

- C. Ms. Washburn's conduct did not amount to sick leave abuse, as per the medical testimony offered at hearing.
- D. The Board treated Ms. Washburn differently than similarly-situated employees by terminating her for alleged abuse of sick leave when other district employees were disciplined less harshly or not disciplined at all for using sick leave when they were not sick.
- E. Ms. Washburn had no prior disciplinary history at the time of her termination.
- F. The Board failed to follow the principle of progressive discipline, and thus did not have good and just cause to terminate Ms. Washburn.
- G. Both Referee Page and the Board failed to adequately consider the impact of applicable case law, namely *Katz v. Maple Heights School Dist. Bd. of Ed.*, 87 Ohio App.3d 256, 611 N.E.2d 1 (8th Dist. 1993), by failing to consider Ms. Washburn's employment history and the circumstances in which the conduct occurred.
- H. The Board's termination of Ms. Washburn in part for not answering questions about her medical condition in a pre-disciplinary hearing violates Ms. Washburn's constitutional rights under *Cleveland Board of Education v. Loudermill*, 470 US 532 (1985).
- I. For any other procedural and substantive error appearing in the record and transcript of the proceedings of Defendant Board.

These facts are more fully set forth as follows:

JURISDICTION

1. The jurisdiction of this Court is invoked pursuant to R.C. § 3319.16. The case at bar is an appeal of the Defendant Board's Resolution Terminating the Teaching Contract of Eileen Washburn, passed by the Board on October 28, 2024.
2. Pursuant to R.C. § 3119.16:

Upon service or waiver of summons in that appeal, the board immediately shall transmit to the clerk of court for filing a transcript of the original papers filed with the Board, a certified copy of the minutes of the board into which the termination finding was entered, and a certified transcript of all evidence adduced at the hearing or hearings before the board or a certified transcript of all evidence adduced at the hearing or hearings before the referee. . . .

R.C. § 3319.16. The record is fully incorporated herein and will be referred to as the “Record.” The record in this case includes the transcript of a multi-day hearing before Referee Gregory S. Page, appointed as Referee in accordance with R.C. § 3319.161, exhibits introduced and admitted into the hearing by both Ms. Washburn and the Board and Post Hearing Briefs submitted by Ms. Washburn and the Board.

PARTIES

3. The Plaintiff Eileen Washburn is a teacher affected by the Resolution Terminating the Teaching Contract of Eileen Washburn dated October 28, 2024.
4. The Plaintiff Eileen Washburn is a teacher as defined in R.C. § 3319.09(A).
5. The Defendant Lakota Local School District Board of Education is a “public employer” within the meaning of R.C. § 4117.01(B).
6. The Defendant Lakota Local School District Board of Education is the employing board of Ms. Washburn within the meaning of R.C. § 3319.16 and § 3319.07(A).

COUNT I **TERMINATION WITHOUT GOOD AND JUST CAUSE**

7. Ms. Washburn has been an accomplished rated teacher during her 20 years as an Ohio educator and has no prior incidents of discipline. (Record, Trans. at 453-454, and Ex. 11.)¹
8. In 2004, Ms. Washburn also applied for and received her first professional license to teach issued by the Ohio Department of Education and Workforce (ODEW). Her first license

¹ Trans. refers to the Transcript of the hearing. Union exhibits were entered numerically (Ex. 1-33).

- was a two-year Provisional Adolescence to Young Adult (7-12) License effective from July 1, 2004 through June 30, 2006. (Record, Trans. at 454, and Ex. 10.)
9. On April 10, 2006, Ms. Washburn was issued a five-year Professional Adolescent to Young Adult (7-12) License with an Integrated Language Arts endorsement. This license was effective from July 1, 2006 through June 30, 2011. (Record, Ex. 10.)
 10. Throughout the following years, she has been issued a succession of five-year professional educator licenses. Ms. Washburn's current professional license expires June 30, 2026. (Ex. 10.)
 11. Ms. Washburn taught English Language Arts (ELA) at Princeton High School from 2004 through June, 2015, when she resigned her position to take a job teaching English for 10th through 12th grade students at Lakota West High School. (Record, Trans. at 455-456 and Ex. 11.)
 12. On June 26, 2019, Ms. Washburn earned the Teaching English to Speakers of Other Languages (TESOL) endorsement and began teaching English as a Second Language (ESL) classes to junior high and high school aged students at Liberty Junior High and Lakata West High Schools. (Record, Trans. at 457, and Ex. 10.)
 13. At the beginning of the 2023-2024 school year, Ms. Washburn voluntarily transferred to Lakota East to continue teaching ESL to high school students. (Record, Trans. at 457)
 14. Throughout her 20 years of teaching, Ms. Washburn has received excellent evaluations, notably rated as accomplished – the highest rating on the Ohio Teacher Evaluation System – since the 2014-2015 school year. (Record, Trans. at 463-464, and Ex. 12-20.)
 15. In addition, throughout her tenure, Ms. Washburn has never been disciplined nor has she ever been the subject of a licensure investigation by the ODEW Office of Professional Conduct. (Record, Trans. at 465.)

