

STATE OF MINNESOTA

TEACHER DISCHARGE ARBITRATION

IN THE MATTER OF THE PROPOSED)
IMMEDIATE DISCHARGE OF)
MARK GOODALL,)
Teacher)
By RIVER BEND EDUCATION) **DECISION**
DISTRICT, INDEPENDENT SCHOOL)
DISTRICT NO. 6049,)
Employer.) **BMS CASE NO: 13-TD-2**

Arbitrator: Stephen F. Befort
Hearing Dates: April 16, 17, & 18 2013
Post-hearing briefs received: May 24, 2013
Date of Decision: June 27, 2013

APPEARANCES

For the Teacher: Anthony L. Sheehan
For the Employer: Patricia A. Maloney
Christian R. Shafer

INTRODUCTION

The River Bend Education District (District) has proposed the immediate discharge of Mark Goodall, a teacher with tenure under Minnesota’s Continuing Contract Act (Teacher). The District alleges that the discharge is warranted based upon four

grounds specified in Minn. Stat. § 122A.40, subd. 13, namely 1) insubordination; 2) willful neglect of duty; 3) conduct unbecoming a teacher; and 4) immoral conduct. Mr. Goodall denies each of these charges and has elected to challenge the proposed dismissal in an arbitral forum as authorized by Minn. Stat. § 122A.40, subd. 15. The dispute proceeded to an arbitration hearing at which the parties were afforded the opportunity to present evidence through the testimony of witnesses and the introduction of exhibits.

ISSUES

1. Does the District have cause to discharge Mark Goodall based upon the criteria set out in Minn. Stat. § 122A.40, subd. 13?
2. If so, is the Teacher's conduct remediable?
3. If so, what is the appropriate remedy?

FACTUAL BACKGROUND

The River Bend Education District is a service organization formed through a joint powers agreement entered into on behalf of a group of member schools. The District's members are comprised of seven school districts and three charter schools. The District employs 68 employees, including school psychologists, occupational therapists, and autism resource specialists who assist member schools in providing special education services for qualifying students.

The District employs seven school psychologists who are a part of the teacher's bargaining unit. The principal job duty of the school psychologists is to coordinate the

evaluations of students with possible disabilities to determine their need (and eligibility) for special education services. Each school psychologist generally is assigned to work with two or more of the participating member schools.

Mark Goodall has worked for more than fifteen years as a school psychologist, including ten years with the River Bend District. For five of those years, he served as the District's lead school psychologist. For the 2011-2012 school year, the District assigned Mr. Goodall to work with the Gibbon-Fairfax-Winthrop school district (GFW) and with the Minnesota New Country charter school (MNCS). Although most school psychologists rotate assignments annually, Goodall has worked with GFW for more than nine years. In addition to undertaking evaluations, Mr. Goodall provided a variety of direct services such as supervising boys' groups and working on crisis response interventions. Mr. Goodall has no record of prior discipline.

Mr. Goodall was responsible for the evaluation of approximately 65 students during the 2011-2012 school year. These evaluations typically involve the assessment of students by a team of educators and specialists. School psychologists have two roles during these evaluations. First, they are responsible for administering and interpreting a variety of tests that provide relevant data for the evaluations. In addition, they are assigned the responsibility of coordinating the responses of other team members and the preparation of a final evaluation report. Minnesota regulations provide that special education evaluations must be completed within thirty school days after the student's parents consent to the evaluation process. Minn. Rules 3525.2550.

School psychologists also are required to complete Medical Assistance billing forms that detail the special education services that they provide. Medical Assistance (MA) is a state program that provides financial reimbursement to school districts for the provision of services to qualified students. The school psychologists are expected to provide the service information to a billing specialist employed by the District who then submits an invoice to the state that generates reimbursements that flow to the individual member schools.

On August 2, 2012, a parent of GFW student "J" contacted the District to request a copy of student J's special education evaluation report. Assistant Director Holle Spessard, after being unable to find the report, contacted Mark Goodall as the school psychologist responsible for the report. Mr. Goodall responded that he would take care of the request, and he delivered a report to the parents later that same day.

Being concerned about the missing report, Ms. Spessard shared this information with District Director Erin Toninato. They reviewed the relevant evaluation files and found that numerous reports assigned to Mr. Goodall were either late or missing. The parties stipulated at the hearing that Mr. Goodall had not submitted a final evaluation report for 22 of his assigned students prior to the end of the 2011-2012 school year.

The record indicates that Mr. Goodall completed most of these reports during July and August of 2012. For most of these files, Mr. Goodall noted a final report date that coincided with the earlier "results" meeting of the evaluation team members. At the results meeting, which typically occurs before the end of the 30 day evaluation period, the evaluation team members share information concerning their respective assessments

of the student in question. This information, in turn, informs the school psychologist in preparing the final written evaluation report.

