

**IN THE COURT OF APPEALS OF IOWA**

No. 6-424 / 05-1059  
Filed March 14, 2007

**BOARD OF DIRECTORS OF THE  
AMES COMMUNITY SCHOOL DISTRICT,**  
Plaintiff-Appellant,

**vs.**

**DENNIS CULLINAN,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Story County, Kurt L. Wilke, Judge.

School board appeals from a district court order affirming an adjudicator's decision that found no just cause to terminate the contract of a high school basketball coach. **AFFIRMED.**

Ronald L. Peeler of Ahlers & Cooney, P.C., Des Moines, for appellant.

Corey R. Lorenzen and David J. Dutton of Dutton, Braun, Staack & Hellman, P.L.C., Waterloo, for appellee.

Heard by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

**ZIMMER, J.**

The Board of Directors of the Ames Community School District (Board) appeals from a district court order affirming an adjudicator's decision that found there was no just cause to terminate the coaching contract of high school basketball coach Dennis Cullinan, reversed the Board's decision to terminate Cullinan's coaching contract, and ordered the Board to reinstate the contract. We affirm the district court.

**I. Background Facts and Proceedings.**

Cullinan was hired as the Ames High School Basketball Coach, beginning with the 1996-1997 school year.<sup>1</sup> On April 14, 1998, while still on probationary status, Cullinan received a "Job Performance Memorandum" from Athletic Director David Posegate. The memorandum stated there had been complaints Cullinan did not value all team members and had threatened or intimidated some athletes. The memo did not indicate whether the complaints had been substantiated, but noted "public perception can result in perceptions that, true or not, must be addressed in a positive manner." It also stated that Cullinan was expected to make "significant improvements" in these areas during the next school year. Cullinan agreed to extend his probationary status for another year.

There were no further concerns regarding Cullinan's coaching performance until the 2001-2002 season, when several new student and parent complaints were lodged regarding Cullinan's coaching style. Following an investigation the new athletic director, Pat Heiderscheit, concluded allegations of

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<sup>1</sup> Cullinan was also hired as a social studies teacher. However, this matter involves only Cullinan's coaching contract.

profanity and disrespectful comments towards student-athletes were substantiated, and that Cullinan had “thus far fallen short of the directive he was given by Mr. Posegate.” Heiderschiet concluded that “[c]hanges are necessary. Either Mr. Cullinan needs to change how he addresses or interacts with his players or the district needs to change the person responsible for leadership in the boys’ basketball program.”

On July 2, 2002, Assistant Superintendent Tim Taylor directed Cullinan to prepare a remediation plan with specific elements, including student-athlete and parent surveys, student-athlete interviews, and provisions for direct interaction with student-athletes. The memo set forth expectations for each element of the plan, including the following: “It is critical that in the future, when handling or dealing with acute individual student-athlete corrections, that corrections must be . . . [d]one in the presence of an assistant coach or . . . the student’s counselor or parent . . . .” The directive ended with a warning that “[a] copy of this letter will be placed in your permanent personnel file with the expectation that any future similar incidents will, no doubt, lead to serious disciplinary actions up to and including possible termination from duties.”

Cullinan prepared and submitted a remediation plan. The plan contained a “Positive and Corrective Verbal Reinforcement” section, which included provisions for handling “Individual Player Correction” and “Acute Individual Student-Athlete Corrections.” The plan did not require acute individual corrections to occur in the presence of an assistant coach or other adult. Cullinan’s plan was accepted by the current athletic director, Judge Johnston, and Superintendent W. Ray Richardson.

Cullinan received a positive year-end evaluation after the 2002-2003 school year from Athletic Director Johnston. The evaluation ended with the following statements: "Denny [Cullinan] and I have had numerous conversations and updates throughout the year regarding his positive handling of the team. We will continue to monitor and expect this coaching style to continue well into the future." The evaluation made no reference to the remediation plan. In addition, surveys and other assessment methods required by the remediation plan were not continued into the 2003-2004 season.