16. In addition to her duties as a high school teacher, beginning in January 2017, Ms. Washburn was elected to serve on the Loveland Board of Education in Loveland, Ohio. She continues to serve on that Board of Education. (Record, Trans. at 461, and Ex. 11.)
17. Ms. Washburn first learned of her employer's concern for her sick leave usage when she received a Fact-Finding Conference Notice on February 15, 2024 from her principal, Rob Burnside. (Record, Trans. at 465.)
18. The Notice provided the reason for the conference was fraudulent use of sick leave. The stated purpose of the conference was to be "given the opportunity to provide testimony and/or evidence in your defense." (Record, Ex. E.)²
19. Ms. Washburn learned that the investigation was focused on two (2) absences in February 2024, so she asked Dr. Vonder Brink to write a letter explaining the reason for the absence. (Record, Trans. at 468; Ex. 5.)
20. Dr. Vonder Brink had been her primary care physician since April 24, 2019, he knew her medical history and provided a note for her to present to her employer at the conference. Dr. Vonder Brink understood that the surgeon Ms. Washburn had seen for a medical procedure had asked her to stop medication that Dr. Vonder Brink had prescribed for her, and he knew that resuming that medication after the surgery would lead to the serious side effects Ms. Washburn suffered. (Record, Trans. at 468-469.)
21. Dr. Vonder Brink's note, dated February 21, 2024, provided Ms. Washburn was undergoing a course of therapy for her medical condition which was being monitored by him, and that "[t]he resumption of her [prescribed medication] caused some side effects which necessitated her missing work on 2/8/24 and 2/9/24." (Record, Ex. 2)

² Board exhibits at the hearing were introduced alphabetically (Ex. A-U).

22. During a conference on February 22, 2024, the Board alleged that Ms. Washburn's use of sick leave on the dates of February 8 and 9, 2024 was fraudulent. (Record, Trans. at 473.)
23. Specifically, it was alleged Ms. Washburn falsified sick leave by traveling with her teenage son to attend a concert in Nashville while taking sick leave. (Record, Jt. Ex. 1.)³
24. During the fact-finding conference, Ms. Washburn provided the letter from Dr. Vonder Brink addressing her use of sick leave on February 8 and 9. (Record, Trans. at 473.)
25. In response to the letter, the Executive Director of Human Resources Rob Kramer, asked for additional details regarding her medical condition and the prescriptions she was taking. (Record, Trans. at 476.)
26. Ms. Washburn was reluctant to answer his questions because she believed her medical condition was a personal matter which she was not required to share with her employer. (Record; Trans. at 476-477.)
27. At the conclusion of the meeting, Mr. Kramer asserted that Ms. Washburn was a liar, that her doctor was unethical, and that he was moving for her termination. (Record, Trans. at 476.)
28. By letter dated April 3, 2024, the Board informed Ms. Washburn that it intended to consider the termination of her employment under R.C. 3319.16 and R.C. 3319.161. (Record, Jt. Ex. 1.)
29. Ms. Washburn requested a hearing under R.C. 3319.16 and R.C. 3319.161. (Record, Jt. Ex. 2.)
30. The hearing was held before Referee Gregory S. Page on July 29-30, 2024, pursuant to R.C. 3319.16 and R.C. 3319.161. (Record, Referee's Report.)

³ The parties submitted Joint Exhibits at hearing numerically (Jt. Ex. 1-4).

