

**IN THE MATTER OF PROPOSED DISCHARGE**

Mitchell Clausen, Principal		Proposed Discharge Pursuant to Minnesota Statutes 122A.40
And		
Independent School District 911 Cambridge-Isanti, Minnesota School District		Bureau of Mediation Services Case No. 11-TD-2

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<b>ARBITRATOR:</b>	<b>James L. Reynolds</b>
<b>DATE AND PLACE OF HEARING:</b>	<b>December 16, 2010 and January 21, 2011</b>
	<b>Cambridge City Hall Cambridge, Minnesota</b>
<b>Date of Receipt of Post Hearing Briefs:</b>	<b>March 21, 2011</b>
<b>Date of Award:</b>	<b>April 18, 2011</b>

**APPEARANCES**

For the Principal:	Roger J. Aronson, Attorney at Law Post Office Box 19350 Diamond Lake Station Minneapolis, MN 55419
For the District:	Joseph E. Flynn, Attorney at Law Knutson, Flynn & Deans P.A. 1155 Centre Point Drive, Suite 10 Mendota Heights, MN 55120

**ISSUE**

Did the District have cause to immediately discharge the Principal from his continuing contract under Minnesota Statutes 122A.40, Subdivision 13 for insubordination, conduct unbecoming a principal which requires immediate removal from duties, failure without justifiable cause to perform duties without first securing the written release of the school board, gross inefficiency by failing to correct after reasonable written notice, and willful neglect of duty, including, but not limited to failing to properly perform duties as an administrator, and failing to follow the specific directives as set forth in that Notice of Deficiency, dated June 28, 2007, in timely and/or appropriate manner.

## **WITNESSES TESTIFYING**

### Called by the District

Bruce Novak,  
Superintendent of Schools  
Cambridge-Isanti District 911

Dan Fosse,  
Former Member of  
District 911 School Board

### Called by the Principal

Charles Burroughs,  
Principal, Cambridge Middle School

Paul Neubauer,  
Principal, St. Francis High School

Robert Swanson,  
Teacher, Cambridge-Isanti District 911

Jackie Swanson,  
Teacher, Cambridge-Isanti High School

John Droubie,  
Teacher, Cambridge-Isanti High School

Brenda Oslund,  
Teacher, Cambridge-Isanti High School

Bruce Danielson,  
Teacher, Cambridge-Isanti High School

Mitchell Clausen,  
Principal, Cambridge-Isanti High School

## **JURISDICTION**

The issue in dispute was submitted to the Arbitrator for a final and binding resolution under Minnesota Statute 122A.40, Subd. 15. The Arbitrator was selected by the parties from a list of names of arbitrators supplied to them by the Minnesota Bureau of Mediation Services. No procedural issues were presented at the hearing, and the issue is deemed to be properly before the Arbitrator for a decision.

At the hearing the parties were given full and complete opportunity to examine and cross-examine witnesses and present their proofs. Final argument was provided through post hearing briefs which were received by the agreed upon deadline as amended. With the receipt of the briefs of the parties by the Arbitrator, the record in this matter was closed. The issue is now ready for determination.

### **STATEMENT OF THE ISSUE**

The issue in this case is:

Did the District have cause to immediately discharge the Principal from his continuing contract under Minnesota Statutes 122A.40, Subdivision 13 for insubordination, conduct unbecoming a principal which requires immediate removal from duties, failure without justifiable cause to perform duties without first securing the written release of the school board, gross inefficiency by failing to correct after reasonable written notice, and willful neglect of duty, including, but not limited to failing to properly perform duties as an administrator, and failing to follow the specific directives as set forth in that Notice of Deficiency, dated June 28, 2007, in timely and/or appropriate manner.

### **RELEVANT STATUTORY LANGUAGE**

The discharge of continuing contract teachers in Minnesota is governed by Minnesota Statutes, Section 122A.40 **Employment; Contracts; Termination**. Mitchell Clausen, as principal of Cambridge-Isanti High School is engaged by Independent School District 911 pursuant to a continuing contract. Accordingly, he is covered by the provisions of that Act.

