

TA 20110027 Exhibits

Exhibit A

Exhibit B

Exhibit C

Exhibit D

Exhibit E

Exhibit F

Exhibit G

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 633 17 th Street, Suite 1300 Denver, Colorado 80202	
DENVER PUBLIC SCHOOLS, Petitioner, vs. SCOTT HANSEN, Respondent.	▲ COURT USE ONLY ▲ CASE NUMBER: TA 20110027
DECISION	

This is a teacher dismissal proceeding as described in Sections 22-63-301 and 302, C.R.S. A hearing in this matter was held before Administrative Law Judge (“ALJ”) Matthew E. Norwood March 5-9, 2012 at the Office of Administrative Courts (“OAC”). The ALJ heard this case as provided by Section 22-63-302(4). Holly Ortiz, Esq. appeared on behalf of the Petitioner (“School District”). Charles F. Kaiser, Esq. appeared on behalf of the Respondent (“the Teacher”) or (“Mr. Hansen”).

Summary

The ALJ finds and concludes that the Teacher's neglect of his non-inclusion special education class during the 2009-2010 school year constituted “neglect of duty,” not merely “unsatisfactory performance.” Also, the Teacher created a demoralizing climate for one of his fellow teachers by his rude behavior toward her, “other good and just cause” for dismissal. Based on this, the ALJ recommends the dismissal of the Teacher.

Student Records

Neither party moved for a private hearing per Section 22-63-302(7)(a) and the hearing was open to the public. However, exhibit 19 contains confidential documents concerning students. The ALJ orders that, while in the possession of the OAC, this exhibit not be made available to the public.

The OAC maintains the exhibits introduced at hearing, unless the decision of the School District board is appealed as described in Section 22-63-302(10). In which case, the record will be certified to the Court of Appeals. In the event this matter is so appealed, the ALJ encourages the parties and the Court to protect the confidential information in exhibit 19.

Background

Hansen I--Case no. TA 20110006.

On October 24, 2011, an earlier hearing was held before the ALJ in case no. TA 20110006. The hearing concerned allegations made by the School District in a recommendation to dismiss dated March 17, 2011. At the outset of the hearing, the School District moved to dismiss the case without prejudice in order to add allegations. This motion was made orally and for the first time at hearing. That motion was opposed by the Teacher. The ALJ denied the motion for the reason that it was not made until the first day of hearing, after the Teacher had prepared his defense. Parties are required to be ready for hearing. Section 22-63-302(7)(c).

Thereafter, the School District presented no evidence in support of its March 17, 2011 recommendation to dismiss. Consequently, on October 24, 2011, the ALJ issued a decision, as described in Section 22-63-302(8), recommending retention of the Teacher.

Hansen II--Case no. TA 20110027.

On December 2, 2011 the School District requested another hearing concerning allegations against the Teacher. That is this case, numbered TA 20110027. As was later disclosed, the School District's request for a hearing again relied on the March 17, 2011 recommendation to dismiss, as well as new allegations in a November 17, 2011 recommendation to dismiss.

On December 15, 2011 the School District moved to recuse the ALJ assigned to hear this case. The ALJ assigned, the undersigned, was the same one who had issued the decision in TA 20110006. The motion to recuse focused on the fact that the ALJ had denied the motion to dismiss and had instead issued a decision in TA 20110006. The motion contained no affidavit as required by Section 24-4-105(3), C.R.S. and *Peoples Natural Gas Division v. Public Utilities Commission*, 626 P.2d 159, 164 (Colo. 1981). The motion was therefore denied in an order dated December 16, 2011.

On December 16, 2011 a telephone prehearing conference was held before the ALJ. At the prehearing conference, the Teacher moved to dismiss the November 17, 2011 allegations on the grounds of *res judicata* or "claim preclusion." The Teacher argued that these claims should have been brought in the earlier case. The ALJ orally denied this request, but did say he would not permit evidence in support of the March 17, 2011 allegations. Those allegations had already been resolved in case no. TA 20110006. The ALJ issued a written order that day.

On December 21, 2011 the Teacher submitted a "Motion to Reconsider Bench Ruling of December 16, 2011 Motion to Dismiss." In this the Teacher presented the claim preclusion argument in writing.

On January 25, 2012 the School District submitted a "Motion for Reconsideration." In that motion the School District asked the ALJ to reconsider the December 16 order and to allow the presentation of evidence relating to both the March 17 and November 17 allegations.

On January 27, 2012, the Teacher responded in opposition.

The Teacher's December 21, 2011 Motion

Again, this motion asserted that the November 17 allegations should be dismissed on grounds of claim preclusion. The Teacher identified the October 24, 2011 decision in TA 20110006 concerning the March 17 allegations as the previous action for purposes of imposing the claim preclusion bar. *Res judicata* or "claim preclusion:

[O]perates as a bar to a second action on the same claim as one litigated in a prior proceeding when there is a final judgment, identity of subject matter, claims for relief, and parties to the action. [Citations omitted] *Res judicata* not only bars issues actually decided, *but also any issues that should have been raised in the first proceeding but were not.* [Emphasis added.]

Denver v. Block 173 Associates, 814 P.2d 824, 830 (Colo. 1991).

The ALJ denied the Teacher's December 21, 2011 motion in an order dated February 16, 2012. Although the ALJ had imposed judgment per the October 24, 2011 decision in TA 20110006, the School District had failed to enter its written order in 20 days as required by Section 22-63-302(10). Because of this, the ALJ determined that the "final judgment" prong was missing and claim preclusion could not be imposed.

In his January 27, 2012 response, the Teacher asserted at page 2 that there is a "practical finality" rule even when there is no final judgment for purposes of appeal. He cited 18A, Wright, Miller and Cooper § 4434 (2002). This authority recognizes a relaxation in the finality requirement related to *issue* preclusion, not claim preclusion. Section 4434 goes on to question whether this same development will occur in the case of claim preclusion. Such a development seems doubtful in Colorado where judgment is not final for purposes of issue preclusion when on appeal. *Rantz v. Kaufman*, 109 P.3d 132, 141 (Colo. 2005). The ALJ therefore declined to impose "practical finality," where the School District had not entered its decision and the opportunity to appeal from such a decision had not run.

Because of the lack of finality, the ALJ declined to determine whether the claims in TA 20110027 were of the type that should have been brought in TA 20110006.

The School District's January 25, 2012 Motion for Reconsideration

In this motion the School District asked the ALJ to rescind the December 16 order and to permit it another opportunity to present evidence in support of its March 17 charges at the hearing in this case, TA 20110027. As grounds, the School District asserted that no findings of fact as required by Section 22-63-302(8) were made in the October 24, 2011 decision.

But this was not true. The October 24, 2011 decision explicitly found as fact that no evidence in support of the allegations was presented and that none of the allegations were proven. Moreover, the ALJ was clear with the School District at that hearing that failure to present evidence would result in an adjudication on the merits. The ALJ also denied this motion for reconsideration in his February 16, 2012 order.

The Teacher's February 29, 2012 Motion for Reconsideration

Throughout this time, the Teacher had sought in Denver District Court, case no. 2011CV8135, an order in the form of a writ of mandamus per C.R.C.P. 106(a)(2) to compel the School District to issue a decision in TA 20110006 per Section 22-63-302(10). With this February 29, 2012 motion, the Teacher attached an order from the District Court denying a request for a forthwith hearing. The District Court determined that administrative remedies were still available to the Teacher and must be exhausted.

The Teacher argued that because the District Court refused to compel the School District to issue a decision in TA 20110006, that case should be deemed final as a practical matter and claim preclusion should apply to the November 17, 2011 claims. Per the Teacher, these claims should have been raised in the earlier case. The ALJ denied this motion orally at hearing and restates that denial here.

The lack of finality remains a bar to the imposition of claim preclusion. That the District Court denied the request for forthwith hearing does not mean that the Teacher is unable to compel the School District to issue a decision in TA 20110006. In the first place, the Teacher can appeal the District Court's action. Secondly, the Teacher can renew the request following this decision in TA 20110027. The District Court may have wanted to wait to learn the effect of the outcome of this proceeding before deciding whether to require the School District to issue a decision.

The School District's Second Motion for Recusal

Also on February 29, 2012, the School District moved to recuse the ALJ once again. This time, an affidavit was included. It was authored by School District's counsel who appeared at the October 24, 2011 hearing in TA 20110006. Different counsel represented the School District at the hearing March 5-9, 2012 in this case, TA 20110027. This motion to recuse was filed three business days prior to the start of the five day hearing set to begin March 5, 2012. The February 29, 2012 motion contains little new that was not submitted with the December 15, 2011 motion and nothing that was not known at both times.

Section 22-63-302 contains no provision for a motion for recusal of the ALJ. An ALJ is assigned after the failure of the parties to agree on a hearing officer. Section 22-63-302(4)(a), C.R.S. The Administrative Procedure Act at Section 24-4-105(3) requires a "*timely* and sufficient affidavit of personal bias of an administrative law judge." [Emphasis added.] Because the motion was filed so close to hearing and long after the original motion was denied for failure to include an affidavit, it is untimely. See *People ex rel. S.G.*, 91 P.3d 443, 449 (Colo. App. 2004). Moreover, because the School District knew of the grounds for recusal, but waited to see the outcome of its January 25, 2012 motion for reconsideration before filing a proper motion for recusal with an affidavit, it has waived the right to seek recusal. See *Aaberg v. Dist. Court*, 136 Colo. 525; 529, 319 P.2d 491, 494 (1957) and *In re Marriage of Fifield*, 776 P.2d 1167, 1168 (Colo. App. 1989).

Additionally, neither the motion nor the affidavit provides a sufficient basis for recusal. The motion asserts that the ALJ is biased against the School District because he determined in this case TA 20110027 that the claims in TA 20110006 had already

been adjudicated. But of course, a judge's ruling on a legal issue cannot form the basis for recusal. *Brewster v. District Court*, 811 P.2d 812 (Colo. 1991).

Finally, the affidavit asserts that the actions of the ALJ at the October 24, 2011 hearing in TA 20110006 are a basis for recusal. In considering a motion to recuse, a judge may not determine the truth or falsity of the supporting allegations, but only the legal sufficiency of the factual averments made. See *Goebel v. Benton*, 830 P.2d 995, 1000 (Colo. 1992). To sustain a motion to recuse, the facts alleged in the affidavits may not be based on "mere suspicion, surmise, speculation, rationalization, conjecture, [or] innuendo," nor can they be "statements of mere conclusions of the pleader." *Johnson v. District Court*, 674 P.2d 952, 956 (Colo. 1984).

Affidavits in support of recusal must concern "actual events and statements which, if true, evidence partiality or the appearance of bias or prejudice against" a party. *Id.* The affidavit does not identify any specific statements. It provides only: "During my exchange with Judge Norwood, he became angry and agitated towards me." This statement fails to establish a basis for recusal. See *People v. Coria*, 937 P.2d 386, 391-92 (Colo. 1997). The motion to recuse was therefore denied on the first day of hearing. The ALJ restates that denial here.

Findings of Fact

Based upon the evidence presented at the hearing, the ALJ makes the following findings of fact:

The Teacher and His Duties

1. The Teacher has been a teacher for the School District for 15 years. He has taught a wide variety of subjects. In approximately 2004 he began teaching special education classes at South High School ("South"), a school in the School District.

2. He taught "inclusion" and "non-inclusion" classes. In inclusion classes, the Teacher assisted special education students in classes where they were together and "included" with non-special education students. These classes had a teacher other than Mr. Hansen.

3. Only special education students attended non-inclusion classes. In those classes, Mr. Hansen was the only teacher.

4. The Teacher also ran an after-school tutoring program as part of his teaching duties.

5. Special education teachers will meet with parents of special education students to go over the "IEP" for the student. Colloquially, "IEP's" are referred to as "independent educational plans." Technically, they are "independent educational programs" as defined in 34 C.F.R. § 300.22.

