, and performance of all students through the recruitment, support, and retention of quality Iowa teachers." The teacher quality program "shall consist of" three "major elements":

> (1) Career paths with compensation levels that strengthen Iowa's ability to recruit and retain teachers;
> (2) Professional development designed to directly support best teaching practices;
> (3) Evaluation of teachers against the Iowa teaching standards.

IOWA CODE § 284.1.

The Iowa Teaching Standards are set forth in Iowa Code section 284.3(1) and are as follows:

> a. Demonstrates ability to enhance academic performance and support for and implementation of the school district's student achievement goals.
> b. Demonstrates competence in content knowledge appropriate to the teaching position.
> c. Demonstrates competence in planning and preparing for instruction.
> d. Uses strategies to deliver instruction that meets the multiple learning needs of students.
> e. Uses a variety of methods to monitor student learning.
> f. Demonstrates competence in classroom management.
> g. Engages in professional growth.
> h. Fulfills professional responsibilities established by the school district.

Iowa Code section 284.3(2) tasks the Iowa Department of Education with the establishment of criteria to assist in the evaluation of a teacher against the Iowa Teaching Standards. The Iowa Department of Education promulgated such criteria in Iowa Administrative Code 281—83.4. *See also Iowa Teaching Standards and Criteria*, IOWA DEP'T OF EDUCATION (August 27, 2018), https://educateiowa.gov/sites/files/ed/documents/IowaTeachingStandardsAndCriteria_0.pdf (last visited on March 21, 2021).

Teacher quality provisions of Iowa Code section 284.8(2) require that "[a]ll school districts *shall be prepared to offer* an intensive assistance

program." IOWA CODE § 284.8(2) (emphasis added).[1] Likewise, Iowa Administrative Code 281-83.5(3)(e) requires school districts to "*develop and implement* a teacher evaluation plan that contains . . . [p]rovisions for an intensive assistance program as provided in Iowa Code section 284.8 . . . ." (emphasis added). Intensive assistance is "the provision of organizational support and technical assistance to teachers, other than beginning teachers, for the remediation of identified teaching and classroom management concerns for a period not to exceed twelve months." IOWA CODE § 284.2(6).

A teacher may voluntarily elect to participate in intensive assistance after undergoing peer group review. IOWA CODE § 284.8(1). Alternatively, and in the event an evaluator deems a teacher's performance "not meeting district expectations under the Iowa teaching standards," the "evaluator shall, at the direction of the teacher's supervisor, recommend to the district that the teacher participate in an intensive assistance program." IOWA CODE § 284.8(2).

A teacher who is failing to meet the Iowa teaching standards "shall participate" in an intensive assistance program. IOWA CODE § 284.8(3). School districts are not required to provide intensive assistance to a teacher

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[1] In 2002, the Iowa Legislature ordered that by July 1, 2004, all school districts were required to "be prepared to offer an intensive assistance program." 2002 IOWA ACTS ch. 1152 §17.

who has previously participated in the program "relating to particular Iowa teaching standards or criteria." *Id.* In other words, teachers have one opportunity to participate in an intensive assistance plan on any particular teaching standard, but failure to do so will not bind the district to provide intensive assistance on the same teaching standard more than once.

Upon completion of the intensive assistance program, Iowa Code chapter 284 imposes the following directives and guidance:

> Following a teacher's participation in an intensive assistance program, the teacher *shall be reevaluated* to determine whether the teacher successfully completed the intensive assistance program and is meeting district expectations under the applicable Iowa teaching standards or criteria. If the teacher did not successfully complete the intensive assistance program or continues not to meet the applicable Iowa teaching standards or criteria, the board may do any of the following:
> a. Terminate the teacher's contract immediately pursuant to section 279.27.
> b. Terminate the teacher's contract at the end of the school year pursuant to section 279.15.
> c. Continue the teacher's contract for a period not to exceed one year. However, the contract shall not be renewed and shall not be subject to section 279.15.

IOWA CODE § 284.8(4) (emphasis added).[2] The provisions of Iowa Code chapter 284 promote the necessarily intertwined goals of enhancing student

[2] The current language of Iowa Code section 284.8(4) was added anew in 2017. 2017 IOWA ACTS ch. 2 §46.

achievement and supporting and retaining qualified teachers. Consistently, Iowa Code section 284.8 provides significant protections for both the school district and the teacher and demonstrate a balancing of the interests of both parties.

