IN THE SUPREME COURT OF IOWA

NO. 21-0067

DANNA BRAAKSMA,

Petitioner-Appellant,

vs.

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

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

APPELLEE'S FINAL BRIEF AND REQUEST FOR ORAL ARGUMENT

Stephen F. Avery AT0000512
CORNWALL, AVERY, BJORNSTAD & SCOTT
407 Grand Avenue, PO Box 999
Spencer, IA 51301
Phone: 712-262-1630
Fax: 712-262-1211
Email: steve@cabslaw.com
ATTORNEY FOR APPELLEE

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ROUTING STATEMENT

This case should be transferred to the Court of Appeals as it presents the application of existing legal principles.

STATEMENT OF THE CASE

Appellant's statement of the case is accepted.

STATEMENT OF FACTS

Danna Braaksma (hereinafter "Braaksma") received a notice of termination of her teaching contract pursuant to Iowa Code §279.27. That notice was received by her on November 13, 2019. Braaksma has taught Spanish since the 2001-2002 school year at the Sibley-Ocheyedan Community School District.

The reasons listed for a recommendation for her termination were:

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. (Notice to Termination) App. 159.

On April 25, 2019, then Superintendent Bill Boer and Principal Stan Principal De Zeeuw placed Braaksma on intensive assistance pursuant to the policies of the district. Braaksma described that meeting in response to questions by her attorney.

> Q. So last year there was one meeting on the plan. And that's when Mr. De Zeeuw read verbatim this plan sitting in front of you on page 8 and 9; is that correct?
> A. Yes.
> Q. And at the initial meeting, and at the meeting on August 21st, did you try to have a discussion with Mr. De Zeeuw and the superintendent there at the time about your concerns about the plan and why it was necessary?
> A. Actually the way Mr. Boer let the meeting run was to be a give and take. So I asked questions or I gave my opinion on some of the things that are listed here, and he didn't have a problem with that.
> Q. Did he listen?
> A. Mr. Boer?
> A. Yes.
> Q. Did he listen intently on what you had to say at the April 25th meeting?
> A. He did. (Tr. p. 192/21-25; p. 193/1-17) App. 91.

At the meeting when Superintendent Boer placed Braaksma on intensive assistance, she refused to sign. (Tr. p. 44/8-9) App. 54.

At the meeting with Superintendent Boer and Principal De Zeeuw, Braaksma did not indicate she would follow the plan. (Tr. p. 45/10-12) App. 54.

Braaksma did not accept being placed on intensive assistance and told the new superintendent, James Craig, who began his employment on July 1, 2019, that she would not comply. (Tr. p. 62/24-25; p. 63/1-10) App. 59. Obviously, that was not well received by Superintendent Craig. She then changed her position and indicated that she would comply. (Tr. p. 70/1-17) App. 61. However, she did not comply. (Tr. p.70/8-11) App. 61.

In October 2019, Braaksma was cited in four areas with her notice of termination. (Notice of Termination) App. 159.

A private hearing on the notice was held December 16, 2019 and was continued to January 8, 2020 after which the board voted to terminate. (Tr. p. 109/16-18) App. 70. The witnesses at the hearing were Superintendent Craig, Principal De Zeeuw and Braaksma. On January 8, 2020 the board of directors issued its decision to terminate and Braaksma timely appealed that decision. App. 42. An appeal hearing was held with the district court and following that hearing, the decision of the board of directors was affirmed. This appeal followed that district court decision.

The individual contract of Braaksma specifically provides in the fourth paragraph her 2019-2020 salary amount, reverted back to the 2018-2019 amount for failing to complete the district's expectations in two areas: the 90 Minute Reading Block and Close Reading. (Tr. Ex. 1. P.2) App. 160.

Principal De Zeeuw supervises 35 staff members and Braaksma ranked last, (Tr. p. 45/17-21) App. 54, and she was the only one to be placed on intensive assistance. (Tr. p. 40/18-22) App. 53. She was failing to teach Spanish II.

ARGUMENT

Brief Point 1

The action by the Board of Directors of the Sibley Ocheyedan Community School District to terminate Danna Braaksma's contract does not violate board policy or the terms of her individual contract.

