

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 REPLY BRIEF

**Christy A.A. Hickman AT0000518
Iowa State Education Association
777 Third Street
Des Moines, IA 50309
Telephone: 515-471-8004
Facsimile: 515-471-8017
Email: christy.hickman@isea.org
ATTORNEY FOR APPELLANT**

TABLE OF CONTENTS

TABLE OF CONTENTS.....2

TABLE OF AUTHORITIES.....3

STATEMENT OF ISSUES PRESENTED FOR REVIEW.....4

ARGUMENT.....5

I. THE DECISION OF THE BOARD OF DIRECTORS OF THE SIBLEY-OCHEYEDAN COMMUNITY SCHOOL DISTRICT VIOLATES THE BOARD’S POLICIES AND THE TERMS OF BRAAKSMA’S TEACHING CONTRACT.....5

II. THE BOARD OF DIRECTORS OF THE SIBLEY-OCHEYEDAN COMMUNITY SCHOOL DISTRICT MAY IMPOSE ITS OWN STANDARDS FOR EMPLOYEE PERFORMANCE, BUT A NON-PROBATIONARY TEACHER TERMINATION IN ACCORDANCE WITH THOSE STANDARDS MUST BE FOR JUST CAUSE AND OTHERWISE LAWFUL.....11

CONCLUSION.....12

REQUEST FOR ORAL ARGUMENT.....13

CERTIFICATE OF SERVICE.....14

CERTIFICATE OF COMPLIANCE.....15

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE(S)</u>
<i>Anderson v. Douglas & Lomason Co.</i> , 540 N.W.2d 277 (Iowa 1995).....	7
<i>Bd. of Dirs. of Ames Cmty. Sch. Dist. v. Cullinan</i> , 745 N.W.2d 487 (Iowa 2008).....	12
<i>Bd. of Educ. v. Youel</i> , 282 N.W.2d 677 (Iowa 1979).....	10
<i>Jones v. Lake Park Care Ctr.</i> , 569 N.W.2d 369 (Iowa 1997).....	7, 8, 10
<i>Olds v. Bd. of Educ.</i> , 334 N.W.2d 765 (Iowa Ct.App. 1983).....	9
 <u>STATUTES</u>	
IOWA CODE ch. 279.....	12
IOWA CODE § 279.14(1)-(2).....	12
IOWA CODE § 279.15.....	5
IOWA CODE § 279.18(2)(c).....	9
IOWA CODE § 279.27.....	6
IOWA CODE ch. 284.....	12
IOWA CODE § 284.3(1)(h).....	11

STATEMENT OF ISSUES PRESENTED FOR REVIEW

- I. THE DECISION OF THE BOARD OF DIRECTORS OF THE SIBLEY-OCHEYEDAN COMMUNITY SCHOOL DISTRICT VIOLATES THE BOARD'S POLICIES AND THE TERMS OF BRAAKSMA'S TEACHING CONTRACT.

Authorities

Anderson v. Douglas & Lomason Co., 540 N.W.2d 277 (Iowa 1995)

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Olds v. Bd. of Educ., 334 N.W.2d 765 (Iowa Ct.App. 1983)

IOWA CODE § 279.15

IOWA CODE § 279.27

- II. THE BOARD OF DIRECTORS OF THE SIBLEY-OCHEYEDAN COMMUNITY SCHOOL DISTRICT MAY IMPOSE ITS OWN STANDARDS FOR EMPLOYEE PERFORMANCE, BUT A NON-PROBATIONARY TEACHER TERMINATION IN ACCORDANCE WITH THOSE STANDARDS MUST BE FOR JUST CAUSE AND OTHERWISE LAWFUL.

Authorities

Bd. of Dirs. of Ames Cmty. Sch. Dist. v. Cullinan,

745 N.W.2d 487 (Iowa 2008)

IOWA CODE ch. 279

IOWA CODE § 279.14(1)-(2)

IOWA CODE ch. 284

IOWA CODE § 284.3(1)(h)

ARGUMENT

I. THE DECISION OF THE BOARD OF DIRECTORS OF THE SIBLEY-OCHEYEDAN COMMUNITY SCHOOL DISTRICT VIOLATES THE BOARD'S POLICIES AND THE TERMS OF BRAAKSMA'S TEACHING CONTRACT.

Danna Braaksma's 2019-2020 teaching contract incorporated "official school policies" and made them "part of" her teaching contract. (Appendix (App.) 160). The District Court found the District's Intensive Assistance Policy was one of those policies incorporated into Braaksma's teaching contract. (App. 11).

