

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

HUSTISFORD EDUCATION ASSOCIATION

and

HUSTISFORD SCHOOL DISTRICT

Case 29
No. 59216
MA-11222

(Terry Dallman Grievance)

Appearances:

Mr. Armin Blaufuss, UniServ Director, WinnebagoLand UniServ, on behalf of the Hustisford Education Association.

Davis & Kuelthau, S.C., Attorneys at Law, by **Mr. Gregory B. Ladewski**, on behalf of the Hustisford School District.

ARBITRATION AWARD

The Hustisford Education Association, hereinafter the Association, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Association and the Hustisford School District, hereinafter the District, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The District subsequently concurred in the request and the undersigned, David E. Shaw, of the Commission's staff, was designated to arbitrate in the dispute. A hearing was held before the undersigned on January 8 and February 13, 2001 in Hustisford, Wisconsin. There was no stenographic transcript made of the hearing and the parties submitted post-hearing briefs in the matter by April 25, 2001. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties agreed to the following statement of the issues:

Did the District violate Article 7: Individual Rights during the 1999-2000 school year when it formally reprimanded Mr. Dallmann and placed him on a “plan of amelioration”?

If so, what shall the remedy be? 1/

1/ The District, however, did so with the understanding it was arguing that the October 11 and 18, 1999 reprimands and the initial placement of the Grievant on a “Plan of Amelioration” were not properly before the Arbitrator.

CONTRACT PROVISIONS

The following provisions of the parties’ Agreement are cited:

ARTICLE 5: MANAGEMENT RIGHTS

The Board, on its own behalf, hereby retains and reserves upon itself without limitations, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by applicable laws, rules and regulations to establish the framework of school policies and projects including, but without limitations because of enumeration, the right:

- A. To the executive management and administrative control of the school system and its properties, programs and activities.
- B. To employ and re-employ all personnel and, subject to the provisions of law or State Department of Public Instruction regulations, determine their qualifications, their dismissal or demotion, or their promotion.
- C. To establish and supervise the program of instruction and the extra-curricular program that in the opinion of the Board benefits the students.

- D. To determine methods and means of instruction, authorization to purchase textbooks and other teaching materials, the use of teaching aids, and class schedules.
- E. The parties hereto recognize that the Board is legally charged with the responsibility of, and the legal right to, the establishment and enacting of policies governing the operation of the school district.
- F. To determine the management organization of the district and the selection of persons for appointment to supervisory and management positions.
- G. To determine the size of the working force, the allocation of employees, the determination of policies affecting the selection of employees and establishment of quality standards and judgment of employee performance.
- H. To create, combine or modify teaching positions deemed necessary by the Board.
- I. To establish reasonable work rules and schedules of work.
- J. To take whatever reasonable action that is necessary to carry out the functions of the district in situations of emergency.

The exercise of the foregoing powers, rights, authority, duties and responsibilities by the Board, the adoption of policies, rules, regulations and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this Agreement.

Foregoing rights shall be subject to the laws of the State of Wisconsin and the Constitution of the United States of America.

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ARTICLE 7: INDIVIDUAL RIGHTS

A. Observation/Evaluation

1. The observations and evaluation of certified personnel in the scope of their job description/duties shall be made by administration as representatives of the Board. The following procedures will be observed:

a) Observations

- 1) Formal observations of performance shall be conducted openly and with the full knowledge of the teacher. Informal observations may still occur. Any copy of formal or informal observations put in writing and used to measure teacher performance shall be provided to the teacher within five (5) working days following the observation. The teacher will acknowledge receipt of the observation by signing the original copy and returning it to the administration.
- 2) The instrument(s) used shall be determined by the Administration. Prior to using the instrument(s), teachers shall have the opportunity to review them.
- 3) Teachers shall be observed for purposes of evaluation at least once every year. It is recognized that in the goal setting model, observations may not always be applicable. Teachers new to the district, and teachers on probationary status, shall be observed at least three (3) times during their first year. Teachers new to the District shall use the Clinical Model of Supervision in their first year in the evaluation process. Teachers on a plan of amelioration shall be observed and evaluated in accordance with a written plan developed by the administration. See Article 7(A)(2).

b) Evaluation

- 1) All certified personnel may have a conference with their evaluator within five (5) working days after receipt of the evaluation form to discuss the evaluation. The teacher may be represented at this conference.
 - 2) No evaluation instrument or pertinent material shall become part of a certified person's file without the person's knowledge or opportunity to respond to such material. Complaints regarding a teacher shall be called to the teacher's attention in writing when they may affect the teacher's employment status. Teachers shall have the right to review all material in their personnel file and to make copies of any such material except for personal references, academic credentials and other documents received prior to the teacher's initial employment.
 - 3) A copy of the written evaluation shall be provided to the teacher within five (5) working days after the evaluation. The teacher will acknowledge receipt of the observation/evaluation by signing the original copy and returning it to the administration. The teacher shall have an opportunity to respond in writing to said evaluation within five (5) working days. Such signature by the teacher does not indicate agreement with the contents of the evaluation.
2. Any teacher judged to have serious deficiencies will be notified of such deficiencies in writing. In this case, a Plan of Amelioration shall be mutually developed by the administration and the affected staff member.
 3. Summaries and/or recommendations made by administrative personnel that become part of the teacher's personnel file will be shared with and signed by the teacher as per Article 7 Section A paragraphs (1)(a)(1) and (1)(b)(3).

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B. Non-Renewal

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6. No teacher shall be denied due process.

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F. Teacher Performance Provision

1. Within the school setting, or during school related activities, informal observations do occur. Where there is cause for concern, as determined by the Administrator, those concerns will be shared verbally with the staff member.
2. Should repeated occasions occur, the teacher shall be notified in writing of any alleged delinquencies. Notification shall include expected correction and indicate a reasonable period for correction. Alleged breaches of discipline shall be promptly reported to the affected teacher.
3. A teacher shall at all times be entitled to have a representative of the Association whenever requested to meet with the Administration when being reprimanded, warned or disciplined for any infraction of rules or delinquency in professional performance.
4. No teacher shall be suspended, reprimanded, or otherwise disciplined without cause. All information bearing on any disciplinary action will be made available to the teacher and the Association.

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ARTICLE 8: GRIEVANCE PROCEDURE

- A. Purpose: The purpose of this procedure is to provide an orderly method for resolving disputes arising from and during the term of this Agreement.

- B. For the purpose of this agreement, an aggrieved person or teacher shall mean either a teacher, a group of teachers, or the bargaining unit. When the grievant is an individual teacher, that teacher shall be named.
- C. A grievance is a dispute over the application and/or interpretation of this agreement.
- D. Grievances shall be processed in accordance with the following procedure:

Step 1:

- a) An earnest effort shall be made to settle the dispute informally between the grievant and the principal.
- b) If the dispute is not informally resolved, the grievance shall be presented in writing to the principal. At this point, the principal and grievant can mutually agree to bypass Step 1 and file the written grievance at the Step 2 level.
- c) If the dispute is not informally resolved, the grievance shall be presented in writing by the grievant to the principal within ten (10) days of notification of the incident.
- d) The principal shall give a written answer within five (5) days of the time the written grievance is presented.
- e) Due to unforeseen circumstances any time limits in the grievance procedure may be extended by mutual agreement between the District Administrator and the H.E.A.

Step 2:

If not settled in Step 1, the grievance may within five (5) days be appealed in writing to the District Administrator. The District Administrator shall give a written answer no later than ten (10) days after receipt of the appeal.

Step 3:

If not settled in Step 2, the grievance may within ten (10) days be appealed in writing to the Board of Education. Within fifteen (15) days after receipt of the appeal, the grievant may make a verbal presentation and the Board will render a written answer.

Step 4:

- a) If satisfaction is not reached at Step 3, the grievant may request in writing within ten (10) days that the grievance be submitted to arbitration.
 - b) Within ten (10) days after such written notice of submission to arbitration, the Association will file a written request with the Wisconsin Employment Relations Commission to appoint an arbitrator to determine the grievance. The WERC will appoint a member of its staff to act as arbitrator.
 - c) The arbitrator will schedule a hearing on the grievance and, after hearing such evidence as the parties desire to present, shall render a written decision. The arbitrator shall have no power to advise on salary adjustments, except as to the improper application thereof, nor to add to, subtract from, modify or amend any terms of this Agreement. A decision of the arbitrator shall, within the scope of his authority, be binding upon the parties.
- E. If the Principal, Administrator, or Board fail to give a written answer within the time limits designated for the specific step, the grievant may appeal the grievance to the next step.
- F. Grievances not processed to the proper step within the required time limits are terminated.
- G. The written grievance shall give a clear and concise statement of the alleged grievance including the facts upon which the grievance is based, the issue involved, the specific section(s) of the Agreement alleged to have been violated, and the relief sought.

- H. Saturdays, Sundays, legal holidays, and summer shall be excluded in computing time limits under this Grievance Procedure.
- I. Grievance involving the same act or the same issue may be consolidated in one proceeding provided the grievance has been processed through the grievance procedure by the time the parties request arbitration.
- J. Each party shall bear the expenses of its representatives and witnesses. Teacher witnesses shall be paid while attending the arbitration hearing, but the parties will attempt to schedule hearings after work hours. If it is not possible to schedule an arbitration hearing after work hours, the Association agrees that teachers shall be in attendance at the arbitration hearing during the work day only for that time which is necessary for them to testify. The fees and expenses of the arbitrator shall be equally shared by the Association and the Board.
- K. Rights to Representation
 - a) In the processing of grievances, a grievant may be self-represented or by a representative selected by the grievant. The Association shall have the right to be present and to state the Association views at all stages of the grievance procedure.
 - b) The Board and the grievant agree to make available to the requesting party, all pertinent information not privileged under law, in its possession or control and which is relevant to the issue raised by the grievance.
 - c) All documents, communications and records dealing with the processing of a grievance will be filed separately from the personnel files of the participants.

BACKGROUND

The Grievant, Terry Dallman, has been a fifth grade teacher in the Hustisford School District for twenty-one years at time of hearing. Matthew Toetz, both the Elementary Principal and Superintendent in the 1999-2000 school year and at time of hearing, began with the District as the Elementary Principal in August of 1998, and is the Grievant's immediate supervisor.

Toetz testified that he received a call from the parent of one of the Grievant's students on October 4, 1999, who had concerns about the Grievant's instruction of her child. As a result of that conversation, Toetz sent the Grievant the following e-mail on that same date:

Terry, I received a disconcerting phone call today. I have a parent who is concerned about her child receiving and (sic) A on the Language Arts portion of the progress report and is not sure exactly what has been done to earn it. The student reports that there really is no writing or specific instruction, they just do a little stuff. The parents report that they paid for an assignment notebook but (sic) has not used it. I have made it clear that all 3-6 will use the assignment notebook. I am equally concerned that a fifth grade student would either be able to get everything done so as not to have homework or not have enough work to need the assignment notebook.

The parent has had conversations with other parents and there seems to be these same concerns with them. The parent is concerned the academic qualifications are to (sic) low and her child will fall behind. She wonders what is going on that her child has no homework but other students from John Hustis do? She has concerns about students grading students? I thought we had discussed this practice and described it as inappropriate. If you are to teach kids then you need to be the one who knows what they are doing. Correcting student work is a great way to see if they have understood what you have taught.

The parent has specific concerns about Language Arts and the lack of instruction and higher expectations. I must admit I share some of these concerns, please set a time with me to meet and address these issues.

Toetz testified that on the morning of October 5, 1999, a parent came to him regarding the parent's child, saying the child was crying and did not want to go to school and felt the Grievant was humiliating the student. Toetz arranged to meet with the Grievant the morning of Friday, October 8, 1999. Toetz had also arranged to meet with the Grievant on October 19, 1999 for a "goal setting" meeting. The 1999-2000 school year was the first time that the District was to use the goal setting method of evaluating teacher performance.

Toetz testified he prepared the following document in preparation for the October 8 meeting, and had the Grievant read it at the meeting:

10/8/99

This is a description of the future, I (Mr. Toetz) see for Mr. Dallmann as he works towards his goals. The goals are in part constructed by him and in part set forth as actions to be taken, by him, as directed by Mr. Toetz.

Vision: Mr. Dallmann is a teacher who has a passion for topics in social studies and science. This passion leads to many hands on activities and creative writing assignments that offer students the chance to use the analytic writing process they have been taught in Language arts time. Mr. Dallmann understands that teaching with only the pre-constructed curriculum materials causes gaps in the teaching process, therefore he supplements his teaching guides with self-created materials, materials from fellow teachers and outside resources. In an effort to ensure that all students have the opportunity and self esteem to achieve to the best of there (sic) ability he daily strives to protect and nurture student emotions and attitudes. This effort includes fostering their willingness to ask questions, protecting their right to express opinions and encouraging them to take risks with teacher support.