No further concerns arose until a December 16, 2003, basketball game with rival Urbandale. Towards the end of the game, Cullinan instructed the players that they were not to dribble the ball. Player Alex Thompson ignored the directive, and the ball was stolen from him. After the game, which Ames won by eight points, Cullinan asked an assistant coach to bring Thompson to him. The meeting involved only Cullinan and Thompson. It took place in a public hallway that was the primary exit and entrance to the gymnasium, approximately ten to twelve feet from an open door to an office where assistant coaches were present.

Sometime in the next few days Thompson's parents contacted Superintendent Richardson to complain about the meeting. Richardson initiated an investigation. Cullinan was eventually interviewed and admitted to meeting alone with Thompson. School officials determined Cullinan had admitted to a violation of the 2002 directive, and imposed a two-game suspension. School officials also prepared and distributed a player survey, to be completed and returned anonymously, and interviewed players and parents. It was eventually recommended that Cullinan's coaching contract be terminated.

On April 28, 2004, Superintendent Richardson served Cullinan with a notice and recommendation to terminate his coaching contract pursuant to Iowa Code sections 279.15 and 279.19A (2003). The notice indicated termination was recommended due to Cullinan's failure to (1) effectively lead the boys' basketball program and (2) adequately remediate leadership deficiencies. Cullinan requested a private hearing, which was held on June 15 and 16, and July 13, 2004. Following the hearing, the Board voted to terminate Cullinan's coaching contract for the 2003-2004 school year, and to not renew his contract for the following season.

The Board concluded Cullinan's meeting with Thompson was an acute individual student-athlete correction, and that Cullinan had violated the 2002 directive that such meetings occur in the presence of another adult. The Board concluded it was understood that the remediation plan was in effect at the time of the meeting and, even though it was not part of the written remediation plan, it was understood that acute individual corrections were to be done in the presence of another adult. The Board further found that, even if the meeting was not an acute individual correction required to be held in the presence of another adult, Cullinan's behavior was nevertheless intimidating and in violation of prior directives to modify his coaching behavior.

Although the Board determined the meeting alone provided a sufficient basis for termination of Cullinan's coaching contract, it also pointed to the results of the interviews and anonymous player surveys as evidence Cullinan was no longer instilling a positive, supportive atmosphere. The Board found Cullinan

was primarily responsible for dissension in the program and had failed to improve his leadership skills despite numerous warnings.

Cullinan timely filed for review by an adjudicator. The adjudicator concluded the Board's decision should be reversed because it was not supported by the evidence and it was unreasonable, arbitrary, and capricious. The adjudicator held there was no just cause for Cullinan's termination and ordered his coaching contract to be reinstated with back pay. The Board then filed a petition for judicial review. Following a hearing, the district court affirmed the adjudicator's decision.

The Board appeals. It contends the district court erred in (1) failing to rule Cullinan's ineffective leadership and failure to correct past leadership deficiencies were "just cause" for terminating his coaching contract, (2) ruling the Board's decision was not supported by a preponderance of the evidence, and (3) affirming the adjudicator's decision that the Board's decision was arbitrary, unreasonable, or capricious.

## **II. Scope and Standards of Review.**

Our review is for the correction of errors at law. *Walhart v. Board of Dirs.*, 694 N.W.2d 740, 744 (Iowa 2005). The question before us is whether the Board's findings are supported by a preponderance of the competent evidence in the record. *Id.* In conducting such a review, "especially when considering the credibility of witnesses, the court shall give weight to the fact findings of the board; but shall not be bound by them." Iowa Code §§ 279.17-.18.

### III. Discussion.

Cullinan's coaching contract can be terminated only for "just cause." See Iowa Code §§ 279.15(2), .19A(2). The existence of just cause is a fact specific-inquiry dependent upon the circumstances of a particular case. See *Briggs v. Board of Dirs.*, 282 N.W.2d 740, 743 (Iowa 1979). Although just cause has not been expressly addressed in the context of an extracurricular contract,

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. It must include the concept that a school district is not married to mediocrity but may dismiss personnel who are neither performing high quality work nor improving in performance. On the other hand, "just cause" cannot include reasons which are arbitrary, unfair, or generated out of some petty vendetta.