In compliance with Iowa Code chapter 284, the District adopted its own Intensive Assistance Policy:

> Intensive Assistance: In the event an employee is not meeting the standards of the District, the employee will be placed on intensive assistance and, in conjunction with his/her principal, will mutually develop an intensive assistance plan. The employee will have a minimum of 6 months and a maximum of 12 months to implement changes at which time the employee will be:
> a. Returned to the 3 year (sic) cycle if successfully completed the intensive assistance;
> b. Recommended for termination effective immediately or at the end of the year;
> c. Continue the contract for a period not to exceed one year and the contract shall not be subject to termination provisions in 279.15.
>
> A teacher who previously participated in an intensive assistance program shall not be entitled to participate in another intensive assistance program relating to the same standards or criteria.

(App. 230).

The District placed Braaksma on the Plan on April 25, 2019. (App. 51,

p. 30, ln. 3-4; App. 90, p. 189, ln. 6-8; App. 91, p. 192, ln. 13-15; App. 166-167). Braaksma was directed to "[b]egin working on [the plan] in [the] Spring of 2019." (App. 166). For the remainder of the 2018-2019 school year, no meeting or conversation was held regarding the Plan. (App. 91, p. 192, ln. 17 – p. 193, ln. 21). Braaksma's 2019-2020 contract year began on August 21, 2019. (App. 160). On October 11, 2019, the administration asked for her resignation, and upon her refusal, instituted termination proceedings. (App. 108, p. 261, ln. 6-7; App. 159). Braaksma was allowed just over two and one-half months to participate in the Plan, a time far less than the minimum six-month period required by the District's Intensive Assistance Policy, which was incorporated by reference into Braaksma's teaching contract. (App. 91, p. 190, ln. 18 – p. 191, ln .5; App. 92, p. 195, ln. 10-19; App. 160; App. 230).

During the short period between April 25 and October 11, 2019, the administration provided no "organizational support and technical assistance" as is required by Iowa Code sections 284.2(6) and 284.8(2) and (3). (App. 74, p. 124, ln. 15 – p. 125, ln. 9; App. 83, p. 162, ln. 25 – App. 84, p. 163, ln. 5; App. 91, p. 193, ln. 22 – p. 194, ln. 13). No assistance was offered or provided to Braaksma. (App. 66, p. 92, ln. 12 – p. 93, ln. 5; App. 72, p. 114, ln. 9 – p. 115, ln. 3; App. 74, p. 124, ln. 15 – p. 125, ln. 9; App. 75, p. 129, ln. 12 – 18; App. 85, p. 168, ln. 9-15; App. 91, p. 193, ln. 18 – App. 92, p. 194, ln. 8).

Braaksma was never "reevaluated to determine whether" she "successfully completed the intensive assistance program" as is required by Iowa Code section 284.8(4). (App. 107, p. 255, ln. 13-14).

The District Court acknowledged that "[t]he Board did not dispute that Braaksma was terminated without re-evaluation under § 284.8(4) or that Braaksma had no input or assistance from administration in her intensive plan." (App. 34). The District's handling of the intensive assistance program, a procedure required by law, complied neither by letter nor with the intent of Iowa Code section 284.8. It also gave Braaksma "no real opportunity to remedy the complaints against" her, which the Iowa Supreme Court has "considered of some importance." *Munger v. Jesup Cmty. Sch. Dist.*, 325 N.W.2d 377, 380 (Iowa 1982).

Finding Braaksma's termination was lawful, the District Court relied upon Iowa Code section 279.14(2) for the proposition that standards of performance are reserved as an exclusive management right of a school board. (App. 34). While this proposition is applicable in the context of public sector collective bargaining, it is inapposite in the present case. Section 279.14(2) in its entirety states as follows:

> The determination of standards of performance expected of school district personnel shall be reserved as an exclusive management right of the school board and shall not be subject to mandatory

> negotiations under chapter 20. Objections to the procedures, use, or content of an evaluation in a teacher termination proceeding brought before the school board in a hearing held in accordance with section 279.16 or 279.27 shall not be subject to any grievance procedures negotiated in accordance with chapter 20.