6. An "IEP team," consisting of the parents, a regular education teacher, a special education teacher and others, as defined at 34 C.F.R. § 300.321, is to meet annually. 34 C.F.R. § 300.324 (b)(1)(i).

7. A case manager coordinates the annual review. The Teacher was a case manager for a number of special education students. These students were not necessarily in his classes.

The Teacher's February 15, 2005 Class

8. On this date the Teacher's then supervisor, Betty Golembeski, observed the Teacher teach a class. She completed a form setting out her observations, exhibit 24, p. 1. She wrote on the form that the students were actively engaged in discussing and taking notes. As an "area of concern" she wrote:

Mr. Hansen seemed to concentrate his efforts on a select group of students – leaving some students out of the discussion. In area of Special Ed Mr. Hansen needs to work cooperatively with colleagues and get to know his students (case load) better.

9. No "verbal warning," identified as such, was given to the Teacher regarding the matters in this "area of concern."

10. There is a place on the form for the Teacher to respond to the concerns. The Teacher wrote that he *did* know his caseload.

11. At some point in time when Ms. Golembeski was his supervisor, she confronted him about attending his inclusion classes. The Teacher admitted to her at that he was not attending all inclusion classes and would start. This matter was handled informally.

The Teacher's 2005-2006 Evaluation

12. For the 2005-2006 school year, Ms. Golembeski completed a School District classroom teacher comprehensive performance form, exhibit 24, pp. 2-8. This is the only such form in evidence in this case against the Teacher.

13. Ms. Golembeski dated her signature on the form April 12, 2006. The form contains a grid in which five standards are measured against five criteria. Ms. Golembeski evaluated the Teacher as "meeting" or "exceeding" in all categories of the grid.

14. Ms. Golembeski also completed the portion of the form "strengths" and "area(s) for improvement." For "strengths" she wrote:

Mr. Hansen is a valuable asset to the inclusion program at South. He works well with the mainstream teachers and they all feel very lucky to have him in class with them. He works well with his colleagues and goes out of his way to make sure that his students' IEP's are up-to-date and appropriate. He promotes positive relations with his students and they know that Scott truly wants them to be successful in high school. He communicates well with parents and is always fully prepared at staffings. I feel very comfortable that Scott is providing his special needs students with the best possible education.

15. For "area(s) for improvement," she wrote:

I would like to see Scott teach at least one resource class because I think his students could use his valuable expertise with SPED students.

Adam Kelsey

16. In the 2006-2007 school year, the Teacher taught special education students in an inclusion social studies class. Adam Kelsey was the social studies teacher. At times, Mr. Hansen would not arrive on time and would frequently leave the classroom to obtain materials from his office.

17. On occasion in the classroom, the Teacher would verbally provide answers to Mr. Kelsey's questions before students had an opportunity to answer. Teachers can legitimately provide answers when students are stuck or simply to avoid dead air. There was no evidence that Mr. Kelsey or anyone else ever told the Teacher that his responses to questions were inappropriate or "disruptive." There is insufficient evidence that this conduct was "disruptive behavior" as alleged by the School District.

18. As to the non-special education students in Mr. Kelsey's classroom, the Teacher gave more attention to the girls than to the boys.

19. Because of these and other concerns, Mr. Kelsey asked that the Teacher not be assigned as a special education teacher to his class after the 2006-2007 school year. From prior experience, he believed other special education teachers would do a better job.

Supportive Colleagues

20. In contrast to Mr. Kelsey, Steven Bonansinga was a mathematics teacher at South who had a high opinion of the Teacher's work. Mr. Bonansinga had the Teacher in his classroom as an inclusion teacher for one to three classes over a five year period. Mr. Bonansinga felt that he and the Teacher worked well together as a team. He believes that Mr. Hansen is one of the best inclusion teachers he has worked with.

21. Mr. Bonansinga especially valued the Teacher's knowledge of mathematics. Mr. Bonansinga felt that the Teacher showed flexibility and patience with special education students.

22. Mr. Bonansinga is also complimentary of the Teacher's work with the after-school tutoring program.

23. Deborah Shope was another teacher at South who holds a high opinion of the Teacher. She observed him as an inclusion teacher in her mathematics classes. According to her, he had very good interactions with students, was always helping, never standing around.

24. Baruch Yitzchaki was yet another special education teacher at South with a favorable opinion of the Teacher. Per Mr. Yitzchaki, Mr. Hansen was a very good teacher, was very professional and Mr. Yitzchaki would love to have him back.

Dr. Antonio Acuna

25. Dr. Antonio Acuna was a school psychologist at South. From time to time he would attend IEP meetings with the Teacher and parents. Dr. Acuna wished that the Teacher was better prepared for these meetings and was concerned that the Teacher had not seen or worked extensively with the students in question. The dates he wished this were not established by the evidence.

26. On multiple occasions, the dates of which are not established by the evidence, Dr. Acuna observed two boys in the Teacher's "resource" class who were never on task. There is no specific structural lesson in a resource class; according to Dr. Acuna it is "close to" a study hall. These two boys had grades that were failing, or close to failing. The evidence does not disclose whether these students had an attention deficit disorder, as is the case with some special education students.

27. According to Dr. Acuna, the Teacher should be credited for developing rapport with the students, which Dr. Acuna regards as critically important. Dr. Acuna's approach would have been to do less in the way of rapport building with students and more in the area of task completion.

28. According to Dr. Acuna, on three to five occasions over a two year period, the Teacher told Dr. Acuna prior to an IEP meeting that he had not seen the student, didn't know the student or was unprepared for the IEP meeting. At these meetings, per Dr. Acuna, the Teacher was the case manager. The Teacher denies saying this.

29. The ALJ finds that the Teacher indeed made this statement and was so unprepared. In making this finding, the ALJ relies, in part, on an email sent to the Teacher in December 2008. In the email a school social worker asked the Teacher whether he was working with a student with a very unique name. The email provided a great deal of information regarding the student's family situation. The Teacher emailed back that he was unsure. With the unique name and detailed family history, the Teacher would have known whether or not the student was on his caseload if he had been properly familiar with his caseload.

30. Nevertheless, the details of this unfamiliarity with the students have not been established. The evidence does not provide when, during his time at South, the Teacher made these statements.

The 2008 Emails

31. In an August 13, 2008 email, the Teacher apologized to another teacher for making an "inappropriate disclosure" regarding a School District employee. The nature of this disclosure is not disclosed by the evidence. The Teacher referred to himself as a "jerk."

32. In an email in late September 2008, the Teacher complained to Dr. Acuna that he had been given too much paperwork to see his caseload.

The February 4, 2010 Incident with Jeanette Broz

33. Jeanette Broz was another special education teacher who shared a classroom with the Teacher in the 2009-2010 school year. She began teaching at

South after the start of the school year. She had replaced another teacher who had been put on administrative leave. This other teacher had been a friend of Mr. Hansen's.

34. On February 4, 2010, the Teacher abruptly broke in on a closed door IEP meeting that Ms. Broz was conducting with a family. He told her that she had left her purse out and the classroom computer unlocked. Ms. Broz was flustered and embarrassed in front of the family. Even if the Teacher was unaware of the nature of the meeting, he should have taken more care to prevent such an interruption.

35. Half an hour later, Ms. Broz was logged in under her name and was working on the computer in the classroom she shared with the Teacher. She got up to speak to a student in the hall. When she returned, the Teacher was using the computer. This was a rude intrusion into her personal space. She asked him if he could use the school issued lap top that he usually used. He said he couldn't be bothered, or words to that effect.

36. Amy Bringedahl was an Assistant Principal at South for the 2009-2010 school year. She was the Teacher's supervisor. Stephen Wera was another Assistant Principal who was not the Teacher's direct supervisor.

37. On February 10, 2010, Assistant Principals Bringedahl and Wera met with the Teacher and Ms. Broz to discuss Ms. Broz's complaints, which she had committed to writing in an email to Ms. Bringedahl. Also in attendance was Susan Pinckney-Todd the grievance representative at South from the Denver Classroom Teachers Association. The following occurred at the meeting:

a. All the participants at the meeting, including the Teacher, agreed in relation to the interruption of the IEP meeting that the Teacher should have used a more respectful manner. The Teacher stated that he was unaware that Ms. Broz was in an IEP meeting.

b. In relation to taking over at the computer, the Teacher said that he was sorry and that he didn't mean to do it. He also said that the computer was for both of them and that he had been instructed not to use the lap top for attendance. He said that it was to take attendance that he had used Ms. Broz's computer. He said he didn't remember saying that he couldn't be bothered.

c. At one point in the discussion, the Teacher noted that Ms. Broz started working after the School District had "fired my friend."

d. The Teacher apologized and said that he has a direct manner. He said that he was more than willing to work with Ms. Broz and to let him know if he does something that bothers her.

38. No "verbal warning," identified as such, was given to the Teacher at the meeting.

39. After the meeting the Teacher came into Ms. Bringedahl's office and told her: "I am really trying to change," "I feel like I am wasting your time," "I want to do better and am trying my best," and "I don't want this to happen again."

The May 10 or 11, 2010 Incident

40. At some point on May 10 or 11, 2010, the Teacher told a student that he was on the computer in his class looking for another job. This was not true, however. That same student complained to the Teacher that he was not helping her. According to the Teacher, he had helped her on two problems, but insisted that she do a third problem herself.

41. A meeting was held May 24, 2010 between the Teacher and Ms. Bringedahl. They discussed the student who complained, as well as another student who had made a similar allegation. The Teacher said that during the class, he was creating a study tool for another student for after-school tutoring, not looking for a job. Ms. Bringedahl told the Teacher not to tell students he was looking for another job. Ms. Bringedahl also told the Teacher that the School District would perform a search of his computer.

School District Policy Regarding Computer Use

42. Teachers at South are not to use their computers for non-school-related activities. However, the administration at South recognizes that some amount of personal use will occur at work and it is not concerned by it.

43. The School District has a policy "EGAEB" regarding internet use. There is insufficient evidence that the School District attempted to familiarize teachers of this policy or that Mr. Hansen was made aware of it.

44. In pertinent part, the policy prohibits:

2. Using the district's network for any inappropriate non-district-related business and/or commercial purpose, product advertising,

...

4. Attempting to access restricted data

45. "Restricted data" does not appear in the definitions portion of the policy. However, common usage indicates that this is confidential data, not data that has been blocked by software. The policy separately prohibits using the district's network in support of an "illegal or obscene activity." The policy defines "obscene activities" as "activities in violation of generally accepted social standards for use of a publicly-owned and operated communication vehicle [including] access to any sexually explicit materials."

46. There is no evidence that the Teacher accessed any obscene or sexually explicit materials. The School District has made no such allegation.

The Teacher's Computer Use May 10 and 11, 2010

47. The School District searched the two computers assigned to the Teacher and created a log of web sites visited by the computers May 10 and 11, 2010.

48. During this period, as shown by the log, the Teacher went to a web site "heraclitus." This is the Teacher's home page, which he uses for school-related and non-school-related activities.

49. Generally speaking, school began for the Teacher at 7:00 a.m.

50. On a number of occasions between 7:07 and 7:35 a.m. on May 11, 2010 the Teacher visited a "panoramio" site. Panoramio contains pictures of places around the world. The Teacher is a photographer interested in nature shots.

51. At 7:35 a.m. on that same date, the Teacher visited "Scottscapes," a web site with the Teacher's landscape and nature photography of the western United States. The web site offers the Teacher's photos for sale and offers his services to take nature photographs. The Teacher calls this something of wishful thinking in that he has never been paid to travel to take pictures. There is insufficient evidence that the Teacher operated a photography business on school time.

52. At 11:00 a.m., the Teacher visited Scottscapes. At 11:09 a.m. the Teacher visited "model mayhem," which advertises itself as a website for professional models and photographers. Within model mayhem, the Teacher searched for the name of a former female student at South High School. The School District's computer software blocked access to the picture of the student and labeled the category of the photo: "explicit art."