31. The parties submitted post-hearing briefs on the matter, and Referee Page issued his Report on September 25, 2024. (A copy of the Referee's Report is attached herein as Exhibit A)
32. The Board terminated Ms. Washburn's teaching contract by resolution on October 28, 2024. (A copy of the Board Resolution is attached hereto as Exhibit B)

WHEREFORE, Plaintiff Eileen Washburn demands judgment against the Defendant Lakota Local School District Board of Education as follows:

- A. That this Court order the Board to rescind the Resolution Terminating the Teaching Contract of Eileen Washburn passed by the Board on October 28, 2024;
- B. That this Court order the Board to reinstate Plaintiff Washburn to her teaching position;
- C. That this Court order the Board to make Plaintiff Washburn whole for all of her losses, including and without limitation back pay and all contractual benefits and full restoration of seniority in all respects;
- D. That this Court order the Board to pay the costs of this action and to pay Plaintiff's reasonable attorney's fees; and
- E. That this Court award the Plaintiff any and all other relief which this Court deems just and proper.

Respectfully submitted,

DOLL, JANSEN & FORD

/s/ Susan D. Jansen

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111 West First Street, Suite 1100
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Attorney for Plaintiff

IN RE:
THE PROPOSED TERMINATION OF THE TEACHING CONTRACT OF
EILEEN WASHBURN

Before

GREGORY S. PAGE, REFEREE

REFEREE'S REPORT

This matter is properly before the Referee for consideration of the Lakota Local School District Board of Education's Notice of Intention to Consider the Termination of the Teaching Contract of Eileen Washburn. Upon receiving such Notice, Ms. Washburn timely requested a hearing pursuant to O.R.C. § § 3319.16 and 3319.161. The hearing was conducted at the Lakota Local School District Offices on July 29-30, 2024 and this matter is now ripe for report and recommendation.

I. **SPECIFICATIONS**

The Specifications for the grounds to consider termination are:

1. On February 8th and 9th (2024) falsified sick leave. She informed several colleagues that she was attending a concert in Nashville, while taking sick leave from the District.
2. During her pre-disciplinary meeting she refused to answer questions regarding your whereabouts or specifics on her alleged need for sick leave.
3. Ms. Washburn's actions violated O.R.C. §3319.141, Collective Bargaining Agreement Section 14.01(H), a number of Board Policies, including 3432 (Sick Leave) and 3210 (Staff Ethics). Her actions also violated the *Licensure Code of Professional Conduct for Ohio Educators*, specifically Principles 1 and 3.
4. Other good and just cause.

II. FINDINGS OF FACT

1. Eileen Washburn (“Washburn”) graduated from The Ohio State University in 2000 with a Bachelor’s of Arts degree in English.
2. Washburn attended Xavier University where she earned her Master’s in Secondary Education degree in 2004.
3. Washburn earned certification in Teaching English to Speakers of Other Languages (TESOL) at Xavier University. Hearing Transcript (“HT”) at 453-454; *Ex. 11*.
4. Washburn began her career teaching English Language Arts (ELA) at Princeton High School in the Princeton City School District. *HT at 455; Ex. 11*.
5. Washburn remained in this position until June, 2015 when she voluntarily resigned her position. *HT at 456; Ex. 11*.
6. In 2015, Washburn began teaching English for students in the 10th through 12th grade at Lakota West High School in the Lakota School District. *Id.*
7. Ms. Washburn has been employed by the Lakota Local School District Board of Education (the “Board”) for approximately 8 years. *HT at 456; Ex. 8*.
8. When the instant matter arose, Washburn was employed as an ESL (English as Second Language) teacher within one of the Board's two high schools. *HT at 457, Ex. 12-16*.
9. Washburn has been an accomplished rated teacher during her 20 years as an Ohio educator, including nearly nine years in the Lakota Local District and has had no prior or other incidents of discipline. *HT at 463-465*.
10. Washburn was a part of the Lakota East ESL team.
11. The ESL team at Lakota conducts annual testing of students in February and March. *HT at 71*.
12. The testing needs to be completed by the end of March but the ESL team normally has the testing completed prior to Lakota’s annual spring break. *Id.*
13. In January-February 2024, there were four members of the ESL team at Lakota East High School. *HT at 63*.