The discharge of continuing teachers under MN Stat. 122A.40 is addressed in Subd. 9 - **Grounds for termination**, and Subd. 13 – **Immediate discharge**. Subdivision 9 provides for termination at the end of a school year for failure on the part of a continuing contract teacher to correct deficiencies for which he/she has been given notice and an

opportunity to correct. Subdivision 13 provides for immediate termination of a continuing contract teacher for more serious misconduct than that specified in Subdivision 9. The provisions of Subdivisions 9 and 13 read in their entirety as follows:

**Subd. 9. Grounds for termination.**

A continuing contract may be terminated, effective at the close of the school year, upon any of the following grounds:

- (a) Inefficiency;
- (b) Neglect of duty, or persistent violation of school laws, rules, regulations, or directives;
- (c) Conduct unbecoming a teacher which materially impairs the teacher's educational effectiveness;
- (d) Other good and sufficient grounds rendering the teacher unfit to perform the teacher's duties.

A contract must not be terminated upon one of the grounds specified in clause (a), (b), (c), or (d), unless the teacher fails to correct the deficiency after being given written notice of the specific items of complaint and reasonable time within which to remedy them.

**Subd. 13. Immediate discharge.**

(a) Except as otherwise provided in paragraph (b), a board may discharge a continuing-contract teacher, effective immediately, upon any of the following grounds:

- (1) immoral conduct, insubordination, or conviction of a felony;
- (2) conduct unbecoming a teacher which requires the immediate removal of the teacher from classroom or other duties;
- (3) failure without justifiable cause to teach without first securing the written release of the school board;
- (4) gross inefficiency which the teacher has failed to correct after reasonable written notice;
- (5) willful neglect of duty; or
- (6) continuing physical or mental disability subsequent to a 12 months leave of absence and inability to qualify for reinstatement in accordance with subdivision 12.

For purposes of this paragraph, conduct unbecoming a teacher includes an unfair discriminatory practice described in section 363A.13.

Prior to discharging a teacher under this paragraph, the board must notify the teacher in writing and state its ground for the proposed discharge in reasonable detail. Within ten days after receipt of this notification the teacher may make a written request for a hearing before the board and it shall be granted before final action is taken. The board may, however, suspend a teacher with pay pending the conclusion of such hearing and determination of the issues raised in the hearing after charges have been filed which constitute ground for discharge.

(b) A board must discharge a continuing-contract teacher, effective immediately, upon receipt of notice under section 122A.20, subdivision 1, paragraph (b), that the teacher's license has been revoked due to a conviction for child abuse or sexual abuse.

The section of MN Stat. 122A.40 that provides for arbitration of continuing contract teacher terminations is found in Subd. 15, and reads as follows:

**Subd. 15. Hearing and determination by arbitrator.**

A teacher whose termination is proposed under subdivision 7 on grounds specified in subdivision 9, or whose discharge is proposed under subdivision 13, may elect a hearing before an arbitrator instead of the school board. The hearing is governed by this subdivision.

(a) The teacher must make a written request for a hearing before an arbitrator within 14 days after receiving notification of proposed termination on grounds specified in subdivision 9 or within ten days of receiving notification of proposed discharge under subdivision 13. If a request for a hearing does not specify that the hearing be before an arbitrator, it is considered to be a request for a hearing before the school board.

(b) If the teacher and the school board are unable to mutually agree on an arbitrator, the board must request from the bureau of mediation services a list of five persons to serve as an arbitrator. If the matter to be heard is a proposed termination on grounds specified in subdivision 9, arbitrators on the list must be available to hear the matter and make a decision within a time frame that will allow the

board to comply with all statutory timelines relating to termination. If the teacher and the board are unable to mutually agree on an arbitrator from the list provided, the parties shall alternately strike names from the list until the name of one arbitrator remains. The person remaining after the striking procedure must be the arbitrator. If the parties are unable to agree on who shall strike the first name, the question must be decided by a flip of a coin. The teacher and the school board must share equally the costs and fees of the arbitrator.