By designating standards of performance as an "exclusive management right," the Iowa legislature excluded the topic from bargaining between a school board and a certified employee organization under Iowa Code chapter 20, the Public Employment Relations Act. It is clear from other statutory provisions that local standards of performance are not governed exclusively by a local school board. Iowa Code sections 284.3(2)(a) and (b) require Iowa school boards to provide performance evaluations which measure a teacher's performance against the Iowa Teaching Standards and criteria developed by the Iowa Department of Education. In the context of a beginning teacher, a school board must even utilize an evaluation instrument developed by the Iowa Department of Education. IOWA CODE § 284.3(2)(a). That is not to say that school districts do not maintain control over local standards of performance. The Iowa Teaching Standards, specifically Iowa Code section 284.3(1)(h), include the expectation that educators "[f]ulfill[ ] professional responsibilities established by the school district." Nonetheless, Iowa Code section 279.14(2) does not provide a school district the right to ignore the legal

obligations imposed by Iowa Code Chapter 284 to prepare, offer, and execute, an intensive assistance program, which includes organizational support, technical assistance, and re-evaluation. Courts “do not judge the wisdom of the Board's action” or “force the Board to adopt a policy” they find “preferable;” policy decisions are left to the discretion of the Board “subject, of course, to a teacher's constitutional, statutory and contractual rights.” *Olds v. Bd. of Educ.*, 334 N.W.2d 765, 771 (Iowa Ct. App. 1983).

III. THE DECISION OF THE BOARD OF DIRECTORS OF THE SIBLEY-OCHEYEDAN COMMUNITY SCHOOL DISTRICT TO TERMINATE THE CONTINUING CONTRACT OF DANNA BRAAKSMA IS UNSUPPORTED BY A PREPONDERANCE OF COMPETENT EVIDENCE IN THE RECORD MADE BEFORE THE BOARD WHEN THAT RECORD IS VIEWED AS A WHOLE.

A. Preservation of Error

Upon the filing of a written decision by the Board terminating Braaksma’s continuing teaching contract, Braaksma timely appealed pursuant to Iowa Code section 279.18. On appeal to the District Court, Braaksma sought a determination as to whether her termination was unsupported by a preponderance of the competent evidence in the record made by the Board when the record is viewed as a whole and the District Court affirmed the Board’s decision. (App. 24-34). Therefore, error has been preserved on this issue.

B. Scope and Standard of Review

A court's review of a school board's decision to terminate a teacher's continuing contract "is for correction of errors at law." *Bd. of Dirs. of Ames Cmty. Sch. Dist. v. Cullinan*, 745 N.W.2d 487, 493 (Iowa 2008) (citing *Walthart v. Bd. of Dirs.*, 694 N.W.2d 740, 744 (Iowa 2005)). Upon review of the termination of a teacher's contract under Iowa Code section 279.15, the court will "make anew the judicial determinations" required by section 279.18. *Bd. of Educ. v. Youel*, 282 N.W.2d 677, 679 (Iowa 1979). The court "may affirm the board's decision or remand to the board for further proceedings upon conditions determined by the court" and

> shall reverse, modify, or grant any other appropriate equitable or legal relief from the board decision, including declaratory relief, if substantial rights of the petitioner have been prejudiced because the action is any of the following:
> a. In violation of constitutional or statutory provisions.
> b. In excess of the statutory authority of the board.
> c. In violation of a board rule or policy or contract.
> d. Made upon unlawful procedure.
> e. Affected by other error of law.
> f. Unsupported by a preponderance of the competent evidence in the record made before the board when that record is viewed as a whole.
> g. Unreasonable, arbitrary, or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

IOWA CODE § 279.18. "The court is limited on review to the record made before a school board." *Walthart,* 694 N.W.2d at 744.

C. Analysis

Public school teachers work "under a written contract of employment with the board of directors of the school district." *Giaforte v. Whitehead*, 773 N.W.2d 540, 544 (Iowa 2009) (citing IOWA CODE § 279.13(1)). The term of the contract is "automatically continued" from year to year except "as modified or terminated by mutual agreement of the board of directors and the teacher" or as otherwise "modified or terminated" in accordance with the law. *Giaforte*, 773 N.W.2d at 544 (citing IOWA CODE § 279.13(2)). The legal procedures for terminating the continuing contract of a public school teacher are codified in Iowa Code sections 279.15 through 279.18. *Borgen v. Anderson*, 366 N.W.2d 583, 584 (Iowa 1985). The law entitles the teacher to extensive procedural due process rights, as well as the substantive right that "just cause" exist for the termination of the teaching contract.[3]

The substantive right of "just cause" is embodied in the statutory

[3] The Iowa Legislature revisited the law in 2017 and amended, inter alia, the teacher's appeal process. The amendment removed the teacher's first-level appeal to an adjudicator, formerly provided in Iowa Code section 279.17. Today, the teacher's right to appeal begins in the district court. IOWA CODE § 279.18.

language of Iowa Code section 279.15(2), where it states:

> Notification of recommendation of termination of a teacher's contract shall be in writing and shall be personally delivered to the teacher, or mailed by certified mail. The notification shall be complete when received by the teacher. The notification and the recommendation to terminate shall contain a short and plain statement of the reasons, which shall be for *just cause*, why the recommendation is being made.