The Teacher's Computer Use January 19 to February 4, 2009

53. The School District also searched the computers assigned to the Teacher for the time period January 19 to February 4, 2009. On January 20, 2009, at 9:56 a.m., the Teacher visited photographic supply websites. He did so again at 10:36 a.m. and 10:38 a.m. On January 21, 2009 at 7:49 a.m., he visited Scottscapes.

54. On January 22, 2009 at 1:55 p.m., the Teacher visited Scottscapes and viewed nature pictures from Africa. On January 27, 2009 at 7:38 a.m., the Teacher visited Scottscapes and viewed pictures of Canyonlands National Park. At 12:00 p.m. that same day, the Teacher again visited Scottscapes. At 2:56 p.m., he again visited Scottscapes and pictures of Canyonlands.

55. On February 3, 2009 at 6:43 a.m., the Teacher again visited Scottscapes.

56. Based on the amount of this computer use, the ALJ finds that the Teacher was on the computer doing non-school-related activities during some part of the class periods during the days sampled.

The Teacher's Completion of IEP's

57. In addition to requesting a review of the Teacher's computer usage on May 10 and 11, 2012, Ms. Bringedahl also requested in May 2010 that a review of the Teacher's IEP documentation be done.

58. The IEP forms used by the School District have a place to describe "post secondary education/training" and "career/employment." Teachers in the School District are instructed when completing this portion of the forms to use the words "will" and not "would like" when describing a student's plans. The Teacher erroneously used the

words “would like,” and the School District is critical of this. The Teacher admits that this was a mistake.

59. But this is a trifling criticism. The School District identified no legal authority mandating this choice of words. The requirement may derive from the need to set “[a]ppropriate measureable postsecondary goals” at 34 C.F.R. § 300.320(b)(1). If this is the source of the requirement, saying “will” instead of “would like” does not make the goals any more “measurable.”

60. There was insufficient evidence of any other fault in the Teacher’s completion of IEP paperwork.

The Teacher’s Use of Sick Leave

61. Also during the 2009-2010 school year, the Teacher took a number of sick days. There was insufficient evidence that he took any more than he was allotted.

62. The sick days he did take fell disproportionately on Mondays or Fridays or other days that would extend a weekend or a holiday. From this the ALJ infers and finds as fact that the Teacher took some amount of sick days when he was not really sick. From the evidence, it cannot be determined how many days he did this.

63. There was insufficient evidence that the Teacher failed to provide sufficient or timely emergency lesson plans for when he was absent.

Jeanette Broz

64. As stated, Jeanette Broz shared the Teacher’s classroom during the 2009-2010 school year. She had numerous opportunities to watch him in his algebraic thinking, non-inclusion class. Based on her observations, the ALJ specifically finds:

a. The Teacher did not teach the class in the traditional manner with textbooks and notebooks. The class more resembled a study hall. The Teacher was not engaged with the students.

b. Students would often just be sitting there, occasionally the Teacher would redirect them.

c. The Teacher would often engage in conversations with the students unrelated to mathematics.

d. On more than one occasion, the Teacher showed his slide show of his African safari trip.

e. The Teacher would often be working on a computer during class.

f. One student in particular told Ms. Broz that he was doing nothing in class.

g. Progress monitoring is the method by which student achievement is measured by use of a form. The form was not introduced and the specific requirements of this task were not disclosed by the evidence. The Teacher complained about this task, and more or less refused to do it. He relied on Allison Mitchell, another teacher, to perform this task.

h. The Teacher complained about the fact that the person Ms. Broz had replaced had been fired and that he didn't know why.

i. The Teacher complained about other teachers not carrying their workload. By this, the Teacher was referring to Ms. Broz and a second teacher. These comments were meant to be heard and understood by Ms. Broz as such.

j. Students were coming in and out of the room and were able to overhear the Teacher's complaints.

k. The Teacher's behavior, including his breaking in on her IEP meeting and his using her computer on February 4, 2010, made Ms. Broz feel intimidated and uncomfortable.

65. As testified to by Ms. Broz, the Teacher was not so much irritated by Ms. Broz, as by "the idea" of Ms. Broz. Ms. Broz was hired to replace the Teacher's friend, who had been let go. When she was brought on, she did not have the same case load as Mr. Hansen and other special education teachers because she was new to the school. The Teacher was resentful about this and took it out on Ms. Broz.

66. The School District's evidence fails to tie any of the Teacher's behavior toward Ms. Broz to a date after the February 10, 2010 meeting with Ms. Bringedahl and Mr. Wera. In other words, the School District has not shown that the Teacher failed to change his behavior toward her after he was confronted with it and apologized.

67. During the 2009-2010 school year, the Teacher suffered more than usual from migraine headaches. From time to time he would go to his truck and rest to alleviate the headaches. Ms. Broz saw him there and believed him to be sleeping.

Allison Mitchell

68. Ms. Mitchell was another special education teacher who worked with the Teacher during the 2009-2010 school year. That was her first year as a teacher. She observed the Teacher in an inclusion mathematics class. In Ms. Mitchell's opinion, the Teacher was too quick to eject misbehaving students from the class, and should have instead made more of an effort to get them to quiet down and focus. Ejecting the students created a distraction in the classroom. This was not, however, "disruptive behavior," as alleged by the School District.

69. On the other hand, Ms. Shope testified that she appreciated the Teacher's support in disciplining unruly students.

70. Ms. Mitchell also observed the Teacher in non-inclusion classes. She observed, and the ALJ finds as fact, as follows:

a. The Teacher showed the students slide shows of his photography. The time spent on the slide shows well exceeded what could legitimately be described as "rapport building" and took up a great deal of the class period.

b. The Teacher failed to properly circulate in the classroom and redirect students who were off-task.

c. The Teacher failed to complete the progress monitoring forms.

71. Ms. Mitchell appreciated some of the guidance she received from the Teacher because she was new and he was a veteran teacher. Overall, however, she believed that he was “burned out.”

The Teacher’s May 14, 2010 Algebraic Thinking Class

72. On May 14, 2010, Ms. Bringedahl performed an informal observation of the Teacher’s performance in his algebraic thinking, non-inclusion class. A formal observation is to be scheduled in advance, is recommended to last 20 minutes, and includes a pre and post-observation conference between supervisor and teacher. An informal conference has none of these requirements. Exhibit 4, p. 31.

73. At least one formal observation is required for an evaluation of a non-probationary employee such as the Teacher, according to the agreement and partnership between the School District and the Denver Classroom Teachers Association effective September 2008 to August 2011, exhibit 4. Evaluations of non-probationary employees are to be performed once every three years. Exhibit 4, p. 30.

74. Algebraic thinking was a class to support students in their regular mathematics classes. The students were at different ability levels.

75. Based on Ms. Bringedahl’s 25 minute observation May 14, 2010 (exhibit 23, pp. 2-3), the ALJ specifically finds:

a. The class was made up of six students, a typical amount for a non-inclusion class.

b. The statement on the board was only “review fractions and decimals.” This had been the same activity one week prior. Some of the students finished early and engaged in off-topic discussions.

c. Two students engaged in off-topic discussions about skateboarding, but the Teacher did not redirect them.

d. The Teacher stated that he hoped the students were doing something fun for the upcoming summer break. This caused at least three students to start talking about summer vacation and pulled them away from the learning at hand.

e. Two students did not work for almost ten minutes. The Teacher did not, in this time, attempt to redirect them toward work.

f. Only two of the students answered the Teacher’s questions; he should have engaged the other students who were not answering.

76. Assistant Principal Bringedahl criticized the Teacher’s performance in writing on a form, exhibit 23, pp. 1-2. The Teacher filled out a portion of the form in response. Ms. Bringedahl was concerned that, during the entire 25 minutes that she observed, the students were engaged in a “warm-up activity,” namely, the review of fractions and decimals with a review sheet. A warm-up activity is designed to get students engaged at the start of class and should only last two to five minutes. As a consequence, Ms. Bringedahl believed that there was no proper instructional objective.

77. The Teacher justified his review of fractions and decimals in his written response. He noted that some of his students are stuck on fractions and have been

stuck since they were introduced to them in the fourth grade. He noted that his special education students have various math abilities and some do not speak English as well as others. He wrote that the class was supposed to have been "leveled" by ability, but was not. The ALJ finds that the School District has failed to prove either that the Teacher's teaching of decimals and fractions was an improper activity or that there was no proper instructional objective.

78. The Teacher justified his encouragement and tolerance of off-topic discussions as "rapport building." The ALJ rejects this justification. The class observed was toward the end of the school year. To the extent that rapport could have been established, it should have been established by that time. This was just a rationalization for not planning for and not controlling the class.

The Notice of Intent to Dismiss

79. In August 2010, the School District placed the Teacher on administrative leave. As discussed above, the notice of intent to dismiss is dated November 17, 2011.

80. Except as described below, all of the allegations in the notice of intent to dismiss were made without any discussion with the Teacher to learn his version of events. Also, except as described below, all of the allegations in the notice of intent to dismiss were made without offering the Teacher an opportunity to remediate his behavior. The exceptions are:

a. Ms. Golembeski made written comments following her February 15, 2005 observation of his class. The Teacher made written comments in response. None of the concerns expressed by Ms. Golembeski were reiterated in her classroom teacher comprehensive performance form for the following 2005-2006 school year.

b. The School District met with the Teacher on February 10, 2010 to discuss Ms. Broz's concerns regarding the interruption of the IEP meeting and his use of the computer after she was signed on.

c. Ms. Bringedahl made written comments after her informal observation of the Teacher's May 14, 2010 class. The Teacher was allowed to make written comments in response.

d. Ms. Bringedahl met with the Teacher May 24, 2010, at which time the Teacher was told not to tell students he was looking for a job.

81. No written warnings or letters of reprimand were issued by the School District regarding any of the conduct alleged in the notice of intent to dismiss. Nor was the Teacher ever subject to a "verbal warning," identified to him as such. He did receive verbal criticism and he was told not to tell students he was looking for a job.

82. There is no evidence that the Teacher was noticed, evaluated or provided an opportunity to remediate by a written system to evaluate teachers adopted by the School District pursuant to Section 22-9-106, C.R.S.

83. The notice of intent to dismiss alleges that the Teacher's identified conduct constitutes "neglect of duty," "insubordination," "immorality," "incompetency" and "other good and just cause" for dismissal. These terms appear in Section 22-63-301.

Discussion

"Unsatisfactory Performance" vs. "Neglect of Duty"

Not alleged is "unsatisfactory performance." When this is a ground for dismissal, the School District is required, per Section 22-63-302(8), to establish that the particular teacher has been evaluated by a written system to evaluate licensed personnel adopted by the School District pursuant to Section 22-9-106. Section 22-9-106(3.5) requires that a teacher be given notice of deficiencies, a reasonable period of time to remediate the deficiencies, as well as a statement of the resources and assistance available for the purposes of correcting performance or the deficiencies.

Through counsel, the Teacher asserts that the School District's allegations are really in the nature of "unsatisfactory performance," but that the School District has not made this allegation in order to get around the requirements of Section 22-9-106.

A statute is to be construed to further legislative intent. *Martinez v. Continental Enterprises*, 730 P.2d 308, 315 (Colo. 1986). Legislative intent would be thwarted if a school district were permitted to evade the requirement of a written system to evaluate by choosing a different allegation where "unsatisfactory performance" is the actual basis for the proposed dismissal. On the other hand, the General Assembly has not required a written system in the case of "neglect of duty" or "other good and just cause." The task then is to determine whether the complained of conduct is more accurately in the nature of "unsatisfactory performance" or some other basis for which a written evaluation system is not required.

"Neglect of duty occurs when a teacher fails to carry out his or her obligations and responsibilities in connection with the classroom and other school sponsored activities." *School District No. 1 v. Cornish*, 58 P.3d 1091, 1096 (Colo. App. 2002), citing *Board of Education v. Flaming*, 938 P.2d 151, 158 (Colo. 1997). In *Cornish* at 1096, the teacher in question "adamantly refused to teach the math curriculum." In *Flaming* at 159, the Court determined that a teacher's failure to comply with discipline policies constituted "neglect of duty." In that case, the teacher was dismissed following a fourth incident of physical discipline of a child. The teacher had been warned against this in the three prior incidents.