(c) The arbitrator shall determine, by a preponderance of the evidence, whether the grounds for termination or discharge specified in subdivision 9 or 13 exist to support the proposed termination or discharge. A lesser penalty than termination or discharge may be imposed by the arbitrator only to the extent that either party proposes such lesser penalty in the proceeding. In making the determination, the arbitration proceeding is governed by sections 572B.15 to 572B.28 and by the collective bargaining agreement applicable to the teacher.

(d) An arbitration hearing conducted under this subdivision is a meeting for preliminary consideration of allegations or charges within the meaning of section 13D.05, subdivision 3, paragraph (a), and must be closed, unless the teacher requests it to be open.

(e) The arbitrator's award is final and binding on the parties, subject to sections 572B.18 to 572B.28.

## **FACTUAL BACKGROUND**

### **Relevant Statutes**

Involved herein is the termination of Mitchell Clausen, Principal of Cambridge-Isanti High School. Mr. Clausen is covered by the provisions of MN Stat. 122A.40. In terminating the employment of Mr. Clausen the School District elected to proceed under the higher standards provided in MN Stat. 122A.40, Subd. 13. It is noted that Subdivision 9 of the statute sets lower standards for discipline in several areas. Subdivision 9 provides for termination only if a teacher has failed to correct deficiencies for which he/she has been given notice and reasonable opportunity to correct.

Subdivision 13, on the other hand, provides for *immediate* termination for more egregious conduct. Comparison of the provisions of Subdivision 9 and Subdivision 13 provides guidance as to the legislative intent of the two disciplinary tracks found in the Statute. Subdivision 9 provides for discipline for neglect of duty, whereas Subdivision 13 requires a showing of willful neglect of duty [Emphasis supplied]. Additionally, Subdivision 9 does not provide for insubordination as a basis for discipline, whereas Subdivision 13 does. Importantly, Subdivision 13 provides for *immediate* termination of a teacher for conduct that requires immediate removal of the teacher from the classroom. Relevant to this case, sustaining a termination under Subdivision 13 is seen to require a showing by the School District through a preponderance of the evidence that the Principal has committed conduct that requires his *immediate* removal from his administrative duties and his presence in the High School.

In *Kroll v. Independent School District No. 593*, [304 N.W.2d 338, (Minn. 1981)] the Minnesota Supreme Court adopted a “remediability standard” in the application of MN Stat. 122A.40. The remediability standard mandates that a principal would not be subject to immediate termination if he/she could reasonably be expected to remedy his/her conduct. In *Downie v. Independent School District 141* [367 N.W.2d 913 (Minn. App. 1985)] the Minnesota Court of Appeals described [at 917] several factors that should be weighed when determining remediability as follows:

1. The record of the teacher;
2. The severity of the conduct in light of the teacher’s record;
3. Whether the conduct resulted in actual or threatened harm, either physical or psychological;
4. Whether the conduct would have been corrected had the teacher been warned by superiors.

In this case the District must first show with a preponderance of the evidence that Principal Clausen is guilty of the charges against him. If that is shown, the District must then show that the conduct which led to his termination requires immediate termination and would not reasonably be considered remediable.

It is useful to examine the nature of the offenses that would warrant immediate termination that are specified in Subd. 13. The offenses specified in that subdivision would be properly characterized as egregious or continuing after appropriate notice. They involve immoral conduct, insubordination, conviction of a felony, conduct unbecoming requiring immediate removal from the classroom, failure to teach without first securing the written release of the school board, gross inefficiency which the teacher has failed to correct, and willful neglect of duty. The very nature of such offenses would, if proven, require the immediate removal of a teacher from the classroom, or, as in this case, the removal of a principal from administrative duties and the school building. They are readily comparable to those offenses listed in many collective bargaining agreements that warrant termination on the first offense, and are not eligible for progressive discipline. Those offenses listed in Subd. 9, on the other hand, are clearly less onerous and, as ruled by the Minnesota Supreme Court, require the teacher to be afforded an opportunity to remedy his/her conduct. Accordingly, analysis of the record evidence in this case was undertaken in part to determine whether or not the incident that led to the termination of Mr. Clausen was properly shown to be a continuation of previously noted deficiencies.