14. The members of the ESL team were Courtney Jacobs, Barb Kociba, Eileen Washburn and Sally Barker.
15. The ESL team administers testing to approximately 125 students during the testing period each year. *HT at 63.*
16. It is unusual for teachers to schedule time off during the testing period. *HT at 25, 64.*
17. On January 29, 2024, Washburn informed her colleague, Courtney Jacobs, that she would be out of town during OELPA testing to "take her son and his friend to a concert and potentially a college visit because her husband was not able to - to take the boys on the trip. *HT at 27.*
18. The conversation was in person and took place in Room 200, a large classroom that is used for the testing. *HT at 26, 54.*
19. Jacobs was out with the flu for a week after this conversation took place so it could not have occurred after January 29, 2024.
20. Washburn did not tell Jacobs that she was going to use sick leave for the time she was taking off. *Id.*
21. Barb Kociba ("Kociba") had a conversation with Washburn about her absence during the testing period. *HT at 65.*
22. Kociba recalls that the conversation occurred on January 31, 2024, also in Room 200. *Id.*
23. Sally Barker was also present for the conversation. *Id.*
24. Washburn told Kociba and Barker that she was going to be absent on February 8 and 9, 2024 because "[S]he was taking her son to a concert in Nashville, Tennessee." *Id.*
25. Washburn also mentioned that her husband was supposed to take their son but he was not able to go. *HT at 65-66.*
26. Sally Barker also recalled the conversation with Washburn: "It was just Barb, Eileen, and myself. And she just said, you know, that she was not going to be here the following week on the 8th and 9th because she was going to Nashville with her son and his friend. And there was a concert that -- she didn't want to waste \$600 on a concert, and her husband couldn't go." *HT at 101.*

27. Washburn did not tell Kociba or Barker the type of leave she intended to use for the days' off. *HT at 102.*
28. Washburn did not tell either Kociba or Barker that she was re-commencing any medication due to a prior medical procedure. *HT at 81, 113.*
29. Barker then told Susanne Linder ("Linder"), who was responsible for securing substitute teachers, that Washburn was going to be out on February 8 and 9. *HT at 102.*
30. She reported this information to Linder because she (Washburn) was scheduled to test one of those days (Feb 8 or 9), and make sure we had a substitute teacher available. *Id.*
31. Washburn was absent from school on February 8 and February 9, 2024. *HT 29-30.*
32. Washburn coded the absences as sick leave. *HT at 124.*
33. On those days, Washburn was traveling to Nashville, Tennessee to transport his son and his son's friend to a concert. *HT 29-30; See also Lakota Exhibit A.*
34. Washburn exchanged text messages with Jacobs, Kociba and Barker during the trip to Nashville and after she arrived in Nashville. *See Lakota Exhibit A.*
35. The text messages reveal that Washburn was driving to Nashville at least part of the way. *Id.*
36. When Washburn arrived in Nashville she texted the group again indicating that she has been "ditched" already, presumably by her son and his friend. *Id.*
37. Washburn indicated she "might do a double decker bus tour bc (because) why not." *Id.*
38. The text message exchanges do not reference anything related to Washburn feeling poorly or having resumed any medication regimen. *Id.*
39. The text message exchanges do not indicate that Washburn stayed in the hotel room for the duration of the trip due to her feeling poorly. *Id.*
40. Washburn did not tell any of her colleagues that she stopped a medication regimen due to an upcoming medical procedure (weight loss surgery). *HT at 491.*

41. After the medical procedure, Washburn did not tell any of her colleagues that she had resumed a medication regimen. *Id.*
42. Washburn did not resume a medication regimen upon the advice of a physician, but rather, of her own accord.
43. On or about February 15, 2024, Washburn received a Fact-Finding Conference Notice from Lakota. *See Lakota Exhibit E.*
44. The Fact-Finding Conference Notice indicated the reason for the conference was the "Fraudulent Use of Sick Leave." *Id.*
45. The Fact-Finding Conference ("FFC") occurred on February 22, 2024. *See Lakota Exhibits E, G, and H.*
46. At the FFC, Washburn had the opportunity to explain the basis for her absences on February 8 and 9, 2024. *Id.*
47. Washburn was evasive and hesitant to respond to Lakota's inquiries. *See generally, HT at 176-178; See also, Lakota Exhibits G and H.*
48. At the FFC, Washburn presented Lakota with a note from her primary care physician (Dr. Richard H. Vonder Brink, M.D.) in an effort to explain her absences. *See Washburn Exhibit 2.*
49. Prior to February 8, 2024, Washburn had not seen Dr. Vonder Brink since at least October 2023. *Vonder Brink Depo. at pg. 25.*
50. There was no medical record introduced which detailed any visit in October 2023 and Dr. Vonder Brink did not provide any context or substance regarding the visit in his deposition. *See generally Washburn Exhibits 4, 5, 6 and 7.*
51. Prior to October 2023, the last medical record in Dr. Vonder Brink's chart regarding Washburn was from August 4, 2022. *See generally Washburn Exhibits 4, 5, 6 and 7.*
52. Dr. Vonder Brink based his original note solely upon the information provided to him by Washburn. *Vonder Brink Depo. at pg. 14-16, 26; HT at 513.*
53. After providing the original doctor's note, Vonder Brink was asked by Washburn to clarify the note. *Vonder Brink Depo at pg. 28.*
54. He provided a second note on or about March 20, 2024. *See Washburn Exhibit 8.*