These cases, as well as common usage of the terms "unsatisfactory performance" and "neglect of duty," indicate that "neglect of duty" means something more than simply failing to perform satisfactorily. Also, using remediation where it will do some good promotes the legislative intent evinced by Section 22-9-106: to provide an opportunity for a teacher with unsatisfactory performance to improve. That the General Assembly did not require remediation in the case of "neglect of duty" makes sense in that such conduct is less or not at all suited to remediation. The ALJ will apply this distinction in examining the School District's allegations.

The School District's Allegations

Paragraph A

Paragraph A of the notice of intent to dismiss alleges that the Teacher engaged in "disruptive behavior" in inclusion classes. No such disruptive behavior was proven. As a basis for its allegation, the School District relies on the fact that the Teacher gave answers in Mr. Kelsey's class in the 2006-2007 school year and the fact that Ms. Mitchell believed that the Teacher was too quick to remove misbehaving students from class. Such conduct is not fairly alleged as "disruptive behavior."

Paragraph B

Paragraph B alleges that the during the Teacher's non-inclusion classes, students were regularly off task while the Teacher was disengaged, sitting at his desk, or on his computer. This allegation is proven. Paragraph B also alleges that the Teacher repeatedly showed still photographs to students. This allegation is proven as well.

These allegations are supported by the testimony of Ms. Broz and other evidence. Ms. Broz described a class that was essentially a study hall, with the Teacher talking to the students about unrelated topics, showing slide shows and working on the computer. The Teacher's counsel argues that Ms. Broz's testimony is biased because she hates the Teacher. But Ms. Broz's testimony is supported by the observations of Ms. Mitchell, who has had no apparent conflict with Mr. Hansen.

Ms. Bringedahl's observations on May 14, 2010 are also consistent with both the testimony of Ms. Broz and Ms. Mitchell. Even though Ms. Bringedahl was there to evaluate him, the Teacher nevertheless inappropriately talked to the students about their summer breaks and did not redirect students engaged in off-topic discussions. The samples of the Teacher's computer for the periods January 19 to February 4, 2009 and May 10-11, 2010 show that the Teacher was on the computer a significant amount of time during the day, some of which had to be during class.

The ALJ also finds that these proven allegations in paragraph B demonstrate "neglect of duty" that goes beyond mere "unsatisfactory performance." From the testimony of Ms. Broz, Ms. Mitchell and Ms. Bringedahl, a clear picture emerges of a teacher who was not simply unaware of how to do his job. Indeed, the Teacher is a veteran teacher. Rather, it is a picture of someone who is just going through the motions, who has essentially given up on his students, who was "burned out." This behavior came from the Teacher's sense that he was not supported and was required to do an unfair amount of work. He was likely irritated as well by the requirement to perform paperwork, such as progress monitoring. Remediation is not well suited to this conduct.

No doubt, teaching a classroom of special education students, students with very different and individual obstacles to learning, is a difficult job. Nor can the School District legitimately require superhuman effort or a miracle worker. Nevertheless, a special education teacher is required to continue to make an effort with these students. This duty was neglected by the Teacher.

The allegations in paragraph B that the Teacher often spent time socializing with select students, talking about photography or his photography side business or that he showed videos of his world travels were unproven.

Paragraphs C and D

None of the allegations in paragraph C regarding parent or student complaints were proven.

The School District has proven the allegation in paragraph D that the Teacher “consistently neglected progress monitoring obligations.” The School District has not proven the allegation in D that he “was emphatic that he disagreed with the District’s protocols for progress monitoring of students.”

Paragraphs E and F

The ALJ has credited the testimony of Dr. Acuna that the Teacher was unfamiliar with three to five of his students for which he was case manager. Therefore, the allegation in paragraph E that the Teacher failed to familiarize himself with students assigned to his caseload has been proven. *When* this conduct occurred during the eight years that the Teacher was at South, has not been established. As such, this conduct is insufficient to support a recommendation of dismissal.

There was no evidence in support of the allegation in paragraph E that the Teacher asked a colleague to “cover” for him at an IEP meeting. Nor was it proven, as alleged in paragraph F, that the Teacher selectively provided services to certain students, that he fixated on one student, or that he attempted to remove challenging students from his caseload.

Paragraphs G and H

None of the allegations in paragraph G concerning IEP’s are proven. No state or federal requirement for IEP’s, requirements the Teacher is alleged to have violated, were identified. It is true that the Teacher used the term “would like” instead of “will” when completing the IEP forms, but this error is insignificant.

The allegation in paragraph H that the Teacher was “seen sleeping” in his truck in the parking lot during planning periods was unproven. The Teacher was in his truck attempting to recover from a migraine headache.

Paragraph I

Paragraph I alleges that the Teacher “violated the District internet policy EGAEB by spending time online during the school day on non-educational matters including operation of his personal photography business and other personal pursuits.”

In the first place, there is insufficient evidence that the Teacher was made aware of the policy. Secondly, there was insufficient evidence that he was operating a personal photography business or that he even had such a “business.”

There can be no doubt that during the days sampled, the Teacher spent time goofing off, looking at pictures. But it is a stretch to say that the policy forbids this. There is no allegation that he looked at anything obscene or pornographic and no evidence that he did so. The allegations in paragraph I are unproven.

Paragraph J

Paragraph J relies on the testimony of Ms. Golembeski and asserts that the Teacher frequently failed to appear in scheduled classrooms and that classroom teachers complained that his whereabouts were unknown. The ALJ finds as fact that the Teacher did not attend all inclusion classes, as he admitted to Ms. Golembeski. This aspect of paragraph J is proven.

When the Teacher did this is not clear. But it had to be more than five years in the past, because that is how long Ms. Golembeski has been away from South. The significance of this failure is belied by the fact that it was not mentioned in Ms. Golembeski's very favorable evaluation of the Teacher for the 2005-2006 school year, where she wrote: "Mr. Hansen works very effectively in the inclusion classes." The incident was apparently un concerning to the South administration at the time and was handled informally.

Paragraphs K and L

The allegation that the Teacher was "excessively" absent, is proven in that he took some amount of sick days that he was not really sick during the 2009-2010 school year. How often he did this is not established.

Using sick leave when one is not really sick, even if only rarely, is "neglect of duty." Other than telling a teacher not to do this, something a teacher should know already, it is difficult for school administrators to remediate this problem. Administrators cannot tell if a teacher is really sick. The requirement of a doctor's note is impractical in that teachers can be legitimately sick and not go to the doctor.

There is insufficient evidence that the Teacher failed to provide lesson plans for substitute teachers during his absences as alleged in paragraph L.

Paragraphs M, N, O, P and Q

The School District agreed at closing that there is no evidence in support of the allegations in paragraphs M, N and P and these allegations are unproven.

Paragraph O alleges, based on Mr. Kelsey's observations, that the Teacher "was inappropriately focusing on female students rather than male students." It is true that the Teacher favored the girls over the boys. But there is no evidence that he did so for any reason other than, for example, the fact that girls are often better behaved. There is no evidence of any boundary issue on the part of the Teacher as alleged by the use of the word "inappropriately." Paragraph O is unproven.

The Teacher complained about colleagues as alleged in paragraph Q. Unproven was the allegation in Q that the Teacher would "constantly argue and complain about ... District policies, and inappropriately confront or criticize South administrators." All other allegations in paragraph Q were unproven. There is no evidence of the "multiple written and verbal warnings" alleged by the School District.

Paragraph R

As alleged in paragraph R 1), the Teacher created a demoralizing and negative climate for Ms. Broz in that he complained about the fact that the person she took over

for, his friend, had been let go. The Teacher's comments about "firing my friend" made Ms. Broz feel unwelcome and were meant to make her feel that way.

That the Teacher apologized about being a jerk at the August 13, 2008 meeting, is insufficient to establish the allegation regarding it in R 2).

The allegation in R 3) that Ms. Golembeski verbally warned the Teacher about his "unprofessional interactions with colleagues" was unproven.

Paragraph S

As alleged in S 1), the Teacher did complain about people not carrying a proper workload, implying Ms. Broz and another teacher. This was done in a manner meant to be heard and understood by Ms. Broz as applying in part to her. There was no evidence in support of the School District's allegation that the Teacher would repeatedly make "intimidating faces," at Ms. Broz or that he would slam his book on his desk and shake his head in a negative manner towards her.

The Teacher improperly interrupted Ms. Broz's February 4, 2010 IEP meeting with a family as alleged in paragraph S 2). There is insufficient evidence that he addressed Ms. Broz in an unprofessional tone of voice.

Also that day, the Teacher rudely took over at the computer Ms. Broz was using. This was alleged, in essence, in paragraph S 3).

There was no evidence in support of the allegation in paragraph S 4). That allegation was that the Teacher inappropriately told a student with an IEP that she was being reassigned because another South special education teacher did not have enough work to do.

The School District has failed to prove that the intervention done by Ms. Bringedahl and Mr. Wera at the February 10, 2010 meeting was unsuccessful. The evidence does not tie the Teacher's conduct toward Ms. Broz to any date after this meeting. Again, the Teacher apologized at the meeting and afterward to Ms. Bringedahl. Also, no written or verbal warning identified as such was issued.

There is insufficient evidence that South administrators had to spend a disproportionate or significant amount of resources addressing conflicts and investigations regarding the Teacher. This was alleged in paragraph T. Whether the Teacher was particularly more troublesome than others was not established. Moreover, it is part of the job of administrators to deal with interpersonal conflicts of staff. The allegations in paragraph T are unproven.

Paragraphs U, V and W

The allegations in paragraph U are unproven. It is true that Mr. Kelsey asked that the Teacher not be assigned to his classroom after the 2006-2007 school year. But there is insufficient evidence that this preference was based on any objective misconduct on the part of the Teacher. There is insufficient evidence that Mr. Kelsey ever told the Teacher about the concerns he had. There is also insufficient evidence of "multiple incidents during which Mr. Hansen disrupted [Mr. Kelsey's] class, blurted out answers, and would raise his hand to answer questions, as if he was a student."

The School District agreed that it presented no evidence in support of the allegations in paragraph V.

There is insufficient evidence in support of the allegations in paragraph W that the Teacher failed to take responsibility for his work or that he inappropriately delegated his work to colleagues.

Other Matters

There was insufficient evidence of any order of a superior that the Teacher disobeyed.

There was insufficient evidence of any immoral behavior on the part of the Teacher or that any such behavior reflected on his fitness to teach.

The School District provided insufficient evidence that the Teacher was incompetent or could not perform his duties.

Conclusions of Law

Based upon the foregoing findings of fact, the ALJ enters the following conclusions of law:

1. The School District has the burden of proof in this matter. Section 22-63-302(8).

2. Section 22-63-302(2) requires the School District to include in the notice of intent to dismiss "the reasons for dismissal." The School District alleged in paragraph A that the Teacher engaged in "disruptive behavior," but failed to identify what it was referring to. At closing, counsel for the School District explained that this referred to Mr. Kelsey's observation that the Teacher provided answers to questions and Ms. Mitchell's belief that the Teacher was too quick to eject students. This evidence failed to establish "disruptive behavior." Moreover, the failure to identify these specific incidents as the basis for the allegation of "disruptive behavior" was not in compliance with Section 22-63-302(2). Due process requires adequate notice of opposing claims. *Snyder v. Colorado Podiatry Board*, 100 P.3d 496, 501 (Colo. App. 2004).

3. Again, the School District alleges that the Teacher's conduct constitutes "neglect of duty," "insubordination," "immorality," "incompetency" and "other good and just cause."