### **Findings of Fact Related to the Notice of Deficiency of June 28, 2007**

On June 28, 2007, while in his first year at Cambridge-Isanti High School, Principal Clausen was issued a “Notice of Deficiency” [Employee Exhibit 4]. In that notice Mr. Clausen was placed on notice that his conduct did not meet the expectations of the District. Specifically, he was provided notice that his attire and conduct at the 2007 graduation ceremony was deficient, that he failed to properly relate to staff under his supervision by engaging in inappropriate and unprofessional comments, that he failed to professionally relate to colleagues by engaging in transfer discussions with a teacher in another building without first discussing the matter with the teacher’s current principal, that he used demeaning or sarcastic comments in communications with others, and that he failed to timely respond to individuals in the community. There is nothing in the record of this arbitration hearing to show that Mr. Clausen grieved or otherwise challenged the June 28, 2007 Notice of Deficiency.

### **Findings of Fact Related to the June 2010 Model Schools Conference**

The facts surrounding this incident are largely undisputed. In June 2010 the District sent a group of approximately 40 teachers and staff, including Principal Clausen, to a Model Schools Conference in Orlando Florida. Testimony at the hearing by John Droubie and Robert Swanson, who appeared on behalf of Mr. Clausen, was entered to the effect that Director of Teaching and Learning Susan Burris, in pre-conference briefings to the attendees from Cambridge-Isanti characterized the conference as demanding and could be overwhelming. She was purported to have advised the attendees that while the conference was not a vacation, in view of the demanding schedule they should feel free to

take some time for themselves. Ms. Burris was not called to testify. Accordingly, the intent of her comments will have to be discerned from the testimony that was entered.

The conference began with a keynote address the evening of June 14, 2010. Working sessions ran from 8:00 AM to 5:00 PM on June 15 and 16, 2010, and continued on June 17 from 8:00 AM to 12 Noon. It is not disputed that Mr. Clausen attended the keynote address and all sessions on June 15<sup>th</sup> from 8:00 AM to 5:00 PM. On June 16<sup>th</sup>, however, he attended only from 8:00 AM to 12 Noon. It is not disputed that on the afternoon of June 16<sup>th</sup> he joined five other staff from the Cambridge-Isanti District on a trip to Universal Studios in Tampa. As a result he was absent from the conference sessions that were scheduled from 1:00 PM to 5:00 PM the afternoon of June 16<sup>th</sup>. Within the 1:00 PM to 5:00 PM period there were three conference sessions that Mr. Clausen could have attended [School District Exhibit 10]. It is not disputed that he attended the sessions scheduled for the morning of June 17, 2010.

The five other staff included three teachers from the Cambridge-Isanti Middle School, Mr. Robert Swanson, a teacher on special assignment in the District, and Ms. Jackie Swanson, a teacher at Cambridge-Isanti High School. Only Ms. Swanson was supervised by Mr. Clausen during the regular school year. There was no evidence introduced to show that Mr. Clausen had any supervisory responsibility for anyone except Ms. Swanson.

Mr. Swanson testified at the hearing that he suggested to Mr. Clausen that he and his wife, who had accompanied him to the conference, join Mr. Swanson and his wife on a trip to Universal Studios the afternoon of June 16<sup>th</sup>. They agreed to do so, and were absent from the conference for that time.