(emphasis added). Iowa Code section 279.27 also provides, "[a] teacher may be discharged at any time during the contract year for *just cause*." (emphasis added).

The term "just cause" was not originally defined by the Iowa Legislature, but the Iowa Supreme Court provided the following guidance in *Briggs v. Bd. of Dirs.*, 282 N.W.2d 740, 743 (Iowa 1979):

> Probably no inflexible "just cause" definition we could devise would be adequate to measure the myriad of situations which may surface in future litigation. It is sufficient here to hold that in the context of teacher fault, a "just cause" is one which directly or indirectly significantly and adversely affects what must be the ultimate goal of every school system; high quality education for the district's students. It relates to job performance including leadership and role model effectiveness.

Cullinan, 745 N.W.2d at 493. In 2017, the Iowa Legislature added the following definitional language to Iowa Code section 279.27:

> "just cause" includes but is not limited to a violation

> of the code of professional conduct and ethics of the board of educational examiners if the board has taken disciplinary action against a teacher, during the six months following issuance by the board of a final written decision and finding of fact after a disciplinary proceeding.

IOWA CODE § 279.27(2).

The Iowa courts have held fast to the position that each case must be based on its own merits, and no particular case can point the way for a subsequent case. *Youel*, 282 N.W.2d at 682; *see also Walthart,* 694 N.W.2d 744. "The resolution of each case depends on its own circumstances, which necessitates [a] thorough review of the record." *Bd. of Dirs. v. Mroz*, 295 N.W.2d 447, 449 (Iowa 1980). The Iowa Supreme Court has stated:

> As in virtually every teacher termination case, the controversy boils down to whether the record supports the board's conclusion that just cause exists to warrant [the teacher's] dismissal. That conclusion must be supported by more than just substantial evidence; a preponderance— or greater weight—of the competent proof is required.

Sheldon Cmty. Sch. Dist. v. Lundblad, 528 N.W.2d 593, 596 (Iowa 1995). Substantial evidence is that "quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance." *Walthart*, 694

N.W.2d at 744 (citing IOWA CODE § 17A.19(10)(f)(1)). In contrast, a "preponderance" of the evidence "means superiority in weight, influence, or force. The evidence may preponderate, and yet leave the mind in doubt as to the very truth. In such cases the evidence does not fairly set the question at rest, but merely preponderates in favor of that side whereon the doubts have less weight." *Walthart*, 694 N.W.2d at 744.

While each teacher termination case turns on its own set of facts, Iowa courts have applied certain universal principles. The evidence at the hearing is limited to the reasons stated in the recommendation of termination, thereby providing the teacher notice of the charges and a process in line with general due process concepts. *Giaforte*, 773 N.W.2d at 545; *Munger v. Jesup Cmty. Sch. Dist.*, 325 N.W.2d 377, 379 (Iowa 1982). It is also clear that the initial burden of proof is upon the Superintendent to prove by a preponderance of the competent evidence that "just cause" does indeed exist for termination. *Youel*, 282 N.W.2d at 680. On appeal to a court, the burden of proof does not shift, but rather, it is incumbent upon the teacher to demonstrate "why" the Superintendent failed to carry his burden of proof in the first instance. *Id.*

The termination of Braaksma's continuing contract may only be for "just cause." *Cullinan*, 745 N.W.2d at 493. In this particular case, just cause is lacking. A "just cause" is one that "directly or indirectly significantly and

adversely affects" a district's ability to provide a "high quality education for the district's students" and this concept "relates to job performance including leadership and role model effectiveness." *Id.* The Notice cited the following reasons for the Superintendent's recommendation:

> 1. An intensive assistance program was provided to you and you refused to comply with the program with regard to grading.
> 2. Failed to teach appropriate to grade level.
> 3. Failed to meet Teaching Standard 8.
> 4. Students in Spanish II have not received appropriate instruction.