*Id.*

Our consideration of this matter is necessarily limited to the allegations of just cause contained within the notice to Cullinan: (1) failure to effectively lead the boys' basketball program and (2) failure to adequately remediate leadership deficiencies. In assessing the evidence in support of these allegations, we agree with Cullinan that evidence of his past leadership deficiencies cannot alone serve as a basis for termination. However, such evidence is relevant to the question of whether past deficiencies have been remediated. See *Sheldon Cmty. Sch. Dist. Bd. of Dirs. v. Lundblad*, 528 N.W.2d 593, 596 (Iowa 1995) (concluding board may consider past incidents that individually had been satisfactorily resolved, to the extent they demonstrate a pattern of behavior).

The Board's just cause determination was based on two findings. First, the Board found the December 16 meeting with Thompson was either (1) an acute individual correction that required the presence of another adult, or (2) intimidating and thus in violation of earlier warnings to modify Cullinan's coaching behavior. Second, the Board found, based on post-incident surveys and interviews, that Cullinan was no longer providing a motivating, supportive atmosphere, and that his handling of the boys basketball program resulted in low team morale and was the primary cause of dissension in the program. We agree with the Board that the foregoing findings, if shown, would constitute failure to effectively lead the boys basketball program and failure to remediate past leadership deficiencies, which in turn would provide just cause for termination of Cullinan's coaching contract. However, upon review of the record we, like the adjudicator and the district court, conclude the underlying findings are not supported by a preponderance of the competent evidence.

**A. December 16 Meeting with Thompson.** We first address the Board's determination that Cullinan violated the 2002 directive when he conducted an acute individual correction without the presence of another adult. Cullinan asserts the meeting was not an acute individual correction, and moreover that he was free to conduct even acute individual corrections without another adult present. In regard to the latter assertion, we recognize the accepted remediation plan did not require acute individual corrections to take place in the presence of another adult, and that it is unclear whether the remediation plan remained in effect at the time of the December 16 meeting. Nevertheless, testimony from Cullinan and his representative from the Iowa State Education Association

(ISEA), as well as testimony from school administrators, indicated that Cullinan recognized a continuing need to have an adult present when he engaged in acute individual corrections. We accordingly agree with the Board that conducting an acute individual correction without another adult present would have been evidence of Cullinan's failure to remediate past leadership deficiencies. However, we agree with Cullinan that the preponderance of evidence in the record does not support a determination that the December 16 meeting was an acute individual correction.

Although, prior to the hearing, no clear definition of acute individual correction was ever supplied to or by Cullinan, the Board found the term encompassed "[r]eprimands, conflicts, scoldings, or individual criticisms . . . ." To the extent the Board's definition encompassed any individual criticism or correction of a player, it lacks adequate evidentiary support. However, a definition that encompasses reprimands, negative or confrontational criticisms, the correction of severe and urgent problems, and similar situations, is supported by Cullinan's own testimony, the language of the remediation plan, and the plain and ordinary meaning of the words used. See Webster's Third New International Dictionary 23 (2002) (defining word "acute," in relevant part, as "serious, urgent, and demanding attention"; "intensified or aggravated nearly to a crisis, culmination, or breaking point"; or "extreme, severe, critical"); *id.* at 1987 (defining word "reprimand," in relevant part, as "a severe or formal reproof" or "a sharp rebuke").

Based on Cullinan's testimony, the December 16 meeting did not rise to the level of an acute individual correction. Cullinan admitted the team had not

played up to expectations, but asserted that, in light of the poor start to the season, the fact Urbandale had won the sixteen prior match ups between the two rivals, and the injury of some key players, he was “ecstatic” about the team’s December 16 win. He testified he began the meeting by stating, “Nice win,” and that Thompson responded he knew why Cullinan wanted to see him and he apologized. Cullinan told Thompson, a top college recruit, that he had been stopped by another coach after the game and asked what it was like to coach Thompson. Cullinan thought the other coach was implying that Thompson was an uncooperative or egotistical player, and he wanted to remind Thompson that there is always someone watching, and that people would form an opinion about Thompson based on his behavior during the game.

