

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 APPLICATION FOR FURTHER REVIEW
(COURT OF APPEALS DECISION FILED DECEMBER 15, 2021)**

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QUESTIONS PRESENTED FOR REVIEW

1. In a teacher termination for cause under Iowa Code §279.27 is the completion of an Intensive Assistance Program authorized under Iowa Code §284.8 enacted in 2017 a prerequisite to terminate?

2. If a teacher is placed on an Intensive Assistance Program under Iowa Code §284.8 and subsequently is determined to not be teaching a portion of her assigned contract duties, can she be terminated for just cause under Iowa Code §279.27 prior to the teacher agreeing she completed her Intensive Assistance Program?

3. If the Intensive Assistance Program in the school district provides the employee “will have a minimum of six months and a maximum of twelve months to implement changes...” can the teacher be discharged for cause under Iowa Code §279.27 for failing to teach assigned subject matter when that failure is not part of the Intensive Assistance Program?

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STATEMENT SUPPORTING FURTHER REVIEW

This is a case of first impression. The Court of Appeals determined there was a conflict between Iowa Code §279.27 providing for termination of teachers for just cause and Iowa Code §284.8 providing for an intensive assistance program for teachers needing improvement. The Court of Appeals on page 2 stated: *“Here, the tension exists between the Board’s contention it could terminate Braaksma for just cause at any time – under Iowa Code section 279.27 – and Braaksma’s position that was not so if the reasons for the termination related to conditions imposed under an IAP to address her teaching performance – under section 284.8. Because we conclude the time for providing performance under the IAP had not yet expired and the Board’s termination of Braaksma’s contract was in violation of state laws, its own policy, and the terms of Braaksma’s contract, we reverse.”* p. 17.

The net effect of the decision of the Court of Appeals is to make completion of an Intensive Assistance Program a condition precedent to a termination for cause.

Danna Braaksma was placed on Intensive Assistance on April

24, 2019. The Intensive Assistance is a minimum six (6) month program at Sibley Ocheyedan Community School District. (Attachment C, p. 32). Danna Braaksma refused to accept the administration's decision that she needed an Intensive Assistance Program.

Danna Braaksma was served the Notice and Recommendation to Terminate Contract on November 13, 2019.

The Notice contained four (4) reasons for termination:

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.

Two of the four reasons (#2 and #4) were not referenced in the Intensive Assistance Program.

The decision of the Court of Appeals has decided an important question of law concerning school teacher terminations which should be settled by the Supreme Court.

This issue arises from a new statute enacted in 2017. This is a case of first impression and has broad public importance as it

impacts all public schools In Iowa.

If the Court of Appeals' decision stands, it changes prior legal principals and could extend by twelve months the prior time frame for terminating a teacher for cause.

BRIEF/ARGUMENT

The intensive assistance program designed in Chapter 284.8 is designed to improve the performance of teachers. Sibley Ocheyedan Community School District has a six to twelve month program. (See Exhibit C, p. 32). Here, the program commenced on April 24, 2019. Braaksma was given her recommendation for termination notice 189 days after being provided the Intensive Assistance Program.

Braaksma's teaching contract is subject to Iowa Code §279.27(1): "A teacher may be discharged at any time for cause."p. 31. Braaksma treats the Intensive Assistance Program as if it is a prerequisite to a termination for cause. The Intensive Assistance Program 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 should not prevent an immediate discharge under Section 279.27 for just cause with a reason not involved in the Intensive Assistance Program. A variety of improprieties may arise suggesting the need for immediate action rather than delay for six to twelve months.

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 §284.8. In this situation, Braaksma did not agree with being placed on intensive nor did she agree with the program of intensive assistance. She refused to follow policy.

With the reevaluation provided for in §284.8(4) and the options open to the board based on the reevaluation results, this procedure is different from the §279.27 termination for cause.

Section 284.8 Intensive Assistance is tied to the Iowa teaching standards listed. §279.27 covers all other issues, such as failing to teach assigned duties.

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 terminations provided in Section 279.15. It is a strained interpretation to believe the enactment of § 284.8 designed to improve performance was also intended to frustrate terminations for non-performance.

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.

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

The 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.