Appellee asserts that in this proceeding for judicial review of the board's decision, the court hears the matter upon the certified record and gives weight to the decision of the board but is not bound by it as provided in Iowa §279.18(2).

Braaksma's teaching contract is subject to Iowa Code § 279.27(1): "A teacher may be discharged at any time for just cause." Braaksma treats the Intensive Assistance Program as if it is a prerequisite to a termination for cause. The Intensive Assistance placement of Braaksma on April 25, 2019 and completion of that intensive assistance is not a condition precedent to a Chapter 279.27 discharge. Iowa Code § 284.2(6) provides a remediation program for up to 12 months. That does not prevent an immediate discharge under Section 279.27.

Intensive Assistance in the district is a program to provide improvement for those willing to work at improving. It affords remediation of classroom concerns. Iowa Code § 284.2(6). In this situation, Braaksma did not agree with being placed on intensive assistance nor did she agree with the program of intensive assistance. (Tr. p. 30/11-14; p. 63/8-10) App. 51, 59. She refused to follow policy.

If the Intensive Assistance Program, which can last up to 12 months, was a condition precedent to termination, it would hamstring the immediate discharge provisions provided in Iowa Code §279.27 or the year end termination provided in Section 279.15.

The Iowa Teaching Standards used as a guide for intensive assistance are the eight listed in Iowa Code §284.3(1). These are the standards which

Principal DeZeeuw found Braaksma deficient in six of the eight when she was placed on intensive assistance by Principal DeZeeuw and Superintendent Boer on April 25, 2019. (Tr. p. 29/18-21) App. 50.

Iowa Code §284.3(2)(a) provides the board shall .... *"determine whether the teacher's practice meets the requirements specified for a career teacher.*"

This legislative directive places on the board the determination of whether Braaksma met the standard for the Sibley-Ocheyedan Community School District. The board of directors determined she did not. The vote of the board was 5-0.

Iowa Code §279.14(1) places the final judgment with the board.

Principal De Zeeuw did complete the evaluation training program referenced in Iowa Code §284.10. App. 50. His cumulative opinion was Braaksma was not performing satisfactorily. After inserting the long term substitute teacher, the Spanish II students were found to be doing a Spanish I curriculum. (Tr. p. 71/1-25; p. 72/1-12) App. 61.

The District is not "married to mediocrity." *Briggs v. Bd. of Dirs.*, 282 N.W.2d 740, 743 (Iowa 1979). Principal De Zeeuw's opinion of the performance of Braaksma was an opinion of below mediocrity. (Tr. p. 70/14-18) App. 61.

Braaksma in September 2019 did not follow the Intensive Assistance Plan and there was not much going on in the classroom. (Tr. p. 154/15-25; p. 155/1-20) App. 82. In October, Principal De Zeeuw moved rapidly to allow the Spanish students to receive some instruction. (Tr. p. 144/8-25) App. 179.

Braaskma acknowledges the Sibley board has the right to determine the standards of performance. (Appellant's Brief p. 34-35). For other than beginning teachers, the evaluations shall at a minimum use the Iowa Teaching Standards. Iowa Code § 284.3(2)(b). In Braaksma's situation, the most telling was the lack of teaching. It is hard to imagine a bigger performance failure by a teacher.

Starting with the decision in *Bd. of Education v. Youel*, 282 N.W.2d 677 (Iowa 1979), the Iowa decisions have protected local administrations to render opinions on performance and protect local boards of directors to determine the level of performance required for the individual district. These standards are specific to Sibley under Section 279.14.

In this case Principal De Zeeuw provided his opinion and the board of directors determined Braaksma's performance was inadequate to continue.

Braaksma argues there is a violation of board policy. There was no violation of the board's policy as this determination set the policy on Mrs.

Braaksma's facts. The board applied their standard required in Sibley-Ocheyedan Community School District. It was Braaksma who violated policy by refusing to partake in Intensive Assistance and appropriately teach.

The action of the board did not violate Braaksma's contract, as in the contract she agrees to "*well and faithfully perform the duties of teacher*." (Tr. p. 2 of Ex. 1) App. 160.