The District's Intensive Assistance Policy includes the following key provisions: (1) an employee "not meeting the standards of the District will be placed on intensive assistance;" (2) the principal and employer "will mutually develop" the intensive assistance plan; (3) the employee "will have a minimum of 6 months and a maximum of 12 months to implement changes"; and, finally, (4) at the conclusion of the six-month minimum period of remediation, a success employee "will be [r]eturned to" the regular evaluation cycle with other employees, while an unsuccessful employee "will be [r]ecommended or termination" or offered a one-year contract which "shall not be subject to termination provisions in [Iowa Code §] 279.15." (App. 230).

Braaksma was never allowed to participate in the development of her Intensive Assistance Plan (“Plan”). (App. 90, p. 189, ln. 20-24). No assistance was provided. (App. 91, p. 193, ln. 22-24). No guidance or mentoring was provided. (App. 91, p. 193, ln. 18-25; App. 92, p. 194, ln. 1-13). No feedback was provided. (App. 92, p. 195, ln. 1-4; App. 95, p. 208, ln. 4-17). Braaksma was also not allowed the minimum six-month period to show improvement guaranteed by the Intensive Assistance Policy. (App. 84, p. 165, ln. 20-22).

The District Court held, and the Board now argues on appeal that the Intensive Assistance Policy did not prevent Braaksma’s immediate termination under Iowa Code section 279.27. (App. 36; Appellee’s Proof Br. 9). Iowa Code section 279.27 provides in pertinent part, “A teacher may be discharged at any time during the contract year for just cause.” The District Court concluded, “A termination under this statute is not predicated on a completion of an intensive assistance plan.” (App. 36). This conclusion, however, is irrelevant. The question for the Court is whether the District’s Intensive Assistance Policy required Braaksma’s termination be predicated upon her completion of the Plan. Were Braaksma’s rights violated when the Board terminated her in violation of the District’s own Intensive Assistance Policy? Iowa Code section 279.27 may not be

expressly contingent upon the completion of an intensive assistance plan, but the District's Intensive Assistance Policy clearly is.

Even in the context of an employee working without an employment contract, Iowa courts recognize an exception to the general presumption of at will employment when "an implied contract of employment is created by a handbook or employee policy manual guaranteeing that discharge will occur only under certain circumstances." *Jones v. Lake Park Care Ctr.*, 569 N.W.2d 369, 374-375 (Iowa 1997). The Iowa Supreme Court considers three factors to determine whether a contract is created by an employment handbook or policy.

When considering whether a handbook is objectively definite to create a contract, we consider its language and context. Our analysis of case law reveals three factors to guide this highly fact-intensive inquiry: (1) Is the handbook in general and the progressive disciplinary procedures in particular mere guidelines or a statement of policy, or are they directives?; (2) Is the language of the disciplinary procedures detailed and definite or general and vague?; and (3) Does the employer have the power to alter the procedures at will or are they invariable?

Anderson v. Douglas & Lomason Co., 540 N.W.2d 277, 286-87 (Iowa 1995) (internal citations omitted). The "key" to determining whether a contract has been created by such a policy or handbook, "is whether a reasonable

employee upon reading the handbook would believe they had been guaranteed certain protections by their employer.” *Jones*, 569 N.W.2d at 375.

The District’s Intensive Assistance Policy is clear, ordered and written as a directive: an employee not meeting District standards “will” be placed on intensive assistance; the principal “will” mutually develop a plan with the employee; the employee “will” have a minimum of six months to implement necessary changes; and “at that time,” the unsuccessful employee “will be [r]ecommended for termination” or offered a one-year contract. (App. 230). This policy “requires specific action to be taken” and is no mere “statement of policy” or “guidelines.” *Jones*, 569 N.W.2d at 375. It requires specific action to be taken” by the employer. *Id.* The policy provides no language allowing the administration to depart from the steps set forth therein and no disclaimer to suggest that the noted deficiencies could result in termination at any time. The terms are invariable. Under these circumstances, a court would find an implied contract in an otherwise at-will employment relationship. *Id.* at 376.

While the employment-at-will analysis is illustrative, Braaksma was far more than an at-will employee. She had a valid employment contract incorporating District policies, including the Intensive Assistance Policy.

In this appellate proceeding, the Court “*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 . . . [i]n violation of a board rule or policy or contract.”

IOWA CODE § 279.18(2)(c). The law requires the Court to reverse Braaksma’s termination because it was carried out in violation of the Intensive Assistance Policy and the terms of her employment contract incorporating such policy.