Starting with the decision in *Bd. of Education v. Youle*, 282 N.W.2d 677 (Iowa 1979), the Iowa decisions have approved local

administrations to render opinions on performance and approve local boards of directors to determine the level of performance required for the individual district. Those are decisions and standards specific to each district in Iowa.

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

The District Court decision provided: *"On the whole, considering the overall evaluations from Principal DeZeeuw, the observations from the replacement teacher, from other corroborating evidence such as Braaksma's lag in turning in lesson plans (an area in which she showed some improvement), failure to have a lesson plan available for a substitute teacher, deficiency in implementing district-instituted close reads, failure to timely record grades and observed occasional unpreparedness, tardiness and late notification of absences, the court finds that competent evidence shows it more likely than not (Preponderance of the evidence) that Braaksma is deficient in teaching appropriate content in Spanish II. Such deficiency adversely impacts the district's ability to deliver high*

quality Spanish education to students and, therefore, constitutes just cause for termination.” (District Court Decision p. 23).

This is not tied to the Iowa Intensive Assistance Program. The lower court recognized the failure to teach Spanish II was cause for immediate termination.

If this case stands as the law for teacher terminations, if a district has to place a teacher on intensive assistance to try to improve performance, that teacher is guaranteed employment to the end of the intensive assistance program the teacher was placed on which most probably be after the April 30th deadline provided in Iowa Code §279.15. This is an unreasonable interpretation of the use of §284.8.

Each of the four reasons listed in the notice to Danna Braaksma do not need to be just cause. The question is whether the circumstances satisfy for just cause. *Sheldon Community School District v. Lundblad*, 528 N.W.2d 593 (Iowa 1995).

In this case Danna Braaksma was not delivering Spanish II or III instruction. A replacement needed to happen to save the instructional year. Termination for cause should not be frustrated

by a program intended to improve performance when the teacher has chosen not to perform or improve and has chosen not to teach assigned duties.

Failing to teach an assigned duty or subject is not just poor performance. It is a breach of contract and a blatant failure to discharge her duty. What could be a more graphic failure by a teacher than failing to teach. That failure is not related to the Intensive Assistance Program. It is a reason separate from the program but a failure supporting a Chapter 279.27 termination.

The plain meaning of Iowa Code §284.8 is to provide improved performance.

The plain meaning of Iowa Code § 279.27 is to allow removal of a teacher who is not teaching or is damaging to the educational process.

This case warrants further review because all of the school districts in Iowa are required by Iowa Code §284.8 to have an Intensive Assistance Program.

The within decision of the Court of Appeals causes an immediate termination for cause to be held captive to completion of

the Intensive Assistance Program even though Danna Braaksma failed to teach Spanish II and III which were a portion of her assigned duties.

This is a conflict between two statutes. It is a case of first impression. It changes the prior case law on termination for cause under Iowa Code §279.27 by placing this condition precedent.

The net effect of the decision is to allow a lame duck teacher who is subject to discharge for cause to continue to be employed for an extra year. That seems very much at odds with a statute designed to improve performance.

The school district policy, Exhibit C, p. 32, attached provided the six month minimum. That same policy immediately below the six months, references returning to a three year cycle of evaluations. Clearly summer months are counted.

Respectfully submitted,

/s/ Stephen F. Avery

Stephen F. Avery

CERTIFICATE OF COST

I, Stephen F. Avery certify that there were no cost to reproduce copies of the preceding application because the Application for Further Review is being filed exclusively in the Supreme Court's EDMS system.

/s/ Stephen F. Avery
Stephen F. Avery

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE
REQUIREMENTS AND TYPE-VOLUME LIMITATION**

This application complies with the typeface requirements and type-volume limitations of Iowa R. App. P. 6.1103(4) because:

1. This application has been prepared in a proportionally spaced typeface using Century type style in 14 point font, and contains 1450 words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(4)(a).

/s/ Stephen F. Avery

Stephen F. Avery

PROOF OF SERVICE AND CERTIFICATE OF FILING

The undersigned hereby certifies that a true and correct copy of the foregoing application was served on the attorney of record for Appellant by filing the same with the Iowa Electronic Document Management System on January 3, 2022 . The following attorney of record was served through the Iowa Electronic Document Management System.