4. The ALJ has found above and concludes here that the Teacher has engaged in "neglect of duty," more than the mere, unalleged "unsatisfactory performance." Specifically, this is based on his not really teaching the students in his algebraic thinking, non-inclusion class. This was shown by the testimony of Ms. Broz, Ms. Mitchell and Ms. Bringedahl.

5. That his conduct was "neglect" was shown by the fact that his class resembled a study hall, that he would not redirect idle students, that he would show, on more than one occasion, his African safari slide show and that he spent class time on the computer, not related to class work. Further support for this neglect came in his

failure to perform practice monitoring and his use of sick leave when he was not really sick.

6. The School District has proven other allegations, but they are insufficient to impose discipline. It is true that the Teacher was unfamiliar with three to five students for which he was the case manager. But the facts and circumstances surrounding this unfamiliarity were not sufficiently established.

7. The Teacher's use of the term "would like" on IEP's is insignificant. That the Teacher agreed he had not been attending all inclusion classes was handled informally by Ms. Golembeski.

8. "Insubordination" includes both a constant or persistent course of willful defiance of reasonable orders of a lawful superior or any particular instance of such willful disobedience of a reasonable order. *Ware v. Morgan County School District No. RE-3*, 748 P.2d 1295, 1300 (Colo. 1988). No insubordination on behalf of the Teacher has been proven by the School District.

9. "Immorality" must relate to a teacher's "fitness to teach." *Ricci v. Davis*, 627 P.2d 1111, 1117 (Colo. 1981), citing *Weissman v. Board of Education*, 190 Colo. 414, 547 P.2d 1267, 1272 (Colo. 1976). In *Ricci*, the Court upheld the dismissal of a teacher based on a finding that he hugged, touched or kissed five female students and that at least three of these incidents occurred in a sexually charged setting. *Ricci*, 1119-20. *Weissman* upheld the dismissal of a teacher, who, on a school-related field trip, touched and tickled female students while riding in the back of a van.

10. The *Weissman* Court required at 1272 that "immorality":

[B]e in relation to, or affect, the teacher's work,

And that the teacher's actions,

[C]annot constitute immorality within the meaning of the statute unless these actions indicate his unfitness to teach.

11. The School District has failed to prove "immorality" on the part of the Teacher.

12. "[I]ncompetence indicates the inability to perform." *Benke v. Neenan*, 658 P.2d 860, 862 (Colo. 1983). The School District has failed to prove incompetence on the part of the Teacher. Also, competency to teach implicates the requirement to remediate argued for by the Teacher.

13. "Other good and just cause" includes "any cause bearing a reasonable relationship to the teacher's fitness to discharge her duties" or "which materially and substantially affects performance." *Flaming, supra* at 159, quoting *Fredrickson v. Denver Public School District No. 1*, 819 P.2d 1068, 1073 (Colo. App. 1991). That the Teacher created a demoralizing and negative climate for Ms. Broz constitutes such "other good and just cause." It is true that the School District failed to show that the Teacher's behavior did not respond to the February 10, 2010 intervention. Nevertheless, the fact that the Teacher behaved in the manner at all demonstrates this basis for dismissal.

Recommendation

Section 22-63-302(8) provides that the hearing officer, in this case the ALJ, make only one of two recommendations: dismissal or retention. Many of the allegations were *de minimus* or groundless. Nevertheless, the ALJ is very troubled by the Teacher's lack of real teaching in his non-inclusion class. The Teacher did not provide these students the level of attention his duty required. Also, being unpleasant to Ms. Broz was unprofessional. The ALJ therefore recommends that the Teacher be dismissed.

DONE AND SIGNED

March 23, 2012



MATTHEW E. NORWOOD
Administrative Law Judge

Hearing Recorded in Courtroom 2

Exhibits:

For the School District: 11 (The bracketed portion setting out student statement was offered but not admitted); 15, p. 001 (Admitted only for those statements indicated to which the Teacher nodded and his statement "fired my friend." Note that this page is a copy of exhibit 11. The remainder of the exhibit was offered, but not admitted.); 15, p. 002 through 005 (Only the statements of the Teacher are admitted; they are highlighted in green. The remainder of the exhibit was offered, but not admitted.) 19 (except for pages 3, 25, 43, 64, 85, 105, 128, 148, 168, 195, 207, 219, 231, 243, 255, 267, 279, 291, 305, 318, 329, 341, 354 and 367. All of these pages are notes of Gene Bamesberger; they were offered, but not admitted.); 20; 21; 22 (Only the statements attributed to the Teacher are admitted; they are highlighted in green. The remainder of the exhibit was offered, but not admitted.); 23; 24 p. 1; 25 pp. 7-8, 11-12, 18; 27; 28 (The bracketed portion setting out the parents' statement was offered, but not admitted); 29; 31; 32; 33; 34; 35; 36; 37; 38; 39 and 40.

Exhibit 30 was offered, but not admitted.

For the Teacher: F and F2; 4 and exhibit 24, pp. 2-8.

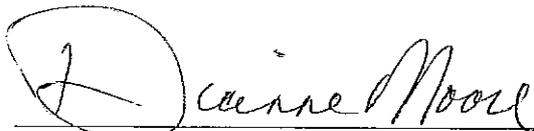
CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the above **DECISION** by placing same in the U.S. Mail, postage prepaid, at Denver, Colorado on this 28 day of March 2012, addressed to:

Holly Ortiz, Esq.
1120 Lincoln Street, Suite 1308
Denver, CO 80203

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Office of Administrative Courts

Denver Public Schools

OFFICE OF THE SUPERINTENDENT

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March 17, 2011

Board of Education
Denver Public Schools
900 Grant St.
Denver, CO 80203

Re: Recommendation to Dismiss Scott Hansen

Dear Board Members:

It is my duty under the Teacher Employment, Compensation and Dismissal Act, Colo. Rev. Stat. § 22-63-101, et seq., to recommend the dismissal from employment of Mr. Scott Hansen, a special education teacher assigned to South High School ("South") on the basis of neglect of duty, insubordination, immorality, and other good and just cause.

This dismissal action arises out of Mr. Hansen's engagement in repeated unprofessional communication with coworkers, his hindrance of two investigations of students with weapons, and his inappropriate comments made to a female student.

Unprofessional Communication with Administrators, Coworkers, and Parents

1. Mr. Hansen has repeatedly engaged in uncooperative and unprofessional communication with administrators, coworkers, and parents and failed to develop productive ways of engaging others and expressing disagreement.
2. On December 21, 2007, Mr. Hansen interrupted a meeting conducted by Assistant Principal David Daves by refusing to leave and loudly stating his grievances. Despite the fact that Assistant Principal Daves was meeting with a separate employee about an unrelated matter, Mr. Hansen interjected himself in their discussion. In a loud and aggressive voice, he complained about the schedule set by Assistant Principal Daves and stated that certain teachers were unqualified to teach their classes. Mr. Hansen then left without receiving a response.

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Exhibit B

3. During August of 2008, Mr. Hansen complained bitterly in a series of emails about repairs needed for a room used by the special education department. Assistant Principal Daves asked for clarification on the matter and asked to meet with Mr. Hansen. Without consulting facilities management, Mr. Hansen first attempted to make repairs himself. He then complained by email to Assistant Principal Daves about the state of his room and demanded repayment for his efforts. Mr. Hansen ordered Assistant Principal Daves to “reimburse me for my expense, or send all this crap to Fred.” He finished by complaining, “I don’t know why I started fixing things anyway? No one else will!”
4. In September of 2009, Mr. Hansen disrupted a meeting with DPS officials by loudly complaining about revised special education procedures. Principal Stephen Wera, another participant in the meeting, addressed Mr. Hansen’s unprofessional behavior after the meeting by instructing him not to speak in such a loud voice and to behave more professionally at meetings in the future.
5. Mr. Hansen refused to complete an online, college readiness survey despite an administrative directive to do so. In November of 2009, Principal Wera directed Mr. Hansen to complete a college readiness survey. Mr. Hansen encountered difficulty completing it and informed Principal Wera, “I will not complete this at home since I have other obligations away from this job that preclude me from using my own personal time for work related duties.” After being directed again to complete the survey or face corrective action, Mr. Hansen finally finished the survey.
6. Mr. Hansen disrupted a pre-IEP meeting by speaking in an aggressive, accusatory tone to the meeting’s participants. On November 9, 2009, Assistant Principal Amy Bringedahl, supervisor of the special education department, told Mr. Hansen that she was going to remove a student from his caseload due to his over-involvement in her case. Initially, Mr. Hansen thanked Assistant Principal Bringedahl for removing the student from his caseload and stated that it was for the best. Despite his initial agreement with the decision, at a pre-IEP meeting for that student on November 18, Mr. Hansen became markedly upset and spoke in an angry voice about his displeasure with the reassignment and falsely told meeting participants that the meeting was the first time he had heard the student had been removed from his caseload. Both the new case manager for the student and a school psychologist present at the meeting noted that Mr. Hansen had behaved in an unprofessional manner.

7. On December 3, 2009, Mr. Hansen received a Letter of Reprimand for his November 18, 2009 conduct. That letter was downgraded to a Letter of Warning after Mr. Hansen completed an anger management course. That Letter of Warning cautioned Mr. Hansen:

It is the expectation that all staff at South will behave in a professional and cordial manner at all times; with students, parents and all DPS staff. This includes using the appropriate tone and refraining from making negative comments. You have been warned in the past to maintain professionalism in your dealings with colleagues.

8. On January 7, 2010, Mr. Hansen disregarded the Letter of Warning and communicated in an unprofessional manner with the parents of one of his students. Mr. Hansen drafted a diatribe against South's administration and the School Board, questioning their concern for children. In an email to a parent, he wrote:

I apologize, but we just do not structure high school in a way where [your student] can have individual time and attention every day. Our school board and administrators do not see a need for this, and are actually moving away from smaller class sizes and more student contact time. They are giving us more classes with more students, and as they see it, they are increasing our student contact time. However, in especially in cases like [your student's] they are making individual time and attention more and more difficult to find!

Interference with Security Investigations and Disregard for Security Protocol

9. In February of 2009, Mr. Hansen entered Dean Robert Dilworth's office uninvited, interrupting an interview with a student being investigated for bringing a hatchet to a school-related gang fight. While Dean Dilworth asked the student questions, Mr. Hansen interrupted and asked what the purpose of the questions were and advised the student not to answer. Assistant Principal Daves entered Dean Dilworth's office and directed Mr. Hansen not to interfere with the questions. Despite this, Mr. Hansen continued to interrupt the investigation. While Dean Dilworth called the student's guardian, Mr. Hansen whispered to the student, "We know what they are trying to pull; they are trying to expel you."

10. Dean Dilworth directed Mr. Hansen to retrieve the student's IEP and Behavior Plan for consultation. Mr. Hansen did not do so. Instead, he refused and said that he wanted to speak with the student. Dean Dilworth was forced to give the directive to retrieve the documentation again. Mr. Hansen finally left to retrieve both items.
11. Dean Dilworth then informed Assistant Principal Daves of Mr. Hansen's continued interference with the investigation. Assistant Principal Daves told Mr. Hansen to see him in his office. Assistant Principal Daves directed Mr. Hansen "not to interfere with their investigation, and not to speak with the student, or anyone concerning the matter." Once a union representative and Assistant Principal Miranda Odom were present, Assistant Principal Odom again directed Mr. Hansen not to further interfere with the investigation, nor contact the student.
12. Following this incident, Principal William Kohut verbally reprimanded Mr. Hansen. Principal Kohut directed Mr. Hansen to behave in a professional manner in future situations, directing him not to interfere in such situations in which he was not aware of all of the facts.
13. On April 20, 2010, a student informed Mr. Hansen that he had brought a knife to school. The student was involved in an earlier assault at school and had made threats of violence toward others. Due to these earlier events, the student was placed on a safety plan, of which Mr. Hansen was aware. Mr. Hansen left that student with the knife in the classroom and neglected to tell the paraprofessional in the room that the student had a knife. He also failed to place a call to school administration, school security, or the police to inform them that a student had brought a knife to school. Instead, he went to speak with the department chair of the special education department whom, correctly, advised him to call the school administration immediately.
14. Instead of contacting school administrator, as directed, Mr. Hansen continued to wander the halls for an additional fifteen minutes searching for the school psychologist, Dr. Acuna. Despite repeated opportunities to do so, Mr. Hansen refused to tell school administrators why he was searching for Dr. Acuna.
15. Mr. Hansen first entered Room 104 where Assistant Principal Bringedahl and Assistant Principal Tonee Cole were present, looked around the room and walked out. Mr. Hansen then came back to the room a few minutes later and asked for the cell phone number of the school's psychologist. He left the room without telling Assistant Principal Bringedahl why he was searching for the psychologist. A security guard in the hall

noticed Mr. Hansen frantically searching the halls and told Mr. Hansen to speak with Dean Dilworth. Mr. Hansen did not inform the security guard of the nature of the problem.