Cullinan stated he talked to Thompson, a team captain, about leadership, and shared some points he had learned at a recent conference. He told Thompson that players and coaches need to be “on the same page” and, emphasizing his own experience as a player and coach, that Thompson needed to trust the coaching staff. According to Cullinan, Thompson questioned whether Cullinan believed he was a better player than Thompson, and that he had replied there was no comparison between athletes playing so many years apart. Cullinan stated that, other than explaining he could not consider Thompson’s request to play post until some injured players returned to the game, the rest of the meeting was essentially small talk. Cullinan admitted he had made a comment about having done everything he could to help Thompson in his recruitment efforts, but stated he had done so in the context of asking Thompson to “work together and bring the team forward . . . .” He asserted there was no

anger during the meeting, which ended with a handshake. Cullinan denied disciplining, demeaning, or criticizing Thompson.

Thompson did not testify, and thus did not directly refute Cullinan's account of the meeting. The Board nevertheless determined that Cullinan's version of events was not entirely credible in light of the demeanor of the various witnesses, certain surrounding circumstances, and hearsay testimony.

The Board dismissed Cullinan's assertion that he was not angry, noting that the team had not been playing up to preseason expectations and had faltered in a game that should have been an "easy win," that Thompson had disobeyed a coaching directive, and that a witness had testified Cullinan stated "he was so angry he wasn't sure what he would do with Alex." Our review of the record convinces us that little weight should be placed on any of the foregoing.

Significantly, we do not find the above-noted witness testimony in the record. The only testimony that is somewhat similar to the foregoing was given by Thompson's father, who asserted that, according to his son, Cullinan "seemed very upset and was saying that he needed to talk to him right now or he didn't know what he would have done if he didn't talk to him right now." Thus, the Board's finding misstates the record, and incorrectly indicates the witness had first-hand knowledge of the alleged statement.

In addition, the statement is hearsay. While hearsay testimony is admissible in Board hearings, the proper weight to be given to such testimony, by either the Board or the reviewing court, depends on a number of factors including "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.” *Walhart*, 694 N.W.2d at 744-45. Here, the Board seemed willing to accept a second-hand assertion of Cullinan’s anger over Cullinan’s express denials, not because it found Thompson or his father to be particularly credible, but because it presumed Cullinan would be angry, and would express that anger to Thompson, in light of the surrounding circumstances.

The Board appeared to accept Cullinan’s explanation of what was said during the meeting while rejecting his assertion that the meeting was intended to be and in fact was conducted in a supportive and motivational manner. In essence, the Board seems to have found that Cullinan delivered his correction of Thompson in an angry and inappropriate manner because that is what the circumstances dictated. For example, the Board presumed Cullinan would be upset, even though the team won a close game, because in the Board’s estimation it should have been an “easy win.” It also rejected the notion that the meeting was “a supportive, motivating ‘let’s build a team together/leadership’ meeting” because it believed such a meeting was unlikely to occur so soon after a player had disobeyed a coach. It discounted Cullinan’s assertion that he was sharing motivational information from a recent conference, apparently concluding that if he had intended to share such information with his players he would have done so soon after returning from the conference, and would not have waited until a player disobeyed a directive.

Notably absent from the Board’s findings are any facts demonstrating that Cullinan’s comments to Thompson in fact constituted an *acute* individual correction. An acute individual correction does not occur merely because

Cullinan was, as the Board found, “dissatisfied with [Thompson’s] attitude and was trying to correct it.” As reflected by the remediation plan, not every correction rises to the level of an acute individual correction. Absent credible proof that Cullinan was engaged in a reprimand, negative or confrontational criticism, the correction of a severe and urgent problem, or similar behavior, there is insufficient support for the determination that the December 16 meeting was an acute individual correction.<sup>2</sup>

We therefore turn to the Board’s finding that, even if the December 16 meeting did not constitute an acute individual correction, it was nevertheless intimidating and in violation of prior directives. The Board’s finding of intimidation appears to turn largely on a determination that a player in Thompson’s situation would have found the meeting intimidating.