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IN THE COURT OF APPEALS OF IOWA

No. 21-0067
Filed December 15, 2021

DANNA BRAAKSMA,
Plaintiff-Appellant,

vs.

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

Appeal from the Iowa District Court for Osceola County, Nancy L.
Whittenburg, Judge.

A teacher appeals the termination of her teaching contract. **REVERSED.**

Christy A.A. Hickman of the Iowa State Education Association, Des Moines,
for appellant.

Stephen F. Avery of Cornwall, Avery, Bjornstad & Scott, Spencer, for
appellee.

Heard by Greer, P.J., Badding, J., and Potterfield, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206
(2021).

GREER, Presiding Judge.

In an apparent question of first impression, we must discern how the interplay between two statutes regulating the process to terminate a teacher functions. This tension became apparent when, in the middle of the 2019–2020 school year, the Board of Directors (Board) of the Sibley-Ocheyedan Community School District (District) voted to terminate the teaching contract of long-time teacher Danna Braaksma. Braaksma asked for judicial review, and the district court upheld the Board’s decision. Now, Braaksma challenges the termination on appeal. She argues (1) the Board’s termination of her contract violated the Board’s own policies and the teaching contract itself; (2) the termination of her teaching contract violated Iowa law because she was not allowed to complete an intensive assistance program (IAP)¹ as provided by statute; and (3) the four reasons the Board gave for ending her contract are not supported by a preponderance of the competent evidence in the record.

Here, the tension exists between the Board’s contention it could terminate Braaksma for just cause at any time—under Iowa Code section 279.27—and Braaksma’s position that was not so if the reasons for the termination related to conditions imposed under an IAP to address her teaching performance—under section 284.8. Because we conclude the time for proving performance under the IAP had not yet expired and the Board’s termination of Braaksma’s contract was

¹ Throughout the proceedings, “intensive assistance plan” and “intensive assistance program” have been used interchangeably. For consistency, and because the statute refers only to an “intensive assistance program,” we use that term throughout. See Iowa Code § 284.8 (2019).

in violation of state laws, its own policy, and the terms of Braaksma's contract, we reverse.

I. Facts and Past Proceedings.

Braaksma began teaching in the District as a substitute teacher during the 1980–1981 school year. She continued substitute teaching in the District until she signed a continuing contract to teach high school Spanish for the 2001–2002 year. Braaksma continued in that role, teaching Spanish I through IV, without issue until the 2018–2019 school year.

It was then when Stan De Zeeuw was hired as the principal for grades seven through twelve. As part of his job as principal, De Zeeuw evaluated teachers. Braaksma, who, as a veteran teacher, was formally evaluated on a three-year rotation, was up for evaluation in the spring of 2019. She elected to be evaluated on March 21, during which time she was working with the students on a "close read." De Zeeuw took handwritten notes, which indicated Braaksma was unprepared and still completing materials at the beginning of the class period. De Zeeuw also expressed concern that Braaksma spent ten minutes explaining close reads to the students when the students and teachers were supposed to have been working on them all year.

After that review, De Zeeuw completed his written evaluation of Braaksma in April. He concluded Braaksma failed to meet six of the eight teaching standards outlined in Iowa Code section 284.3(1):

- 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.

De Zeeuw met with the superintendent, Bill Boer, and the two administrators decided Braaksma would be placed on an IAP.

To jumpstart that program, Boer and De Zeeuw met with Braaksma on April 25. Braaksma was given a typed "plan of assistance" that included fourteen bullet points of expectations she was supposed to meet to address concerns with her failure to meet the teaching standards. The fourteen points were:

- Students will receive timely feedback on assessments and homework.
- Students will receive rubrics ([when] applicable) so they know expectations ahead of time.
- Students will have multiple grades entered within each progress period (twice a quarter).
- Grades will not be mass entered just before conclusion of said grading period.
- Graded work will be completely and adequately assessed, returned to students, and submitted on [the online grading tool] within the given grade deadlines.
- All classroom materials will be prepared before class begins each day.
- All district required close reads will be satisfactorily completed within the required timeframe and ALL required paperwork will be completed by teacher.
- Teacher will attend all scheduled meetings as planned (emergency situations are exceptions) and on time.
- Teacher lesson plans will be submitted by 8:00 am every Monday (or first day of week).
- Teacher will indicate what is being planned and assessed (if necessary each day) each unit.
- Teacher will indicate standards and objections for all chapters (or units or similar concept).