Mr. Dallmann is available to parents and sees his position as facilitator of learning and supporter of family values. He is willing to listen to parent concerns, responds with suggestions of how he could help address the concerns and maintains his professional disposition when differences need to be resolved.

Actions to be taken immediately:

1. A newsletter will be sent home to families weekly.
 - the letter will be typed by Mr. Dallmann, copied by him and sent home with students
 - prior to this he will mail a letter home explaining that families should be looking for this to come home.
 - the newsletter will include but is not limited to: Subject area information, current class happenings, upcoming events and suggestions for parent participation in their student's education. (Mrs. Engelbrecht has a good example to look at. I would suggest asking her for input.)
 - this letter is not to be done during any classroom instructional time.
 - Mr. Toetz will have the opportunity to preview the letter each week.
 - Since the letter is a weekly report, Thursday late afternoon or Friday mid morning would be the best time for preview and final copy.

2. No longer will students be allowed to correct each other's work.
 - knowing how students are working and where strengths and weaknesses are is the responsibility of Mr. Dallmann. A simple report of a score does not serve this function.
 - students looking at each others work can be embarrassing and therefore is counterproductive.
3. Entries into a gradebook will be done during instructional preparation time.
 - consistent with number 2 above, this is a misuse of teaching time and the reporting out loud of grades is humiliating.
4. Classroom instruction is a dynamic and interactive process. Therefore the daily instruction of children should not take place from a chair.
 - every opportunity to move around the room and help children with assignments and interact should be used.
5. Lesson plans will be provided on a weekly basis to Mr. Toetz.
 - Plans will include Goals, Objectives, Activities, Performance outcomes, Need for instructional modifications.
 - These will be provided on Monday mornings.
6. A long term unit plan will be provided to Mr. Toetz on October 19, 1999
 - this plan will include the same headings as number 5 above but on a more long-term basis.
 - Units will include all 5 academic subject areas and can be of a length determined appropriate by Mr. Dallmann and Mr. Toetz collectively.

According to Toetz, he did not recall that the Grievant responded to the "vision" statement. As to the first "action", the Grievant asked what if the child did not take the newsletter home. The second action was not a problem as that concern had been discussed previously with the Grievant, and he said he had already taken that step. That was also the case as to the third action and the Grievant was agreeable to the fourth action, as well. Toetz testified that the Grievant was not agreeable to the fifth and sixth actions to be taken, i.e., providing Toetz with "lesson plans" on a weekly basis and with a "unit plan" by October 19. Toetz told the Grievant he wanted his lesson plans, with goals, objectives, etc., by the following Monday morning, October 11. According to Toetz, the Grievant was not happy about having to do this.

Toetz then testified that on Monday morning, October 11, he came in and there were no lesson plans from the Grievant. After checking the Grievant's schedule to see if he had classes, he went to the Grievant's classroom at approximately 10:15 a.m. He told the Grievant that he was looking for the lesson plans, and the Grievant said that he was going to bring them down to him in five minutes. The Grievant then subsequently brought Toetz a copy of the page for that week from his lesson plan book. Toetz did not think this was an appropriate response as it did not set forth the goals and objectives, etc. that he had asked for and considered them to be just notes to self by the Grievant. According to Toetz, it was not sufficient to allow him to address parental concerns in a positive way regarding the lack of content in the Grievant's instruction. Toetz conceded that he did not tell the Grievant specifically what time he expected the lesson plans on Monday morning at their October 8th meeting. However, after receiving the Grievant's lesson plans on October 11, Toetz placed a written note in the Grievant's mailbox indicating that in the future, "Monday morning means 7:45 – 8:10, not anytime before noon." He also indicated that he expected that they would either be given to him or placed in his box and that he would not have to come and get them from the Grievant. The Grievant returned the note with the indication that he had the lesson plans to Toetz by 10:15 a.m., which was "still morning" and that he had a parent with him from 7:45 to 8:10.

The Grievant testified that no parental or student concerns had been brought to his attention prior to Toetz's October 4 e-mail, nor had any concerns regarding his lesson plans been brought to his attention previously. As to the parental concern expressed on October 5, 1999, the Grievant recalled that it was a student who was having trouble due to having moved due to divorce.

The Grievant does not dispute that the "vision" statement done by Toetz and the "action plan" were discussed at the October 8 meeting. However, as to the lesson plans, the Grievant thought that it was the same lesson plans that he had done in the past, and which had been accepted, and Toetz provided him with no examples at the meeting. While there are no "goals" or "objectives" on the plans that he submitted to Toetz on October 11, those are referenced in the pages of the teacher's manual noted on the plans, and the Grievant felt that this met Toetz's expectations. As to handing in the lesson plans late on Monday, October 11, the Grievant testified that he turned them in around 10:10 a.m. and that Toetz had just said "Monday morning", and did not specify it was to be before the student day began. The Grievant testified that he had a parent with him until 8:15 a.m. that morning and was waiting for the morning recess period to get the lesson plan to Toetz, which is when Toetz came to his room.

On October 11, 1999, Toetz issued the Grievant the following:

10/11/99

TO: Mr. Dallmann
 FROM: Mr. Toetz, John Hustis Elementary Principal
 RE: NONCOMPLIANCE

Mr. Dallmann:

On 10/9/99 (sic) I met with you to discuss issues related to preparation for teaching, communication with parents, use of class time and emotionally safe interactions with students. During that meeting I shared with you several very specific actions for you to take to begin to address the problem (copy attached).

Item number 5 of that document requires the submission of lesson plans to me on Monday mornings for the weeks teaching. On 10/11/1999 I had to come to your room at 10:15 to get the lesson plans from you. At that time you had not even made copies for me. My expectation would be to have the lesson plans before instruction for the week began.

After review of the lessons I feel you have not made a real effort to fulfill the expectation. Item number 5 was clear as to the expected parts of the lesson plans.

5. Lesson plans will be provided on a weekly basis to Mr. Toetz.
 - Plans will include Goals, Objectives, Activities, Performance outcomes, Need for instructional modifications.
 - These will be provided on Monday mornings.

In your plans I see the name of a book or numbers to a page and general subject area it may relate to. The plan is not specific enough to have times other than 8:35 to 9:00 on Monday, and specials time.

Corrective Action:

On Monday 10/18/99 I will have lesson plans brought to me or put in my box before 8:10 a.m. These plans will include Goals, Objectives, Activities, Performance Outcomes, and Need for instructional modifications. All other items in the 10/8/99 document will continue to be in effect.

As per Article 7(F)(1 & 2) I am formally notifying you of delinquencies in the areas of:

1. Preparation for teaching
2. Communication with parents
3. Use of class time
4. Emotionally safe interactions with students

I am also notifying you that you will not be part of the Goal Setting this year, as per Article 7(A)(3).

This letter along with the 10/8/99 letter and the lesson plans received on 10/11/99 will be placed in your professional file on 10/11/99.

My concern remains, as always, the best education for the Hustisford students.

On October 18, the Grievant submitted lesson plans to Toetz that were similar to the ones he submitted on October 11, except that they noted the times he was teaching the various subjects.

On October 18, Toetz issued the Grievant the following:

10/18/99

TO: Mr. Dallmann

FROM: Mr. Toetz, John Hustis Elementary Principal

RE: 2nd NONCOMPLIANCE

Mr. Dallmann:

On 10/11/99 you received a very specific letter describing areas of delinquency and expected Corrective Action.

Corrective Action:

On Monday 10/18/99 I will have lesson plans brought to me or put in my box before 8:10 a.m. These plans will include Goals, Objectives, Activities, Performance Outcomes, and Need for instructional modifications. All other items in the 10/8/99 document will continue to be in effect.

As per Article 7(F)(1 & 2) I am formally notifying you of delinquencies in the areas of:

- 1. Preparation for teaching*
- 2. Communication with parents*
- 3. Use of class time*
- 4. Emotionally safe interactions with students*

In that same letter I informed you of my intention to use the Clinical Model of evaluation as per Article 7(A)(3).

I am also notifying you that you will not be part of the Goal Setting process this year, as per Article 7(A)(3).

On this day 10/18/99 I received the lesson plans I requested. Again, however, they resembled your schedule for the week not a lesson plan as I described. During the week of 10/11/99 I was not asked by you for further definition nor asked for help in developing weekly lesson plans. I will assume then that you are clear about the expectations.

I will again add your weekly lesson plans to your professional file along with this letter. This is the second such letter in 1 week.

On 10/19/99 our meeting will include the provision of your Unit Plans as per the 10/8/99 letter, explanation of the delinquencies outlined in the 10/11/99 letter and the creation of a formal Plan of Amelioration. As you will recall this is the meeting we agreed upon in the e-mail from 10/5/99. We agreed to use the 8:35-9:35 for goal setting and then changed it due to the recent events.

At the October 19 meeting, Toetz, the Grievant and the Association's Grievance Chair, Kathleen Steingraber, were present. At that meeting, Toetz discussed the Grievant's lesson plans and what he wished the Grievant to do in that regard, as well as the "plan of action" for the Grievant. According to the Grievant, he asked Toetz what he wanted as far as the lesson plan and asked for examples. While none were given to him at that meeting, he subsequently received examples in the form of lesson plans done by another teacher. The lesson plans submitted by the Grievant after October 18 were all typewritten. The District asserts that the lesson plans submitted by the Grievant after October 18 were essentially copied from the teacher's manual for the various classes. The Grievant testified that while he did use the teacher manuals for some of the lesson plans, there is no manual for some of his classes, so that he did not use the manual for lesson plans for those classes.

On October 22, 1999, Toetz met with the Grievant and his Association representative, Don Baumann, to discuss Toetz's "concerns" regarding the Grievant, and what he felt he needed to see from the Grievant. Toetz also discussed a "plan of amelioration" outline with the Grievant which included: Weekly lesson plans; Unit plans; Scheduled/regular observations; Plan of action to address student self-esteem and social comfort; Continuation and expansion of safety patrol; Video tape instruction for self-reflection; and Connection with another willing teacher to be a peer mentor.

Toetz testified that he discussed concerns parents had with the Grievant, and that those concerns came from approximately ten parents, beginning with when Toetz first started with the District. The Grievant testified that the "plan" was not mutually developed by Toetz and himself, but was strictly from Toetz. Toetz testified that his decision to place the Grievant on

a “plan of amelioration” was based on his having told the Grievant what he wanted, that he wanted to be able to defend him with regard to parental concerns, and what he felt the Grievant needed to do. According to Toetz, what he received from the Grievant showed him that the Grievant was making every effort to dodge what was needed.

On November 5, 1999, Toetz issued the Grievant a letter reprimanding him for “inappropriate planning and class coverage” when Toetz observed the Grievant in a storage closet looking for materials during instructional time.

On November 8, 1999, Toetz, the Board’s attorney, Greg Ladewski, the Grievant, Baumann, Steingraber and Winnebagoland UniServ Director, Armin Blaufuss, met to discuss Toetz’s concerns regarding the Grievant, and the two letters of non-compliance placed in the Grievant’s personnel file. Nothing was resolved at the meeting.

On November 10, 1999, Toetz sent the Grievant a letter regarding a formal observation to occur on November 15, 1999, and the elements of the plan of amelioration which included: weekly lesson plans with goals, objectives, etc.; unit plans, scheduled regular observations, a plan of action to address student self-esteem and social comfort; continuation and expansion of the safety patrol; video tape instruction; and connecting with a peer mentor. Toetz’s letter also again listed his concerns and what actions he expected the Grievant to take to address them.

On November 12, 1999, a letter from Blaufuss to Toetz along with a grievance was filed regarding the letters of non-compliance of October 11 and 18, 1999 and the placing of the Grievant on a plan of amelioration. The letter from Blaufuss included an offer discussed at the November 8 meeting – remove the October 11 and 18 non-compliance memos and provide the Grievant with a period of time (to the end of the semester) to work on Toetz’s concerns.

On November 13, 1999, at a Saturday “TRIBES” class, Toetz left the following with the Grievant as a possible compromise on a plan of amelioration for the Grievant:

Terry:

How about this for a possible compromise b/t you & I for a plan

- 1) Peer mentor (specifics to be worked out b/t you and I)
- 2) Video Tape teaching (tapes for you, not me and same as above)
- 3) Unit Plans: for unit but (goal statement only & timeline)

- 4) Lesson Plans: objectives, activities, assessment/performance & outcome for M-T-W no Th-F
- 5) Amend regular observations & non-planned to follow standard format
- 6) I will remove 2 letters in file, with the reservation of right to replace if necessary.

On November 17, 1999, Toetz provided the Grievant with the documentation he was placing in the Grievant's personnel file, which included an extensive typed version of thirteen concerns he states he had discussed verbally with the Grievant at the October 22, 1999 meeting and what Toetz felt he needed to have addressed in that regard; the November 10, 1999 letter regarding the observation and possible plan of amelioration, and the reprimands of October 11 and 18, 1999 and November 5, 1999. The Grievant submitted written responses to each of the letters of non-compliance wherein he objected to not having had the opportunity to sign an acknowledgement of the documents prior to their being placed in his personnel file, objected that the goals Toetz referred to were not constructed by the Grievant, objected that he had not been supplied with any documentation regarding Toetz's concerns, objected to not having received written notification of the deficiencies along with expected corrective action and a reasonable amount of time to comply, and that as to the letter of non-compliance of October 11 with regard to his lesson plan not being submitted on time, that Toetz had not specified any particular time, beyond that it be in the morning and that circumstances that Monday morning did not permit him to submit them before the 10:10 recess.