55. Thereafter, Vonder Brink was requested by Washburn to provide a third note.
56. On or about April 2, 2024, Vonder Brink issued a third note. *See Washburn Exhibit 9.*
57. The third note provided by Vonder Brink was transcribed directly from a phone message Vonder Brink received from Washburn on April 1, 2024. *See Washburn Exhibit 9; See Vonder Brink Depo at pg.28-30.*
58. Vonder Brink's testimony and the doctor's notes he provided in an attempt to justify Washburn's absences were simply not credible.
59. Following the FFM, Lakota delivered to Washburn a written notice of its Intent to Recommend Termination of Teaching Contract. *See Lakota Exhibit I.*
60. The notice included a draft of a Resolution to Consider Termination which the Lakota Board was going to review at its meeting on March 11, 2024. *Id.*
61. Washburn was given the opportunity to address the Lakota School Board in executive session on March 11, 2024. *Id.*
62. Washburn had the opportunity to provide the Board with any additional information she wanted the Board to consider regarding the matter. *Id.*
63. Washburn addressed the Board in the executive session. *HT at 514.*
64. Following the executive session on March 11, 2024, the Board voted to proceed with termination proceedings. *See Lakota Exhibit I.*
65. Lakota provided Washburn was adequate due process and notice of intention to consider termination. *Id.*; *See also, HT at 513-514; See also Joint Exhibit 1.*
66. Washburn timely demanded a hearing pursuant to R.C. 3319.16 and RC 3319.161. *See Joint Exhibit 2.*
67. Washburn falsified and/or intentionally misrepresented her need for or use of sick leave for her absences on February 8 and 9, 2024.
68. Washburn's testimony regarding her condition and use of sick leave on February 8 and 9, 2024 was not credible.
69. Washburn engaged in a pattern of conduct leading up to and after the FFM in an effort to disguise the true reasons for her absences on February 8-9, 2024. *See generally, Lakota Exhibits A, B., C, D; See also, Vonder Brink Deposition.*

70. Washburn was advised by Lakota on multiple occasions that if an employee falsified sick leave it was cause for termination. *HT at 241-242; See also, Lakota Exhibit R.*
71. The Master Contract Agreement (Joint Exhibit 5) and Ohio law provide that the “falsification of a statement justifying sick leave payment is grounds for suspension or termination of employment....” *See Joint Exhibit 5; See also R.C. 3319.141.*
72. Washburn violated the Ohio Department of Education Licensure Code, specifically, “Falsifying, intentionally misrepresenting...reasons for absences or leaves.” *See Lakota Exhibit Q.*
73. For a violation of Principle 3 of the Licensure Code, “ the presumption for the appropriate range of disciplinary action is...Suspension (One day to five years). *See Lakota Exhibit Q.*
74. A violation of Principle 3 constitutes a violation of Principle 1.
75. Washburn violated R.C. 3319.141 by falsifying the reason for her use of sick leave.
76. Washburn violated Board Policy 3432 by falsifying her use of or need for sick leave on February 8-9, 2024.
77. The violation of Board Policy 3432 constitutes a violation of Board Policy 3210 (failure to comply with Board policies).
78. There is harm inherent to any teacher falsifying or intentionally misrepresenting the basis for an absence, including harm to the teacher’s students and harm to the teacher’s colleagues.
79. No first-hand evidence was presented that demonstrated any disparate treatment of teachers or other employees of the District pertaining to the falsification of sick leave.
80. Other teachers or employees who falsified sick leave were permitted to resign rather than be terminated.
81. Prior to recommending that Washburn’s teaching contract be terminated, Lakota’s Superintendent did not consider Washburn’s employment history, including her teacher rating or the lack of any prior discipline.