- All standards and objectives for all classes will be known and posted.
- Classroom rules will be posted and referred to as needed.
- Classroom management rules and expectations will be presented at the beginning grading period for all classes taught; they will be referred to as situations arise.

Braaksma did not believe she needed the IAP and refused to sign the document. Still, she was given a copy and told she would be held accountable for improving in the outlined areas, regardless of her lack of signature. She was expected to begin working on the plan immediately. The written plan states, "Will meet and discuss during 2019–2020 academic year. Satisfactory progress must be achieved to maintain employment . . . for 2020 and beyond." According to Braaksma, neither the principal nor the superintendent discussed the plan with her again during the 2018–2019 school year.

During this time, another administrative staff change occurred. James Craig took over as the superintendent beginning with the 2019–2020 school year. He and De Zeeuw scheduled a meeting with Braaksma to revisit the IAP; it took place in Craig's office on August 21—a couple of days before students returned to class. De Zeeuw began the meeting by reading the bulleted points from the plan out loud. Braaksma spoke up several times. De Zeeuw and Craig testified she was interrupting and denigrating the plan, while Braaksma viewed her statements as interjections because she wanted clarifications and explanations about specific points of the plan and what she was supposed to be doing. According to Braaksma, she was never told she could ask questions once De Zeeuw finished reading the plan. Eventually, Craig became agitated and asked Braaksma, "Do I need to ask for your resignation now?" When she persisted, he shouted at her to

get out and ended the meeting. Braaksma spoke with Craig in the hallway later and told him she intended to follow the plan. Craig shared this information with De Zeeuw by email.

As part of being on the IAP during the 2019–2020 school year, Braaksma was supposed to be formally evaluated three times. The first of these evaluations was supposed to take place by October 31. It never occurred. According to Braaksma, she asked De Zeeuw about meeting to discuss expectations leading up to her first scheduled observation, but the meeting never took place. Then, on Friday, October 11, Braaksma encountered De Zeeuw in the supply closet and again asked about the IAP. De Zeeuw provided no substantive response, so Braaksma went to Craig to tell him about her difficulty getting information from De Zeeuw. Craig listened and then asked her to return to his office at 3:30 p.m.

When Braaksma arrived, Craig led her to the board room, where De Zeeuw was waiting. Then Craig told her, "We've done as much as we can with you," and presented her with a separation and release agreement. The agreement was for Braaksma to resign, and she would have been paid and continued to receive insurance for rest of the school year. She was given twenty-one days to decide whether to sign it, and Braaksma testified she decided to take the document home to speak with her family and an attorney. De Zeeuw testified that Craig told Braaksma, "One way or another you won't be here Monday. You can agree to this. If not you're on paid leave until the due date of the agreement. You have 21 days." Braaksma did not recall being told she was on administrative leave.

On Monday, October 14, Braaksma reported to work as usual; she believed she was still under contract and did not want to be subject to allegations she was

in breach. Craig noticed Braaksma was in her classroom and went in to ask her why she was there. De Zeeuw entered shortly after, and Craig instructed him to call the sheriff's office to have Braaksma removed from the school. The school was then put in lockdown.² Braaksma refused to leave until she had something in writing that she was not supposed to be teaching, which Craig then produced for her. It stated:

You are hereby notified that you are on paid administrative leave from your teaching and extra-curricular duties. Further information will be presented as to the status of your employment at Sibley-Ocheyedan Schools as high school Spanish teacher and International Club sponsor.

You are not to be on school grounds unless you are returning the signed release agreement you were presented with on Friday, October 11th, 2019. A substitute will be provided for your classes.

Braaksma did not take the offer to resign from her position.

On November 13, Craig notified Braaksma that he was recommending to the Board that her teaching contract be terminated immediately. Craig provided four reasons for his 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.

Five days later, Craig made a written recommendation to the Board to end Braaksma's contract. Braaksma exercised her right to request a private hearing, and it took place over two days—on December 16, 2019, and January 8, 2020.