By a memo of November 22, 1999, Toetz responded to the grievance filed on November 12, 1999, wherein he disputed a number of factual assertions and denied the grievance.

Toetz sent Baumann a memorandum of November 23, 1999 regarding his November 13 compromise offer, which stated, in relevant part, as follows:

From: Matt Toetz
Subject: Re: Nov. 13 Memo
To: Don Baumann
Cc: Terry Dallmann

1. As for Peer Mentoring, Terry and I talked Monday, and I suggested possibly a team of Joyce, LouAnn and Sylvia.

...

2. I asked that Video Taping be part of the plan. I do not want the tapes myself and have no intention of using them against him, unless he does something horrifically illegal, like hit a student. I am thinking something for Terry to look at at home or during prep time and compare what he planned on getting accomplished against what actually happened. A self-reflection tool.

3. I will pull out the 10/11 and 10/18 letters put into his file without his signature. With the understanding that I will replace them at any time I see he is stopping his efforts to improve and be compliant (sic).

4. Kathy Steingraber had asked if I would change the language from Plan of Amelioration to something else. I do not see how this is possible since the contract specifically designates the instrument to be used.

5. I will agree to having only three days worth of lesson plans, with corresponding pieces. I believe Mr. Dallman is possibly beginning to understand how the pieces fit together and how they interrelate.

6. I am still looking for dates of Unit Plans and I am willing to have the unit plans have only Goals and Objectives. I am also willing to limit the unit plans to 2 subject areas. 1 choice from Terry and 1 choice from me.

7. I would like to have a discussion about Terry's Plan of Action as it relates to improving student self-esteem and social comfort. I know he is looking for a description but he has also asked no questions.

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On November 18, 1999, Toetz gave the Grievant examples of what he expected regarding lesson plans in the form of lesson plans he had asked several other teachers to provide.

According to Toetz, there were weekly meetings beginning in October and continuing through December, 1999 with the Grievant, himself, and an Association representative to discuss what it was Toetz wanted from the Grievant.

The Grievant was evaluated by Toetz on November 15, 1999, which evaluation was for the most part critical of the Grievant, especially with regard to organizing and planning his lessons and otherwise preparing for activities. The Grievant was also evaluated on December 14, 1999 by Tom Hercules, which evaluation was for the most part positive but did

note that the Grievant deviated from the lesson plan he had turned in for the day. Hercules also noted on the evaluation that he was not comfortable evaluating the Grievant as he did not have a daily working relationship with him, but was more familiar with the Grievant in the course of the latter's coaching duties. Until the 1999-2000 school year, the Grievant's annual evaluations since at least the 1992-93 school year had been satisfactory or better, including his 1998-99 evaluation by Toetz.

On November 30, 1999, Toetz gave the Grievant a note describing how a parent who had previously had some concerns regarding the Grievant and her child, expressed how pleased she was with the child's improving grades, how well the daily log and homework journal had been working, as well as the improved relationship between the Grievant and the child.

On December 7, 1999, Toetz sent the Grievant a memo criticizing the fact that the Grievant's lesson plans appeared to be copied from the teacher manual and asserting that following a scripted lesson plan from the manual, would at best only meet the needs of 40% of the class.

Toetz was out most of January due to having spinal surgery, and came back near the end of the month for half days. On January 31, 2000, Toetz, the Grievant, and Baumann met to discuss the "plan of amelioration". Agreement was reached on a "Plan of Professional Improvement" for the Grievant, and was memorialized in the following memo to the Grievant from Toetz:

TO: Terry Dallmann

FROM: Matthew Toetz

RE: Plan of Professional Improvement

DATE: January 31, 2000

On 1/31/2000 Mr. Dallmann, Mr. Baumann and I met to discuss, the Plan of Amelioration previously put in place for Mr. Dallmann. In the Plan of Amelioration Mr. Dallmann was to address several issues (see attached).

In December 1999, the same three professionals met to discuss the Plan of Amelioration and Mr. Dallmann expressed his desire to move away from the Plan of Amelioration into something else. This document represents the "something else and is the collective thoughts of Mr. Toetz, Mr. Baumann and Mr. Dallmann. Currently we are all in agreement on this Plan of Professional Improvement.

Plan of Professional Improvement:

1. Continue work with colleagues and other professionals, in relation to lesson design, implementation and modification. Currently Mr. Dallmann has been using several staff members to share their respective expertise.
2. On occasion, it is believed that Mr. Dallmann will videotape his instruction. The videotapes are intended to be reflective teaching tools for his use and growth. Mr. Dallmann has expressed how he has been able to notice details in his teaching requiring refinement from the video taping. Mr. Toetz expressed how he would encourage the use of video as a way to monitor not only instruction but also interactions with students.
3. Safety Patrol has not been brought out as a high area of concern. In a previous meeting Mr. Toetz has shared with Mr. Dallmann how this responsibility is an excellent way for him to have a positive, professional presence within the school community. During this meeting however, Mr. Dallmann did express some concern about how the sixth grade students in Patrol have been struggling with leadership. Mr. Toetz offered to meet with Mr. Dallmann and the Patrol to discuss the issue.
4. The weekly newsletter Mr. Toetz believes has been a success for Mr. Dallmann. Although Mr. Toetz has encouraged the continual expansion and development of the newsletter, Mr. Dallmann currently feels that a biweekly letter would better serve his purposes. The purpose of the newsletter was to keep families informed about the academic happenings in Mr. Dallmann's classroom, provide him with a forum to express his willingness to be contacted and, share his suggestions on how the home can help the student at school. To date Mr. Toetz and Mr. Dallmann believe the newsletter has done this. As a professional courtesy, Mr. Dallmann will provide Mr. Toetz with a copy of each newsletter.
5. Many concessions were made on the original request for lesson and unit plans. Ultimately Mr. Dallmann supplying lesson plans every Monday morning satisfied the expectation for lesson plans. The lesson plans were for Monday, Tuesday and Wednesday in the areas of Math and Social Studies. The plans included Goals, Objective and Assessment and modifications. Although Mr. Toetz feels the goals and objectives written by Mr. Dallmann have come from the Teacher's additions (sic) of the

respective subjects, he feels Mr. Dallmann has come to understand the importance and necessity of having these items prepared and understood prior to engaging students in the teaching and learning process. **It is no longer required for Mr. Dallmann to submit weekly lesson plans.** It is still the expectation that weekly and daily lesson plans be prepared and be available to the administration consistent with the teachers job description and Staff Handbook.

6. Unit Plan have not been submitted to Mr. Toetz and it was agreed that Mr. Dallmann would fulfill this expectation by submitting these plans to Mr. Toetz in one subject area.
7. Mr. Toetz will continue to have scheduled and non-scheduled observations of Mr. Dallmann.

Following the agreed-upon “Plan of Improvement” for the Grievant, the Grievant no longer turned in lesson plans to Toetz on a weekly basis. The Grievant also was not formally observed the second semester of the 1999-2000 school year. Toetz testified that at the meeting on January 31, 2000, the Grievant indicated that he wanted to be treated like other teachers, and that Toetz therefore felt that formally observing the Grievant would likely be perceived as being treated differently. Toetz testified that he did tell the Grievant that he would have to be able to defend at the end of the school year that he had met the goals. Toetz also testified that in October he had sent e-mails to staff regarding scheduling a meeting with each teacher to set goals and discuss how they would be met and that at the end of the year meeting, teachers typically bring stacks of materials, videotapes, etc. to show that they in fact did the things that had been discussed.

In May of 2000, Toetz attempted to schedule year-end meetings with all of the teachers, including the Grievant, and sent the following memorandum of May 24, 2000 to the Grievant regarding the year-end meeting:

From: Matt Toetz
Subject: Re:
To: Terry Dallman
cc: Don Baumann

Either day would work, but I would prefer the 30th. This day looks like it may have some problems already. The 30th looks better.

I am preparing for a meeting that will include.

1. Continued attention to the items in the 1/31/00 agreement. (video, newsletter, mentor)
2. A discussion of the items you would like removed from your file. (do not be confused, I will by no means expoge (sic) the record of everything.) That is to say I have no intention, and am not obligated to remove any items which I had just reason to put there. If it is your and Don's position that I should remove all such item (sic), the (sic) we are at an impass. I would be professionally neglect (sic) to do such a thing.

I would suggest you be prepared to discuss in reasonable and logical fashion those items described above.

Toetz testified that Baumann contacted him regarding discussing removing items from the Grievant's personnel file at the meeting and that Toetz had responded that he would discuss it.

On May 30, 2000, Toetz met with the Grievant and Baumann. According to Toetz, the Grievant brought nothing to the year-end meeting, and all he wanted to discuss was what was going to be removed from his personnel file; the Grievant wanting all of the items in question removed. Toetz asked for the videotapes and the Grievant responded that he thought the videotaping was for himself and not for evaluations. The Grievant also offered nothing regarding peer mentoring. According to Toetz, he was open to examining whatever evidence the Grievant had brought to the meeting, and that even after the meeting the Grievant never provided, or asked for an opportunity to provide, the materials that Toetz had expected. The Grievant testified that as to the videotapes, he had taped himself twice, but was of the opinion that they were only for his viewing. The Grievant testified that as to conferring with mentors, he had spoken to others during the year, and to outside people as well. He testified that he did not bring anything to the meeting and that he would not have known what Toetz wanted. At the meeting, the only thing Toetz had said he wanted was the videotapes, and that was not part of the agreement. The Grievant testified that it was his expectation that if everything was going well, then everything would be removed from his personnel file. The parties stipulated that in previous years, teachers had turned in their lesson plan books at the end of the school year.

On June 5, 2000, Toetz issued the following to the Grievant:

TO: Mr. Dallmann, Teacher
FROM: Mr. Toetz, Principal of John Hustis
RE: 5/30/00 Evaluation of the Plan of Professional Development

DISCUSSION

The first proposed action in this plan was for Mr. Dallmann to use a peer to review lesson plan preparation and clarity. This has not been done since the January implementation of this plan. When I asked the identified peer staff to recount when Mr. Dallmann approached them, they could not recall one time. During the 5/30/00, conference Mr. Dallmann himself could not account for one time when he had taken such action. This first goal has not been met.

The second goal was for Mr. Dallmann to videotape his instruction. He has verbally stated that he has done this 2 or 3 times. That would account for less than once per month. When asked if I could see them, Mr. Dallmann took offense and said he thought they were for him. He would be accurate that I said they would be for him to use and focus on his own teaching. That does not however suggest he should be unable or unwilling to provide evidence of completing this task with more intensity than 2 or 3 times in 5 months. This goal would also be considered unaccomplished.

The third goal was for Mr. Dallmann to continue with safety patrol and help them develop leadership. I offered to meet with Mr. Dallmann and the 6th graders. Mr. Dallmann did not decide to use this resource. Patrol had its share of struggles. I do not however feel it has not been due to any role Mr. Dallmann played. They are a leaderless group. If anything, Mr. Dallmann has been able to make a functional patrol out of a complicated group. To his credit, they have done well. This goal has been accomplished despite Mr. Dallmann deciding not to use me as a resource.

The fourth goal was the publication of a newsletter. The newsletter was successfully published to my knowledge only for a short period. Soon after this 1/31/00 Plan of Professional Improvement, the newsletters stopped being shared with me. Mr. Dallmann received a letter saying I did not need to preview them any longer but would require an FYI copy each time. This has not been done since February. This goal would be considered not accomplished. At this meeting, Mr. Dallmann suggested it was not his problem, I did not ask for it. What he seems to forget is that my having to ask him to give me something that I had already asked for once was a major factor in him being on a Plan of Amelioration in the first place.

The last item was the submission of lesson plans to me in two subject areas. This goal was accomplished. I reaffirm my position that the lesson plans were derived directly from Teacher's Additions (sic) of recently published curriculum materials. I, however, am more comfortable that he follow a curriculum guide directly than do a halfhearted job of creating something on his own.

SUMMARY

I had expressed that I would like to be able to do goal setting with him, but since I have had the chance to review his progress, I would doubt the possibility. He seems either unable or unwilling to become actively accountable for his own professionalism. Evidence of this is the fact that at the 5/30/00 meeting, which I scheduled an end of the year goal review meeting with everyone, he did not bring any evidence of showing his accomplishments. He continues to display surprise when asked to do so, like it is some sort of extreme request to have prepared for an end of the year goal setting meeting.