(App. 159). The record fails to show by a preponderance of the evidence that any one of these reasons are supported by a preponderance of the evidence in the record or that they "directly or indirectly significantly and adversely affects what must be the ultimate goal of every school system: high quality education for the district's students." *Bd. of Dirs. v. Sexton*, 334 N.W.2d 341, 333-34 (Iowa Ct. App. 1983) (citing *Wedergren v. Bd. of Dirs.*, 307 N.W.2d 12, 15 (Iowa 1981)).

1. Ground One: Refusal to Comply with Intensive Assistance Program with Regard to Grading

Braaksma's Plan required that "[g]rades will not be mass entered just before [the] conclusion of said grading period" and "[g]raded work will be completely and adequately assessed, returned to students and submitted on JMC within the given grade deadlines." (App. 166). Principal De Zeeuw set

no deadlines for grades other than those set for established grade checks. (App. 69, p. 105, ln. 18 – App. 70, p. 106, ln. 1). In all instances of grade deadlines after the Plan was put in place, Braaksma entered her grades on time. (App. 67, p. 96, ln. 6-8; App. 94, p. 204, ln. 21-25, App. 117, p. 295, ln. 12-15; App. 117, p. 296, ln. 3-6).

Principal De Zeeuw noted in his evaluation, upon which the Plan was premised, that Braaksma had failed to meet District policies and obligations including "completing and turning in grade work on JMC before established deadlines." (App. 176). Braaksma testified that even prior to the Plan, she never entered her grades in JMC, the District's grading program, significantly later than the established deadline and her grades were always provided on the date due. (App. 94, p. 205, ln. 5-17). Braaksma also noted that she was never the only teacher who published grades toward the end of the grading period. (App. 94, p. 205, 20-21). Principal De Zeeuw testified that he regularly sends reminders to teachers to enter grades. (App. 69, p. 105, ln. 13-17). He acknowledged other teachers failed to enter grades on time, but that Braaksma was the only teacher placed on intensive assistance. (App. 53, p. 40, ln. 18-22; App. 69, p. 102, ln. 6 – p. 103, ln .21).

Braaksma discussed a number of important considerations related to grading. The grading of Spanish classes, much like other classes heavy in

written assignments, is very time intensive. (App. 95, p. 206, ln. 1 – p. 207, ln. 21). Also, Braaksma allowed students to work to a mastery level of the material she teaches. (App. 93, p. 199, ln. 17 – p. 200, ln. 25). To do so, students were allowed multiple opportunities to complete work at the mastery level, i.e. A-level work. In the meantime, Braaksma taught and re-taught material to allow students to reach the mastery level. (App. 93, p. 201, ln. 1-20). She provided student assessment regularly in class. (App. 94, p. 203, ln. 3 – p. 204, ln. 25). Consequently, Braaksma generally withheld adding grades on JMC until students had a chance to go through this process. (App. 94, p. 202, ln. 12 – p. 204, ln. 13). The exception to this practice was, of course, when grading deadlines arose. Principal De Zeeuw never discussed with Braaksma any of these student assessment practices beyond the recording of grades JMC needing to be timely entered. (App. 94, p. 204, ln. 14-20).

Braaksma used a number of means to assure that between grading periods students were aware of their grade status in her classes, including the use of Google Classroom, a program much like a personal class web page. (App. 92, p. 196, ln .17 – App. 93, p. 198, ln. 17). Braaksma placed assignments on the Google Classroom platform and delivered tests using this program. (App. 92, p. 196, ln. 25 – App. 93, p. 198, ln. 4). Grades were published to students on this platform, allowing students to know the grades

before Braaksma ever entered the grade into JMC. (App. 93, p. 198, ln. 5-17). Braaksma also used a number of on-line resources that provided automatic feedback and grading information to students on their individual work. (App. 93, pg. 198, ln. 17-21).

The District Court focused upon Principal De Zeeuw's testimony that intermittent grading was necessary to determine student eligibility and to inform parents of student progress and found "the principal's directive for intermittent grades reasonable and fully within his administrative mandate." (App. 26-27). Yet, Principal De Zeeuw did not testify that Braaksma's actions ever prevented him from determining student eligibility. The District also presented no evidence of complaints from students or parents that they were unable to access information on a student's grade status. While it is Braaksma's duty on appeal to show how the Board has erred, it cannot be forgotten that the burden of proof remains with the Board. *Youel*, 282 N.W.2d at 680. The record fails to support a finding by a preponderance of the evidence that Braaksma's grading "directly or indirectly significantly and adversely affect[ed]" the District's ability to provide a "high quality education for the district's students." *Sexton*, 334 N.W.2d at 343-44; *Wedergren*, 307 N.W.2d at 15.