² At the hearing before the Board, De Zeeuw testified it "wasn't a lockdown" but admitted he made an announcement over the loudspeaker, stating, "Until further notice, staff, please keep the students in their rooms."

Following the conclusion of the hearing, the Board issued a written decision the same day. In its entirety, it states:

Pursuant to Iowa Code 279.16, and based on the evidence in the record of the private hearing conducted on December 16, 2019 and January 8, 2020, the Board of Directors of the Sibley-Ocheyedan Community School District direct that Danna Braaksma's continuing teaching contract with the Sibley-Ocheyedan Community School District be terminated effective immediately.^{3]}

After receiving the decision, Braaksma petitioned for judicial review, asking for the decision of the Board to be reversed. She argued the Board's finding of "just cause" to terminate her teaching contract was not supported by a preponderance of the evidence; was in violation of the statutory provisions governing teacher performance review in chapter 284; and was made in violation of both District policy and her contract, which require the District to provide an IAP.

On judicial review, the district court affirmed the Board's decision to terminate Braaksma's contract. Citing Iowa Code section 279.27, which states, "A teacher may be discharged at any time during the contract year for just cause," the district court concluded the Board was allowed to terminate Braaksma's contract for deficient performance. The court considered the record made at the hearing before the Board and concluded that a preponderance of evidence in the record supported the four reasons the superintendent gave for terminating Braaksma's

³ A 2017 change in Iowa Code section 279.18 suggests the Board is no longer required to make fact findings as part of its decision and ruling. See 2017 Iowa Acts ch. 2, § 34; *compare* Iowa Code § 279.18(2) (2016) ("In [proceedings for] judicial 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." (emphasis added)), *with id.* § 279.18(2) (2019) ("In [proceedings for] judicial review, especially when considering the credibility of witnesses, the court shall give weight to the *decision* of the board, but shall not be bound by it." (emphasis added)).

contract and that those reasons constituted deficient performance of her teaching job. The court considered section 284.8, which requires that school districts “shall be prepared to offer an [IAP]” if a teacher is found not to meet the teaching standards of section 284.3 and the Board’s written policy that a teacher “placed on intensive assistance . . . will have a minimum of 6 months and a maximum of 12 months to implement change.” The district court recognized Braaksma was not given six months on the plan but concluded the fact was inapposite because section 279.27 allows for discharge “at any time for just cause.”

Braaksma appeals.

II. Standard of Review.

We review the school board’s termination of Braaksma’s contract for correction of errors at law. See *Bd. of Dirs. of Ames Cmty. Sch. Dist. v. Cullinan*, 745 N.W.2d 487, 493 (Iowa 2008). We glean some evidence of the Board’s determinations of credibility from its ultimate decision, and we give those determinations weight. See Iowa Code § 279.18(2) (“[E]specially when considering the credibility of witnesses, the court shall give weight to the decision of the board, but shall not be bound by it.”). But, as always, it is the role of the court—not the Board—to determine the meaning of statutes. See *Martinek v. Belmond-Klemme Cmty. Sch. Dist.*, 760 N.W.2d 454, 456 (Iowa 2009).

III. Analysis.

Braaksma contends that the Board’s decision to terminate her contract should be reversed because she was entitled to participate in an IAP⁴ that adhered

⁴ “Intensive assistance” is statutorily defined as “the provision of organizational support and technical assistance to teachers, other than beginning teachers, for

to the statutory and contractual requirements as well as the policies adopted by the Board. She argues that because she was not allowed to do so, the termination of her contract is not proper.

De Zeeuw concluded Braaksma was not meeting the expectation of six of the eight Iowa teaching standards, which are codified in Iowa Code section 284.3(1)(a) through (h). Based on this conclusion, De Zeeuw had to recommend that Braaksma participate in an IAP and Braaksma had to do so. See Iowa Code § 284.8(2) (“If . . . an evaluator determines . . . [a] teacher is not meeting district expectations under the Iowa teaching standards . . . , the evaluator *shall* . . . *recommend* to the district the teacher participate in an [IAP].” (emphasis added)), (3) (“A teacher who is not meeting the applicable standards . . . *shall participate* in an [IAP].” (emphasis added)). Similarly, the District had to have a program to offer Braaksma. See *id.* § 284.8(2) (“All school districts shall be prepared to offer an [IAP].”). Notably, the District would receive moneys appropriated for teacher professional development if the Board applied to the department of education under its participation requirements. See *id.* § 284.4(1)(b)(2) (including the requirement to “[m]onitor the evaluation requirements of [chapter 284] to ensure evaluations are conducted in a fair and consistent manner throughout the school district or agency”).