Subsequently, Mr. Burroughs, the Principal of the Cambridge-Isanti Middle School learned of the absences and talked with the three teachers from his building who skipped the conference sessions on June 16<sup>th</sup>. He expressed his disappointment in their actions. The three teachers from the Middle School, Mr. Swanson and Ms. Swanson were not issued discipline until December 13, 2010. That discipline was a written reprimand.

On August 2, 2010 the District terminated Mr. Clausen. At the time the District terminated Mr. Clausen it did not take any disciplinary action against any of the other five teachers who went to Universal Studios rather than attend the conference sessions. The first, and apparently the only discipline issued to the other five teachers were the written reprimands issued on December 13, 2010. It is noted that the written reprimands were issued three days before the December 16, 2010 scheduled arbitration of Mr. Clausen's case. Upon learning of the written reprimands of the five others, counsel for Mr. Clausen moved for a continuance of the hearing in order to determine how the then newly issued discipline of the others who participated in the Universal Studios trip would affect the case. Counsel for the District opposed that motion. Counsel for the District and Mr. Clausen argued their positions with regard to the requested continuance to the Arbitrator in closed session. Upon hearing and considering their arguments the Arbitrator

determined that there was sufficient cause for a continuance. The hearing was continued to January 21, 2011.

Other conference attendees from the Cambridge-Isanti District learned, while they were at the conference, of the trip to Universal Studios taken by Mr. Clausen and the five others. Before the delegation returned to Cambridge word had reached the community that six of its members had missed the afternoon sessions on June 16<sup>th</sup>. It is not disputed that the community was disturbed by what was perceived as taking a holiday at the expense of the School District. It is not clear from the record, however, what information was being circulated in the community or the accuracy of that information.

Upon his return to Cambridge Mr. Clausen met with Superintendent Novak to discuss the matter. In that meeting Mr. Clausen admitted to absenting himself from the conference the afternoon of June 16, 2010. On June 24, 2010 Director of Teaching and Learning Susan Burris requested that Mr. Clausen advise her as to what sessions he attended each day at the conference. Mr. Clausen provided the requested information the same day [School District Exhibit 17].

On July 13, 2010 Principal Clausen was placed on paid administrative leave pending completion of an investigation relating to the allegations against him. In the notice [School District Exhibit 4] placing Mr. Clausen on paid administrative leave the District advised him that upon completion of its investigation it would hold a meeting with him

where he would be “advised of the allegations against [him] and be afforded the opportunity to respond. There is no evidence that such a meeting was ever held.

On August 2, 2010 the School Board issued a “Notice of Proposed Immediate Discharge and Suspension with Pay of Mitch Clausen” [School District Exhibit 2].

On August 21, 2010 counsel for Mr. Clausen responded in a letter [School District Exhibit 12] to counsel for the District to a request from the Superintendent that Mr. Clausen provide the names of the individuals who were not in attendance for all portions of the conference. On September 9, 2010 the Superintendent sent a letter to Mr. Clausen apparently requesting the same information that counsel for Mr. Clausen had supplied counsel for the District on August 21<sup>st</sup>.

### **ANALYSIS OF THE EVIDENCE**

In the August 2, 2010 notice of Proposed Immediate Discharge the District charged Mr. Clausen with the following:

1. Failure to properly perform his duties as an administrator by being absent for a part of a day at the workshop.
2. Inappropriately authorizing other employees to be absent.
3. Failure to discipline those employees who left the conference early on June 16<sup>th</sup>.

In its August 2, 2010 letter to Mr. Clausen the District cited him with, among other things, “Failing to follow the specific directives issued to you as set forth in the Notice of Deficiency, dated June 28, 2007”. In regard to that charge it is noted that his performance

was subsequently appraised on April 14, 2008, approximately one year after he received the June 2007 Notice of Deficiency. The April 14, 2008 performance appraisal was documented in Employee Exhibit 2. There is no mention in that exhibit of any of the deficiencies listed in the June 28, 2007 notice. Had the District had continuing concerns about his remediation of the deficiencies raised in the June 28, 2007 notice, a reasonable person would expect to find some mention of that in the performance appraisal that followed about a year later. Since the June 2007 deficiencies were not mentioned in the performance appraisal and no further disciplinary action was taken in the following year, it is reasonable to conclude that the District was satisfied with Mr. Clausen's remediation of the deficiencies. Moreover, it is important to note that no further concerns about the conduct of Principal Clausen were raised by the District until the incident in June 2010 that led to his suspension in July 2010 and his eventual termination in August 2010.

