

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA BOARD OF TEACHING

In the Matter of the  
Revocation of the Teaching  
Licenses of Debra K. Frank

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION

The above-entitled matter came duly on for hearing before Administrative Law Judge Steve M. Mihalchick on April 8, 1994, at 9:30 a.m. at Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138. The record closed at the end of the hearing.

Bernard E. Johnson, Assistant Attorney General, 1200 NCL Tower, 44S Minnesota Street, St. Paul, Minnesota 55101-2103, appeared on behalf of the Minnesota Board of Teaching (the Board). Debra K. Frank, 909 Twelfth Street North, Apartment 3, Fargo, North Dakota 58102, appeared on her own behalf.

This Report is a recommendation, not a final decision. The Board of Teaching will make the final decision after a review of the record which may adopt, reject, or modify the Findings of Fact, Conclusions of Law, and Recommendations contained herein. Pursuant to Minn. Stat. 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact the Board of Teaching, 608 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this contested case proceeding is whether disciplinary action should be taken against the teaching licenses of Debra K. Frank.

Based on all the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Debra Frank holds four licenses from the Board of Teaching: 1) Home

Economics 7-12; 2) Emotionally/Behaviorally Disordered (EBD); 3) Specific Learning Disabilities K-12 (LD); and 4) Mild to Moderate Mentally Handicapped (MMH).

2. Frank was hired by Independent School District No. 21 (ISD 21) in 1980. She taught LD students in Special Education at the elementary school level there from 1980 to 1986. In 1986, Frank obtained her MMH license. In 1987, Frank obtained her EBD license. She has never taught home economics.

3. When students are believed to be in need of Special Education services, a referral is made to the Special Education teachers. The assigned special Education teacher obtains permission from the student's parents to begin an assessment. The assessment is made by a team assembled by the teacher. The Special Education teacher or other professionals administer tests and the team members develop an Individual Education Plan (IEP) based on the results of those tests. Under its own policy, ISD 21 required that IEPs were to be complete within thirty days of the initial referral. State rules require that each student receiving Special Education services under an IEP must be tested annually and a full reassessment must be done every three years. ISD 21 requires that the Special Education teacher must do the testing and organize the reassessment team.

4. Frank had a caseload of between seven and thirteen students from the time she started teaching with ISD 21 until 1988. None of these students were EBD. In the 1988-89 school year, Frank had eight students, one of whom was EBD. In the 1989-90 school year, she had seven students, three of whom were EBD. In the 1990-91 school year, Frank had thirteen students, five of whom were EBD. In the 1991-92 school year, she had nine students, three of whom were EBD.

5. In addition to her normal teaching load, Frank filled in for other teachers who were out on sick leave. This additional teaching took place on an irregular basis.

6. Frank received satisfactory evaluations in each year of her employment from 1980 to 1989. In the 1989-90 school year, Frank received a satisfactory evaluation, but with the recommendation that Frank "strengthen her skills in working with EBD students."

7. During the 1990-91 school year, Frank began having problems

controlling EBD students. She failed to perform an initial assessment of a student referred to her for Special Education services despite being reminded to do so. She also failed to complete IEPs for several students receiving Special Education services. It became known among classroom teachers that she was not processing referrals and they stopped making referrals to her.

8. IEPs for a number of students receiving Special Education services still had not been completed by Frank at the start of the 1991-92 school year. Many written and oral requests were made to Frank by her supervisors in the fall of 1991, asking her to complete these IEPs. A number of the IEPs were never completed and some of those that she worked on did not comply with the Minnesota Department of Education rules on IEPs.

9. On December 16, 1991, Thurman R. Wetteland, Special Education Director for the Special Education Cooperative of which ISD 21 is a member, met with Frank. Wetteland indicated to Frank that her failure to complete

IEPs placed ISD 21 in noncompliance with state rules. At this meeting, Frank complained that her caseload precluded preparation of the required paperwork. Wetteland made suggestions on Frank's use of time to enable her to catch up. Wetteland also offered to provide a substitute teacher for up to two days so that Frank could devote that time to completing the required paperwork. Frank refused to accept the hiring of a substitute teacher, saying that it would only create more work for her. Frank maintains that she would have needed to prepare a lesson plan before the substitute came and would have had to catch up with the students after the substitute left.

10. On December 11, 1991, Richard D. Hanson, Principal of the elementary school in ISD 21 in which Frank taught, sent Frank a written reprimand. The reprimand cited Frank:

- 1) for having failed to meet his earlier directive to finish a student's testing and his individual education program,
- 2) for improperly preparing for a staff meeting with respect to another student, and
- 3) for failing to comply with Hanson's earlier directive to keep student files in the fire-proof file cabinet in his office.