16. Mr. Hansen then saw Assistant Principal Daves in the main office with School Secretary Tracy Holt and told him that he had an emergency and needed the cell number for the school psychologist. Assistant Principal Daves asked Mr. Hansen what the emergency was and Mr. Hansen refused to tell him what was happening. Additionally, Mr. Hansen stated that Assistant Principal Bringedahl was handling the problem.
17. Dean Dilworth found Mr. Hansen wandering the hall and asked him what was happening. Mr. Hansen would not say, but informed Dean Dilworth that he would describe the problem to Assistant Principal Bringedahl. Both men went back to Room 104 and, after nearly fifteen minutes of Mr. Hansen wandering the halls, Mr. Hansen told Assistant Principal Bringedahl that a student with a history of violent outbursts had a knife and was in his classroom.
18. Mr. Hansen's conduct violated reasonable security protocol.

Inappropriate Comments to a Female Student

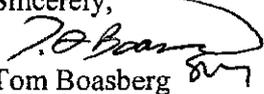
19. During the 2008-2009 school year, Mr. Hansen made numerous sexually inappropriate statements to a female student and in front of other students. On one occasion, Mr. Hansen apologized for looking into the student's eyes and told her they were beautiful. On another occasion he told her that he knew she was Puerto Rican because she was so "good looking." Mr. Hansen also remarked, "You can tell your[sic] a sexually strong girl." Additionally, he would frequently speak with the student about her boyfriend. Lastly, when asked by a male student about whether he had visited a particular pornographic website, Mr. Hansen said that he had not because he would "get too excited."
20. When confronted with these accusations, Mr. Hansen denied making the specific statements but admitted to a making a number of additional comments. First, Mr. Hansen admitted that the student had complimented his "beautiful eyes" and he had returned the compliment. Second, Mr. Hansen remembered telling the student that he knew she was Puerto Rican because she was talented and that he had originally believed the student was Mexican. Third, Mr. Hansen recalled trying to explain the concept of a sexual metaphor and its strength to the student. Fourth, Mr. Hansen described how he had intercepted a

note sent by the student expressing concern that the student and another girl were "fat."
Mr. Hansen claims that he took the time to tell both girls that they looked "just fine."

Conclusion

Mr. Hansen's above-referenced acts and omissions constitute a failure to adhere to the repeated verbal and written directives of his supervisors to conduct himself in a professional manner. Further, Mr. Hansen violated security protocol, endangering the safety of others through his concealment of the fact that a student had brought a knife to school. Finally, the inappropriate comments Mr. Hansen made to his female student are indicative of his larger failure to understand appropriate boundaries within the school workplace. Accordingly, he is unfit to work as a teacher within the Denver Public Schools.

Sincerely,


Tom Boasberg
Superintendent

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 633 17 th Street, Suite 1300 Denver, Colorado 80202	
DENVER PUBLIC SCHOOLS, Petitioner, vs. SCOTT HANSEN, Respondent.	▲ COURT USE ONLY ▲ CASE NUMBER: TA 20110006
DECISION	

This is a teacher dismissal proceeding as described in Sections 22-63-301 and 302, C.R.S. A hearing in this matter was held before Administrative Law Judge ("ALJ") Matthew E. Norwood October 24, 2011 at the Office of Administrative Courts. The ALJ heard this case as provided by Section 22-63-302(4), C.R.S. Walter Kramarz, Chief Deputy General Counsel appeared on behalf of Denver Public Schools ("School District"). Charles F. Kaiser, Esq. appeared on behalf of the teacher Scott Hansen ("Teacher").

Procedural Background

Hearing in this matter was set by agreement of the parties for October 18-21 and 24-25, 2011. On October 3, 2011 the School District moved to continue the hearing. On October 6, 2011 a prehearing conference was held at which the Teacher acceded to the School District's request and the first day of hearing was continued to October 24, 2011.

At the outset of hearing October 24, 2011, the School District moved to dismiss the case without prejudice in order to add additional allegations. This motion was made orally and for the first time at hearing. That motion was opposed by the Teacher. The ALJ denied the motion for the reason that it was not made until the first day of hearing, after the Teacher had prepared his defense. As of the date of hearing, the Teacher's 100 days of compensation described at Section 22-63-302(3), C.R.S. had elapsed.

Thereafter, the School District presented no evidence in support of the School District's March 17, 2011 recommendation to dismiss, which is attached and incorporated herein.

Discussion and Recommendation

Section 22-63-302(7)(c) provides in pertinent part:

By entering an appearance on behalf of ... the chief administrative officer, counsel agrees to be prepared to commence the hearing within the time limitations of this section and to proceed expeditiously once the hearing has begun.

Section 22-63-302(8) provides in pertinent part:

The chief administrative officer shall have the burden of proving that the recommendation for the dismissal of the teacher was for the reasons given in the notice of dismissal and that the dismissal was made in accordance with the provisions of this article. ... The hearing officer shall review the evidence and testimony and make written findings of fact thereon. The hearing officer shall make only one of the two following recommendations: The teacher be dismissed or the teacher be retained

Because the School District failed to present any evidence, it has failed to sustain its burden of proof. The ALJ finds as fact that none of the allegations in the March 17, 2011 recommendation to dismiss have been proven. It is therefore the recommendation of the ALJ that the teacher be retained.

DONE AND SIGNED

October 24, 2011


MATTHEW E. NORWOOD
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have served a true and correct copy of the above **DECISION** by depositing same in the U.S. Mail, postage prepaid, at Denver, Colorado to:

Walter Kramarz, Esq.
Denver Public Schools
900 Grant Street, Room 401
Denver, CO 80203

Charles F. Kaiser, Esq.
Colorado Education Association
1500 Grant Street
Denver, CO 80203

on this on this 20 day of October, 2011.

Deanne Moore
Office of Administrative Courts

Denver Public Schools

OFFICE OF THE SUPERINTENDENT

Tel 720-423-3300

Fax 720-423-3318

Web www.dpsk12.org



November 17, 2011

Board of Education
Denver Public Schools
900 Grant St.
Denver, CO 80203

Re: Recommendation to Dismiss Scott Hansen

Dear Board Members:

It is my duty under the Teacher Employment, Compensation and Dismissal Act, Colo. Rev. Stat. § 22-63-101, et seq., to recommend the dismissal from employment of Mr. Scott Hansen, a special education teacher assigned to South High School ("South") on the basis of neglect of duty, insubordination, immorality, incompetency, and other good and just cause.

Dismissal charges were initially filed against Mr. Hansen on March 17, 2011 ("Initial Charges"). Prior to the scheduled hearing on the Initial Charges on October 24, 2011, new evidence surfaced of additional misconduct and neglect of duties by Mr. Hansen. The new evidence of misconduct and neglect of duty are contained in this letter recommending dismissal ("November Charges"). The Initial Charges were withdrawn and a copy of the Initial Charges is attached and incorporated by reference into this set of charges.

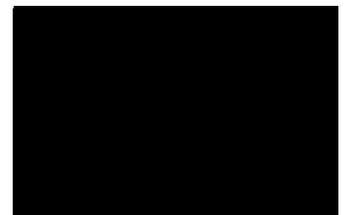
Mr. Hansen chronically disregarded his obligations to render services to students with Individualized Educational Programs ("IEPs), and to comply with related documentation obligations by failing to instruct students; and by otherwise abusing the instructional day. Mr. Hansen also was absent from work on an excessive basis, and abused sick leave. Finally, despite multiple written and verbal warnings and verbal counseling over the course of three school years from South administrators William Kohut, Miranda Odom, David Daves, Amy Bringedahl, and Betty Golembeski, Mr. Hansen repeatedly engaged in unprofessional conduct towards colleagues, students, and other members of the South school community.

Failure to Provide Services to Students/Abuse of Instructional Time

Mr. Hansen was a teacher assigned to South from 2003-2004 to 2010-2011. Mr. Hansen was assigned to Montbello after he claims he was "forced out" of assignments at other schools. During the school year at which he was assigned to South, Mr. Hansen frequently neglected student service obligations. For example:

Exhibit D

DENVER PUBLIC SCHOOLS OFFICE OF THE SUPERINTENDENT
900 Grant Street • Room 702 • Denver, CO 80203



- A. During classes in which he was to provide “inclusion” services to students with IEPs, i.e., providing special education and related services in classrooms in which a general education teacher was simultaneously providing instruction, Mr. Hansen often did not engage students at all, socialized or discussed his photography hobby with students who were not even on his caseload, or engaged in disruptive behavior. Mr. Hansen was failing to properly document student performance as instructed in these inclusion settings.
- B. During non-inclusion special education classes, students were regularly off-task, doing artwork not related to the class or doodling in class while Mr. Hansen was disengaged, sitting at his desk or on his computer. Mr. Hansen often spent instructional time socializing with select students, talking about photography or his photography side business, or engaging in non-instructional activities such as repeatedly showing videos of his world travels/African safaris or still photographs to students, rather than providing instruction or services consistent with students’ IEPs.
- C. Mr. Hansen’s failure to engage or support students resulted in a number of parent/student complaints. For example, one student complained to a paraprofessional that Mr. Hansen declined to provide support despite his request for help, and instead spent designated instructional time filling out job applications and telling the students that he was applying for jobs elsewhere. That student previously came forward with the classroom paraprofessional to complain about Mr. Hansen’s failure to provide services. In a meeting with Assistant Principal Amy Bringedahl on May 24, 2010, Ms. Bringedahl discussed with Mr. Hansen his failure to provide services in this circumstance and three prior issues with students on Mr. Hansen’s caseload had complained of not receiving adequate services.
- D. Mr. Hansen was emphatic that he disagreed with the District’s protocols for progress monitoring of students and consistently neglected progress monitoring obligations.
- E. Mr. Hansen failed to familiarize himself with students assigned to his caseload. On several occasions, Mr. Hansen approached a colleague on the eve of a student’s IEP meeting, and asked the colleague to “cover” for him at the IEP meeting because Mr. Hansen did not even know who the student was.

- F. Mr. Hansen selectively provided services to certain students while ignoring the needs of other students assigned to his caseload. For example, Mr. Hansen fixated on one student and expended significant time working with her on projects which were irrelevant to her instructional needs. Conversely, he would deliberately attempt to get particularly challenging students removed from his caseload.
- G. Mr. Hansen's IEP-related documentation frequently failed to meet district and state and federal requirements. IEP recommendations were not data-based; documentation was untimely; IEP goals were inappropriate, inadequate, and unrelated to the actual educational needs of the student; and IEPs often lacked data and failed to reflect actual services being rendered to the student.
- H. Mr. Hansen would leave the school building during designated planning periods and be seen sleeping in his truck in the South parking lot.
- I. Mr. Hansen violated the District Internet policy EGAEB by spending time online during the school day on non-educational matters including operation of his personal photography business and other personal pursuits.
- J. Mr. Hansen would frequently fail to appear in scheduled classrooms where he was expected to provide inclusion services. Classroom teachers often complained that Mr. Hansen's whereabouts were unknown. When former Assistant Principal Betty Golembeski confronted Mr. Hansen on this issue, he failed to provide a satisfactory explanation for his non-attendance.