III. RELEVANT LAW

Good and Just Cause for Termination

R.C. 3319 governs the employment of public-school teachers in Ohio. Specifically, R.C. 3319.16 delineates the procedural requirements that must be followed before a teacher's contract may be terminated for disciplinary reasons. The statute specifies that "[t]he contract of any teacher employed by the board of education of any *** school district may not be terminated except for good and just cause." *R.C. 3319.16*. In order to terminate a teacher for "good and just cause," the basis for the termination must involve "a fairly serious matter." *Hale v. Board of Education*, 13 Ohio St. 2d 92, 99.

"Generally, what constitutes good and just cause 'depends on the context and unique facts of each case.'" *Fiedeldey v. Finneytown Loc. Sch. Dist. Bd. of Educ.*, 2020-Ohio-3960, 156 N.E.3d 1017, ¶ 26 (1st Dist.), quoting *Hiss v. Perkins Local School Dist. Bd. of Edn.*, 2019-Ohio-3703, 144 N.E.3d 1093, ¶ 149 (6th Dist.). The Ohio Supreme Court has explained that good and just cause must involve "a fairly serious matter." *Hale v. Bd. of Edn. City of Lancaster*, 13 Ohio St.2d 92, 98-99, 234 N.E.2d 583 (1968). Ohio courts continue to apply *Hale* since the 2009 amendments to the language of R.C. 3319.16. Courts have broadly held that just cause exists where a teacher's acts are hostile to the school community, or caused or could have caused harm to the school community or students. See *Fiedeldey*, at ¶ 27; *Hiss*, at ¶ 150; and *Winland v. Strasburg-Franklin Loc. Sch. Dist. Bd. of Edn.*, 2013-Ohio-4670, 999 N.E.2d 1190, ¶32, 39 (5th Dist.).

Due Process Rights

Due process rights guaranteed by the United States and Ohio Constitutions apply in administrative proceedings, such as a teacher termination. See, e.g., *Cleveland Bd. of Educ. v.*

Loudermill (1985), 470 U.S. 532, 545. *R.C. 3319.16* provides for the normal due process safeguards, giving the teacher notice and an opportunity for a hearing, and including a right to appeal the board's decision to the court of common pleas. To be sure, the essential requirements of due process are notice and an opportunity to respond. *Badertscher v. Liberty-Benton Sch. Dist. Bd. of Educ.*, 2015-Ohio-1422; See also, *Elsass v. St. Marys' City School District Board of Education*, 2011-Ohio-1870.

In this case, the Referee concludes that Washburn was afforded the due process required under *Loudermill* and its progeny.

Other Relevant Caselaw

Washburn relies on *Katz v. Maple Heights School Dist. Bd. of Ed.*, 87 Ohio App.3d 256, 611 N.E.2d 1 (8th Dist. 1993) for the proposition that an employee's employment history and other relevant circumstances should be reviewed when considering the termination of a teacher with a continuing contract. See *Katz v. Maple Heights School Dist. Bd. of Ed.*, 87 Ohio App.3d 256, 611 N.E.2d 1 (8th Dist. 1993).

In *Katz*, the teacher had a continuing contract. He applied for sick leave but was actually on a family vacation. The referee who considered the matter recommended a suspension rather than a termination based upon a variety of factors, including, the instructor's excellent employment record; a lack of any prior disciplinary infractions; and the fact that the teacher was under severe emotional pressure at the time of the falsification due to a deteriorating marriage. The referee in *Katz* determined that under those specific facts, the Board should have considered suspension rather than termination.

In *Katz*, the Eighth District Court of Appeals held that "where *** the relevant statutory provisions and the teaching contract itself provides for a range of possible sanctions for a particular offense (emphasis added), it is necessary that a superintendent take into account a teacher's employment record prior to recommending a particular sanction."

Conversely, Lakota cites *Elsass v. St. Mary's City Schl. Dist. Bd. of Ed.* (3rd Dist. Ct. App. Ohio, Apr. 18, 2011) for the proposition that an employee's employment history, prior disciplinary action, or teaching acumen are not relevant unless the proposed termination is based upon the quality or competency of the teacher's instruction.

However, *Elsass* is wholly fact specific and has little application to the instant matter. As here, the teacher in *Elsass* had a lengthy history of no discipline and a clean record as an educator. The Court in *Elsass* concluded that the one-time incident at issue therein was sufficient for termination, despite the teacher's clean history. However, the underlying incident in *Elsass* is substantially different than here, which renders *Elsass* virtually inapplicable to this case.