Mr. Dallmann came to the meeting merely to ask that all evidence of having problem (sic) in the 1999-2000 school year be removed from his file because *he felt* he did so well. We had several conversations about taking items out of his file. I told him to look at his file, and if he did well, I would consider removing some items. The above description does not show evidence of doing well. Mr. Dallmann uses the same argument that since I have not been in to tell him to do something better, or I have not had to add additional negative items to his file, he has therefore done well, is ridiculous. I had asked him to come to the meeting with a list of items he would feel should be removed. He came with nothing. His own union representative showed surprise that he came to the meeting with no list. Mr. Dallmann did not even have the Plan of Professional Improvement. He feigned surprise at seeing the document (Plan of Professional Improvement).

CONCLUSION

In conclusion, let me say again the things I shared in our 5/30/00 meeting. I believe Mr. Dallmann has much more to offer than I currently see in his classroom. Mr. Dallmann seems to be suffering from the idea that if I do not "check on it" it is not his responsibility to do, and then it only needs to be done as long as I can "watch over him." I am not sure if it is because he is lazy, unmotivated, unable or does not care. In any case it makes it very difficult for me to even consider moving to the districts new goal setting model with him. Mr. Dallmann continues to respond to situations that would require him to be accountable for his action or inaction with the threat of grievance or some other

legal action. It is most certainly within his right to seek counsel, but the mere fact that he would come to a goal setting meeting, with no evidence of achieving anything. Then suggesting that his file be expunged because he thinks I said I would do that if he did well. His belief that the **evidence** of his doing well is; I have not had to “be on his case,” shows to me how little he has considered the implications of his position.

This record will be added to your file similar to the Goal Setting record being added to the other staff files. I do not intend to use the district Goal Setting procedure for you in the 2000-2001 school year. At the beginning of the 2000-2001 school year we will again meet to develop a Plan for your evaluation. Since the HEA contract does not have a mechanism for this other than a Plan of Amelioration, it is my belief that that will be the tool that will be used.

On the last day of school, teachers clean out their rooms and check out. Toetz testified that he made an effort on that day, June 5, 2000, to get around to everyone’s room and make sure they were cleaned. The Association had also requested to use part of the day to have a retirement party for Baumann. Toetz testified that he checked the Grievant’s storage closet, which he shared with the Elementary School Secretary, Lynn Persha, and asked the Grievant to make sure he cleaned out the closet before he left, and to work with Persha in doing so. According to Toetz, the Grievant indicated he would do so. Persha testified that she shares the closet with the Grievant and that on the last day of school she asked the Grievant if he was going to clean it, as she could not get into the closet. According to Persha, the Grievant said “No.” The Grievant testified that he shared the closet with Persha, and that it is a fifth-grade storage area and another teacher was also using it unbeknown to Persha. He testified he had already put away his things and that the other teacher had placed the books on the closet floor. The Grievant testified he never told Toetz the books were not his because he was never given the opportunity to do so, however, he did tell Persha, and she is Toetz’s secretary. Ultimately, Toetz and Persha cleaned out the closet and Toetz issued the Grievant the following reprimand:

To: Terry Dallmann

From: Mr. Toetz, John Hustis Principal, and Hustisford School District
Administrator

RE: INSUBORDINATION

On 6/5/00 I walked the hallways and rooms of John Hustis Elementary. I was conducting checkout procedures for all staff. Part of the checkout procedure was for all staff to clean their storage closet.

During my walk around the halls (between 11:00 and 12:00), and in the process of checking teachers out as quickly as possible, I specifically instructed you to clean your storage closet and asked you to work with Lynn Persha to do so. Your response to this request was, "yeah, I know." I asked Mrs. Persha to help, because she also shared the space. She came to you and asked to go about the business of cleaning out the closet; you told her you would not be cleaning it.

All other teachers were asked about the status of their closets and I checked them all as well. In every case except yours the closet could be walked in from back to back and side to side. I could read the names of books and count the number of science books or basal readers, because they were all organized together.

The purpose of the end of the year clean-up is to assure that at the beginning of the next year, when staff in-service training is scheduled teachers are not overburdened with having to organize their rooms and be expected to be trained.

On 6/6/00, Mrs. Persha and myself spent 3 hours cleaning the same closet I had directed you to clean before you would leave on the 6/5/00. The closet had books all over the floor, 6-8 boxes of miscellaneous rocket materials were strewn about, math, science and literature texts were found in several different locations.

Your deliberate and conscious act of not doing specifically what I directed you to do is insubordination.

I am notifying you that any further acts by you that require a reprimand will be dealt with using progressive discipline measures.

This letter will be placed in your file and you are, of course, welcome to respond to this letter.

On June 20, 2000, the Grievant submitted the following response to Toetz's "Evaluation":

TO: Mr. Toetz

FROM: Terry Dallmann

**RE: Response to the 6/5/00
Evaluation of Plan of Professional Improvement**

DATE: **June 20, 2000**

1. Peer Collaboration:

In the documentation of 11/23/99, Mr. Toetz stated that the person(s) chosen to work with for professional collaboration “to address that persons purpose and function. I do not want this to become a stigma for them. . .” In the 1/31/00 documentation, Mr. Toetz stated that the plan is for me to “work with colleagues and other professionals, in relation to lesson design, implementation and modification. I have continued to work with my colleagues on a regular basis on school and curriculum planning and preparation. I have also worked with other professionals outside of the Hustisford School District on personal and professional growth. These individuals names are available upon request.

2. Videotaping:

In the documentation of 11/23/99, Mr. Toetz stated “I do not want these tapes myself and have not intention of using them against him. . .A self-reflection tool”. In the 1/31/00 Plan, it stated “On occasion,. . .will videotape . . .(as) reflective teaching tools for his (Terry’s) use and growth” At no time was a specific number of videotaping established or determined; nor, was it understood the tapes were to be given to Mr. Toetz. I understood the frequency and necessity to be at my professional discretion.

3. Safety Patrol:

I believe I did ask Mr. Toetz to attend several of the Safety Patrol meetings. I did not put these requests in written form so I do not have documentation to support this belief. It appears Mr. Toetz uses every opportunity to be derogatory. Instead of stopping with “to his credit, they have done well”, Mr. Toetz felt the need to add “this goal has been accomplished despite Mr. Dallmann deciding not to use me as a resource”.

4. Newsletter:

I believe the newsletter was continued on a regular basis, although not to the agreed upon frequency.

5. Weekly Lesson Plans

The 1/31/00 documentation in bold print, clearly stated **“It is not longer required for Mr. Dallmann to submit weekly lesson plans.”** Mr. Toetz again took this opportunity to be derogatory and degrading.

In response to the **Summary**, I was under the impression that I was not part of the goal setting/evaluation process this year. When requested by e-mail to attend “A Goal Setting” meeting, it was difficult for me to come to such a meeting prepared. I did not view it as an “extreme request”; however, I did assume Mr. Toetz would request a different meeting, or, in retrospect, would have indicated his outline to discuss the Plan of Professional Improvement. It was not that I was surprised to see the document; however, I was surprised at his desire for me to have documentation to address this plan without fore knowledge.

In a memo dated 12/2/99, Mr. Toetz did agree that all letters placed in this school year’s file would be removed and destroyed. It was not to be based on “if. . . , I would consider”. Prior to Mr. Toetz’s employment with the Hustisford School District, my professional file had contained positive and satisfactory to superior evaluations. It is not only my opinion, but the opinion of past administrations that I have performed professionally and have been considered an excellent teacher.

In response to the **Conclusion**, I believe the character statements made by Mr. Toetz clearly indicates a biased negativity that has been evidenced throughout the school year. Mr. Toetz had clearly made judgmental and opinionated comments beyond the level of professionalism or objectivity. My only recourse has been to use representation to be present at any and all meetings or interactions.

Terry Dallmann /s/

The following grievance was subsequently filed on behalf of the Grievant:

Hustisford Education Association

Statement of Grievance

On or about June 13, Matthew Toetz, Hustisford School District Administrator sent Terry Dallman a written Evaluation of Terry Dallman's Plan of Professional Development. The written report was highly critical of Mr. Dallman.

The Plan of Professional Improvement (PPI) prepared by Mr. Toetz on January 31, 2000 was mutually developed by Mr. Dallman, Mr. Toetz, and Don Baumann, Association Grievance Chairperson. The following statements address Mr. Toetz's criticisms.

Peer Review – There was no express agreement that “peers” would review Mr. Dallman's lesson plans. Mr. Dallman has, as called for in the PPI, worked with colleagues and other professionals with respect to planning lessons.

Videotaping – There was no express agreement that Mr. Toetz had the right to view the videotapes that Mr. Dallman made of his instruction and interaction with students. The videotapes were for the purpose of Mr. Dallman's personal professional growth and development – that is they were “intended to be reflective teaching tools for his use and growth.”

Newsletters – The PPI left to Mr. Dallman the continued use of newsletters as a tool to communicate with parents. Mr. Toetz even informed Mr. Dallman that it was no longer necessary to give him a courtesy copy.

Mr. Toetz has a negative and biased attitude toward Mr. Dallman. This is evident by his begrudging acknowledgement that Mr. Dallman met the lesson plan expectations. In the PPI Mr. Toetz tacitly accepted Mr. Dallman's use of curriculum and teacher's guides. Now he is held to a different standard.

Mr. Toetz cites as “evidence” for his criticism that Mr. Dallman did not bring in anything to show his accomplishments during the school year. From the end of January to the end of the school year Mr. Toetz had the opportunity to get a first hand view of Mr. Dallman's accomplishments. Not once did he come in to Mr. Dallman's classroom to observe his work.

Mr. Toetz acted in an unfair, arbitrary, capricious and very likely discriminatory manner – the latter to be also addressed in a prohibited practice based on Mr. Dallman's union activities. Mr. Toetz's actions have violated the Professional Employment Agreement and Mr. Dallman's rights.

Articles Violated

Article 4: Association Rights

Article 5: Management Rights

Article 7: Individual Rights

Remedy

The Association requests that

1. Memorandums from Mr. Toetz to Mr. Dallman dated October 8, 1999, October 11, 1999, October 18, 1999, November 10, 1999, November 17, 1999 and November 23, 1999 be expunged from Mr. Dallman's personnel file and destroyed;
2. The January 31, 2000 Plan of Professional Improvement be expunged from Mr. Dallman's personnel file and destroyed;
3. The written summary of the May 30, 2000 evaluation of the Professional Plan of Improvement be expunged from Mr. Dallman's personnel file and destroyed;
4. Any material related to documents cited in 1, 2, and 3 above be expunged from Mr. Dallman's personnel file and destroyed;
5. Mr. Dallman be evaluated and supervised by an administrator other than Mr. Toetz; and
6. Mr. Toetz immediately cease and desist treating Mr. Dallman in an arbitrary, capricious and discriminatory manner.

The grievance was denied.

The parties were unable to resolve their dispute and proceeded to arbitration on the grievance before the undersigned.

POSITIONS OF THE PARTIES

District

The District asserts that the Agreement gives the administration sole discretion regarding teacher evaluations. The Grievant alleged that Toetz somehow exceeded his authority in October of 1999 by determining that the Grievant had serious deficiencies. Several claims were implied. First, there was an argument to the effect that Toetz needed to make some sort of form “showing” the Grievant’s serious deficiencies. There is also an implied claim that Toetz was required under the Agreement to give the Grievant some sort of “due process” (prior notice) before determining there were deficiencies. Another unsupported claim is that deficiencies must be numerous and documented.

The management rights clause in the Agreement, Article 5, gives express, broad rights to the administration regarding the administration and supervision of teachers, including evaluation. Highly relevant are the rights to “determine (teachers) qualifications”, to establish “executive management and administrative control of the school system” and to “establish and supervise the program of instruction”. Most relevant is the express language leaving to the administration the “establishment of quality standards and judgment of employee performance.” Article 5 also concludes with the statement: “The exercise of the foregoing powers. . .and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this Agreement.” (Emphasis supplied).

Article 7 contains no such “express” limitation. Thus, the determination that the Grievant was seriously deficient was within Toetz’s sole discretion. This is confirmed by the use of the term “judged” in Article 7, Section A, 2. The Grievant cannot seriously claim that “due process” or repeated violations must be shown to justify this determination of his deficiencies. In this case, spurred by parent complaints and confirmed by the Grievant’s response to his clear directive, Toetz judged the Grievant to be seriously deficient. This was solely within his authority, and the facts demonstrate that Toetz was correct.