At the arbitration hearing the School District averred that the June 28, 2007 Notice of Deficiency was placed into the record as "background" and noted that it was not current. Those representations and the absence of any reference to continuing concerns over Mr. Clausen's deficiencies compel a finding that the June 28, 2007 Notice of Deficiency was not appropriately used by the District to form the basis for the termination of Mr. Clausen. More importantly, the deficiencies in the Notice appear from the record to have been satisfied prior to the incident of June 16, 2010. Accordingly, the charge in the August 2, 2010 notice of proposed immediate discharge and suspension with pay that Mr. Clausen failed to follow the specific directives issued to him as set forth in the Notice of Deficiency dated June 28, 2007 is dismissed.

The particulars of the August 2<sup>nd</sup> notice of immediate discharge charge Mr. Clausen with insubordination among other things. There is no evidence to show that Mr. Clausen failed to follow a direct order as would be required for a showing of insubordination. There is no question that he left the conference early on June 16<sup>th</sup>, and that is disturbing. It does not, however, meet any reasonable definition of insubordination. It is also noted that Mr. Clausen is not charged with violation of any District policy that could reasonably be considered a directive or order that personnel must abide by. No District policies were introduced into evidence.

The second charge levied against Mr. Clausen is conduct unbecoming that would require his immediate removal from his duties. In order to sustain such a charge the evidence must show conduct that is so egregious or so repeated after notice that it requires immediate removal of a principal from his/her duties. The evidence does not support that finding. His absenting himself from the conference for an afternoon simply is not comparable to the type of activity that mandates immediate removal. As provided for in MN Statute 122A.40, such activity would involve such serious offenses as immoral conduct, conviction of a felony, gross inefficiency which the teacher has failed to correct and willful neglect of duty. The Principal's skipping a half day of conference sessions is not comparable to those activities. To the contrary, his conduct on June 16<sup>th</sup> is of the type that a reasonable person would deem as remediable.

The criteria for remediability that were set out by the Minnesota Court of Appeals in *Downie v. Independent School District 141* were the following:

1. The record of the teacher;
2. The severity of the conduct in light of the teacher's record;
3. Whether the conduct resulted in actual or threatened harm, either physical or psychological;
4. Whether the conduct would have been corrected had the teacher been warned by superiors.

Application of those criteria to the instant case compels a finding that Mr. Clausen's conduct on June 16<sup>th</sup> is of the type that is remediable. The remediability standard mandates that a principal would not be subject to immediate termination if he/she could reasonably be expected to remedy his/her conduct. Accordingly, his conduct is not found to be of the type that would require immediate removal of Mr. Clausen from his duties under the applicable statute.

As to the charge the Mr. Clausen demonstrated gross inefficiency which he has failed to correct, there is no showing that he had ever been counseled or disciplined for gross inefficiency, or for that matter simple inefficiency. Accordingly, no finding that he has failed to correct gross inefficiency can be made.

The District also charged Mr. Clausen with "willful neglect of duty". They base that charge on his being absent from the conference on the afternoon of June 16, 2010, authorizing others to be absent, and failing to discipline those who were absent. A question arises as to whether his actions comprise "neglect of duty" as envisioned in MN Statute 122A.40, Subd. 9 or "willful neglect of duty" as envisioned in Subd. 13. Neglect of duty is reasonably regarded as a form of employee misconduct. Black's Law Dictionary, 6<sup>th</sup> Ed., BNA, 1991 provides a useful definition of willful employee

misconduct to mean “more than mere negligence, and contemplates the intentional doing of something with knowledge that it is likely to result in serious injuries, or with reckless disregard of its probable consequences”. The actions of Mr. Clausen on June 16<sup>th</sup> do not rise to the level of willful misconduct, as that term is used in Subd. 13.