In its brief, the Board suggests it has the exclusive right to set performance standards on an individual basis and that Braaksma failed to meet those standards. (Appellee’s Proof Br. 13). The Board further argues it determined Braaksma’s “performance was inadequate to continue,” and there was “no violation of the board’s policy as this determination set the policy on Mrs. Braaskmas’ (sic) facts.” (Appellee’s Proof Br. 11). While school districts exercise significant discretion over teacher performance standards, those standards are still subservient to a teacher’s rights under contract, policy, and statutory and constitutional law. *Olds v. Bd. of Educ.*, 334 N.W.2d 765, 771 (Iowa Ct.App. 1983). The Board arbitrarily abandoned the Intensive Assistance Policy and thereby breached its duty to provide Braaksma the procedure it proscribed for any employee failing to

meet performance standards. For a school board's termination to be for "just cause,"

there should not be an abuse of the conferred right. It must be a fair and honest cause or reason, regulated by good faith on the part of the party exercising the power. It limits the party to the exercise of good faith, based upon just and fair grounds as distinguished from an arbitrary power.

Bd. of Educ. v. Youel, 282 N.W.2d 677, 680-81 (Iowa 1979).

The Intensive Assistance Policy shows an interest in creating a uniform policy and procedure for any employee found to be deficient in the Iowa Teaching Standards. A policy like this one affords employees certain protections when their performance is questioned and ensures consistent treatment among employees. *Jones*, 569 N.W.2d at 375. "They exist to protect the best interest of all employees." *Id.* Such policies protect against the arbitrary treatment of employees and ensure administrative support when deficiencies are noted.

The Board asserts, "[i]t was Braaksma who violated policy by refusing to partake in Intensive Assistance and appropriately teach." (Appellee's Proof Br. 12). The Board claims Braaksma "refused to follow the policy." (Appellee's Proof Br. 12). Braaksma "didn't disagree" with being placed on the Plan; she just "didn't understand" why the administration concluded one was required after her years of successful

teaching. (App. 104, p. 245, ln. 3-6). She testified she agreed to follow the Plan and kept it with her to “refer to instantly.” (App. 103, p. 239, 12-13). Superintendent James Craig also testified that Braaksma agreed to follow the plan. (App. 81, p. 153, ln. 9-23; App. 86, p. 171, ln. 6-13). Braaksma sought out feedback on whether she was following the plan. (App. 103, p. 241, ln. 7-13; App. 104, p. 242, ln. 4-12).

The facts of the case are quite clear that Braaksma was never given an opportunity to “partake” in intensive assistance to learn to teach in a way that would be acceptable to Principal Stan De Zeeuw because he provided her no assistance, spent mere minutes in her classroom or outside in the hallway looking into her classroom, engaged in no discussion of her practice, and provided no feedback on the lesson plans she regularly submitted to him. The District provided no assistance at all.

II. THE BOARD OF DIRECTORS OF THE SIBLEY-OCHEYEDAN COMMUNITY SCHOOL DISTRICT MAY IMPOSE ITS OWN STANDARDS FOR EMPLOYEE PERFORMANCE, BUT A TERMINATION IN ACCORD WITH THOSE STANDARDS MUST BE FOR JUST CAUSE AND OTHERWISE LAWFUL.

Local school boards exercise significant 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.” Review and

maintenance of teacher performance is also governed by statutory and administrative law. (*See* Appellant’s Final Br. § II (C)). The Board argues Iowa Code section 279.14(1) “places final judgment on performance with the Board.” (Appellee’s Proof Br. 10). However, Iowa Code section 279.14(1) and (2) do 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. Nor does this provision allow a school board to ignore the procedural and substantive due process requirements of Iowa Code Chapter 279 in the event of a termination of a non-probationary teacher, including the requirement of “just cause.” The Iowa Supreme Court has defined “just cause,” in the “context of teacher fault,” as “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.” *Bd. of Dirs. of Ames Cmty. Sch. Dist. v. Cullinan*, 745 N.W.2d 487, 493 (Iowa 2008). Braaksma was meeting those standards set out for her and faithfully accepted and implemented the Plan. (App. 91, p. 192, ln. 7-12).

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,

/s/ Christy A.A. Hickman
Christy A.A. Hickman AT0000518
Iowa State Education Association
777 Third Street
Des Moines, IA 50309
Telephone: 515-471-8004
Facsimile: 515-471-8017
Email: christy.hickman@isea.org
ATTORNEY FOR APPELLANT

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:

Stephen F. Avery
Cornwall, Avery, Bjornstad &
Scott
407 Grand Ave., P.O.
Box 999
Spencer, IA 51301
Telephone: 712-262-1630
FAX: 712-262-1211
Email: steve@cabslaw.com

/s/ Christy A.A. Hickman
Christy A.A. Hickman AT0000518
Iowa State Education Association
777 Third Street
Des Moines, IA 50309
Telephone: 515-471-8004
Facsimile: 515-471-8017
Email: christy.hickman@isea.org
ATTORNEY FOR APPELLANT

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/s/ Christy A.A. Hickman June 9, 2021
Christy A.A. Hickman AT0000518 Date