The District next asserts that the plan of amelioration was properly developed. Toetz was free to draft and provide the Grievant with a “vision statement” as a starting point for a constructive dialogue between teacher and administrator. Toetz was also free to give the Grievant a “draft” of a “plan of amelioration”, again as only the starting point for discussion, and given the Grievant’s consistent non-responsive attitude toward Toetz’s concerns, a necessary step. The Agreement expressly authorizes Toetz to unilaterally develop a plan for evaluating the Grievant in light of perceived deficiencies. While the “plan of amelioration” itself must be “mutually developed” by administrator and teacher, Article 7 (A)1,a),3) provides that a “teacher on a plan of amelioration shall be observed and evaluated in accordance with a written plan developed by the administration.” (Emphasis added). The

directive that the Grievant provide detailed lesson plans was a necessary and integral part of Toetz's duty to monitor and evaluate the Grievant's progress, as well as to confirm his ability to teach on a day-to-day level. Most importantly, Toetz worked with the Grievant and his representatives to "mutually develop" an acceptable plan, meeting the Grievant more than halfway on a number of occasions. Toetz radically reduced the Grievant's obligation to provide detailed lesson plans to just two classes. At the suggestion of the Association's representative that the process be more "formative" and less "summative", the name of the plan was changed from "Plan of Amelioration" to "Plan of Professional Improvement", as a face-saving device for the Grievant. Toetz agreed to arrange an after-hours meeting with the Grievant and his representatives in an attempt to resolve the issue. Recognizing the Grievant's inability to write detailed lesson plans and his unfamiliarity with basic terminology, Toetz obtained and passed along to the Grievant, other teachers' drafts of such lesson plans. Toetz also allowed him to hand in plans derived (and sometimes copied) from a Teachers' Manual. Thus, Toetz followed the letter and spirit of the Agreement in dealing with the Grievant's deficiencies. The initial finding was proper, made in good faith, and acknowledged by everyone but the Grievant, and the eventual plan was mutually agreed-upon.

Under Wisconsin law, the District determines what educational methodologies are to be utilized by teachers. It follows that the administration is free to define what planning tools and methods teachers shall use in implementing the District's instructional goals. While, as a practical matter, teachers are not routinely required to produce detailed lesson plans in advance for every class, as professionals they are expected to do what is necessary to be well-prepared for each class, and to use instructional time in a most effective manner. Teachers had only been asked to submit their lesson plan books at the end of the year, because it was presumed they had made the necessary preparation for classes. This presumption, however, is rebuttable. It is common for an administrator, as a first step in addressing budding concerns about a particular teacher, to request detailed lesson plans, as was done here. While requiring some extra effort, this is not intended as a punishment, but provides an objective, unequivocal basis for further discussion of the teacher's instructional methodology and his/her strengths or weaknesses. To be of any value in such a discussion, the lesson plan, goals and objectives submitted by the teacher must use and apply accepted definitions.

Based on what he turned in, the Grievant's actions prove that he either forgot or never learned the basics. Turning in a bare-bones schedule as the Grievant initially did, was completely contrary to Toetz's express written directions to the Grievant, which had been discussed in the meeting on October 8. The assertion that the Grievant thought that only the planner was required, because that is what teachers routinely hand in at the end of the year, is clearly contradicted by Toetz's express written directive. Further, a bare-bones schedule was obviously worthless as a discussion tool for further meetings, and was equally worthless as "ammunition" for Toetz to rebut parental concerns. The inarticulate, incomplete, and barely legible lesson plans submitted by the Grievant could only aggravate Toetz's concerns. Further,

the Grievant was well aware that Toetz was asking for something beyond his weekly schedule and that is why he initially balked at the request when it was first mentioned at the October 8 meeting. Had the Grievant thought that all Toetz wanted was calendar entries, he would not have objected on the basis of all the work that would make for him. It is clear that at the end of that meeting, the Grievant had a very good idea that Toetz wanted more than a calendar book page. However, based on the Grievant's offering of October 11, and confirmed on numerous occasions thereafter, it appears the Grievant did not know how to develop a detailed lesson plan with goals, objectives and performance outcomes.

The timing of the Grievant's delivery of the so-called "lesson plans" also demonstrates an inappropriate attitude. The only explanations for the Grievant's procrastination are that he either hoped Toetz would not follow up on the request, an insubordinate desire to make Toetz come and get it himself, or most likely, the embarrassed recognition that the scribbled planner pages were a completely inadequate response to Toetz's request. The Grievant's explanations of the delay do not stand up. He could have photocopied the pages of his planner anytime, and the convenient and undocumented claim that the Grievant had a parent meeting that morning is no excuse, as if the Grievant knew about the meeting beforehand, he should have planned accordingly, and if the meeting was unexpected, he should still have had enough time to make a copy.

The allegation that the lesson plan request from Toetz was onerous does not stand up, as the Grievant did not make a reasonable effort to comply, but handed in a patently deficient set of plans the first three times. While the other teachers may have grumbled when asked for a sample lesson plan, they complied, recognizing that Toetz had the right to request them. If the Grievant had balked at the size of the task, he could have asked that Toetz reduce it, as Toetz later did in response to a request made on the Grievant's behalf in November. Further, the Grievant went to at least as much effort later when he laboriously copied the goals and objectives from the Teachers' Manual in an effort to fool Toetz into believing he understood the concepts.

The District asserts that the lesson plans later submitted by the Grievant demonstrated an attempt at deception. The Grievant, in response to Toetz's persistent demand for some indication of professional competence, copied, sometimes word for word, the goals and objectives from the Teacher's Guide in the hopes of fooling Toetz into believing that he knew how to perform this essential task. By doing so, the Grievant confirmed Toetz's worst fears. Any argument that Toetz had jumped the gun with his quick response to the Grievant's October 11 "work product" was rebutted by the Grievant's clumsy deception. The Grievant has never demonstrated even a rudimentary understanding of how to develop written goals, objectives and performance outcomes.

Toetz may be faulted for his initial reaction to the Grievant in reprimanding him for non-compliance, not recognizing that part of the problem was the Grievant's lack of essential skills. That misapprehension was largely the Grievant's own responsibility. He should have known what to do, and if not, he should have admitted the problem and tackled it directly. Instead, he tried to bluff his way through.

The District next asserts that Toetz's May 31, 2000 evaluation of the Grievant must stand. The Grievant's explanation of the year-end meeting makes no sense. He alleges he brought nothing to the meeting because he was not specifically directed to do so. Yet, he knew that the year-end meeting was important and had the specific objective of evaluating his progress in the Plan of Professional Improvement. He must have known that all of the other teachers, in their evaluations, were bringing portfolio samples and other materials to demonstrate their progress in discussions with Toetz. It is absurd to imagine the Grievant who is on the intensive evaluation/improvement cycle, needed to bring less materials than others who were not under that same cloud. This exemplifies the Grievant's inexplicable lack of care and effort in his dealings with Toetz. The sensible approach would have been to impress Toetz with evidence of progress and achievement, but the Grievant did the exact opposite. That lackadaisical attitude demanded a strong response. Further, nothing in Toetz's evaluation foreclosed the possibility that the Grievant could still produce some documentation at another meeting. Instead, the Grievant did nothing.

For every omission, the Grievant offers excuses. He alleges he had "private" reasons for not consulting master teachers with whom Toetz had directed him to meet. His refusal to divulge or explain his reasons is more likely because he had none. Also groundless is the argument that the absence of negative feedback from Toetz during the spring of 2000 proved that he had made appropriate progress. Toetz was on post-surgery leave for the month of January, 2000, and he testified that the absence put him seriously behind in his work. Most important, after the mutual agreement on the Plan of Professional Development, the Grievant had asked to "be treated like everyone else" and his wish was granted. Thus, relatively less attention was devoted to the Grievant in early 2000. It was up to him to show that he had made progress; instead he offered nothing but unsupported claims.

The Grievant alleges he refused to provide Toetz with videotapes of his teaching because they were for the Grievant's "personal" use. If the tapes in fact existed, and if he thought they were helpful, he surely would have had no objection with sharing them with Toetz. The likely explanation for his refusal is that no tapes were ever made. There is no "privacy" interest that can be legitimately claimed. Toetz was entitled to visit the Grievant's classroom, announced or unannounced, to observe at any time. The point of the taping was to encourage the Grievant to critique his own teaching style and methodology at his leisure. That is what Toetz meant when he said that the tapes were for the Grievant's own use, but the directive to make and use the tapes was not an option. Given the previous pattern of non-

compliance, it was entirely reasonable for Toetz to insist that the Grievant demonstrate that he had gone to some effort of making the tapes in the first place.

Equally unreasonable was his attitude that the meeting was solely to remove all negative documentation from his file. The Grievant was aware the meeting was his opportunity to demonstrate that he was ready for goal-setting the following year. Upon a showing of progress, Toetz would consider removing materials from his personnel file. As there was nothing for Toetz to consider in that regard, there was nothing to be removed. Toetz never promised that anything would be permanently removed; rather, he made it clear that nothing would be removed unless and until the Grievant's progress in the Plan of Improvement warranted it. Toetz had also specifically notified the Grievant in unequivocal terms on May 24, that such an attitude would lead to impasse at the meeting. The Grievant took his chances at the May 30 meeting, and Toetz's evaluation was well-deserved.

With regard to the reprimands of the Grievant in October of 1999, the District asserts that they were justified, and that, in any event, are not arbitrable in this case. Those reprimands were initially grieved in the fall of 1999 and no demand for arbitration was made when they were denied. Thus, the scope of this arbitration is limited to Toetz's year-end review of the Grievant's progress on the agreed-upon Plan of Professional Development. The Grievant has sought in effect, to grieve the reprimands by the back door, seeking to have them removed from his file as a remedy for the instant grievance. Removal would be unjustified and the Grievant has done nothing to merit the remedy he seeks.

In its reply brief, the District asserts that the claim that Toetz acted too quickly in determining that the Grievant had deficiencies warranting taking him off the goal-setting evaluation process fails for several reasons. The Association does not bother to defend the Grievant's "lesson plans", tacitly conceding the point that the deficiencies were both real and significant. It must also be noted that the judgment, however expeditiously arrived at, proved to be correct. The "lesson plan" submitted by the Grievant on October 11 told Toetz all that he needed to know. The Agreement clearly vests sole discretion in the Administration to make the determination that a teacher has deficiencies that warrant a "Plan of Amelioration". Toetz was well within his authority in making that judgment.

The attack on the steps Toetz took to address the problem must also fail. Toetz acted properly in drafting a "vision statement" and outline for the Plan of Amelioration. Neither was set in stone. Toetz and the Grievant met weekly for most of the first semester, at which times they discussed, without resolution, the details of a Plan of Amelioration. On January 31, the final document was mutually agreed upon. The allegation that Toetz expected far too much in his instructions to the Grievant, is baseless. The actions requested by Toetz were neither unreasonable nor unreasonably burdensome. They included skills every teacher should possess, and common-sense tips every teacher should know. There was nothing remotely out-

of-bounds, especially considering the Grievant initially agreed to all of these suggestions. In any event, Toetz proved to be more than willing to compromise to achieve the desired result.

The Association vaguely alleges that Toetz was somehow not qualified to evaluate the Grievant. There is no question that Toetz was fully qualified under applicable statutes and regulations as a district administrator and that in this capacity he had the authority under the Agreement to conduct evaluations and make all relevant determinations regarding the Grievant's performance.

The District also disputes any claim that the determination that the Grievant had serious deficiencies was discipline and subject to the "just cause" standard. While the disciplinary write-ups the Grievant received may be evaluated in accord with just cause, his placement on the "Plan of Amelioration" is not discipline, nor is the judgment that he is deficient.

The Association's reliance on the prior evaluations of the Grievant by Toetz and Hercules and the Grievant's years of experience is misplaced. The two brief observations of the Grievant by Toetz in 1998 and the other by Hercules in 2000, while not highlighting the Grievant's weaknesses in designing lesson plans, were not designed to do so. Rather, they were designed as snapshots of a teacher's manner before a class, and the Grievant was on prior notice before each observation so as to avoid obvious gaffes. A truer assessment of the Grievant's usual performance was Toetz's November, 1999 evaluation of a library assignment, noting "wasted time, pointless busy work, and lost opportunities."

Toetz's determination that the Grievant should remain on a Plan of Amelioration for the 2000-2001 school year should stand. There is no justification for the Arbitrator overruling Toetz's decision to keep the Grievant on a Plan of Amelioration. The Arbitrator should be particularly wary of any invitation that he should substitute his judgment for that of the District Administrator, especially where, as here, the issue is evaluation, not discipline. Far more than exercising routine discipline, overseeing teacher competence is an integral responsibility of the District, and is an area for which arbitrators are far less suited for making the technical distinctions required to gauge a teacher's skills in a particular pedagogical area. The Agreement expressly vests in the administration (Toetz) the sole authority to determine whether, and when, a teacher is deficient and requires a Plan of Amelioration. The parties never agreed to impose a "just cause" or similar due process standard upon the evaluation process, as the evaluation of teachers, like decisions regarding curriculum, go to the very heart of the District's educational mission. The District cannot delegate its authority to determine whether skills are deficient. Finding a teacher to be deficient and placing him/her on a Plan of Amelioration is primarily for the benefit of the students. Overturning an evaluative determination, such as here, has far greater ramifications than the reversal of discipline.