11. on December 13, 1991, Hanson sent Frank another written reprimand. This reprimand cited Frank:

- 1) for having failed to follow his earlier directive not to leave students in the outer area of her classroom without supervision, and
- 2) for failing to complete daily lesson plans.

12. On December 17, 1991, Hanson sent Frank a memorandum, criticizing how Frank conducted a team meeting with the student's parents present. On that date, Hanson also gave Frank a deadline of January 10, 1992, for completing the work needed for a student's IEP.

13. on January 15, 1992, Hanson reprimanded Frank in writing for failing to meet the January 10, 1992 deadline for a student's IEP. On January 16, 1992, Hanson sent Frank a written reprimand for failing to complete another student's paperwork.

14. On January 17, 1992, Hanson sent Frank a memorandum which stated:

You and I have discussed several times verbally and you have received in written communication many times directives to

follow up in a timely manner state mandates and local policy on procedures for testing, written IEP goals and objectives,

student performance levels and communications with staff and parents. Your reasons given to me are that you don't have enough time, but I have offered to arrange for you to get the time, but you have declined to use it. Please be informed that all of the acts of insubordination referred to above and those listed below may lead to your termination of employment with the district.

Failure to:

1. Properly prepare student performance objectives for [student's name omitted] IEP conference.
2. Have current testing completed and reported for [same student's] IEP staffing.
3. Have [another student's] IEP goals and objectives written within the mandatory timelines.
4. Have current testing and IEP goals and objective for [third student] within state mandate and my directive.
5. Keep student files in the fire-proof file in my office.
6. Allow students in your outer room unsupervised with the doors closed between your room and the outer room.
7. Have lesson plans completed.
8. Have [fourth student's] goals and objectives written and sent to parents within the mandated time.
9. Have [fifth students testing completed on the date I directed You have it done.

15. A meeting was held on February 4, 1992, among Frank, Hanson, and Wetteland. At this meeting, Frank was questioned as to whether she had completed the IEPs needed for eight of her students. Frank responded that she had not completed those IEPs.

16. On February 6, 1992, Hanson directed Frank to complete testing for two students by February 26, 1992, and conduct staff meetings for those students by March 18, 1992. Hanson offered Frank the assistance of two Special Education teachers to help her and a substitute teacher to free up some of her time. Frank refused that assistance. She did not complete the work as directed and received another written reprimand from Hanson.

17. A memorandum was issued by Hanson to Frank on March 30, 1992, advising her that she had not met deadlines set for certain work not yet completed in that school year. Another memorandum was issued the next day, March 31, 1992, wherein Hanson again set specific deadlines for Frank. Hanson repeated the offer of two Special Education teachers and a substitute teacher to assist Frank in meeting these deadlines. That assistance was again refused.

18. Hanson issued a written reprimand to Frank on April 6, 1992, for Frank's failure to meet a deadline in the March 31 memorandum. Hanson again offered Frank assistance from other Special Education teachers to meet upcoming deadlines.



19 . on April 8, 1992, Hanson issued a written reprimand to Frank for failing to meet a number of dead lines contained in the March 31 memorandum Hanson noted that another deadline was approaching and again offered assistance to Frank to meet that deadline. He also stated in the reprimand that if she was unable to perform her duties because of mental reasons, that she should notify him and arrangements would be made for her medical care.

20. On April 13, 1992, Hanson issued a written reprimand to Frank for failure to meet deadlines. Hanson stated in the reprimand that he would be applying to the school board for Frank's immediate termination.

21. CA April 16, 1992, Hanson issued a written reprimand to Frank for failure to complete three students' IEPs by the deadlines previously set. The reprimand directed Frank to use a workshop day to complete the overdue paperwork. The reprimand also set a deadline of April 23, 1992, at 4:00 p.m. to complete a student's IEP goal and objectives and send a copy to that student's parents. The reprimand stated that failure to meet this deadline would result in a recommendation to the school board that Frank be terminated.

22. Frank did not complete any of the paperwork for which the deadlines had been set. Nor did she seek any extension of time, request any of the assistance that had been offered, or indicate she had any mental or medical problem.