2. Grounds Two and Four: Failure to Teach Appropriate to Grade Level and Failure to Provide Appropriate Instruction for Spanish II Students

The District Court discussed Grounds Two and Four in tandem, on the basis that "if the record supports Ground 4, that students in Spanish II have not received appropriate instruction, it automatically proves Ground 2" and because the District "relies on essentially the same facts for both grounds." (App. 28). We will follow the District Court's lead in this regard.

Principal De Zeeuw testified that he did not think "the level of content being taught in the classroom . . . to be appropriate for what should be taught at the various levels of Spanish I, II, III, and IV." (App. 51, p. 32, ln. 3-7). He referred to email feedback he received from two Spanish II students who "weren't being taught what they thought they should be taught." (App. 51, p. 33, ln. 1-2; App. 207-208). The first student email, sent on September 6, 2019, states as follows:

> Mr. De Zeeuw, I'm sorry to bug you about this but I am not learning anything in Spanish. I am currently taking Spanish 3 and all I've learned is what I learned in Spanish 1 at Lake Park. I am wanting to major in Spanish in college and I won't be able to do that if I'm not learning any Spanish. We currently are having Hispanics in our class that have to correct Mrs. Braaksma on things because she is either saying it wrong or it isn't close to anything we are learning. When someone tells her that they don't know what the words mean she just tells them to translate it. I know you have probably

> heard many complaints about her and I'm sorry
> that I add to your list. However, I actually want to
> learn Spanish. If you want to speak about it more
> in person let me know!

(App. 207). The second student email, sent on September 10, 2019, states as follows:

> Dear Mr. De Zeeuw,
>
> I am sending you this email because of our español
> teacher, Mrs. Brakrsma [sic]. During my first
> semester of Spanish 1, last year, we learned some
> words. During my second semester, we learned
> about stem changers but it was all confusion. So
> now that I am in Spanish 2, she is expecting us to
> be reading/writing full sentences in Spanish. If we
> are to use google translate, it is an automatic -5
> points. I do not find this fair, because I have not
> learned anywhere near close to the whole Spanish
> dictionary and deserve to use it so I can read what
> the book is asking me. I hope you take this under
> careful consideration on what the next step is to
> making our Spanish learning more flexible.

(App. 208).

The District also presented hearsay evidence that a substitute teacher brought in after Braaksma was dismissed indicated she had to "re-teach some of the Spanish I content to Spanish II students in the fall of 2019," evidence the District Court considered "probative on the issue of Braaksma's teaching competency." (App. 28-29).

Hearsay evidence, such as these student concerns and comments from

the substitute, may come into termination hearings. *Walthart*, 694 N.W.2d at 744 (citing IOWA CODE § 279.16: "The board shall not be bound by common law or statutory rules of evidence . . . ."). However, the "more pertinent question is how much weight should the board or reviewing court accord hearsay testimony." *Walthart,* 694 N.W.2d at 744.

> [T]he proper weight to be given to hearsay evidence in such a hearing will depend upon a myriad of factors--the circumstances of the case, the credibility of the witness, the credibility of the declarant, the circumstances in which the statement was made, the consistency of the statement with other corroborating evidence, and other factors as well.

Id. at 744-745.

The credible evidence in the record strongly supports a finding that the content of Braaksma's Spanish curriculum was in compliance with national teaching standards and the standards set in cooperation with the District's curriculum director. It further shows that despite access to Braaksma's daily lesson plans, the administration could provide no explanation as to how her curriculum was deficient. Braaksma's extensive discussion of her teaching, curriculum, and student outcomes amply countered the sweeping and unsupported generalizations made by the administration. *Cf. Sexton*, 334 N.W.2d at 343-44; *Munger*, 325 N.W.2d at 380.

The District requires all staff to provide lesson plans to the principal at 8:00 a.m. every Monday morning. (App. 97, p. 214, ln. 7-15). Principal De Zeeuw never addressed Braaksma's lesson plans or noted these lesson plans reflected improper instruction or curriculum. (App. 97, p. 214, 16-25). At the hearing, Principal De Zeeuw could not explain how Braaksma's teaching was inappropriate to grade level and acknowledged there was nothing "[s]pecifically" addressing grade level curriculum in his comprehensive evaluation. (App. 62, p. 62, ln. 23 – App. 63, p. 81, ln. 1).