The Board determined that

any student . . . would have felt intimidated being pulled aside individually in a hallway alone right after the game and being told to “trust the coaches,” that other persons were asking if he were difficult to coach, and to get on the same page with the coach.

It then determined, based on the circumstances of the meeting, that Cullinan intentionally intimidated Thompson:

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<sup>2</sup> We recognize the record contains some additional evidence from Thompson’s parents and Superintendent Richardson indicating Cullinan was angry during the meeting or made demeaning comments. However, the Board did not cite to any of this evidence as providing support for its just cause determination, and it did not make specific credibility determinations regarding it. Moreover, upon our review of this evidence, we conclude it is entitled to little weight. The hearsay nature of the testimony from Thompson’s father and the e-mails from Thompson’s mother raise concerns regarding its reliability. In addition, to the extent the e-mails indicated the alleged statements by Cullinan were belittling, critical, or abusive, it is unclear whether Thompson’s mother is repeating her son’s descriptions of the encounter, or providing her own characterizations of the statements. Finally, we note that Superintendent Richardson’s testimony was contradicted by not only Cullinan, but by Cullinan’s ISEA representative.

The totality of the circumstances - in the hallway with no one else present, immediately following the student's violation of a coaching directive in a game situation, mention of an outside college coach questioning his coachability, discussion of leadership and trusting coaches, reminding [Thompson] that he owed the Coach for the efforts he had made on his behalf, telling him to get on the "same page" with the Coach, - all lead the Board members to believe that this was indeed an intimidating situation and intended to be so by the Coach. . . . It is the very type of behavior . . . Coach Cullinan had used in the past that the administrators has worked so hard with Coach Cullinan to extinguish and to substitute with what had proven to be better alternatives.

Once again, it appears the Board made its determinations based on assumptions, rather than on evidence Cullinan had in fact acted in an intimidating fashion. While the manner in which the meeting was conducted may have been intimidating to some players, we cannot agree that any player would have been intimidated under those circumstances. Moreover, while the Board indicated Thompson was more likely to find the meeting intimidating given the stress he endured as a star player, it seemingly ignored the fact that Thompson may have been less likely to find the situation intimidating given that the record indicates Thompson and his parents had a good relationship with Cullinan, who had gone out of his way to assist Thompson in his efforts to be recruited by a top college program. Indeed, the apparently positive nature of this relationship, the fact any past incidents of intimidation had been successfully resolved, and the fact that no difficulties had reoccurred for well over a year, all weigh in favor of a conclusion that this was not, and was not intended to be, an intimidating meeting.

Upon review of the competent evidence in the record, we conclude the Board's findings that the December 16 meeting was either an acute individual correction or intimidating and in violation of earlier warnings are not supported by

a greater weight of that evidence. Because these were the only grounds given by the Board in support of its determination that the December 16 meeting provided a sufficient reason to terminate Cullinan's coaching contract, we conclude the Board erred in determining the meeting was just cause for termination. We therefore turn to the only other basis for termination relied on by the Board, that surveys and interviews revealed Cullinan had failed to instill a positive atmosphere and was responsible for low team morale and dissension.

***B. Surveys and Interviews.*** The Board reviewed the anonymous player surveys that were completed and returned in the course of the investigation of Thompson's complaint against Cullinan, and considered the testimony of Athletic Director Johnston that player and parent interviews had revealed low team morale. The Board found there was a lack of player motivation and enthusiasm, and that "[t]here is something seriously wrong when the players on a winning team are feeling a lack of motivation." The Board noted the surveys had an average score of five to six out of ten which was "actually quite pitiful," and determined the surveys highlighted "a lack of leadership in instilling a positive, supportive atmosphere." It attributed the current atmosphere to Cullinan's coaching style, and concluded Cullinan was "primarily responsible" for the "continuing dissension among players and parents and himself." The Board concluded the foregoing provided a sufficient basis for terminating Cullinan's coaching contract.

