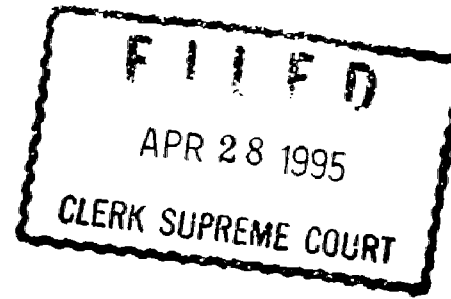


IN THE COURT OF APPEALS OF IOWA

No. 5-048 / 94-636



WILLIAM HAMILTON,

Appellant,

vs.

BOARD OF DIRECTORS OF WAPELLO COMMUNITY SCHOOL DISTRICT,

Appellee.

Appeal from the Iowa District Court for Louisa County, William L. Dowell,
Judge.

William Hamilton appeals a district court decision affirming the school board's
decision to terminate his contract as a school principal. **AFFIRMED.**

Linda Whittaker and Patrick J. Madden of Stanley, Lande & Hunter,
Muscatine, for appellant.

Roger A. Huddle of Weaver & Huddle, Wapello, for appellee.

Heard by Donielson, C.J., and Sackett and Habhab, JJ.

DONIELSON, C.J.

William Hamilton appeals from the termination of his employment as a school principal. Hamilton was a nonprobationary administrator and his employment was terminated in conjunction with the procedures set forth in Iowa Code section 279.24.¹ Upon our review of the parties' arguments and the record, we affirm the decision of the Board of Directors of the Wapello Community School District ("Board") to terminate Hamilton's employment.

I. PROCEDURAL STATUS OF CASE.

Upon receiving written notification that the Board was considering termination of his contract, Hamilton requested the appointment of an administrative law judge to hold a hearing. Iowa Code § 279.24. A hearing was held and the administrative law judge made a proposed decision in which he found just cause did not exist to terminate Hamilton. The Board utilized its statutory right to review the decision of the administrative law judge. *See* Iowa Code § 279.24.

The Board had the right to hear the case de novo upon the record as submitted before the administrative law judge. Iowa Code § 279.24. The Board made findings of fact and conclusions of law in which it found just cause existed for Hamilton's dismissal. Hamilton appealed the Board's decision to the district court which affirmed the Board's action.

Section 279.24 provides in relevant part --

The court may affirm the school board's action. The court shall reverse, modify, or grant any other appropriate relief from the school board's action, equitable or legal, and including declaratory relief, if substantial rights of the administrator have been prejudiced because the school board's action is any of the following:

¹ All references are to the 1993 Iowa Code unless otherwise indicated.

1. In violation of constitutional or statutory provisions.
2. In excess of the statutory authority of the school board.
3. In violation of school board policy or rule.
4. Made upon unlawful procedure.
5. Affected by other error of law.
6. Unsupported by a preponderance of the evidence in the record made before the school board when the record is reviewed as a whole.
7. Unreasonable, arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

II. SCOPE OF REVIEW.

The parties dispute what is the appropriate standard of appellate review. Our scope of review is at law for the correction of errors and not de novo. The sole question is whether the district court correctly applied the law. We apply the standard of section 279.24 to the Board's action to determine whether this court's conclusions are the same as those of the district court. *See Briggs v. Bd. of Directors*, 282 N.W.2d 740, 743 (Iowa 1979). If the conclusions are the same, affirmance is in order. If they are not, reversal may be warranted. *See id.*

During oral argument a point was made regarding the fact that prior to 1987 a substantial evidence, rather than a preponderance of the evidence, standard was used in reviewing a school board's decision to terminate an administrator. 1987 Iowa Acts ch 39 § 1. This preponderance standard is also used in teacher termination cases. *See Iowa Code § 279.18*. The change in this evidentiary standard has no effect upon our scope of appellate review. *Cf. Board of Directors v. Justmann*, 476 N.W.2d 335, 338 (Iowa 1991) (scope of review is at law in teacher termination case); *Board of Educ. v. Youel*, 282 N.W.2d 677, 680 (Iowa 1979) (same).

III. EVALUATIONS.

Hamilton contends his substantial rights were violated by the Board's violation of a statute and its own policies requiring the evaluation of administrators. The Board's policy required new principals be evaluated at least twice in writing for the first two years of employment. After that the policy requires each principal be evaluated in writing at least once a year. Iowa law requires school boards to establish written evaluation criteria and establish and annually implement evaluation procedures. Iowa Code § 279.23A.