In this situation of Braaksma, students were not learning Spanish. (Tr. p. 70/14-18) App. 61. She was not teaching well and a change had to happen so the students did not lose the academic year. (Tr. p. 144/8-25) App. 79. Action was taken in October and a replacement teacher was obtained. Braaksma was placed on administrative leave on October 11, 2019. (Tr. p. 156/9-19) App. 82.

Brief Point 2

The termination of Danna Braaksma does not violate Iowa law. Iowa Code §279.27 provides for immediate discharge for just cause.

Appellee asserts that in this proceeding for judicial review of the board's decision, the court hears the matter upon the certified record and gives weight to the decision of the board but is not bound by it as provided in Iowa Code § 279.18(2).

The Board of Directors of the Sibley Ocheyedan Community School District sets the standard for licensed staff of the district as provided in Iowa Code §279.14(2) "*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.*" This board of directors has the exclusive management right to set the standard. Those standards are developed on an individual case-by-case basis. Braaksma does not contend that some state-wide standard exists to measure performance. Rather, performance is determined locally by an administrator conducting an evaluation. The statute and standard accepts that subjective opinions will be used. The very nature of the Department of Education's standards at Iowa Code §284.3(1) is to accept subjective opinions.

The Sibley board by its finding of just cause, affirms the concept that teachers have to teach at a level above mediocrity. The District is not "married to mediocrity." *Briggs v. Bd. of Dirs.*, 282 N.W.2d 740, 743 (Iowa 1979).

Every case under chapter 279.27 is determined on its own facts in determining just cause. The four (4) points in the Notice of Recommendation are reviewed as a whole to determine just cause. *Sheldon Cmty. Sch. Dist. Bd. Of Dirs. v. Lundblad*, 528 N.W.2d 593, 596 (Iowa 1995).

Just cause is required. Principal De Zeeuw determined Braaksma was not adequately performing. She was at the bottom in performance of the thirty-five (35) teachers he oversaw as principal. (Tr. p. 45/13-19) App. 54.

The legislature provided the modification of the Iowa Code with the amendment to Chapter 279.14 in the Eighty Seventh General Assembly session. Chapter 279.14(2) places on the board the role of determining the standards and those standards are then applied under Chapter 279.27.

Each board of directors decides the standard for their specific district. West Lyon in the northwest corner and Keokuk in the southeast may apply nearly the same standards, whereas Des Moines and West Des Moines may adopt very different standards. These are local decisions for locally elected boards.

All of the circumstances are reviewed to determine if just cause is met. *Sheldon Cmty. Sch. Dist. Bd. of Dirs. v. Lundblad*, 528 N.W.2d 593, 596 (Iowa 1995) The contract terminated, (Tr. p. 2 of Ex. 1) App. 160, was paid at the

2018-2019 salary due to failing to meet expectations. Braaksma was well warned of her problems. First, she was held on step and then she was placed on intensive assistance. Neither caused a rebirth in her performance.

Brief Point 3

The record in the termination hearing of Danna Braaksma supports the decision by a preponderance of the evidence.

Appellee asserts that in this proceeding for judicial review of the board's decision, the court hears the matter upon the certified record and gives weight to the decision of the board but is not bound by it as provided in Iowa Code §279.18(2).

The failure to teach Spanish meets the discussion in *Bd. of Education v. Youel*, 282 N.W.2d 677 (Iowa 1979). That failure by a teacher is a preponderance of the competent evidence. Taking that failure with litany of other problems by Braaksma, the preponderance is met.

The board sets the standard and they are not married to mediocrity. *Briggs v. Bd. of Dirs.*, 282 N.W.2d 740, 743 (Iowa 1979) stated: "*...a school district is not married to mediocrity but may dismiss personnel who are neither performing high quality work nor improving in performance.*

This termination is based on the administrative decision of the need to make a change in the teaching of Spanish so students would receive some instruction. (Tr. p. 144/5-21) App. 79.

The administrative evaluations in this case are the opinion that Braaksma was not meeting the standards of performance necessary for Spanish in the Sibley Ocheyedan Community School District. (Tr. p. 144/11-21) App. 79.

The opinion to terminate was reached by her immediate supervisor who was a trained evaluator. (Tr. p. 26/10-19) App. 50. Evaluations by their very nature are subjective. The board exercised its role as fact finders weighting the testimony. The board weighed these opinions and voted to terminate the contract of Braaksma.