23. On April 24, 1992, Frank was suspended by ISD 21. The suspension notice also contained a notice of discharge. The grounds stated in the notice for both the suspension and discharge were:

- 1) insubordination by failing to complete reports on time as directed;
- 2) failure to keep student files in principal's office;
- 3) failure to complete assessments of students;
- 4) failure to complete IEP goals and objections [sic];
- 5) failure to administer required student tests or measuring instruments;
- 6) failure to provide direction and leadership to paraprofessionals (aides) assigned to teacher Frank;
- 7) failure to utilize educational and in-service training for the use and implementation of computers in the educational process, including writing individual education plans and scoring individual performance of students assigned;
- 8) failure to seek advice and assistance after deficiencies have been pointed out to her and seeking corrective action to correct such deficiencies, including offered assistance by supervisors, staff, and the hiring of substitute teachers so that employee Frank could perform assigned duties; and
- 9) failure to supervise students.

Exhibit A, at 3; Exhibit B, Decision and Award of Arbitrator, at 3-4.



24. On September 9 and 10, 1992, a hearing was held on the proposed termination of Frank. The hearing was conducted by Thomas P. Gallagher, Arbitrator. Both Frank and ISD 21 were represented by counsel. Witnesses were called and subject to cross-examination.

25. At the hearing before the arbitrator, Wettelund testified that Frank's caseload was no more than the average caseload for Special Education teachers. Norma J. Altmann-Bergseth, Coordinator for EBD teaching in ISD 21's Special Education cooperative, testified that Frank's caseload was less than average. Altmann-Bergseth also testified that she was concerned about Frank's teaching skills when aides to Frank indicated Frank was deferring to their Judgment on teaching students. The aides also told Altmann-Bergseth that Frank was not preparing timely lesson plans.

26. The arbitrator made a Decision on November 29, 1992, sustaining the discharge of Frank by ISD 21 on the grounds of "insubordination, gross inefficiency uncorrected after reasonable written notice, or willful neglect of duty." Exhibit B, Decision and Award of Arbitrator, at 18. The arbitrator's decision was not appealed.

27. Based upon the arbitrator's Decision, the Minnesota Department of Education suggested that Frank undergo a retraining program to ensure that she was capable of handling the responsibilities of teaching in the Special Education area. Exhibit C. This suggestion was made on May 27, 1993, in response to an inquiry from the Board of Teaching. The Board was considering what action was appropriate in response to Frank's request to renew her teaching licenses. Frank refused to undergo the proposed retraining program.

28. At the hearing on this matter, Judith Wain, Executive Secretary of the Board of Teaching, testified as to teaching loads in Special Education. In her opinion, a student load of thirteen students in Special Education is average and reasonable.

29. The Notice of and Order for Hearing in this matter was served on Frank on February 15, 1994. The Order for Hearing identified the issue to be determined at the hearing as whether Frank's conduct as a teacher with ISD 21 constitutes gross inefficiency or willful neglect of duty justifying the revocation of her teaching licenses.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Board of Teaching and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. 14.50, 124.10, and 125.09, subd. 1(3).

2. The Board of Teaching gave proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law or rule.

3. Frank's failure to timely prepare IEPs for students determined to be eligible for Special Education services constitutes gross inefficiency and willful neglect of duty under Minn. Stat. 125.09, subd. 1(3).

4. Frank's failure to promptly test students referred to her to determine their eligibility for Special Education services constitutes gross inefficiency and willful neglect of duty under Minn. Stat. 125.09, subd. 1(3).

5. Frank's failure to meet the deadlines set for testing students and completing reports, failure to properly store student files, and failure to properly supervise students constitute insubordination, and therefore, gross inefficiency and willful neglect of duty under Minn. Stat. 125.09, subd. 1(3).

6. The Board has not introduced sufficient information to support the allegation that Frank failed to provide direction and leadership to paraprofessionals under her authority.

7. Frank's failure to utilize all available methods for education, in-service training, advice, and assistance offered by ISD 21 prior to her discharge and the Department of Education during the pendency of this matter demonstrates that Frank is unwilling or unable to improve upon her deficiencies and justifies revocation of her licenses rather than a lesser discipline.

Based on the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

#### RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED: that the Board of Teaching revoke the teaching licenses for Home Economics 7-12, Emotionally/Behaviorally Disordered, Specific Learning Disabilities K-12, and Mild to Moderate Mentally Handicapped held by Debra K. Frank.

Dated: May 9 1994.

STEVE M. MIHALCHICK  
Administrative Law Judge

#### NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first

class mail.

Reported: Jeffrey J. Watzak  
Reporters Diversified Services  
Duluth, Minnesota  
One Volume

MEMORANDUM

The Board renewed its motion for summary disposition at the hearing in this matter. As decided in the Judge's letter of April 4, 1994, the arbitrator's factual findings have been accepted as binding in this matter, but not his ultimate conclusions.