Braaksma utilized the national Spanish education standards to set curriculum for the Spanish program. (App. 100, p. 229, ln. 7-16). Working with Curriculum Director Jenness, Braaksma put together the standards, benchmarks, and pacing calendar for the program. (App. 100, p. 229, ln. 19-25). Braaksma utilized online Spanish education programs and leveled textbook series to deliver curriculum according to those program guidelines. (App. 101, p. 230, ln. 10-16). The administration never criticized or revisited Braaksma's application of these guidelines. (App. 101, p. 230, 2-9). Braaksma delivered lessons according to grade level, conducted periodic assessments, and taught and retaught content to assure student mastery. (App. 101, p. 233, ln. 8-20). Braaksma testified her student assessments did not show that student progress was lacking. (App. 118, p. 300, ln. 8-16). The District

Court noted that the District failed to "introduce any scholastic performance results . . . to calibrate its finding." (App. 29).

Principal De Zeeuw acknowledged he had never discussed with Braaksma the national standards for Spanish education and did not consider them in his evaluation of Braaksma's teaching. (App. 63, p. 80, ln. 5-22).

The circumstances of the case and the lack of corroborating evidence suggest the student emails should be given little weight. No deficiency with regard to the substance of Spanish II instruction was brought to Braaksma's attention until she received her termination notice. As the District Court notes, Principal De Zeeuw's April 25, 2019, evaluation states, "Students have come in to (sic) administration with concerns on the class not being prepared or instruction not happening in the classroom while administration is not present." (App. 28; App. 95, p. 208, ln. 4-12). This notation appears to address being "prepared for class ahead of time," and not curricular concerns. (App. 28). In his 2018-2019 evaluation, Principal De Zeeuw did not cite issues with the content of Braaksma's instruction for Spanish II students and he never asked to look at or discuss her Spanish II curriculum. (App. 172; App. 100, p. 228, 18-25 – p. 229, ln. 6).

Principal De Zeeuw acknowledged that he did not direct these students to discuss their concerns with Braaksma as is District policy. (App. 66, p. 92,

ln. 1-8; App. 228). He did not inform Braaksma of these students' concerns. (App. 66, p. 92, ln. 7-8) He did not discuss any concerns about her Spanish II instruction or provide assistance to Braaksma to aid this alleged deficiency. (App. 66, p. 92, ln. 17 – p. 93, ln. 5). When asked what he did with those complaints, Principal De Zeeuw testified, "I filed it away and sent a copy of the email to Mr. Craig." (App. 66, p. 92, ln. 5-6).

Despite the timing of these student communications, while Braaksma was on the Plan, no assistance or feedback was provided to her by the administration. (App. 66, p. 92, ln. 17 – p. 93, ln. 5). The students who expressed concerns did not testify at the hearing and their identities were not released. Braaksma and the Board never had an opportunity to garner any detail of the students' concerns to compare them to the District's curricular standards.

Regarding testimony about comments from Braaksma's substitute, the District Court also points out that the evidence is inconclusive because, in the Court's own words, "summer vacation may account for some of the need for refreshment" and "[i]t is not known how extensive the review of Spanish I curriculum was" for the Spanish II students. (App. 28-29). Evidence "lack[ing] specificity" and "vague statements attributed to nameless persons" does not support the termination of Braaksma's continuing teaching contract.

Munger, 325 N.W.2d at 380.

3. Ground Three: Failure to Meet Standard Eight

Without any specificity, the Notice and Recommendation to Terminate Braaksma's continuing teaching contract alleged she "[f]ailed to meet Teaching Standard 8."[4] (App. 159). Principal De Zeeuw's 2018- 2019 evaluation noted the following Standard Eight deficiencies:

> getting all close reading and required paperwork filled out with instructional coach before established deadlines, completing and turning in grade work on JMC before established deadlines, completing all professional duties for district evaluation process within established deadlines, has one or more instances of reporting to work or assignments late, one or more instance (sic) of preparing materials for scheduled district semester tests while tests had already started and students were already present (has also happened on regular classroom days).

(App. 176).

During the 2018-2019 school year, Braaksma worked with the instructional coach to prepare for the close read. (App. 98, p. 218, ln. 9 – p. 219, ln. 19). The close read is an on-going and evolving tool used by the District to engage students in critical thinking. (App. 50, p. 28, ln. 15-19; App. 56, p. 53, ln. 4-25). Braaksma testified she was never untimely with a close

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[4] The Iowa Teaching Standards are set out in Iowa Code section 284.3.

read. (App. 98, p. 219, ln. 15-19). After the Plan began on April 25, 2019, Braaksma was never late to complete a close read or related materials. App. 98, p. 218, ln. 1-15).