Mr. Goodall testified that he had been orally instructed by District supervisors to use the date of the results meeting as the date for the submission of the final report, even if the actual submission occurred at a later point in time. Three special education teachers testified that this also was their understanding of normal practice. In contrast, Director Toninato, Assistant Director Spessard, and two other school psychologists testified that the school psychologists had been directed to enter the actual date of the report's submission. The difference in these two dates can be significant. As an example, Mr. Goodall noted on the electronic IEP/IFSP service log that he had completed student J's evaluation report on February 7, 2012 - the date of the results meeting - although the final report was not actually submitted until August 2, 2012.

The District also introduced evidence establishing that Mr. Goodall had submitted MA billing information in fifteen instances for services that had not yet been rendered. Mr. Goodall testified at the hearing that he had been instructed by supervisors to use the date of the results meeting as the official date for billing submissions as well as evaluation reports and that he was able to estimate billing charges based upon past experience. Director Toninato, Special Education Coordinator Doug Hazen, and two other school psychologists testified that the required practice was to submit billing information only after the services had been performed.

While acknowledging that he had been dilatory in meeting the statutory deadlines for submitting evaluation reports, Mr. Goodall offered three explanations for this result.

First, Mr. Goodall offered evidence concerning problems with the SpEdForms software program. District employees had used this software program for several years in the preparation of a variety of special education documents, but not for the preparation of student evaluation reports. In 2011, Ms. Toninato directed the school psychologists to use SpEdForms in completing special education evaluation reports beginning with the 2011-2012 school year. Mr. Goodall and a few other witnesses testified to "bugs" in the program that resulted in frequently garbled reports. Mr. Goodall testified that these bugs were so severe that he and others went back to writing their reports in the form of Word documents. He testified that these software problems contributed to his delay in submitting evaluation reports. Two other school psychologists, however, testified that these initial technical glitches were minor and that they did not prevent them from completing most evaluation reports in a timely manner.

Second, Mr. Goodall offered testimony concerning his son's health problems. In February 2012, Mr. Goodall's son John began experiencing extreme abdominal pain. After two trips to local emergency rooms, John was transported to the Mayo Clinic where it was determined that he had a rare condition that required several surgeries. Mr. Goodall testified that John had a long and difficult recovery during the spring of 2012. While Mr. Goodall missed only seven days of work during this period, he testified that he frequently stayed up late to comfort his son which further cut into his ability to keep up with his normal workload. The evidence establishes, however, that Mr. Goodall did not seek any accommodation in his workload due to his son's illness.

Third, Mr. Goodall submitted evidence concerning the timeliness of other District and member school employees. This evidence took two forms. First, Mr. Goodall elicited testimony concerning the tardiness of some other team members in completing their portions of the evaluation process. In general, final evaluation reports include component reports prepared by other team members such as special education teachers and various specialists. Mr. Goodall testified that some of his final reports were delayed because component reports due from a special education teacher at GFW and a District autism resource specialist frequently were untimely.

Mr. Goodall additionally pointed to the testimony of several other employees who stated that it was not uncommon for school psychologists to miss the 30 day statutory deadline for reports. Indeed, it appears that Director Toninato informed the school psychologists at one point that she would not be concerned so long as the psychologists submitted their reports within two weeks beyond the statutory deadline.

The District countered with evidence showing that the other school psychologists were able to comply with the 30 day deadline on most occasions. In particular, two other school psychologists testified that they had never ended the school year with any uncompleted evaluation reports.

Mr. Goodall also introduced evidence concerning two other matters. Mr. Goodall testified that he served as President of the Education Minnesota River Bend Local Union and that the most recent round of contract negotiations had been particularly contentious. He expressed the opinion that these tensions had spilled over to taint his relationship with Director Toninato. Ms. Toninato, on the other hand, testified that she had a very limited

role in the negotiations and that she did not perceive the negotiations as either overly hostile or damaging to her relationship with Mr. Goodall.

Mr. Goodall also elicited testimony from the GFW middle school principal, three GFW special education teachers, and one Minnesota Country School special education teacher. These five educators uniformly provided glowing reports concerning Mr. Goodall's interactions with students and staff. GFW teacher Heather Bakke testified that Tuesdays were her favorite day of the week, because that was the day that Mr. Goodall would spend at her school. Lorie Standinger described Mr. Goodall as one of the two best school psychologists she has worked with over her twenty years of teaching.

Director Toninato placed Mr. Goodall on paid investigatory leave in August 2012. Following the investigation, the District concluded that Mr. Goodall had engaged in misconduct warranting his immediate termination. The District sent Mr. Goodall a notice of proposed termination on January 22, 2013.

DISCUSSION AND OPINION

A. The Standard for an Immediate Discharge Decision

Minnesota law provides two alternative sets of standards for the termination of teachers with continuing contracts. Minn. Stat. § 122A.40, subd. 9 provides one set of grounds for a termination effective at the close of the school year:

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.

Subdivision 13 of that same section provides a different set of grounds with respect to a termination undertaken *during* a school year:

. . . 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 the 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.