Lakota also relies on *Swinderman v. Dover City Schools Bd of Educ.*, 1992 Ohio App. LEXIS 2187, in support of its position that there is good and just cause to terminate Washburn's teaching contract. In *Swinderman*, a teacher was accused of engaging in a "pattern of falsifying sick leave." The referee in *Swinderman* recommended that Swinderman be terminated for furnishing false information to his administrators and by "engaging in a pattern of falsifying sick leave."

Engaging in a "pattern of falsifying sick leave" is not the ground(s) cited by Lakota for considering termination. Rather, the termination is based primarily on the one incident of falsification. Nonetheless, *Swinderman* does have application herein. Washburn, although only accused of falsifying two sick days, engaged in a pattern of activity thereafter in an attempt to conceal the true nature of her actions. This pattern of activity can certainly support "other good and

just cause" for termination of a teaching contract.

IV. RECOMMENDATION

The Specifications for the grounds to consider termination are:

1. On February 8th and 9th (2024) falsified sick leave. She informed several colleagues that she was attending a concert in Nashville, while taking sick leave from the District.

Specification 1 was proved, in part, by the District. There was no evidence presented that Washburn attended a concert in Nashville. However, there was ample evidence that Washburn traveled to Nashville to take her son and a friend to a concert while taking sick leave. Washburn's falsification of sick leave constitutes good and just cause for termination.

2. During her pre-disciplinary meeting she refused to answer questions regarding your whereabouts or specifics on her alleged need for sick leave.

Specification 2 was proved by the District. However, this conduct in and of itself does not constitute good and just cause for termination. However, the demonstration of this specification supplements the other three specifications.

3. Ms. Washburn's actions violated O.R.C. §3319.141, Collective Bargaining Agreement Section 14.01(H), a number of Board Policies, including 3432 (Sick Leave) and 3210 (Staff Ethics). Her actions also violated the *Licensure Code of Professional Conduct for Ohio Educators*, specifically Principles 1 and 3.

Specification 3 was proved by the District. Washburn's violation of R.C. 3319.141, Board Policy 3432, Board Policy 3210, and Principles 1 and 3 of the Licensure Code constitute good and just cause for termination.

4. Other good and just cause.

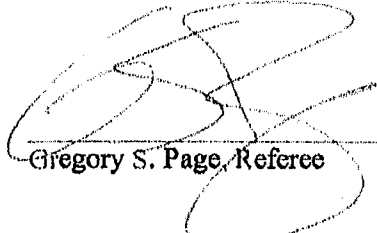
Specification 4 was proved by the District. Washburn's conduct leading up to and after the

FFM was undertaken in an attempt to conceal the true nature of her conduct. This action taken alone constitutes good and just cause for termination.

The District has demonstrated by a preponderance of the evidence the underlying factual basis/bases for each Specification. Similar to *Katz*, in this case, there were a range of possible sanctions for Washburn's conduct, including suspension or termination. Lakota could have considered Washburn's employment history prior to deciding whether to proceed with termination. Nonetheless, *Katz* is not controlling. Therefore, Lakota's superintendent had no statutory or other obligation to take into account Washburn's employment record prior to recommending a particular sanction.

In addition, it is noteworthy, and the Referee specifically finds, that the pattern of conduct Washburn engaged in leading up to and after the FFM satisfies the Specification for "Other good and just cause" for termination.

Based upon all of the foregoing and given the nature of Washburn's underlying violation (falsification/intentional misrepresentation) and the effort thereafter to conceal her true conduct, the Referee finds that the Lakota Local School District Board of Education has good and just cause to terminate the teaching contract of Eileen Washburn.


Gregory S. Page, Referee

October 29, 2024

VIA Certified and Regular U.S. Mail

Eileen Washburn
10923 Rednor Court
Loveland, Ohio 45240

Re: *Termination of Teaching Contract*

Dear Ms. Washburn:

Please be advised that at its Board meeting on October 28, 2024, the Lakota Local School District Board of Education passed a resolution to adopt in its entirety the Findings of Fact and Recommendation of the Referee contained in the Referee's report from September 25, 2024, and therefore, terminate your employment contract with the Board. A copy of the resolution and the Referee's Report are enclosed.



