

**IN THE SUPREME COURT OF IOWA**

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**NO. 21-0067**

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**DANNA BRAAKSMA,  
Appellant,**

**vs.**

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

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

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**APPELLANT'S RESISTANCE TO APPELLEE'S APPLICATION FOR  
FURTHER REVIEW OF THE IOWA COURT OF APPEALS DECISION  
FILED DECEMBER 15, 2021**

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## **STATEMENT IN RESISTANCE OF FURTHER REVIEW**

Pursuant to Iowa Rule of Appellate Procedure 6.1103(2), the Appellant, Danna Braaksma, resists the Appellee Board of Directors of the Sibley-Ocheyedan Community School District's Application for Further Review. The Court of Appeals correctly reversed the District Court's affirmance of Braaksma's termination on the basis the decision was in violation of her employment contract, school policy, and Iowa Code section 284.8 (2019).

The conventional reasons for further review as expressed in Iowa Rule of Civil Procedure 6.1103 are absent. The decision of the Court of Appeals does not involve an issue of broad public importance, nor does it conflict with prior precedent. The case does not pose a substantial question of constitutional law, important question of law that has not been, but should be, settled by the Supreme Court, nor an important question of changing legal principles. The Board's own routing statement requested the transfer of this case to the Court of Appeals on the basis "it presents the application of existing legal principles." Appellee's Final Brief and Request for Oral Argument, p. 5. While the case appears to present the Court's first review of Iowa Code section 284.8 in the context of a teacher termination, this alone does not necessitate further review.

The Application for Further Review should be denied.

## **ARGUMENT IN RESISTANCE OF FURTHER REVIEW**

The general legal principles of teacher terminations under Iowa Code section 279.15-18 are well-settled. Termination of a teaching contract may only be for “just cause.” *Bd. of Dirs. v. Cullinan*, 745 N.W.2d 487, 493 (Iowa 2008) (citing Iowa Code section 279.15(2)). Under Iowa Code section 279.27, “[a] teacher may be discharged at any time during the contract year for just cause.”

There is a

distinction between “just cause” for discharge of a teacher under section 279.27, or nonrenewal of a contract under section 279.15 based on a defect in a teacher’s performance on one hand, and “just cause” for nonrenewal based upon reasons not personal to the teacher, such as declining enrollment or budget constraints, on the other.

*Smith v. Bd. of Educ.*, 334 N.W.2d 150, 152 (Iowa 1983) (citing *Briggs v. Bd. of Dirs.*, 282 N.W.2d 740, 742 (Iowa 1979); *Bd. of Educ. v. Youel*, 282 N.W.2d 677, 680 (Iowa 1979)). While the “legislature has not defined just cause,” in the context of fault attributable to the teacher, this Court stated long ago:

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

*Bd. of Dirs. v. Cullinan*, 745 N.W.2d 487, 493 (Iowa 2008) (citing *Briggs v. Bd. of Dirs.*, 282 N.W.2d 740, 743 (Iowa 1979)).

The present case requires the application of these well-settled general principles but calls on the Court to determine the nature of a school district’s obligations under Iowa Code section 284.8 prior to termination carried out under Iowa Code chapter 279. The Court of Appeals applied the “time-honored principles of statutory construction in order to determine whether the district court made errors of law.” *State v. Wickes*, 910 N.W.2d 554, 569 (Iowa 2018). “[W]hen the terms and meaning of a statute are plain and clear, the appellate court enforces the statute as written.” *Id.* Iowa Code section 284.8 is clear and the Court of Appeals has followed the statute to the letter.

Iowa Code section 284.8(2) requires that “[a]ll school districts *shall be prepared to offer* an intensive assistance program.” Iowa Code § 284.8(2) (emphasis added). Intensive assistance is “the provision of organizational support and technical assistance to teachers, other than beginning teachers, for the remediation of identified teaching and classroom management concerns for a period not to exceed twelve months.” Iowa Code § 284.2(6). In the event an evaluator deems a teacher’s performance “not meeting district expectations under

the Iowa teaching standards,” the “evaluator shall, at the direction of the teacher’s supervisor, recommend to the district that the teacher participate in an intensive assistance program.” Iowa Code § 284.8(2). A teacher who is failing to meet the Iowa teaching standards “shall participate” in an intensive assistance program. Iowa Code § 284.8(3). Upon completion of the intensive assistance program, Iowa Code chapter 284 imposes the following directives and guidance:

Following a teacher’s participation in an intensive assistance program, the teacher *shall be reevaluated* to determine whether the teacher successfully completed the intensive assistance program and is meeting district expectations under the applicable Iowa teaching standards or criteria. *If the teacher did not successfully complete the intensive assistance program or continues not to meet the applicable Iowa teaching standards or criteria, the board may do any of the following:*

- a. Terminate the teacher’s contract immediately pursuant to section 279.27.
- b. Terminate the teacher’s contract at the end of the school year pursuant to section 279.15.
- c. Continue the teacher’s contract for a period not to exceed one year. However, the contract shall not be renewed and shall not be subject to section 279.15.

Iowa Code § 284.8(4) (emphasis added).

The District’s Intensive Assistance Policy provides as follows:

Intensive Assistance: In the event an employee is not meeting the standards of the District, the employee will be placed on intensive assistance and, *in conjunction with his/her principal, will mutually develop an intensive assistance plan*. The employee will have a *minimum of 6 months* and a maximum of 12 months to implement changes at which time the employee will be:

- a. Returned to the 3 year (sic) cycle if successfully completed the intensive assistance;
- b. Recommended for termination effective immediately or at the end of the year;
- c. Continue the contract for a period not to exceed one year and the contract shall not be subject to termination provisions in 279.15.