To meet the State’s directive under chapter 284, the District developed policies. The District’s policy related to IAPs provides that the teacher and principal “will mutually develop an [IAP]” and the teacher “will have a minimum of 6 months

the remediation of identified teaching and classroom management concerns for a period not to exceed twelve months.” Iowa Code § 284.2(6).

and a maximum of 12 months to implement the changes.” This policy applied to Braaksma; her contract states, “The official school policies, calendar, and Master Contract are part of this contract.” Still, the district court found “[t]he Board did not dispute that Braaksma was terminated without re-evaluation under [section] 284.8(4) or that Braaksma had no input or assistance from administration in her intensive plan.” Yet, the statute is clear. “Following a teacher’s participation in an [IAP], the teacher shall be reevaluated to determine whether the teacher successfully completed the [IAP] and is meeting . . . the applicable Iowa teaching standards” *Id.* § 284.8(4). “If the teacher did not successfully complete the [IAP] or continues not to meet the applicable Iowa teaching standards,” *then* the Board has the option to “[t]erminate the teacher’s contract immediately [for just cause] pursuant to section 279.27.” *Id.* at § 284.8(4), (a).

Here, it is undisputed that Braaksma was not given six months to implement the changes outlined in her IAP. The plan began on April 25, 2019, and Craig placed her on administrative leave on October 11, 2019. Even if we count the summer—at which time there were no classes to be taught, so Braaksma could not actively work on implementing the plan—less than six months passed between the two dates.

The district court decided the District’s failure to allow Braaksma the minimum six months of participation was not controlling because section 279.27 allows for discharge for just cause “at any time.” Putting it another way, the Board argues termination of Braaksma’s contract was proper because the “intensive assistance placement of Braaksma on April 25, 2019 and completion of the intensive assistance is not a condition precedent to a chapter 279.29 discharge.”

But when a teacher is discharged for failure to meet the teaching standards (i.e., deficient performance), we believe it is a condition precedent. Otherwise the mandatory language within section 284.8—that if the teacher is not meeting teaching standards, the school district “shall . . . offer,” the evaluator “shall . . . recommend,” and the teacher “shall participate in an [IAP]”—becomes meaningless. See Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 167 (2012) (“Perhaps no interpretive fault is more common than the failure to follow the whole-text canon, which calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts.”); see also Iowa Code § 4.1(30)(a) (“The word ‘shall’ imposes a duty.”).

In its decision, the district court concluded there were two types of “just cause” for which a teacher could be fired for their own actions⁵ under section 279.29—those of “misconduct” and those of “deficient job performance.” But the cases considered by the district court that involved an immediate firing of a teacher for “deficient job performance” were decided before 2001, when the legislature established chapter 284. See 2001 Iowa Acts ch. 161, § 1. Section 284.1 established a “student achievement and teacher quality program,” with two of the “major elements” being “[p]rofessional development designed to directly support best teaching practices” and “[e]valuation of teachers against the Iowa teaching standards.” 2001 Iowa Acts ch. 161, § 2. The teaching standards of section 284.3(1) were established at the same time. See 2001 Iowa Acts

⁵ The district court contrasted these with “legitimate consideration[s] relating to the school district’s personnel and budget needs.”

ch. 161, § 4. The IAP was not added until 2002. See 2002 Iowa Acts ch. 1152, § 17. And school districts were originally given until July 1, 2004, to “be prepared to offer an intensive assistance program.” *Id.* In 2003, the legislature extended the deadline to July 1, 2005. 2003 Iowa Acts ch. 180, § 47.