Adam Zink, CFO/Treasurer

Enclosures (Resolution and Referee's Report)

cc: Dr. Ashley Whitely, Superintendent
Rob Kramer, Executive Director of Human Resources
Erin Wessendorf-Wortman (via email)
Susan Jansen (counsel for Ms Washburn) (via email)
Personnel file

**EXHIBIT
B**

RESOLUTION NO. 24-137

**LAKOTA LOCAL SCHOOL DISTRICT
BOARD OF EDUCATION**

**RESOLUTION TERMINATING THE TEACHING CONTRACT
OF EILEEN WASHBURN**

WHEREAS, Eileen Washburn (hereafter referred to as “Ms. Washburn”) was employed by the Lakota Local School District Board of Education (hereafter referred to as the “Board”) as a teacher; and

WHEREAS, the Board’s Superintendent, at the time, recommended that the Board initiate an action to consider the termination of Ms. Washburn’s employment contract; in accordance with Ohio Revised Code §3319.16; and

WHEREAS, on April 3, 2024, the Board passed a resolution continuing Ms. Washburn’s suspension without pay and benefits and initiating an action to terminate her employment contract with the Board, all actions taken in accordance with Ohio Revised Code §3319.16; and

WHEREAS, pursuant to Ohio Revised Code §3319.16, Ms. Washburn, through counsel, requested a hearing on the proposed termination of her employment, and requested said hearing be conducted privately; and

WHEREAS, pursuant to Ohio Revised Code §3319.161, the State Department of Education and Workforce provided a list of potential hearing officers and referee Gregory S. Page (hereafter referred to as “Referee”) was agreed to by the parties and appointed by the State Department of Education and Workforce to hear the termination case against Ms. Washburn; and

WHEREAS, a hearing was scheduled and held on July 29, 30 and 31, 2024, wherein both parties were permitted to submit evidence regarding the termination of Ms. Washburn’s employment with the Board; and

WHEREAS, both parties submitted briefs in support of their respective positions to the Referee; and

WHEREAS, on September 25, 2024, the Referee issued a decision, issuing Findings of Fact and a Recommendation regarding the termination of Ms. Washburn’s employment contract (hereafter “Referee’s Report”);

WHEREAS, the Referee found that the Board provided evidence to support each of the specifications in support of termination, and recommended termination of Ms. Washburn’s employment contract on the grounds set forth in the Board’s resolution initiating termination of Ms. Washburn’s employment contract, as good and just cause exists; and

WHEREAS, the Board has considered the Referee's Report, including Findings of Fact and Recommendation, as well as all evidence that was before the Referee in this matter.

NOW, THEREFORE, BE IT RESOLVED by the Lakota Local School District Board of Education as follows:

SECTION I

Pursuant to Ohio Revised code §3319.16, after due consideration, the Board hereby adopts, in their entirety, the Findings of Fact and Recommendation of the Referee, as more fully set forth in the Referee's Report, and hereby terminates Ms. Washburn's employment contract with the Board, for the reasons set forth therein. The actions outlined in the Board's Resolution to Consider Termination of Employment and found as fact through the Referee's Report constitutes good and just cause for the termination of Ms. Washburn's employment contract pursuant to Ohio Revised Code §3319.16.

SECTION II

The Treasurer is hereby directed to inform Ms. Washburn, in writing, of the Board's action, with a copy of this Resolution, all to be sent by certified and regular mail. Copies shall also be sent to Ms. Washburn's legal counsel and the State Department of Education and Workforce.

SECTION III

It is found and determined that all formal actions of this Board concerning or related to the adoption of this Resolution were conducted in an open meeting of this Board, and all deliberations of this Board that resulted in such formal action were adopted in meetings open to the public, in compliance with all applicable requirements of the Ohio Revised Code.

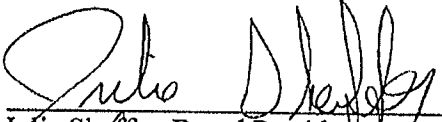
Mr. Horton moved and Mrs. Casper seconded the motion that the above Resolution be adopted.

Upon roll call and the adoption of the Resolution, the vote was as follows:


Yeas: 5

Nays: 0

ADOPTED this 28th day of October, 2024.



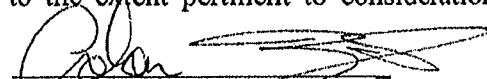
Julie Shaffer, Board President



Adam Zink, CFO/Treasurer

CERTIFICATE

The undersigned hereby certifies that the foregoing is a true and correct copy of a Resolution adopted at a meeting held on the 28th day of October, 2024, together with a true and correct extract from the minutes of said meeting to the extent pertinent to consideration and adoption of said Resolution.


Adam Zink, CFO/Treasurer