To collaterally estop a party through a prior agency determination, five elements must be demonstrated:

1. The issue must be identical to the issue determined in the prior adjudication.
2. The issue must have been necessary to the prior agency determination.
3. There must be a final adjudication on the merits that was subject to judicial review.
4. The estopped party was a party in the prior adjudication or in privity with a party in that adjudication.
5. The estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

Graham v. Special School District No. 1, 472 N.W.2d 114, 116, (Minn. 1991).

Frank was a party to the prior case, there was a final adjudication on the merits that was subject to review (although very limited review), and Frank had a full and fair opportunity to be heard on the adjudicated issue. As used in this matter, the relevant issues are limited to the facts regarding Frank's performance at ISD 21. Findings on those issues were necessary to the arbitrator's determination. Thus, Frank is collaterally estopped from disputing the facts found by the arbitrator. It is also noted that Frank does not dispute most of the findings of the arbitrator, only the ultimate conclusions.

The Judge has declined to accept the arbitrator's conclusions for the purposes of determining whether Frank's license should be revoked. There are two reasons for this. First, while the factual findings are clearly and fully stated, the ultimate conclusions reached by the arbitrator are not entirely clear in his Decision. The Board of Teaching should be provided with conclusions dealing with each charge made regarding Frank's conduct. Second, conduct justifying discharge is not necessarily the same as conduct justifying license revocation. Thus, the first element in Graham is not met for the issue to be decided in this matter. Since the ultimate issues are different and the conclusions reached in the arbitrator's decision are unclear, the Board's motion for summary disposition was denied.



The charges against Frank are straightforward. She was responsible for the education of students needing Special Education services at her elementary school. As part of this responsibility, Frank was required to complete testing, conduct assessments, create IEPs, and document progress. Frank failed to do these things. The reason Frank gave for this failure is the lack of time due to her workload. The workload she had in the 1991-92 school year was average or even less than average for an elementary Special Education teacher and Frank had handled such a load prior to 1991 without difficulty. While the number of EBD students increased in Frank's last two years, the number of those students was not unreasonable.

Frank's defense of insufficient time to complete her work is further undermined by the repeated offers of specialized assistance and a substitute teacher to afford Frank the office time needed for completing her work. Frank had sufficient time available through the use of these resources to complete the work assigned to her. Frank's failure to complete her work constitutes gross inefficiency.

ISD 21 engaged in a prolonged effort to bring Frank's performance as a Special Education teacher up to an acceptable standard. Frank did not respond to that effort. While this failure to use available resources is relevant to the charges of gross inefficiency, such a failure does not constitute an independent ground upon which a license can be revoked.

The deadlines on testing, assessment, and reports were reasonable and Frank's reasons for not meeting those deadlines were responded to by ISD 21. In all instances, the deadlines were imposed to ensure that the school district was in compliance with federal regulations on Special Education. In several instances, the deadlines were intended to provide parents with information about their children. The repeated failure to meet the deadlines and standards set by ISD 21 is willful neglect of duty.

Frank was instructed to leave her door open when students were in the outer room. Leaving the door open is needed to properly supervise students. Frank was informed on December 13, 1991 that she was to keep her door open. She failed to do so and was again instructed to leave her door open on January 17, 1992. Although criticism number 6 in the January 17, 1992 memorandum is phrased incorrectly (Failure to ... Allow students in your outer room unsupervised with the doors closed between your room and the outer room ... )(van Finding 14, above), Frank understood the nature of the reprimand. This constitutes a failure to supervise students.

The improper handling of student files is another example of insubordination. While this problem would not justify revocation of a license by itself, it is relevant in determining what adverse action is appropriate,

At the arbitration hearing, a Special Education consultant for ISD 21

testified to concerns she had over Frank deferring to the opinion of aides in planning classes. No specific allegation has been made relating to this conduct. The only evidence supporting the charge is the consultant's testimony reported by the arbitrator. That testimony is too vague to meet the

evidentiary requirements for license revocation.  
441 N.W.2d 488, 492 (Minn. 1989)("in all professional disciplinary matters,  
the finder of fact ... will be persuaded only by evidence with heft").  
The  
Judge has not considered that allegation in the conclusions and  
recommendations in this Report.

Frank alleged that she was harassed by other teachers as she fell behind  
in her work. Some of the incidents she calls harassment are not, and she was  
unclear as to other incidents. She was, no doubt, the subject of negative  
comments and actions. But Frank has presented no evidence or argument that  
she can perform any better in another school. She seems to say that she is  
what she is and that she is not willing to obtain additional education or  
other assistance to improve her abilities. There seems to be no alternative  
to revocation.

S.M.M.