Further, the facts do not support reversing the decision. The Association's arguments boil down to two contradictory allegations. On one hand, the Association implies there never was any problem with the Grievant's performance and that he did not deserve to be on a Plan of Amelioration for the 1999-2000 school year. On the other hand, the Association alleges illogically that the Grievant improved enough in the 1999-2000 school year to deserve removal from the Plan of Amelioration for the following school year. If the Grievant had an obligation to improve, then he must have been deficient, and Toetz was justified in demanding that he improve.

There is no evidence that the Plan wrought the desired result. Neither at the May 30, 2000 evaluation meeting, nor thereafter, did the Grievant offer any support for his alleged improvement. The argument that by granting the Grievant's plea to be left alone and treated just like everyone else, Toetz somehow waived the right to expect some objective indication of improvement pursuant to the Plan, is nonsense. The Grievant knew Toetz had exercised less first-hand scrutiny of his activities from January to the end of the school year. The term "Plan of Amelioration" (and/or "Professional Improvement") implies something more than keeping one's nose clean. By neglecting to offer any objective indication of progress, the Grievant gave the strongest possible evidence that he had not improved, or even tried to improve.

The District again asserts that the reprimands should stand. The Association attempts to overturn the discipline through the back door, well beyond the contractual grievance window. Toetz never agreed to remove any specific adverse documentation from the Grievant's file, nor made an unconditional promise to remove it all. Rather, Toetz made clear he would consider removing some discipline from the file only if the Grievant's progress warranted it. The Grievant apparently made little or no progress and certainly gave Toetz no evidence he had improved significantly. Thus, the written discipline should remain part of his record. In any event, the October 11 and 18 notices of non-compliance were fully justified by the facts.

The write-up for the June 5, 2000 closet incident must also stand. The allegation that the Grievant was not responsible for the mess in the closet ignores Persha's testimony. Consistent with Toetz's write-up and testimony, Persha testified that as far as she knew, the mess was the Grievant's, that the Grievant had never mentioned anything to her about it being someone else's materials, that the Grievant both failed and refused to clean up the closet, and that she and Toetz ended up cleaning it. She testified forthrightly that, to the best of her knowledge, Toetz's account was accurate. This dispute rests, in part, on a credibility determination. The Grievant's testimony was self-serving as well as improbable, while Persha had no axe to grind one way or the other. Subsequent conduct also confirms Persha's account, and refutes the Grievant's. She acted on her belief that the Grievant was responsible and cleaned it up assuming that it was his. She never told Toetz that the Grievant informed her that the mess was another teacher's responsibility, which she presumably would have done out

of decency to the Grievant. The Grievant, on the other hand, did not do the only logical thing an innocent person would do, i.e. set the record straight with Toetz, either when he was given the instruction, or when he received the reprimand, or in response to the reprimand. The first Toetz heard of the Grievant's "alibi" was at the arbitration hearing. Thus, it was clear that the Grievant almost certainly was responsible for the mess in the closet and he was no doubt still upset over the May 30 meeting and in no mood to take orders from Toetz. Toetz had every reason to believe the Grievant had been non-compliant, and none to believe otherwise.

The District concludes that there is no basis under the Agreement to take the Grievant off the Plan of Amelioration.

Association

The Association asserts that the District improperly placed the Grievant on a Plan of Amelioration. Article 7 specifies that the normal course of evaluation is a "goal-setting" process. Under Article 7, A, 2, the District may place a teacher on a "Plan of Amelioration" where the teacher is judged to have serious deficiencies. The teacher must be notified of such deficiencies in writing and a Plan of Amelioration is to be mutually-developed by the Administration and the affected staff member. Article 7 addresses what must happen if there are concerns and provides that, "where there is a cause for concern, as determined by the Administrator, those concerns will be shared verbally with the staff member." Article 7 requires that teachers shall be notified in writing of any alleged deficiencies, including the expected correction and a reasonable period for correction. Further, alleged breaches of discipline are to be promptly reported to the affected teacher. Toetz short-circuited those provisions when he took a "concern" on October 4 and made it into a "Plan of Amelioration" by October 11. Had he followed Article 7, he would have verbally shared the concern with the Grievant, and had repeated occasions of that concern occurred, he would have notified the Grievant in writing of an "alleged" deficiency. The Grievant would have been told what needed correction, and would have been given a reasonable period of time to do so. If the Grievant had not then made the correction in a reasonable period of time, a deficiency would have been established. Then, Toetz could exercise the Administration's right to notify the Grievant of deficiencies that are serious and could have then placed him on a "Plan of Amelioration". The District failed to fulfill its obligations under Article 7.

The existing record does not establish that the District judged the Grievant to have serious deficiencies during the period of October 4 to October 11. There is no written record prior to October 4 even hinting that the Grievant was judged to have serious deficiencies. On October 4 and 5, Toetz received two parent contacts that led him to prepare the October 8 document with his vision of the Grievant as a teacher, and actions to be taken immediately. The Grievant had little opportunity to react to the concerns, and certainly did not have reasonable opportunity to correct them. Regardless, Toetz decided on October 11 that the

Grievant was no longer a part of the “goal-setting” process, and was now on a “Plan of Amelioration”. There is nothing in the Grievant’s documented employment history that would justify the determination that he was judged to have serious deficiencies at that time. Toetz ignored the obligation to afford the Grievant the contractually-guaranteed interim stages, and went from “concern” to “Plan of Amelioration”. While the District may argue that it knew of other concerns that were serious, and that therefore the Plan of Amelioration status was justified, with the exception of the October 4 and 5 parent concerns, none of those concerns appeared anywhere in writing prior to Toetz’s November 17 memo. Toetz has an absolute obligation to inform a teacher of allegations if he intends to use them against the teacher. Article 7, requires that the District promptly report alleged breaches of discipline to the affected teacher. If the District had concerns, such as those set forth in the November 17 memorandum, it was obligated to inform the Grievant promptly, but did not do so. The first the Grievant heard of them was at the October 22 meeting. If they exist, they are now stale and cannot now serve as justification for a “Plan of Amelioration”. Thus, the District failed to meet its obligations under Article 7, and was not justified in placing the Grievant on a “Plan of Amelioration”.

Next, the Association asserts that the District did not have just cause to discipline the Grievant for events on October 11 and 18, 1999 and June 5, 2000. The October 11 and 18 “non-compliance” memos discipline the Grievant for failing to comply with Toetz’s October 8 action request with respect to lesson plans, i.e. that they be turned in on Monday mornings and that they include goals, objectives, etc. With respect to the former, the Grievant turned in the plans on Monday morning, October 11, shortly after 10 a.m., after being occupied in a parent conference prior to the start of the instructional day. He then had instructional responsibilities until shortly after 10 a.m., and then gave the plans to Toetz at that time. Regarding Toetz’s note on October 11 stating that in the future, “Monday morning means 7:45 – 8:10, not anytime before noon”, that was not indicated in the October 8 request. With regard to the second matter, the Grievant prepared lesson plans for the week of October 11 that looked much like the plans he had prepared during his entire career at Hustisford, which were no different from the lesson plans typically prepared by other teachers in the District, and which had always been accepted. Toetz on October 8 asked for lesson plans that included certain things, but he did not give an example, nor discuss what he expected. Therefore, the Grievant turned in what had been expected and accepted in the past. When the Grievant turned in lesson plans for the week of October 18, Toetz had not given him any feedback other than he was unhappy with the lesson plans of October 11. Again, no examples and no discussion was had as to what Toetz expected. Comparing the plans for the week of October 11 to the plans the Grievant submitted for the week of October 18, it is notable that the latter has more information provided. Instead of acknowledging that the Grievant had made an effort to improve his lesson plans and suggesting that they meet and discuss his expectations further, Toetz criticized the Grievant for not asking for further definition or for help in developing the lesson plans.

The Grievant was also reprimanded for being insubordinate on June 5, 2000; Toetz apparently being under the impression that the Grievant had refused to clean the fifth-grade closet. The Grievant had properly put away all of his materials in the closet prior to June 5 and when he and the Elementary School Secretary, Lynn Persha, looked in the closet at about 11:30 a.m., the other fifth-grade teacher sharing the closet had left books and other materials on the floor. Due to a retirement party that was about to begin, the Grievant told Persha he could not help her then, but would do so later if she wanted. Thus, even though he had properly stored his materials, and even though the materials on the floor belonged to another teacher, the Grievant said he would help clean it up later. That does not constitute insubordination.

Just cause requires that management fulfill its procedural obligations, i.e. it must at least enunciate a concern, state the expected correction, and give a reasonable amount of time for the correction. Toetz's disciplinary actions fail this test. Also essential to just cause is consideration of the employee's past record and length of service, neither of which were given any consideration by Toetz in meting out the discipline. Management is also obligated to conduct a fair and objective investigation. Toetz did not do so with respect to the October 11 and 18, 1999 non-compliance memorandums, nor did he do so with regard to the June 5, 2000 insubordination charge. Without considering whether the "evidence" was objective, Toetz cannot possibly determine whether the evidence was substantial and compelling enough to prove that the Grievant was guilty as charged. Management has the burden to prove that it has just cause to discipline an employee, and the District has not met that burden.

The Association asserts that the Grievant should be in the District's "goal-setting" process for the 2000-2001 school year. Toetz's dismissal of the goal-setting procedure as an evaluation tool for the Grievant for the 2000-2001 school year is not justified. As previously argued, the Grievant was improperly placed on a Plan of Amelioration for the 1999-2000 school year. It was ultimately agreed to change the "Plan of Amelioration" to a "Plan of Professional Improvement" after a contentious meeting on November 8, an Association grievance, a District-initiated proposal to resolve the dispute, and a series of meetings ultimately resulting in agreement between Toetz, the Grievant and Baumann to create a "Plan of Professional Improvement". As a result, the grievance was not pursued.

Although Baumann had recommended that a log be created to document how the Grievant addressed the agreed-upon points and Toetz's reaction, the latter essentially dismissed the recommendation. As a result, there is not a joint record of what occurred between January 31 and May 30, 2000. It is known that, though obligated to do so by virtue of the January 31, 2000 agreement, Toetz did not formally or informally observe the Grievant from January 31 to May 30 and not once raised a concern about the Grievant's performance or his responsiveness to the January 31 plan during this time. Based on the lack of observation and criticism, the Grievant and Baumann had every reason to believe that the Grievant's

performance and response to the January 31 plan were at least satisfactory. If this was not the case, the Grievant and his Association representatives were entitled to know. Not once prior to May 30 was there a mention that Toetz viewed the Grievant's response to the January 31 plan as inappropriate or insufficient. To then assert on May 30 that the Grievant had not met the expectations is not only incredibly unfair, but is an "in your face" exhibition of bad faith on the part of the District.

In his testimony, Toetz attempted to shift the burden to the Grievant. The Grievant had the obligation to respond, and he did so. The rather incredible change in his lesson plans from October 11 to January 17 proves his responsiveness to Toetz's lesson plan concerns. In stark contrast, Toetz accepted little responsibility to assist the Grievant in addressing his concerns and ignored his obligations set forth in the collective bargaining agreement and refused to carry out his responsibilities as set forth in the January 31 agreement.

The Association posits that Toetz's mindset is disclosed in the October 18 memorandum of "non-compliance", where Toetz states: "We agreed to use the 8:35-9:35 (on October 19) for goal-setting, and then changed it due to recent events." To suggest that there was an agreement to change the goal-setting process to a "Plan of Amelioration" is a blatant misrepresentation, as it was Toetz's unilateral determination. Whether it is Toetz's inexperience or his disdain for the Grievant, it was inappropriate for the District to place the Grievant on a "Plan of Amelioration" at that time.

In its reply brief, the Association takes great offense at the District's attempt to discredit and humiliate the Grievant. The intonations and inferences suggested by the District are not supported by the record, and must be disregarded. By way of argument, the Association asserts that the District's reliance on its management rights to justify its actions is not persuasive. The Agreement mandates that the exercise of management rights must be consistent with the terms of the Agreement. As previously set forth, there are a series of obligations that the District must meet before it is determined that a teacher should be placed on a "Plan of Amelioration". When such a determination is made, the Administration is obligated to "mutually" develop the plan with the staff member. The District erroneously argues that there is a "unilateral" right to develop and evaluate the plan. While the District has the right and the obligation to evaluate, that is not the issue. The issue, with respect to the "Plan of Amelioration", is first, whether the District had the right to place the Grievant on a "Plan of Amelioration", and second, did the District and the Grievant "mutually" develop the Plan, if it was warranted? The answer to both questions is "No."