Excessive Absenteeism/Sick Leave Abuse/ Failure to Prepare Lesson Plans

- K. Mr. Hansen was excessively absent from work requiring colleagues to "cover" his obligations for him. For example:
 - 1) Mr. Hansen took 19 sick days during the 2007-2008 school year; 20 sick days during the 2008-2009 school year; and 22 sick days during the 2009-2010 school year, significantly exceeding the district's allowable paid sick time of 10 days annually.
 - 2) Approximately 70% of the sick days taken during the 2009-2010 school year resulted in extended weekends or vacation periods.

Exhibit D

- L. Mr. Hansen also neglected his related obligation to create lesson plans for substitute teachers during his absences. As a consequence, colleagues were required to work with the substitute teachers to prepare assignments for Mr. Hansen's students.

Unprofessional/Offensive Conduct Towards School Community Members

- M. After Mr. Hansen asked a female student of Asian-descent a number of inappropriate personal questions, the student reported becoming extremely uncomfortable in his presence, and she requested that her mother have her removed from the special education program.
- N. Mr. Hansen made sexually offensive comments towards a female teacher who served as the Special Education Department Chairperson. These were made in the presence of at least one other female teacher.
- O. It was very noticeable to one regular education teacher in whose classroom Mr. Hansen was to provide inclusion services that he was inappropriately focusing on female students rather than male students.
- P. One student witnessed Mr. Hansen inappropriately staring at another female student, "V.R.," to whom he had been making inappropriate comments (see Initial Charges). Former South Principal William Kohut issued Mr. Hansen a Letter of Warning regarding unprofessional conduct, including those comments to student "V.R."
- Q. Mr. Hansen would constantly argue and complain about colleagues and District policies, and inappropriately confront or criticize South administrators and other South teachers. This chronic unprofessional behavior persisted despite multiple written and verbal warnings.
- R. Those behaviors in turn created a demoralizing and negative climate for staff members, including members of the South special education team.
- 1) For example, after Principal Steve Wera dismissed a staff member who had engaged in serious workplace misconduct, Mr. Hansen would repeatedly state aloud, "why did they fire my friend?"

- 2) At an August 13, 2008 staff meeting, Mr. Hansen behaved unprofessionally and made inappropriate comments regarding another District staff member, causing another teacher at the meeting to voice her concern regarding his behavior.
 - 3) In another circumstance, former Assistant Principal Betty Golembeski verbally warned Mr. Hansen regarding his unprofessional interactions with colleagues, following her receipt of complaints from other teachers about Mr. Hansen's behaviors.
- S. Mr. Hansen also repeatedly engaged in inappropriate and unprofessional behavior towards that one of the other teachers at South:
- 1) On several occasions, with students present in the classroom, Mr. Hansen would look in the general direction at another teacher who was working in the back of the classroom and criticize the performance of colleagues, and make statements criticizing South administrators (for example, without making eye contact with her, he would stare into empty space next to her and announce aloud that he thought that other South teachers were poor performers and not working hard enough or "pulling their weight," or that their caseloads were too light; he would repeatedly make intimidating faces when interacting with her; and he would slam his book on his desk and shake his head in a negative manner towards her).
 - 2) On one occasion he burst into an IEP meeting she was conducting with a parent and student present and addressed her in an unprofessional and inappropriate tone of voice.
 - 3) Approximately 30 minutes later, Mr. Hansen sat at a chair she had been using while inputting data on her assigned computer. While still logged in under her password, he began using the computer during what was supposed to be his Algebraic Thinking class, with students present. When this teacher returned to the classroom, she asked him why he couldn't instead use the desktop computer he typically used, and he responded to her, "I don't want to be bothered."

- 4) Mr. Hansen also inappropriately told a student with an IEP that she was being reassigned to this teacher's caseload because she (the teacher) and another South special education teacher did not have enough work to do.
- T. Mr. Hansen's inappropriate behaviors also caused South administrators to expend disproportionate/significant resources towards addressing conflicts and investigations he triggered.
- U. One general education teacher specifically requested that Mr. Hansen not be assigned to that teacher's classroom for inclusion services, following multiple incidents during which Mr. Hansen disrupted his class, blurted out answers, and would raise his hand to answer questions, as if he was a student, during that general education teacher's instructional delivery.
- V. After one parent began expressing concerns that her son, who was assigned to Mr. Hansen's caseload was failing to make progress, Mr. Hansen failed to respond to her detailed message requesting a callback, and she was denied the opportunity to meet with him during parent conferences and the South Back-To-School Night.
- W. Mr. Hansen also failed to take responsibility for his work, inappropriately delegating or attempting to delegate his work to colleagues.

Conclusion

Mr. Hansen's above-referenced acts and omissions constitute neglect of duty, insubordination, immorality, incompetency and other good and just cause and he is subject to dismissal under Colorado law based on the above-referenced acts and omissions, in addition to the grounds and omissions contained in the Initial Charges. Mr. Hansen's conduct and performance do not meet the School District standards and expectations of a licensed educator and render him unfit for continued employment with the Denver Public Schools. Accordingly, Mr. Hansen should be dismissed from employment for neglect of duty, insubordination, immorality, incompetency, and other good and just cause, in accordance with the procedures established by law.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Boasberg".

Tom Boasberg
Superintendent

Board of Education
April 19, 2012

BOARD OF EDUCATION
SCHOOL DISTRICT NO. 1 IN THE CITY AND COUNTY OF DENVER, COLORADO

RESOLUTION 3334

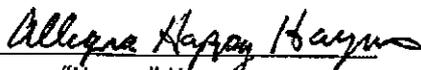
WHEREAS, the Board of Education has received and carefully reviewed the Administrative Law Judge's decision in the matter of *Denver Public Schools v. Scott Hansen*, a teacher dismissal action arising under the Teacher Employment, Compensation and Dismissal Act of 1990;

WHEREAS, the Board is authorized by law to make its own ultimate findings and to accept or reject the Administrative Law Judge's ultimate findings and recommendation regarding dismissal; and

WHEREAS, the Board has considered the findings of fact and recommendation of the Administrative Law Judge and finds that they are sufficient for the Board to determine whether to continue Mr. Hansen's employment.

NOW, THEREFORE, BE IT RESOLVED that:

1. The Board of Education hereby accepts and adopts the findings of evidentiary fact set forth in the Decision, and accepts the Administrative Law Judge's ultimate findings.
2. The Board of Education concludes that the findings of fact establish neglect of duty and other good and just cause for dismissal, and that dismissal is warranted.
3. For the reasons set forth in the Administrative Law Judge's decision, Mr. Hansen is hereby dismissed from his employment with the School District.


Allegra "Happy" Haynes
Vice President

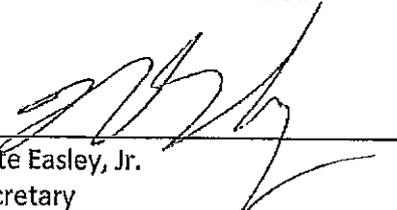

Nate Easley, Jr.
Secretary

Exhibit E

DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock Street Denver, Colorado 80202	DATE FILED: April 7, 2014 11:36 AM CASE NUMBER: 2011CV8135
SCOTT HANSEN, Plaintiff, v. THE BOARD OF EDUCATION, SCHOOL DISTRICT NO. 1, CITY AND COUNTY OF DENVER, COLORADO, Defendant.	Case No. 11CV8135 COURTROOM 209
ORDER	

This mandamus action is before me on the court of appeals' mandate dated January 27, 2014, and underlying opinion directing me to address the parties' cross motions for summary judgment. *Hansen v. School Dist. No. 1*, Court of Appeals Case No. 12CA1630 (February 14, 2013) (*Hansen I*). For the reasons articulated below, Plaintiff's motion for summary judgment is GRANTED, Defendant's cross-motion for summary judgment is DENIED, and Defendant is HEREBY ORDERED forthwith to review the administrative law judge's findings and recommendation dated October 24, 2011, and to enter, within 20 days after the date of this Order, a final order based on those findings and recommendation.

I. INTRODUCTION

The underlying facts, all of which are undisputed, are rather simple, though the procedural posture of the case is a bit complicated. Plaintiff was a Denver teacher for 15 years. His employment, and in particular the processes for his dismissal, are governed by the Teacher Employment, Compensation, and Dismissal Act of 1990 (“TECDA”), §§ 22-63-101 et seq.

School District No. 1 (“the District”) placed Plaintiff on administrative leave in August 2010, and in March 2011, pursuant to TECDA, the District’s superintendent submitted to the Defendant Board of Education of Denver School District No. 1 (“Board”) a recommendation to dismiss Plaintiff. That March recommendation alleged various grounds for dismissal, including Plaintiff’s neglect of duty, insubordination and immorality, and set forth specific factual allegations supporting those grounds. As required by TECDA, and specifically § 22-63-302(2), the District sent a copy of the dismissal recommendation to Plaintiff, who then, pursuant to § 22-63-302(3), exercised his right to demand a hearing before an administrative law judge (“ALJ”).

After several continuances, the hearing on the dismissal recommendation began on October 24, 2011. Before any evidence was taken, the District informed the ALJ that it had learned of additional grounds supporting Plaintiff’s dismissal and sought leave to amend the recommendation to add those grounds and for a continuance so that the District could provide Plaintiff with written notice of the new charges. The new charges involved allegations that Plaintiff had abused sick leave and behaved unprofessionally toward two other teachers. Plaintiff objected to this oral motion to amend, noting that Plaintiff had no written notice of the new charges, that the District had already endorsed ten witnesses as to the existing charges and that Plaintiff was ready to proceed on the existing charges. The District

responded by indicating that if the ALJ did not allow it to add the new charges it would simply withdraw the existing charges and refile a new recommendation containing both sets of charges. Plaintiff responded that these “new” charges were not new at all and should have been discovered long ago, since Plaintiff had not been working at the District for more than a year, and that Plaintiff would be prejudiced by yet another continuance. Indeed, the sick leave charges apparently went back more than three years. After hearing these arguments the ALJ denied the District’s oral motions to add the new charges and for a continuance.

The District nonetheless informed the ALJ that it was withdrawing the existing charges. The ALJ responded by informing the District that the ALJ would not permit the District to withdraw the current charges, and that it must proceed with the presentation of evidence or the ALJ would be forced to recommend that Plaintiff be retained.¹ The District refused to proceed, and by his written Order dated October 24, 2011, the ALJ entered a recommendation of retention based on the fact that the District failed to present any evidence proving the charges.

Under § 22-63-302(9), the Board was required to enter a final order based on the ALJ’s recommended decision within 20 days after the date of that recommended decision, or by approximately November 13, 2011. That statute provides:

The board *shall* review the hearing officer’s findings of fact and recommendations, and it *shall* enter its written order *within twenty days after the date of the hearing officer’s findings and recommendation*. The board *shall* take one of the three following actions: The teacher be dismissed; the teacher be retained; or the teacher be placed on a one-year probation

¹ The District has the burden of proving the charges. § 22-63-302(8).

Id. (emphasis added). Contrary to this command, the Board has never acted on the ALJ's recommendation that Plaintiff be retained.

Instead, in November 2011 the District submitted, as it had threatened, a new recommendation of dismissal containing both the old and new allegations. Upon receipt of this recommendation, Plaintiff brought this action for mandamus, asking this Court to compel the Board to review and then issue a final order based on the ALJ's recommendation of retention. My predecessor in this Courtroom sua sponte stayed the mandamus action, ruling that Plaintiff failed to exhaust his administrative remedies. It was that ruling that the court of appeals reversed in *Hansen I*.