The record reveals Hamilton received no evaluations during his first year ('90-'91) as a probationary principal. One evaluation was done for his second year ('91-'92) as a probationary employee. However, the record indicates this evaluation was not presented to Hamilton for his review until August 1992, shortly after he had commenced his third year as principal. This evaluation indicated Hamilton needed improvement in nearly half of the areas assessed by the superintendent.

After Hamilton had been asked to resign in February 1993, an evaluation for the '92-'93 school year was prepared and presented to Hamilton. The superintendent gave Hamilton an overall rating of unsatisfactory on this evaluation.

In *Wedergren v. Bd. of Directors*, 307 N.W.2d 12, 19 (Iowa 1981), it was unclear whether a school board's policy required annual evaluations of a superintendent. Regardless, the court held the failure to evaluate the administrator more frequently did not prejudice his rights. We similarly conclude Hamilton's substantial rights were not violated. His testimony indicated he was made aware of his '91-'92 evaluation at the beginning of the '92-'93 school year. That evaluation clearly set forth numerous deficiencies and areas in which improvement was needed.

Hamilton was on notice he would have to demonstrate improvement during the '92-'93 school year. It was Hamilton's '92-'93 contract which was terminated by the

Board. He had the benefit of receiving evaluations in August '92 and March '93. Neither Board policy nor state law was violated in conjunction with his required evaluation for that year. Hamilton's argument in this regard is rejected.

IV. PREPONDERANCE OF THE EVIDENCE.

Hamilton contends his substantial rights were violated because the Board's action was not supported by a preponderance of the evidence in the record before it. A nonprobationary principal may only be terminated for "just cause." The definition of "just cause" is flexible in nature and each case depends on its own circumstances. *Wedergren*, 307 N.W.2d at 21. Just cause is not to be found in every trivial lapse from perfect performance. *Id.* There must be some significant direct or indirect effect on the educational program or administration of the school system. *Id.*

The record reflects Hamilton was derelict in ensuring that prompt and adequate evaluations were prepared for teachers. His performance in this area had not substantially improved by the time his contract was terminated. The record also reflected, by a preponderance of the evidence, that Hamilton had failed to comply with deadlines and procedural requirements for curriculum planning and improvements. Other less significant problems similarly reflected a lack of effective leadership and organization by Hamilton. The Board's action was supported by a preponderance of the evidence in the record.

V. REASONABLENESS OF THE BOARD'S ACTION.

Hamilton claims his substantial rights were violated by the Board's unreasonable action. He essentially argues it was unreasonable for the Board to have terminated him after it had given him the additional responsibility of overseeing the seventh and eighth grades. He seems to suggest his performance evaluations do not

reflect a level of dissatisfaction which would lead to termination. However, his '91-'92 evaluation reflected serious concerns with Hamilton's leadership, his failure to take charge of program and curriculum changes, his purchasing problems, and his failure to promptly and adequately evaluate teachers as required by law.

His '91-'92 evaluation made it clear Hamilton had to improve in several areas and that he must realize his position as principal was "not an eight to four job" and had to take precedence over all other concerns. Under these circumstances Hamilton fails to demonstrate the Board's action was unreasonable.

VI. BOARD'S MEETING WITH HAMILTON.

In his reply brief Hamilton contends his right to due process was violated when the Board met with him prior to issuing its notice of consideration of termination of his contract. An issue cannot be asserted for the first time in a reply brief. *Young v. Gregg*, 480 N.W.2d 75, 78 (Iowa 1992). Hamilton did not present this alleged unconstitutional violation in his appellate brief, and we decline to address it now.²

VII. NOTICE OF CONSIDERATION OF INTENT TO TERMINATE.

Hamilton argues the Board's notice of consideration of termination of his contract failed to meet the requirements of due process. Iowa law requires the Board's notice contain "specific reasons" for the decision to consider termination. Iowa Code § 279.24. While the statute requires specific reasons, due process does not require detailed specific factual bases for the reasons. *See Wedergren*, 307 N.W.2d at 17.

² We note an amendment enacted by the 1993 legislature statutorily provides for a meeting of the type to which Hamilton now objects. 1993 Iowa Acts ch. 32 § 4.

While we agree with Hamilton that the record would not support a finding that Hamilton misrepresented facts to the Board, we find no due process deficiency in the actual notice sent to Hamilton. The district court affirmed the Board's action on the basis of the more serious deficiencies cited in the Board's notice and we similarly affirm on those bases as well.

AFFIRMED.