In April 2019, Braaksma was found to be deficient in six of the eight teaching standards set by the Iowa Department of Education. (Tr. p. 29-18-21) App. 50.

Braaksma's view of the situation was that she needed no changes. (Tr. p. 30/11-14) App. 51.

The new superintendent, James Craig, commenced employment with the district on July 1, 2019. App. 80. His first contact with Braaksma was when she told him she did not need intensive assistance to improve her teaching. (Tr.

P. 151/11-25; p. 152/1-20) App. 81.

Braaksma had been warned in April when she did not receive a raise and was placed on Intensive Assistance and at that time she did not accept the purpose of intensive assistance. (Tr. p. 30/2-13) App. 51. She then indicated that she would comply with an intensive assistance program but that was lip service as she did not. (Tr. p. 30/15-21) App. 51.

The many reasons leading to the recommendation and which cumulatively constitute just cause include:

*Unprepared for class. (Tr. p. 28/23-24) App. 50.
*Classroom management problems. (Tr. p. 29/8-12) App. 50.
*Did not meet 6 of 8 teaching standards. (Tr. p. 29/18-21) App. 50.
*Refused the plan of intensive assistance. (Tr. p. 30/11-14) App. 51; (Tr. p. 63/1-10) App. 58.
*Did not comply with the plan. (Tr. p. 31/23-25) App. 51.
*Failed to teach to grade level. (Tr. p. 32/1-7) App. 51.
* Failure to follow local policies; close reads. (Tr. p. 32/13-17) App. 51.
*Students in Spanish II did not receive appropriate instruction. (Tr. p. 32/22-25) App. 51.
*Grades not timely entered. (Tr. p. 35/15-25) App. 52.
*Timely feedback on tests and homework. (Tr. p. 41/1-7) App. 53.
*Close reads. (Tr. p. 42/1-22) App. 54, (Tr. p. 83/9-16) App. 64.
*Scheduled meetings. (Tr. p. 42/23-25) App. 54.
*Lesson plans. (Tr. p. 43/1-22) App. 54.
*Not prepared for class. (Tr. p. 45/1-2) App. 54.
*Enter Grades on JMC. (Tr. p. 45/2-3) App. 54; (Tr. p. 56/15-25) App. 57; (Tr. p. 57/1-25) App. 57; (Tr. p. 58/1-25) App. 58.
*Be on time. (Tr. p. 45/3-5) App. 54.
*Non-cooperative. (Tr. p. 63/1-5) App. 59.
*Emails from students about lack of teaching. (Tr. p. 65/6-25) App. 59;

(Tr. p. 66/1-25) App. 60.
*Insubordinate about intensive assistance. (Tr. p. 152/1-5) App. 81.

Braaksma's self appraisal discounts many of these and ignores others. She did not recognize she was deficient in performance. She would not accept being placed on intensive assistance. (Tr. p. 64/23-25) App. 59. She argued with the administration and found her immediate supervisor young and did not know what he was doing. (Tr. p. 63/4-5) App. 59; (Tr. p. 123/3-6) App. 74.

CONCLUSION

This appeal asserts the decision is not supported by a preponderance of the evidence. In Brief Point III, nineteen deficiencies are listed. One deficiency, failing to teach to grade level, is sufficient.

The presentation by the administration outweighs the teacher's presentation. The weight of all of the problems referenced by the administration is the necessary preponderance. With that preponderance, the decision stands.

REQUEST FOR ORAL ARGUMENT

Appellee requests to be heard in oral argument.

/s/ Stephen F. Avery

Stephen F. Avery
CORNWALL, AVERY, BJORNSTAD & SCOTT
407 Grand Avenue, PO Box 999
Spencer, Ia 51301
Phone: 712-262-1630
Fax: 712-262-1211
Email: steve@cabslaw.com
Attorney for Appellee

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/s/ Stephen F. Avery

Stephen F. Avery

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing brief was served on the attorney of record for Appellant by filing the same with the Iowa Electronic Document Management System on June 8, 2021. The following attorney of record was served through the Iowa Electronic Document Management System.

Christy A.A. Hickman
Iowa State Education Association
777 Third Street
Des Moines, IA 50309

/s/ Stephen F. Avery

Stephen F. Avery AT0000512