A teacher who previously participated in an intensive assistance program shall not be entitled to participate in another intensive assistance program relating to the same standards or criteria.

App. p. 230, Teacher's Ex. C (emphasis added).

Braaksma's 2019-2020 teaching contract incorporated such "official school policies" and made them "part of" her teaching contract. App. 160, District's Ex., p. 2.

The District Court and the Court of Appeals found the District failed to re-evaluate Braaksma as required by Iowa Code section 284.8(4), failed to allow Braaksma input in the intensive assistance plan in accordance with District policy, and failed to provide the assistance the District must "be prepared to offer" pursuant to Iowa Code section 284.8(2). The District's handling of the intensive assistance program, a procedure required by law, complied neither by letter nor with the intent of Iowa Code section 284.8.



The Board challenges what it perceives as a conflict between Iowa Code chapters 279 and 284. Iowa Code section 284.8 imposes companion obligations on the teacher and school district when a teacher's performance fails to meet the Iowa Teaching Standards. Iowa Code section 284.8 does not prevent the termination of a teacher "any time" a teacher's performance is deficient as long as the remediation requirements of Iowa Code section 284.8 have been met. For reasons such as misconduct, Iowa Code section 279.27 gives school districts authority to terminate a teacher "any time" for just cause and the remediation requirements of Iowa Code section 284.8 do not apply.

The Board avers the Court of Appeals erred because Braaksma was terminated for two reasons that did not fall within the ambit of the Iowa Teaching Standards and Iowa Code section 284.8: "Failed to teach appropriate to grade level" and "Students in Spanish II have not received appropriate instruction." The Board mischaracterizes the record. The Comprehensive Evaluation leading to Braaksma's intensive assistance program indicated those same concerns:

Danna has struggled with managing some of her classes. Students have come in to administration with concerns on the class not being prepared or that instruction is not happening in the classroom while the administration is not present. App. p. 171.

Many of the instructional and classroom management issues that arise are the results of not having everything prepared and running smoothly ahead of class time. App. p. 171; 172.

Danna can work on varying her instruction to meet the needs of students with varying abilities and backgrounds. App. p 172; 173.

She can also work on varying her classroom assessments to reflect the multiple ways by which students can demonstrate knowledge and skills. App. p. 172; 173.

Administrative observations have noted times where students are not engaged and do not have the materials they need to succeed for the day as the instructor does not have them ready. App. p. 176.

Danna needs to demonstrate effort in working on professional skills that improve classroom instructional practices and management. App. p. 175.

Administrative observations have noted times where students are not engaged and do not have the materials they need to succeed for the day as the instructor does not have them ready. App. p. 176.

The administration was clearly concerned about Braaksma's instruction. Braaksma was marked deficient in six of the eight Iowa Teaching Standards, including Standard 1. App. p. 50, Tr. p. 29, ln. 18-21; App. p. 169. Under Standard 1, the teacher "[d]emonstrates ability to enhance academic performance and support for and implementation of the school district's student achievement goals." App. p. 169; Iowa Code § 284.3(1)(a). Braaksma's Comprehensive Evaluation concludes, "[t]he teacher has not met all of the Iowa Teaching Standards. A plan of assistance plan or action plan has been created to work on meeting the missed standards." App. p. 177. The plan of assistance required Braaksma to submit all

lesson plans indicating “what is being planned and assessed” and “standards and objectives for all chapters.” App. p. 166. All four reasons listed for Braaksma’s termination are encompassed in the intensive assistance program. Related to the noted deficiencies, the District should have carried out the intensive remediation process contemplated in Iowa Code section 284.8. The District failed to comply.

The Court of Appeals did not err in concluding, “when a teacher is discharged for failure to meet the teaching standards (i.e., deficient performance), we believe [completion of the intensive assistance] is a condition precedent” to termination under Iowa Code section 279.27. Court of Appeals Decision, p. 12. Braaksma’s termination violated the provisions of Iowa Code section 284.8, the District’s intensive assistance policy, and Braaksma’s teaching contract incorporating such policies. The Court of Appeals reversal of the Board’s termination should remain undisturbed.

### **CONCLUSION**

For all of the foregoing reasons, Danna Braaksma respectfully requests the Iowa Supreme Court deny Appellee’s Application for Further Review. The Court of Appeals decision of December 15, 2021, reversing the District Court, is consistent with the plain language of Iowa Code chapters 279 and 284 and existing appellate case law. The decision does not address a substantial question of constitutional law, an important question of law that

has not been, but should be settled by the Supreme Court, nor one of changing legal principles. While the case is of significant importance to Danna Braaksma, it lacks broad public importance. The circumstances of this Application do not warrant further review.

Respectfully submitted,

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**CERTIFICATE OF FILING**

The undersigned hereby certifies that on the January 12, 2022, Appellant's Resistance to Appellee's Application for Further Review was electronically filed with the Clerk of the Iowa Supreme Court, 1111 E. Court Ave., Des Moines, Iowa 50319.

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 12, 2022, a copy of the Appellant's Resistance to Appellee's Application for Further Review was served upon all parties to the above cause by electronically mailing one copy to each of the attorneys or parties of record herein as set forth below.

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in compliance with the provisions of Iowa Rule of Appellate Procedures 6.901. A copy was filed and served via EDMS on January 12, 2022.

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

The Appellant's Resistance to Appellee's Application for Further Review complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because the Resistance contains 1964 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1). The Resistance complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because the Resistance has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman type font.

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