Testimony at the hearing established that Mr. Clausen supervised only Ms. Swanson. Accordingly, he was not in a position to authorize or deny the absence of the other four teachers who went to Universal Studios. While he was the only principal in the absenting group, his authority with regard to the four teachers not employed in his building does not appear sufficient based on the evidence, to authorize or deny their absence. The District also charged Mr. Clausen with failure to discipline the other absenting attendees. Just as he was not in a position to authorize or deny the absences of those not working in his building, he was not authorized to discipline them.

Of course, Mr. Clausen is responsible for his own conduct, and is arguably responsible for supervising the one teacher from his building, Ms. Swanson, who skipped the conference and went to Universal Studios. His actions regarding his own absence and tacit approval of the absence of Ms. Swanson is worthy of discipline.

At the arbitration hearing the District produced witness Dan Fosse who testified that Mr. Clausen was found to be “withholding important information and the names of other employees”. Mr. Fosse further testified that the School Board found Mr. Clausen’s purported withholding of information, his lack of leadership, and noncompliance with the

District's values while at the conference to be "simply outrageous". There is no reason to doubt that the School Board was outraged. Outrage, however, in and by itself is not a basis for termination of an employee. Indeed a factual basis for that outrage at the time it terminated Principal Clausen on August 2, 2010 is not found in the evidence.

On June 24, 2010 Director of Teaching and Learning Susan Burris requested that Mr. Clausen submit to her the dates and times he attended conference sessions. He replied with that information the same day.

The record shows that Mr. Clausen discussed the matter of his absence and the absences of the five other teachers with Superintendent Novak in early July, 2010. Superintendent Novak testified that he asked Mr. Clausen at that meeting for the names of the other teachers who absented themselves from the conference, but that he refused to provide them. Mr. Clausen, for his part, testified that Superintendent Novak never asked him at that meeting for the names of the others who absented themselves from the conference [Tr. 313 at 5-8]. Mr. Clausen testified that Superintendent Novak simply asked him for his keys to the building and his key code card.

On July 13, 2010 Mr. Clausen was suspended, and notified that he would be advised of the date and time of a meeting with School District administration where he would be afforded an opportunity to respond to the charges against him. There is nothing in the record to show that meeting was ever held. There was to have been a subsequent meeting on July 26, 2010 in Superintendent Novak's office attended by Mr. Clausen and his

attorney. The record [Tr. 310 at 5-12] shows that Mr. Clausen and his attorney presented themselves for that meeting. It developed, however, that neither Mr. Clausen nor his attorney was seen by the Superintendent or anyone else from the School District administration. On August 2, 2010 the District notified Mr. Clausen that he was being immediately terminated.

On September 9, 2010, a month after notice of his termination was issued Mr. Clausen was requested in writing to supply the names of any staff members who absented themselves from the conference with him. Counsel for Mr. Clausen responded to that request on September 21, 2010. It is disturbing that the District based its decision to terminate Mr. Clausen, at least in part, on a belief that he had withheld information when that information was, according to the evidence in the record, not requested until September 9, 2010. That request was, according to the evidence, made over a month after the notice of immediate termination had been issued. That is troubling.

On September 28, 2010 the Minnesota Board of School Administrators requested from the School District “information such as reports, allegations, or charges that allege inappropriate behavior or conduct, or the outcome of any investigation of the conduct of Mitchell D. Clausen. That Board is the licensing agency for school administrators. The record of this hearing shows that the District responded to the Board’s request. There was no evidence introduced, however, that the Board had taken any action in regard to Mr. Clausen’s license.