The Association and the District agreed to a "Plan of Professional Improvement", but the District is now arguing that plan is a "Plan of Amelioration". In that regard, the Association asked that the District change its focus from a "summative" to a "formative" approach at a meeting on November 8, 1999, and in a letter dated November 10, 1999. The

Association subsequently filed a grievance on November 12, 1999, asserting violations of the Grievant's rights. On November 13, 1999, Toetz offered a written compromise, suggesting that the issues identified could be resolved based on his six suggestions and also acknowledged that he was willing to change the focus from "summative" to "formative". On January 31, 2000, Baumann, Toetz and the Grievant reached agreement on a "Plan of Professional Improvement". The six points contained in Toetz's November 13, 1999 offer form the framework of the January 31 agreement. This was a negotiated change by the Association and the District from a "Plan of Amelioration" to a "Plan of Professional Improvement". As of January 31, 2000, the Grievant was no longer on a "Plan of Amelioration". Baumann testified that as a result of agreeing to the "Plan of Professional Improvement", the issues set forth in the November 12, 1999 grievance were considered addressed and resolved. Those issues had been the October 8 memorandum, the October 11 reprimand, the October 18 reprimand and the October 22 "Plan of Amelioration". The January 31 resolution dealt with those issues, and included an implicit understanding that items in the Grievant's personnel file would be discussed at the end of the school year.

The Association also asserts that the District has attempted to shift the burden to properly evaluate to the Grievant. "Good faith" with respect to evaluation means following contractual and other mutually agreed-upon guidelines. The District cannot avoid its burden and must demonstrate that it has fulfilled its obligations as set forth in Article 7 of the Agreement and in the January 31, 2000 Plan. The District failed to follow the procedures specified in the Agreement and Toetz failed to follow through on his obligation to "have scheduled and unscheduled observations" of the Grievant, starting in February, 2000, and continuing through the rest of that school year. Citing Toetz's surgery in January of 2000, the District conveniently excuses Toetz from his obligation to observe the Grievant. Ignoring his commitment to have scheduled and unscheduled observations of the Grievant for four months is not "good faith".

The District also cannot deny the Grievant's effort to address Toetz's concerns. The change in the lesson plan structure from October 11 to January 17 is substantial, and began when Toetz asked elementary teachers to prepare detailed lesson plans which he gave to the Grievant, who used them as a basis for changing his lesson plan design. Had Toetz taken the time to show the Grievant what he wanted on October 8 or 11 or 18, the Grievant would have begun meeting Toetz's expectations immediately. While the District asserts that the Grievant's lesson plans reveal a "manifest deficiency", if that is true, it is a standard that the District accepted and commended for 20 years. Even Toetz had accepted the Grievant's lesson plans before this. Thus, the Grievant had every reason to believe he was meeting the District lesson plan expectations when he turned in plans for the week of October 11. Once the Grievant understood what Toetz expected, he made changes which Toetz ultimately accepted. Rather than acknowledge that the Grievant was making a sincere effort, the District has chosen in its brief to denigrate the Grievant's character. It also accuses the Grievant of trying to "fool"

Toetz. To the contrary, the Grievant was upfront about his use of the textbook in preparing his lesson plans.

With regard to the appropriate relief, the Association notes that a grievance was filed on behalf of the Grievant on November 12, 1999, which grievance was rendered moot by the parties' agreement to the January 31 plan. The District, however, did not live up to its end of the bargain, and failed to carry out its obligation to observe the Grievant. Toetz's decision to "write up" the Grievant on June 5 and to place him on a "Plan of Amelioration" for the 2000-2001 school year revived the issues set forth in the November 12, 1999 grievance. In his June 5 write-up of the Grievant, Toetz confirms that nothing will be expunged from the Grievant's personnel file. Thus, the status of the disputed documents remains at issue, and their disposition should be part of the decision in this case. As relief, the Association requests that the grievance be granted and award the following remedy requiring the District to

1. Remove disciplinary memorandums dated October 11, 1999, October 18, 1999 and June 5, 2000 from Dallmann's personnel file.
2. Remove from Terry Dallman's personnel file all reference and documents regarding its 1999-2000 plan of amelioration.
3. Remove from Terry Dallman's personnel file letters dated November 5 and 17, 1999;
4. Remove the evaluation of the Professional Improvement Plan dated May 30, 2000 from Terry Dallman's personnel file;
5. Either find Terry Dallman to have successfully responded to the January 31, 2000 Plan of Professional Improvement or remove that plan from Terry Dallman's personnel file; and
6. Place Terry Dallman in the Goal Setting Process for the 2000-2001 school year.

DISCUSSION

Scope of the Issues

The first dispute to be resolved in this case is what is appropriately before the Arbitrator for resolution. While the parties agreed to a statement of the issues, it was with the realization that the District would be asserting that the January 31, 2000 "Plan of Professional Improvement" resolved the issues in the November 12, 1999 grievance – October 11, 1999

and October 18, 1999 reprimands and October 22, 1999 decision to place the Grievant on a "Plan of Amelioration". The Association conversely asserts that there was an "implicit understanding" that those items would be discussed at the end of the 1999-2000 school year, and that Toetz's decision to place the Grievant on a "plan of amelioration" for 2000-2001 school year revived those issues.

The November 12, 1999 grievance raised issues as to the October 8, 1999 document listing the actions that Toetz expected to be taken immediately by the Grievant in response to concerns raised by Toetz, the October 11 and 18, 1999 write-ups of the Grievant for "non-compliance", and Toetz's placing the Grievant on a "plan of amelioration" on October 22, 1999. Following the grievance, Toetz offered at least twice in writing to remove the October 11 and 18, 1999 reprimands for non-compliance (with the right to put them back if the Grievant was not trying to improve) as part of a plan that would resolve both Toetz's concerns and the Grievant's concerns, as expressed in the grievance and subsequent discussions. The reprimands were not referenced in any manner in Toetz's summary of the January 31, 2000 "Plan of Professional Improvement", as was, however, the "plan of amelioration" on which the Grievant had been placed. As shown by Toetz's May 24, 2000 e-mail to the Grievant, the disposition of at least some of the items that had been placed in the Grievant's personnel file was still open to discussion. While both sides could have taken steps to make clear their respective understanding of the status of the issues raised in the November 12, 1999 grievance, they chose not to do so. Given the lack of evidence of a mutual understanding that the issue of the reprimands had been dropped, along with the evidence that the issue remained an open topic of discussion between Toetz and the Grievant, it is concluded that the issue of the propriety of the October 11 and 18, 1999 reprimands for "non-compliance" was not resolved or waived with the January 31, 2000 agreement on a "plan of professional improvement", and is now properly before the Arbitrator.

The same cannot be said as to the issue of whether the Grievant was inappropriately placed on the "plan of amelioration" by Toetz on October 22, 1999. If the agreement to change the "plan of amelioration" to a "plan of professional improvement", along with the elements of the latter, was not to resolve the parties' dispute as to the placement of the Grievant on a "plan of amelioration", one must ask what it was intended to resolve. The Association concedes in its reply brief that, "As a result of this agreement, the grievance was not pursued." Unlike the case as to the October 11 and 18, 1999 letters of reprimand, the only evidence of any understanding that the issue of the propriety of placing the Grievant on a plan of amelioration in the first place was being placed on "the back burner" and would be resurrected if the plan of professional improvement did not work out, was Baumann's testimony that he believed there was tacit agreement in that regard. However, Baumann also testified that with the January 31, 2000 agreement, Toetz's "plan of amelioration" had fallen by the wayside and that the agreement had resolved the issues raised in the November 12 grievance. There is no evidence that following Toetz's January 31, 2000 written summary of

the agreement, there was any communication from either party that would have indicated a belief that the agreement was merely a temporary compromise, rather than a final resolution of this dispute. Toetz's testimony and his actions subsequent to the January 31, 2000 agreement also do not demonstrate a belief or understanding on his part that the prior plan of amelioration or the previous placement of the Grievant on that plan were still in dispute if the outcome of the agreed-upon "plan of professional improvement" was not favorable to the Grievant.

It is concluded that the propriety of initially placing the Grievant on a plan of amelioration was dealt with and resolved when the January 31, 2000 agreement was reached to place the Grievant on the agreed-upon "plan of professional improvement", and therefore, is not before the Arbitrator.

There is no dispute that the decision to place the Grievant on a "plan of amelioration" for the 2000-2001 school year is properly before the Arbitrator. Likewise, although the grievance filed in June of 2000 regarding Toetz's evaluation of the Grievant's compliance with the "plan of professional improvement", and the decision to place him on a "plan of amelioration" for the 2000-2001 school year, does not make any mention of the June 5, 2000 written reprimand for insubordination, both parties presented evidence and made argument in their briefs regarding the propriety of that discipline. As both parties have chosen to address the issue as part of the broad issue before the Arbitrator, it is addressed in this Award.

October 11, 1999 Reprimand

Article 7, Individual Rights, Section F, 4, of the parties' Agreement requires that a teacher may not be "reprimanded or otherwise disciplined without cause."

On October 11, 1999, the Grievant received what amounted to a written reprimand for "non-compliance" with what he had been told by Toetz on October 8, 1999 were "Actions to be taken immediately" in response to Toetz's concerns. Specifically, Toetz asserted that the Grievant had failed to comply with item 5 of the document discussed with the Grievant on October 8, 1999:

5. Lesson plans will be provided on a weekly basis to Mr. Toetz.
 - Plans will include Goals, Objectives, Activities, Performance outcomes, Need for instructional modifications.
 - These will be provided on Monday mornings.

According to Toetz, the Grievant did not timely submit the lesson plans (before the start of the instructional day – 8:10 a.m.) and the plans submitted were inadequate as far as what Toetz had asked the Grievant to submit.

There is no dispute that Toetz had to go to the Grievant's classroom on Monday, October 11, at approximately 10:15 a.m. to get a copy of the Grievant's lesson plans for that week; that the Grievant did not have the material ready, but shortly thereafter he supplied Toetz with a copy of the page for that week from his lesson plan book; that the Grievant's "lesson plans" did not contain written goals, objectives, activities, performance outcomes, etc.; and that what the Grievant provided in that regard was more or less what had been considered sufficient in the past from the Administration with regard to lesson plans.

The document discussed with, and later given to, the Grievant states only that the lesson plans are to be provided to Toetz "on Monday mornings." There was no specific time or deadline given beyond that statement. Further, the lesson plans were for the entire week, not just that Monday, so that an early Monday morning deadline would not necessarily be inferred as a practical matter.

There is also the issue as to the substance of what the Grievant provided to Toetz on October 11. While there is no dispute that the Grievant did not provide Toetz with what was set forth as item 5, there is also no dispute that what the Grievant did provide was what had been considered acceptable in the past when teachers had been asked to provide lesson plans. What Toetz expected from the Grievant in this regard had not been discussed in detail with the Grievant and it appears that what was said was understood to mean something different to each of them.

Thus, while the Grievant did not provide what Toetz wanted, when he wanted it, the evidence is not sufficient to establish that that failure was the result of anything more than a lack of communication between them in those regards. Having reached that conclusion, it follows that the District has not established that the Grievant's conduct was of the sort in which the District had a disciplinary interest, (i.e., that it was either an intentional refusal, or a negligent failure, to comply with Toetz's directive) and therefore, it cannot be a basis for finding just cause for the discipline.

October 18, 1999 Reprimand

On October 18, the Grievant submitted lesson plans for that week to Toetz which were similar to those he had submitted on October 11, except for noting the times he was teaching the various subjects. The lesson plans again did not indicate "goals, objectives, performance outcomes or need for instructional modifications."

On October 18, 1999, Toetz issued the Grievant a second letter of non-compliance for failing to comply with Toetz's directive in the October 11 letter of non-compliance. In the October 18 letter, Toetz stated

On this day 10/18/99 I received the lesson plans I requested. Again, however, they resembled your schedule for the week not a lesson plan as I described. During the week of 10/11/99 I was not asked by you for further definition nor asked for help in developing weekly lesson plans. I will assume then that you are clear about the expectations.

Contrary to the Association's assertion, the Grievant was given feedback from Toetz about the lesson plans he submitted for the week of October 11, 1999. In the October 11 letter of non-compliance, Toetz had stated:

After review of the lessons I feel you have not made a real effort to fulfill the expectation. Item number 5 was clear as to the expected parts of the lesson plans.

5. Lesson plans will be provided on a weekly basis to Mr. Toetz.
 - Plans will include Goals, Objectives, Activities, Performance outcomes, Need for instructional modifications.
 - These will be provided on Monday mornings.

In your plans I see the name of a book or numbers to a page and general subject area it may relate to. The plan is not specific enough to have times other than 8:35 to 9:00 on Monday, and specials time.

Corrective Action:

On Monday 10/18/99 I will have lesson plans brought to me or put in my box before 8:10 a.m. These plans will include Goals, Objectives, Activities, Performance Outcomes, and Need for instructional modifications. All other items in the 10/8/99 document will continue to be in effect.

Although the lesson plans submitted on October 18 had a bit more detail than those of the previous week, the Grievant ignored Toetz's directive that "Those plans will include Goals, Objectives. . ." While the October 11 reprimand has been found to not stand as discipline, it does serve to place the Grievant on notice as to Toetz's expectations. This was sufficiently clear notice to the Grievant that what he had submitted previously had not met Toetz's expectations. If the Grievant was not clear on what it was Toetz wanted, the burden was on him at that point (after receipt of the October 11 letter of non-compliance) to seek clarification from Toetz. He did not do so; rather, he submitted plans similar in nature to those he submitted on October 11.