In all instances of grade deadlines after the Plan was put in place, Braaksma submitted her grades on time. (App. 67, p. 96, ln. 1 – p. 97, ln. 11; App. 94, p. 204, ln. 21-25; App. 118, p. 295, ln. 20 – p. 296, ln. 6).

Braaksma testified she was never untimely in meeting 2018-2019 evaluation deadlines. (App. 98, p. 219, ln. 20 – p. 220, ln. 11). Her 2019-2020 evaluation was scheduled for October 31, 2020, after she was placed on administrative leave. (App. 64, p. 85, ln. 18-22; App. 98, p. 220, ln. 5-8). There were no evaluation procedures or deadlines related to her forthcoming 2019-2020 evaluation with which Braaksma failed to comply. (App. 72, p. 116, ln. 9-19).

Regarding lateness, Principal De Zeeuw raised an issue with Braaksma's communication regarding an illness and resultant absences.

From September 24 through October 3, 2019, Braaksma was ill with head, throat and chest congestion, coughing, and a long-running fever. (App. 98, p. 220, ln. 12 – p. 221, ln. 8). Principal De Zeeuw testified that he did not question her illness. (App. 60, p. 67, ln. 4-5). On October 1, Braaksma sent a text message to Principal De Zeeuw at 7:47 a.m. indicating she could not come

to work. (App. 99, p. 222, ln. 2-15). On that day, Braaksma attempted to come to work. She got ready for work but was so "taxed" just by the process of getting ready, she had to report her absence for the day. (App. 99, p. 222, ln. 8-10). Principal De Zeeuw testified that he preferred to be informed about an absence "by 6:30 at the latest" because trying "[t]o find a sub after 7 o'clock is pretty much impossible." (App. 60, p. 67, ln. 16-19). He testified that the staff was informed that "*[i]deally* by 6:30" they should text him regarding an absence. (App. 68, p. 98, ln. 20-21(emphasis added)). Braaksma reported her absences from September 24 through September 30, 2019, between 6:55 a.m. and 7:31 a.m. (App. 60, p. 67, ln. 3, 21-22, p. 68, ln. 9; App. 164-165). Principal De Zeeuw's testimony does not show that Braaksma's delay prevented him from finding a substitute. (*See* App. 60, pp. 68-69).

Principal De Zeeuw also noted Braaksma was late on October 3, 2019. (App. 165). On October 3, Braaksma called to report she was on her way, but may be late. (App. 99, p. 223, ln. 5-24). She talked with someone other than Principal De Zeeuw. (App. 99, p. 223, ln. 16). She arrived on time to school on October 3. (App. 99, p. 223, ln. 17).

Prior to the Plan, Braaksma was cited for one incident in which she was delayed by minutes in starting class due to a printer issue. Her attempts to get her materials printed were stalled due to the volume of printing being done by

the staff. The day of this incident, Principal De Zeeuw acknowledged that technological issues happen at times. (App. 65, p. 86, ln. 15 – p. 87, ln. 11; App. 117, p. 297, ln. 8 – p. 298, ln. 3). Nonetheless, the incident found its way into Braaksma's evaluation, couched as a chronic timeliness issue. (App. 176). No incident of this kind was cited with any specificity after the Plan took effect. As such, it should not be deemed credible evidence to support Braaksma's termination. *Munger*, 325 N.W.2d at 380. Further, the "nonserious nature" of these complaints, "and a paucity of evidence that [the teacher's] conduct 'directly or indirectly significantly and adversely affects what must be the ultimate goal of every school system: high quality education for the district's students" shows the District's failure to meet its burden to prove Braaksma's termination was for just cause. *Sexton*, 334 N.W.2d at 343-44.

CONCLUSION

For the foregoing reasons, Danna Braaksma respectfully requests that the Iowa Supreme Court reverse the decision of the District Court and hold that the termination of her teaching contract was in violation of board policy and a valid employment contract between the parties; in violation of Iowa law; and without just cause. She further requests she be immediately reinstated to her teaching position; her continuing teaching contract recognized; and she be

made whole for those losses resulting from her unlawful termination.

REQUEST FOR ORAL ARGUMENT

Appellant respectfully requests oral argument.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing brief was served upon the attorneys of record for the parties by filing the same with the Iowa Electronic Document Management System on June 9, 2021. The following attorney of record was served through the Iowa Electronic Document Management System:

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