Plaintiff demanded a hearing on the November recommendation of dismissal, without waiving his objection that the Board should enter a final order based on the ALJ's prior findings and recommendation of retention. Indeed, at the hearing Plaintiff moved to dismiss the November recommendation on the ground that this second proceeding was precluded by the first. The ALJ found that the first proceeding was not a final judgment for purposes of preclusion because the Board had never issued a final order associated with that first proceeding. The second hearing proceeded, and at its conclusion the ALJ made findings and a recommendation that Plaintiff be dismissed. The Board made that recommendation final.

Pursuant to § 22-63-302(10)(b), Plaintiff appealed that final order to the court of appeals, arguing, among other things, that the ALJ's prior findings and recommendation of retention was preclusive of his later findings and recommendation of dismissal. The court of appeals reversed the final order of dismissal and remanded the case to the ALJ with directions that he reconsider Plaintiff's preclusion argument following my ruling in this case on mandamus. *Hansen v. School Dist. No. 1*, Case No. 12CA887 (NSOP) (February 14, 2013) (*Hansen II*).

II. THE DISTRICT DID NOT HAVE AN UNFETTERED RIGHT TO WITHDRAW ITS MARCH RECOMMENDATION

Neither side cites, and I am unaware of, any provisions of TECDA itself, or any rules or regulations promulgated under it, expressly governing whether the District had an unfettered right to withdraw its recommendation of dismissal and then file a new one.

However, Rule 1:15 of the general rules promulgated by the Department of Personnel and Administration's Office of Administrative Courts ("OAC"), and which apply to all cases before the OAC,² provides:

To the extent practicable, and unless inconsistent with these rules, the Colorado Rules of Civil Procedure apply to matters before the OAC.

1 C.C.R. 104-1:15.

The rules of civil procedure, in turn, provide that plaintiff must obtain leave of the court to voluntarily dismiss claims once the defendant has answered or otherwise responded, let alone on the morning of trial. C.R.C.P. 41(a). Here, Plaintiff's demand for a hearing under § 22-63-302(3), which then put the District to the proof, was the equivalent of an answer or response. Accordingly, the District could not withdraw its initial recommendation without leave of the ALJ, a fact which the District apparently recognized by moving for leave to withdraw the recommendation in the first instance.

² OAC Rule 1:1, the rule on scope, provides that the OAC rules "apply to the conduct of all cases before the Office of Administrative Courts." 1 C.C.R. 104-1:1. There are designated exceptions to this general scope provision, and in fact two of those exceptions are even aimed at hearings conducted under TECDA. 1 C.C.R. 104 1:1(E)(4). But those two exceptions do not include OAC Rule 1:15, which, as discussed in the text below, is dispositive of this procedural issue.

Even if OAC Rule 1:15 does not apply, for example because a recommendation concerning dismissal is not sufficiently analogous to a civil complaint, or the request for a hearing not sufficiently analogous to an answer or response, I do not believe the District had an unfettered right to withdraw its recommendation of dismissal. I reach that conclusion based on the provisions of TECDA itself. Section 22-63-302 contains a litany of requirements that impose on teacher dismissal proceedings a fairly strict process with very short time limits.

Any recommendation of dismissal must be mailed to the teacher just three days after it is made. § 22-63-302(2). Most critically, in that first three days the District must also mail to the teacher all exhibits which the District intends to submit and a list of all witnesses it intends to call. That is, these employment termination recommendations are not to be made lightly, and most if not all of the evidentiary groundwork will have to have been done by the District before the recommendation is made formal.

The teacher then has only five working days to decide whether to accept the recommendation or request a hearing. § 22-63-302(3). If the teacher requests a hearing, the ALJ must be appointed within five working days after that request, and the hearing must be set three working days after such appointment. § 22-63-302(4)(a) and (5)(a). The hearing itself must be set within 30 days after the setting date. § 22-63-302(5)(a). The teacher has only ten days after the selection of the ALJ to submit his exhibits and list of witnesses. § 22-63-302(6)(a). The District then has seven days after that to submit supplemental exhibits and witness names. *Id.* The statute expressly provides that after this supplementation period “additional witnesses and exhibits may not be added except upon a showing of good cause.” § 22-63-302(6)(a).

The processes for discovery and the hearing itself are equally streamlined. No depositions or interrogatories are permitted. § 22-63-302(6)(b). Unavailable witnesses may testify by affidavit. *Id.* Unless otherwise permitted by the ALJ for good cause, neither party gets more than three days to present its case in chief, the entire hearing must be completed in six days, and no side may call more than ten witnesses. § 22-63-302(7)(e). The ALJ must issue his findings and recommendations (limited to dismissal or retention) within 20 days after the completion of the hearing. § 22-63-302(8). As mentioned above, the Board then has only 20 days after the ALJ's findings and recommendations to enter its final order (limited to dismissal, retention or probation). § 22-63-302(9).

If all that were not enough, the statute expressly provides that “[b]y entering an appearance on behalf of the teacher or the [District], counsel agrees to be prepared to commence the hearing within the time limits of this section, and to proceed expeditiously once the hearing has begun.” § 22-63-302(7)(c). The ALJ relied specifically on this section in denying the District's oral motions to add charges and to continue.

Given this statutory architecture, and these express turns of phrase, it is inconceivable to me that the General Assembly intended the tight deadlines for these proceedings to be subject to the District's unconstrained ability to withdraw recommendations whenever it chooses, let alone on the morning of the hearing. None of these strict time limits on disclosure or on the conduct of the hearing itself would have any meaning at all if the District could, faced with an unpleasant deadline, simply withdraw its recommendation and refile it later.

Instead, it is clear to me that the General Assembly intended to invest administrative law judges with the reasonable authority to conduct these hearings in a manner consistent with TECDA's overarching goal of providing teachers and the District with a speedy and efficient method of resolving

dismissals. That authority necessarily includes the power to prevent the District from withdrawing a recommendation without prejudice, and thus starting the entire proceeding over, when, in the judgment of the ALJ, the District has not shown good cause to do so.

Whether expressly under OAC Rule 1:15, or impliedly under TECDA, it is clear to me that the ALJ in this case had the authority to deny the District's request for leave to withdraw its recommendation.

III. THE ALJ DID NOT ABUSE HIS DISCRETION IN REFUSING TO ALLOW THE DISTRICT TO WITHDRAW ITS MARCH RECOMMENDATION

The ALJ, like a court under C.R.C.P. 41(a), had sound discretion to decide whether to permit the District to withdraw its termination recommendation. *Powers v. Professional Rode Cowboys*, 832 P.2d 1099, 1102 (Colo. App. 1992). In exercising that discretion, the ALJ was required to consider several factors, including: the risk of duplicative expense in a second proceeding; the extent to which the current suit has progressed; the adequacy of the explanation for the need to dismiss the current charges; the due diligence in bringing the motion to dismiss; and any undue vexatiousness on the claimant's (District's) part. *Id.* at 1103.

Here, the ALJ properly applied all of these factors in deciding not to permit the District to withdraw its recommendation. The hearing had been continued several times already. Indeed, the statute required the hearing to be held within 30 days after the setting date, and just eight working days after Plaintiff demanded the hearing in March 2011. Yet it was not held until seven months later. The District's desire to add two charges to the litany of existing charges would also of course have forced Plaintiff to request a continuance, and thereby duplicate a large part of his hearing efforts. Perhaps most

importantly, the District had no explanation for why it waited until the morning of the hearing to add these two additional charges, which were based on allegations dating

back more than a year.³ On this state of the record, the ALJ certainly did not abuse his discretion in denying the District's motion to withdraw the recommendation.

When the District then elected not to present any evidence, the ALJ quite properly entered a recommendation of retention, since the District bore the burden of proving facts supporting dismissal. § 22-63-302(8).

IV. PLAINTIFF IS ENTITLED TO MANDAMUS

Mandamus is appropriate when a plaintiff seeks to compel a governmental body “to perform an act which the law specifically enjoins as a duty” C.R.C.P. 106(a)(2). To obtain mandamus a plaintiff must establish three conditions: 1) plaintiff has a clear right to the relief sought; 2) defendant has a clear duty to perform the requested act; and 3) there is no other available remedy. *State ex rel. Norton v. Board of County Comm'rs*, 897 P.2d 788, 791 (Colo. 1995); *Asphalt Specialties Co. v. City of Commerce City*, 218 P.3d 741, 746 (Colo. App. 2009). Here, there is no doubt Plaintiff has satisfied each of these requirements.

Section 22-63-302(9) unequivocally requires the Board to review the ALJ's recommendation and enter its final written order within 20 days after the date of that recommendation. This created both

³ The ALJ made no finding about whether the District was acting vexatiously in seeking the withdrawal, although there was what appeared to be a rather heated exchange between the ALJ and the District's counsel, during which the ALJ, upon learning that counsel was refusing to proceed on the existing charges even though his witnesses were present, said counsel's position as “disgraceful” and demonstrated a “lack of professionalism.” Tr., p. 30 (October 24, 2011), attached as Exhibit A to Motion.

a right in Plaintiff to have the Board timely act on the ALJ's recommendation of retention and a duty by the Board to do so. As for any other available remedy, there is none. Indeed, as the court of appeals has recognized in both *Hansen I* and *II*, the Board's unauthorized refusal to act on the March recommendation has deprived Plaintiff of his right to argue that the March retention recommendation precludes the November dismissal.

V. CONCLUSION

The Board of Education, School District No. 1, City and County of Denver, Colorado is HEREBY ORDERED to forthwith review the ALJ's written findings and recommendation dated October 24, 2011, and to render a final order as to those findings and recommendation within 20 days after the date of this Order.

DONE THIS 7TH DAY OF APRIL, 2014.

BY THE COURT:



Morris B. Hoffman
Morris B. Hoffman
District Court Judge

cc: All counsel

**SCHOOL DISTRICT NO. 1
IN THE CITY AND COUNTY OF DENVER,
STATE OF COLORADO
RESOLUTION NO. 3506**

WHEREAS, the Board of Education has received and carefully reviewed the Administrative Law Judge's decision in the matter of *Denver Public Schools v. Scott Hansen*, case no. TA 20110006 (Hansen I) (concerning allegations of inappropriate conduct with students and staff);

WHEREAS, the Board of Education is authorized by law to make its own ultimate findings and to accept or reject the Administrative Law Judge's ultimate findings and recommendation regarding dismissal;

WHEREAS, the Board of Education has considered the findings of fact and recommendation of the Administrative Law Judge;

WHEREAS, after the ALJ issued the decision in Hansen I, Mr. Hansen was awarded back pay and effectively reinstated;

WHEREAS, after the Hansen I decision, Mr. Hansen was again recommended to the Board of Education for dismissal on separate and distinct grounds and the dismissal was heard by an Administrative Law Judge who issued findings of fact and recommended that Mr. Hansen be dismissed from employment in *Denver Public Schools v. Scott Hansen*, case no. TA 20110027 (Hansen II) (in which the ALJ found that the District demonstrated Hansen neglected his teaching duties).

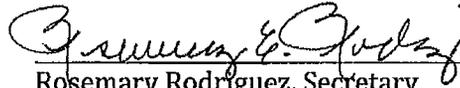
WHEREAS, the Board of Education previously received and carefully reviewed the Administrative Law Judge's decision in Hansen II and voted to adopt the Administrative Law Judge's findings of fact and made the ultimate finding that there existed a basis for termination of Mr. Hansen's employment.

NOW, THEREFORE, BE IT RESOLVED:

1. The Board of Education hereby accepts and adopts the findings of evidentiary fact put forth in the ALJ's recommendation in Hansen I (concerning allegations of inappropriate conduct with students and staff) and votes to affirm the reinstatement of Mr. Hansen's employment
2. The Board of Education hereby declares that the affirmation of Mr. Hansen's reinstatement in Hansen I does not in any way preclude the subsequent dismissal of Mr. Hansen's employment, which was made effective by Board of

Education resolution dated August 23, 2012, as the grounds for termination in Hansen II were based on the District proving allegations that Hansen neglected his teaching duties, which were distinct from the alleged grounds in Hansen I.


Happy Haynes, President


Rosemary Rodriguez, Secretary