It is concluded that the District had cause to issue the October 18, 1999 reprimand to the Grievant for not complying with Toetz's directive.

Plan of Amelioration

The District correctly asserts that the decision to place the Grievant on a “Plan of Amelioration” for the 2000-2001 school year is not “discipline”, and therefore, not subject to the “cause” standard in the Agreement. The question then is what does the parties’ Agreement permit and/or require in this context.

The District asserts that pursuant to the parties’ Agreement, the judgment that a teacher should be placed on a plan of amelioration is reserved to the administrator, and not subject to challenge, i.e. that the Agreement vests in the administration the sole authority to determine whether a teacher is deficient and when they should be placed on such a plan. In those regards, the District primarily relies on Article 5: Management Rights, Section G, which includes “judgment of employee performance”, and Article 7: Individual Rights, Section A, 2, which provides:

2. Any teacher judged to have serious deficiencies will be notified of such deficiencies in writing. In this case, a Plan of Amelioration shall be mutually developed by the administration and the affected staff member.

As the District asserts, the use of the term “judged” in the first sentence indicates that the determination that a teacher has serious deficiencies and should be placed on a plan of amelioration is left to the judgment of the administration. However, as the Association correctly asserts, Article 7, Section F, provides certain procedural requirements that must be followed:

F. Teacher Performance Provision

1. Within the school setting, or during school related activities, informal observations do occur. Where there is cause for concern, as determined by the Administrator, those concerns will be shared verbally with the staff member.
2. Should repeated occasions occur, the teacher shall be notified in writing of any alleged delinquencies. Notification shall include expected correction and indicate a reasonable period for correction. Alleged breaches of discipline shall be promptly reported to the affected teacher.

• • •

Article 7, F, 1 again leaves to the Administration the determination as to whether there is “cause for concern” and only requires that the teacher be verbally informed of such concerns. The requirement of a written notice of alleged delinquencies “should repeated occasions occur”, along with the expected corrective action to be taken and a reasonable period of time to correct the problem, in Article 7, F, 2, appear to relate to the “cause for concern” in 7, F, 1., i.e., if there are repeated occasions of cause for that concern, it becomes an “alleged delinquency.” That “delinquency” equates to the “deficiencies” referenced in 7, A, 2, is established by 7, F, 3, which entitles a teacher to have a representative present to meet with the Administration when being disciplined for a rule infraction or “delinquency in professional performance.”

It appears that much of the language in Article 7 is new or untested, and it is noted that no evidence was presented, nor argument made, as to bargaining history or past practice with regard to the interpretation or application of that language or the interplay of Article 7, F, 1 and 2 with Article 7, A, 2. It is, however, a principle of contract interpretation that an agreement is to be read as a whole and that if possible, the parts should be read in harmony with each other, rather than in conflict. Applying that principle and reading Article 7, A, 2 in conjunction with the procedural requirements of 7, F, 1 and 2, the judgment of whether there is a serious deficiency is left to the Administrator, but the teacher must be notified of the delinquency in writing, along with the expected corrective action and a reasonable period of time to correct the deficiency. That does not, however, rule out placing the teacher on a plan of amelioration as part of, or in conjunction with, that corrective action. 2/

2/ The Association argues that the jump from Toetz's noting “concerns” in his memo and his discussions with the Grievant of October 8, 1999 to “serious deficiencies” and the intention to place the Grievant on a plan of amelioration stated in his October 11, 1999 memo, violated Article 7, F, 2, in that there could not have been “repeated occasions” of these causes of concern in that span of time (a weekend). The problem with that argument is that it attempts to litigate that part of the November 12, 1999 grievance (the initial placing of the Grievant on a plan of amelioration) that was resolved by the January 31, 2000 agreement on a “Plan of Professional Improvement”. As noted at the beginning of this section, that issue is not before me. Further, that the subject teacher might not agree a problem exists is presumed by the use of the term “alleged delinquency” in 7, F, 2.

In this case, the parties reached agreement on a “Plan of Professional Improvement” for the Grievant which set forth certain actions the Grievant was expected to take in order to address what Toetz had previously described as “concerns” in his memo regarding his October 8, 1999 meeting with the Grievant and as “serious deficiencies” in his October 11, 1999 reprimand (which still provided written notice even though unwarranted in its disciplinary aspect), as well as in his discussions with the Grievant on October 8 and October 22, 1999 and November 8, 1999. The Plan of Professional Improvement was mutually developed and covered the rest of the 1999-2000 school year, giving the Grievant a reasonable period of time to correct the “alleged deficiencies”, as provided in Article 7, F, 2.

There then came the meeting on May 30, 2000. Toetz viewed the purpose of the meeting to be the occasion for the Grievant to demonstrate that he had successfully completed the Plan. The Grievant viewed the meeting to be for the purpose of discussing what items would be removed from his personnel file and brought nothing to the meeting. After an apparently brief and contentious discussion, the meeting ended. Toetz concluded from the meeting that the Grievant had not satisfied a number of the corrective actions required by the Plan of Professional Improvement and therefore had not sufficiently addressed the previously-identified "serious deficiencies".

In his June 5, 2000 written evaluation of the Grievant's efforts to satisfy the corrective actions set forth in his "Plan of Professional Improvement", Toetz indicated that the Grievant had not continued to work with colleagues and other professionals in relation to lesson design; had not videotaped his instruction; and had not continued to publish a newsletter. Toetz conceded that the Grievant had met the goals in the Plan as to continuing with the Safety Patrol and as to the preparation and submission of lesson plans (deemed to have been completed as part of the agreed-upon Plan.) There is no mention in Toetz's evaluation of whether or not he considered the Grievant to have satisfactorily submitted "Unit Plans" in compliance with the Plan, nor is there mention of any observations of the Grievant.

As a basis for his conclusion that the Grievant had not continued to meet with colleagues or other professionals with regard to designing his lesson plans, Toetz stated he had asked the colleagues that had been identified as ones with whom the Grievant would work, if they had met with the Grievant since January, 2000, and that they could not recall one time that occurred. Toetz also stated that at the May 30 meeting, the Grievant "could not account for one time when he had taken such action." In response, the Grievant testified that he had spoken to those teachers a couple of times and also to other teachers outside of the District. While the Grievant offered in his response to Toetz's evaluation to provide the names of those individuals, none were provided to Toetz, nor were any submitted at hearing.

With regard to the Grievant's alleged failure to continue to publish the newsletter on a bi-weekly basis, Toetz stated in his June 5, 2000 evaluation that he had not received a copy of the newsletter since February and that the Plan called for the Grievant to provide Toetz with an "FYI" copy each issue. Further, the Grievant brought no copies to the May 30 meeting, nor did he provide any later. The Grievant's June 20, 2000 response stated "I believe the newsletter was continued on a regular basis, although not to the agreed-upon frequency." The Grievant testified he did continue the newsletter, except during parent-teacher conference times or when there were field trips. There were no newsletters later submitted to Toetz nor at hearing.

Toetz also concluded the Grievant had not satisfied the goal of videotaping his instruction, since he did not provide any video tapes to demonstrate that he had done so at the May 30 meeting and only claimed to have videotaped his instruction two or three times during the semester. The Grievant testified he had videotaped himself twice and told Toetz that at the May 30 meeting. In his June 20, 2000 response and in his testimony, the Grievant indicated that based on what Toetz and he had discussed, and on what Toetz had indicated in his November 23, 1999 e-mail, as well as the Plan itself, it was the Grievant's understanding that the tapes were for solely his own use and not to be given to Toetz. Further, the Grievant felt the frequency of the videotaping was left to his own discretion and no specific number was established in the Plan. The Grievant did not subsequently provide any video tapes to Toetz, nor were any submitted at hearing.

The Association asserts the Grievant was never advised to bring any materials or documentation to the May 30, 2000 meeting and that Toetz never invited the Grievant to submit any following the meeting. It also asserts that since the Grievant had heard nothing from Toetz during the remainder of the semester, he reasonably believed he had satisfied the Plan of Professional Improvement and did not need to bring proof that he had done so. The arguments are not persuasive. Toetz's May 24, 2000 memo to the Grievant indicated the meeting would include "continued attention to the items in the 1/31/00 agreement (video, newsletter, mentor)." Given the contentious nature of their discussions over the 1999-2000 school year and Toetz's consistent demands that the Grievant provide evidence that he was doing what Toetz was requiring of him (e.g. the previously-required lesson plans), it was not reasonable for the Grievant to believe he could show up at the May 30 meeting empty-handed. Further, if the Grievant had evidence to support his claims that he had met his obligations under the Plan of Professional Improvement, one would reasonably expect that he would provide that evidence at some point in the dispute. He has not done so.

Regardless of whether or not it constituted a "plan of amelioration", the Grievant was on a mutually-developed and agreed-upon Plan of Professional Improvement for the purpose of addressing problems Toetz had previously judged to be "serious deficiencies". It was not unreasonable for Toetz to require some concrete proof from the Grievant that he had taken the corrective actions required in the Plan to meet those deficiencies. It was also not unreasonable for Toetz to conclude that the Grievant had not satisfactorily met his obligations under the Plan, given the Grievant's failure to provide such evidence at any point in this dispute on or after May 30, 2000.

The Association makes a point that Toetz did not satisfy his obligation under the Plan to "continue to have scheduled and non-scheduled observations" of the Grievant, at least to the extent that he did not formally observe the Grievant in his classroom. Toetz testified, however, that he did not do so because the Grievant had indicated he wanted to be treated like the rest of the staff and Toetz took that to mean the Grievant was uncomfortable having Toetz

come into his classroom to observe him teaching. The Grievant did not indicate otherwise in his testimony and did not deny that was the case.

While it is clear that the Grievant satisfactorily addressed a number of the concerns originally raised by Toetz in October of 1999, e.g., having students correct papers, having grades read aloud in class, and sitting while instructing, Toetz had notified the Grievant in his October 11, 1999 reprimand of what he judged to be delinquencies in the areas of: (1) preparation for teaching; (2) communication with parents; (3) use of class time and (4) emotionally safe interactions with students. It having been found that Toetz reasonably concluded that the Grievant had not satisfactorily taken the corrective actions in the agreed-upon Plan of Professional Improvement meant to address those delinquencies, it was within Toetz's judgment under Article 7, A, 2 of the Agreement to place the Grievant on a "plan of amelioration" for the 2000-2001 school year.

June 5, 2000 Reprimand

The Grievant was given a reprimand for insubordination for not cleaning out the closet he shared with the Elementary Secretary, Lynn Persha, on the last day of school as directed by Toetz.

As this is a disciplinary matter, the District has the burden of establishing that the Grievant engaged in the misconduct for which he was disciplined. There is no dispute that Toetz let the Grievant know he wanted the closet cleaned before the end of that day, and that the Grievant did not do it. The Grievant does not claim that he told Toetz the books on the closet floor were not his (or at least not until after the reprimand) ^{3/}; rather he claims he told

3/ The Grievant testified he thought he included that information in his response to the reprimand, but he could not find that document.

Persha and assumed she would tell Toetz as she was his secretary. Persha testified that she did not know that another teacher had placed the books on the floor until she talked to the Grievant. It is not clear from Persha's testimony when the Grievant told her the books were not his, i.e., whether it was when she asked him if he was going to clean the closet, or after he received the reprimand. Persha did testify, however, that when she asked the Grievant on that day if he was going to clean out the closet, he responded, "No." The Grievant, however, testified he told Persha that he would not do it then, but would help her clean it later. There is no indication from the evidence presented that Persha did not get along with the Grievant or had any reason to want to get him in trouble with Toetz. Given the lack of any apparent motive for Persha to exaggerate or misrepresent what the Grievant said, her testimony is credited over that of the Grievant with regard to his refusal to clean out the closet.

It appears then, that Toetz told the Grievant to make sure he cleaned out the closet before the end of the day and that the Grievant indicated that he would do so, rather than informing Toetz that the books in the closet were not his, and that he therefore should not have to clean up the mess. Instead, the Grievant chose not to clean the closet, contrary to Toetz's directions. Thus, while the Grievant might have had a good reason to argue that he should not have to clean out the closet, he chose for whatever reason not to share that with Toetz at the time he was given the direction from Toetz, and he cannot then later offer that reason as an excuse for not carrying out Toetz's direction to him. For that reason, it is concluded that the Grievant's failure or refusal to clean out the closet constituted insubordination and that the District therefore had just cause to issue the reprimand.

Based on the foregoing, the evidence, and the arguments of the parties, the undersigned makes and issues the following

AWARD

That except as to the October 11, 1999 reprimand for non-compliance, the grievance is denied. As to the October 11, 1999 reprimand, the District is directed to immediately remove that reprimand from the Grievant's personnel records.

Dated at Madison, Wisconsin this 10th day of September, 2001.

David E. Shaw /s/

David E. Shaw, Arbitrator