At oral argument, the Board contended that it can terminate a teacher for just cause even if the teacher is on an IAP. And, if the reasons for the termination are not related to the performance issues listed in the IAP, we agree the Board has that option. Based on our interpretation of section 284.8, the Board would still have the power to immediately discharge a teacher for just cause under section 279.27 for reasons relating to misconduct. But if the teacher is attempting to improve under an IAP, we believe the interplay between sections 279.27 and 284.8 impacts when a teacher can be terminated. Thus, when the teacher is discharged for reasons related to the Iowa teaching standards, the need to offer an IAP—as section 284.8 mandates—cannot be ignored. And while chapter 284 does not set specific timing deadlines to achieve compliance, the District cannot ignore its own policies about that program. Here, the District’s policies, which were incorporated into Braaksma’s teaching contract, promised her at least six months on the program. After that time, she was to be reevaluated. Then, if she was still failing to meet the standards, she could be fired—under both the statute and the District’s policy. See Iowa Code § 284.8(4)(a).

In its appellate brief, the Board implies Braaksma was not entitled to spend six months on the IAP because she refused to engage with or participate in the plan for improvement that was provided to her. We understand this implication to suggest Braaksma was fired for insubordination rather than failure to achieve the

goals of the IAP. But insubordination was not one of the reasons the superintendent gave for terminating Braaksma's contract. And "[o]ur review is 'limited to the specific reasons stated in the superintendent's notice of recommendation of termination.'" *Mackey v. Newell-Providence Cmty. Sch. Dist.*, 483 N.W.2d 5, 8 (Iowa Ct. App. 1992) (quoting Iowa Code § 279.16).

With these statutes defining our course, we reverse the district court's and the Board's decisions. The termination of Braaksma's contract violated section 284.8, the terms of the contract itself, and the District's policies.

IV. Conclusion.

The District was required to offer Braaksma an IAP once it determined she was failing to meet the statutory teaching standards. But it ultimately discharged her contract because of deficient performance without offering the program in adherence with contractual, statutory, and policy provisions, so the discharge was improper under section 284.8. As a result, we reverse the ruling of the district court and the Board's decision terminating Braaksma's contract and reinstate Braaksma to her former position according to the terms of her contract. *See Munger v. Jesup Cmty. Sch. Dist.*, 325 N.W.2d 377, 381 (Iowa 1982).

REVERSED.



IOWA APPELLATE COURTS
State of Iowa Courts

Case Number
21-0067

Case Title
Braaksma v. Board of Sibley-Ocheyedan Community School Dist.

Electronically signed on 2021-12-15 08:06:50

**NOTICE AND RECOMMENDATION
TO TERMINATE CONTRACT**

To: Danna Braaksma
Sibley-Ocheyedan Community School District

You are hereby notified that I will recommend in writing to the Board of Directors of the Sibley-Ocheyedan Community School District, at a special meeting held November 18, 2019, that your teacher's continuing contract be terminated effective immediately following a decision of the Board of Directors. The contract to be terminated is attached to this notice as Exhibit 1. This contract is for your services for the 2019-2020 school year. This notice is given pursuant to the provisions of *Iowa Code, section 279.27*.

The recommendation to terminate your contract is being made for the following reasons:

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.

You are further advised that in addition to myself, the witness which will be called to testify at the private hearing is Stan De Zeeuw.

Sibley-Ocheyedan Community School District


James Craig, Superintendent

SERVICE VERIFICATION

I, James Craig, hereby certify that I served this Notice and Recommendation to Terminate Contract on Danna Braaksma this 13th day of November, 2019.


James Craig, Superintendent

CONTRACT WITH TEACHER.
2019-20

BA-15 Year 22

THIS CONTRACT, is entered into by and between DANNA BRAAKSMA, a teacher, and the Board of Directors, hereinafter called the Board, of the SIBLEY-OCHEVEDAN Community School District; Osceola County; State of Iowa.

WITNESSETH, that in consideration of a Salary, said teacher agrees to well and faithfully perform the duties of TEACHER and such other duties connected with the public schools in said district as may be assigned by the Board or its duly authorized representative. The Total Salary for the 2019-2020 school year shall be \$54,922.00.

Salary will be payable in installments of \$4,576.83 on the 20th day of each calendar month for a period of 12 consecutive months, the first payment to be made on 09/20/2019.