The District in this case has chosen to proceed with immediate termination of Mr. Clausen under MN Statute 122A.40, Subd. 13. That statute requires that the District show with a preponderance of the evidence that Mr. Clausen is guilty of the charges against him. As noted in this award, supra, the Minnesota Supreme Court has distinguished a termination of a continuing contract teacher under Subd. 9 from a termination under Subd. 13. The Court ruled that under Subd. 13 the teacher's conduct must be shown to be so egregious or continuing that remediation is not possible. In *Downie v. Independent School District 141*, cited supra, the following factors were set out for determining remediability:

1. The record of the teacher;
2. The severity of the conduct in light of the teacher's record;
3. Whether the conduct resulted in actual or threatened harm, either physical or psychological;
4. Whether the conduct would have been corrected had the teacher been warned by superiors.

Here, the record of the Principal does not show that remediability would be ineffective. The severity of Mr. Clausen's conduct when taken in the light of his record does not support immediate termination. There was no showing that missing the afternoon of June 16<sup>th</sup> from the conference resulted in substantial harm to the District. Had explicit instructions been offered to conference attendees that they must attend all conference sessions, it is reasonable to believe that Mr. Clausen and the others would have abided by such instruction. To the contrary, at pre-conference briefings the attendees were advised that the conference would be demanding and that they should feel free to take personal time. In making that statement Ms. Burris likely did not intend to release attendees from the conference so they could go to Universal Studios. That said, however, evidence

entered into the record of this hearing showed no limit to the attendees' use of personal time. Ms. Burris was not called to testify. There is nothing in the record to suggest that the attendees would not have abided by an instruction that they attend all sessions if such an instruction was given.

It is noted that the other five teachers who missed the afternoon sessions at the conference on June 16, 2010 received only a written reprimand, whereas Mr. Clausen was terminated for substantially the same offense. His role as a supervisor would hold him to a higher standard, but the disparity between the disciplines imposed is extreme and beyond reasonable limits his supervisory position would justify. The record compels a finding that Mr. Clausen was disparately treated.

Mr. Clausen testified at the arbitration hearing that at the time of the conference he gave no thought to his absence being wrong or that it could cause embarrassment to the District. He went on to testify, however, that at the present time, after reflection he realizes that he was wrong in absenting himself from the conference and would not do so again. He recognizes that some discipline is in order, but pleads that termination is too severe a penalty under the circumstances.

Minnesota Statute 122A.40, Subd. 15 provides that a lesser penalty than termination or discharge may be imposed by the arbitrator only to the extent that either party proposes such lesser penalty in the proceeding. In the post hearing brief filed on

behalf of Mr. Clausen his counsel stated “Mr. Clausen should receive some discipline as the result of his behavior. It should not be discharge.”

The preponderance of the evidence does not support the immediate discharge of Mr. Clausen. His error in judgment that led to his being absent from the conference with several colleagues, one of whom he supervised, requires some discipline, however. Termination is regarded as much too severe, and a written reprimand, as was given to the other teachers who absented themselves from the conference appears too light in view of Mr. Clausen’s standing as a Principal and supervisor. Accordingly, re-instatement and a three day suspension without pay is deemed the appropriate penalty.

**IN THE MATTER OF PROPOSED DISCHARGE**

Mitchell Clausen,  
Principal

And

Independent School District 911  
Cambridge-Isanti, Minnesota  
School District

Proposed Discharge Pursuant to  
Minnesota Statutes 122A.40

Bureau of Mediation Services  
Case No. 11-TD-2

**AWARD**

Based on the entirety of the record adduced at the arbitration hearing in this matter the preponderance of the evidence, as required by Minnesota Statute 122A.40, does not support the immediate termination of Mitchell Clausen on the grounds stated in the August 2, 2010 notice of proposed immediate discharge and suspension with pay. He is reinstated to his position as Principal of Cambridge-Isanti High School and issued a three-day suspension without pay.

April 18, 2011

Dated: \_\_\_\_\_

James L. Reynolds

\_\_\_\_\_  
James L. Reynolds  
Arbitrator