If the record credibly demonstrated that Cullinan's coaching style had led to a negative atmosphere, lack of motivation, and low team morale, we would agree with the Board that this was evidence of Cullinan's failure to effectively

lead the basketball program. However, the evidence relied on by the Board is lacking in persuasiveness and reliability.

First and foremost, we are troubled that the Board's decision was based largely on ten wholly anonymous player surveys. As Cullinan notes, there is no way to determine if any of the surveys, which were to be privately completed by all fifteen players and returned to a mailbox, were in fact completed by student athletes. In addition, we cannot agree that the surveys provide a comprehensive picture of Cullinan's ability to lead the program.

Even if we assume the ten returned surveys were completed by student athletes, the responses represent the views of only two-thirds of the team. In addition, the number ranking relied on by the Board was in response to a request to provide a "Fun" rating for "this season at this point." Not only is "Fun" a rather subjective concept, "this point" of the season occurred in the wake of the controversy created by Thompson's complaint, the preliminary investigation, and Cullinan's suspension. Some of the survey comments indicated that, at least for some players, their view of the season had been influenced by the controversy.<sup>3</sup> The survey ratings and comments also varied widely, from extremely supportive (a "Fun" rating of nine and a comment that Cullinan had "always respected and encouraged me as both a player and a student") to vitriolic (a "Fun" rating of three and a comment that Cullinan "is a sick man"). However, the majority of the

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<sup>3</sup> For example, when asked to list negative experiences during the season one responder wrote, "[A]sked by my family/friends repeatedly what Coach Cullinan did to be suspended." Another wrote, "A certain player had made bad choices and the rest of us were affected."

surveys rated the “Fun” factor to be at least average, while half of the surveys provided a “Fun” rating of seven or higher.

Simply stated, in addition to the reliability concerns created by the manner in which the surveys were completed and returned, we are not convinced they in fact demonstrate that the program as a whole was suffering from low morale and lack of motivation. Nor are we convinced that this snapshot of player opinion adequately reflected the impact of Cullinan’s leadership style. Our opinion does not change when we review the testimony of Athletic Director Johnston.

Johnston testified that, during interviews conducted after Thompson’s complaint, players and parents indicated “the desire to compete, the intensity level was starting to wane seriously,” and there was a “lack of excitement,” but that “there were no concerns regarding the treatment of them by their coach as far as verbal abuse, anything of that nature . . . .” While it is possible the lack of enthusiasm was due to Cullinan’s coaching style, it is also possible the team’s excitement was starting to wane due to tension created by the complaint, investigation, and suspension. In addition, while Johnston testified to player and parent concerns that the assistant coaches were not being used effectively, one of the assistant coaches wrote a letter in support of Cullinan.

The foregoing evidence does not sufficiently support a determination that Cullinan’s coaching style was instilling a negative atmosphere, leading to low team morale, and creating dissension in the program. The Board accordingly erred in terminating Cullinan’s coaching contract on this basis.

**IV. Conclusion.**

The Board's determination that Cullinan had failed to effectively lead the boys' basketball program and adequately remediate leadership deficiencies is not supported by the preponderance of competent evidence in the record. Accordingly, we uphold the district court order that affirmed the adjudicator's decision finding no just cause to terminate Cullinan's coaching contract.

**AFFIRMED.**

Eisenhauer, J., concurs; Sackett, C.J., dissents.

**SACKETT, C.J.** (dissenting)

I dissent. I would reverse the adjudicator and the district court. Giving the required weight to the Board's credibility findings I find the Board's decision is supported by a preponderance of competent evidence when the record is viewed as a whole. See *Board of Educ. v. Youel*, 282 N.W.2d 677, 679-80 (Iowa 1979); *Board of Dirs. v. Simons*, 493 N.W.2d 879, 883 (Iowa Ct. App. 1992).