The 2019-20 salary amount will revert back to the 2018-19 salary for failing to complete district expectations in regards to the 90-Minute Reading Block and Close Reading.

AND IT IS FURTHER AGREED:

- 1) That said term shall commence on the 21st of AUGUST, 2019 and shall include 190 days of service, of which 180 shall be teaching days and 1/190th of the Salary shall be considered as pay for one day of service.
- 2) That an amount equal to the pay for one day of service shall be deducted from the salary of said teacher for each day of service not performed if absence from duty with pay is not authorized by the board or the leave policy in effect.
- 3) That if said teacher is lawfully discharged or is released by mutual agreement before the completion of said term, final settlement shall be made so the total amount which the teacher shall have received shall be an amount equal to the product of the number of days of service multiplied by the amount considered as pay for one day of service.
- 4) That the use to be made of the days in said term, which are in excess of the number of teaching days as stated herein, shall be determined by the board and may be stated in school calendar adopted by the board.
That said teacher shall attend, outside of regular school hours as established by the board, such professional meetings as might be called by school authorities for coordinating the work of the teacher in the school program or for any other reason.
- 6) That said teacher shall present a certificate as required by law to the secretary of the Board of Directors of the school district before accepting payment of any part of the Salary.
- 7) That this contract is subject to the applicable provisions of Iowa Code, Chapter 279.
- 8) That this contract shall be invalid if the teacher is under contract with another board of directors in the state of Iowa to teach covering the same period of time.
- 9) That official school policies, calendar, and Master Contract are part of this contract.
- 10) That the first two years of employment in this School District is a probationary period. This probationary teacher contract shall be subject to the provisions of Iowa Code Section 279.19 and 279.27 and may be terminated at the end of the contract term without cause. The Board may extend the probationary period for an additional year, in which case the teacher's consent to such extension must be obtained.

THIS CONTRACT shall be without force and effect unless it is in the hands of the board, bearing the signature of said teacher and the president of the board, on or before April 12, 2019.

IN TESTIMONY WHEREOF, we have hereunto subscribed our names on dates as hereinafter stated.

Dated April 1, 2019, Danna Braaksma Teacher

Dated: March 22, 2019, Kyle Grimes President

KYLE GRIMES, BOARD OF DIRECTORS
SIBLEY-OCHEVEDAN COMMUNITY SCHOOL DISTRICT

✓
EPK 21

- **Comprehensive Review:** Documents prepared by the administrator and signed by the teacher emphasizing the professional growth of the teacher. Comments will attempt to improve instruction through the exchange of ideas.

Professional Growth (ITPDP) Evaluations teachers with Standard Licensure will:

- Promote continuous learning through the acquisition of knowledge and/or the improvement of instructional skills.
- Be specific, achievable and measurable.
- Include accountability and a formative monitoring process with a set of procedures and plan of action.
- Meet performance criteria at the designated time.
- No teacher on standard licensure will be required to use a portfolio, but a portfolio may be used by the teacher to show evidence of meeting Standards and Criteria established by the Board for evaluation purposes, or may be used in intensive assistance plans.

E. **CONFERENCE:** The evaluator and the instructor shall meet within ten (10) school days following an observation. A copy of the evaluation, signed by both parties, shall be given to the employee. The employee's signature does not necessarily mean agreement with the evaluation. The employee may put his/her objections in writing and have them attached to the evaluation report to be placed in his/her personnel file.

F. **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 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.

G. **EVALUATION FILE:** An employee shall have the right to inspect and copy contents of the employee's personnel file under the supervision of the Superintendent or designee. Such inspections shall be limited to the contents placed in the file after the employment date. The file will contain all formal written evaluations of the employee's performance. No formal evaluation shall be placed in the file without a copy given to the employee in a reasonable time period to address any concerns raised.

H. **INFORMAL EVALUATION:** It is understood that informal evaluations may take place at other times (i.e., walkthroughs). The employee may respond in writing to any informal evaluation.

I. **EVALUATION FORM AND CRITERIA:** The evaluation form and criteria shall be the Iowa Department of Education recommended instrument and shall be adopted by the Board.