A review of these provisions and of the leading Minnesota appellate decisions interpreting subdivision 13 reveals a number of guiding principles. First, the grounds for an immediate discharge differ from those of a year-end discharge in two significant respects. First, the grounds required to establish an immediate discharge are more serious in nature than those that would justify a year-end termination. See Beranek v. Joint Independent School Dist. No. 287, 395 N.W.2d 123, 126 (Minn. Ct. App. 1986). Second, a school district may discharge a teacher under subdivision 9 only if the district has provided the teacher with a written notice of

deficiency and a reasonable opportunity to correct the noted deficiency. Subdivision 13 contains no similar requirements.

The Minnesota Supreme Court has ruled that an immediate discharge is appropriate only for conduct that is not “remediable.” Kroll v. Independent School District No. 593, 304 N.W.2d 338, 345 (1981). To determine whether conduct is remediable, the decision-maker should consider “(1) the teacher’s prior record; (2) the severity of the conduct in light of the teacher’s record; (3) the threatened physical or psychological harm; and (4) whether the conduct could have been corrected had the teacher been warned by superiors.” In the Matter of Discharge of Peterson, 472 N.W.2d 687 (Minn. Ct. App. 1991).

As the Minnesota Court of Appeals observed in Beranek v. Joint Independent School Dist. No. 287, 395 N.W.2d 123, 127 (Minn. Ct. App. 1986), cases of irremediable misconduct warranting an immediate discharge most commonly have involved instances of sexual or physical abuse of students. *See, e.g.,* In re Etienne, 460 N.W.2d 109 (Minn. Ct. App. 1990) (sexual relationship with a student); Russell v. Special School District No. 6, 366 N.W.2d 152 (Minn. Ct. App. 1985) (physical abuse of a student). These two circumstances, however, are not the exclusive basis for an immediate discharge. In Downie v. Independent School District No. 141, 367 N.W. 2d 913 (Minn. Ct. App. 1985), for example, the Minnesota Court of Appeals upheld the immediate discharge of a junior high school counselor for engaging in a series of acts that included sexually harassing remarks directed toward co-workers and students. In addition, the Minnesota Court of Appeals has upheld the immediate discharge of a teacher who stole funds from two co-teachers under circumstances which likely would result in “faculty disorder and an

unsatisfactory learning environment.” In the Matter of Shelton, 408 N.W.2d 594, 598 (Minn. Ct. App. 1987).

Finally, Minn. Stat. § 122A.40, subd. 15 authorizes an arbitrator to impose a lesser penalty than termination to the extent such is proposed by either party. In this instance, Mr. Goodall, in his post-hearing brief, has stated that “a lesser penalty may be appropriate if the arbitrator so determines.”

B. The Alleged Misconduct

The usual first step in analyzing any contested employee disciplinary matter is to determine if the employer has carried its burden of establishing the existence of the misconduct alleged as the basis for discipline. In this instance, the District has alleged three types of misconduct, each of which is discussed below.

1. Failing to Submit Evaluation Reports on a Timely Basis

As a first allegation, the District claims that Mr. Goodall did not complete numerous special education evaluation reports during the 2011-12 school year within the 30 school-day deadline mandated by Minnesota law. In this regard, the District introduced evidence of many late reports, and the parties stipulated that Mr. Goodall had 22 reports outstanding at the end of the 2011-12 school year that he completed during July and August of that year. While other school psychologists testified that it was not uncommon to miss the 30-day deadline on occasion and that Director Toninato at one time announced that she would recognize a two week grace period before enforcing the statutory deadline, Mr. Goodall’s record of non-compliance with the statutory deadline is well beyond the pale of any accepted practice. The District clearly has established the existence of this misconduct.

2. Falsifying Special Education Reports and Billing Documents

The District claims that Mr. Goodall intentionally falsified key documents integral to his duties. These alleged falsifications are of two types. First, the District contends that Mr. Goodall intentionally misstated the submission dates of his evaluation reports in order to cover up the tardiness of his submissions. Second, the District maintains that Mr. Goodall acted fraudulently by submitting MA billing information prior to providing the services in question.

As an initial matter, it is clear that Mr. Goodall engaged in the alleged underlying conduct. He entered evaluation submission dates for reports that had not yet been submitted, and he entered billing information for services that had not yet been rendered.

The remaining question is whether Mr. Goodall intentionally misrepresented this information in order to cover up his tardy work performance. The District argues that Mr. Goodall intentionally falsified evaluation and billing documents. The District claims that it has announced policies requiring school psychologists to date evaluation reports as of the date of actual submission and to submit billing information only after services have been rendered. The testimony of Director Toninato, Assistant Director Spessard, Special Education Coordinator Hazen, and two school psychologists support this position. The District contends that Mr. Goodall's substitution of the date of the results meeting for these purposes represents an intentional violation of these policies for the purpose of covering up the tardiness of his evaluation reports.

Mr. Goodall counters with testimony that he was orally instructed by Director Toninato and other supervisors to use the date of the results meeting as the official date for purposes of the

final evaluation report and for submitting billing information. This assertion was supported by the testimony of three special education teachers.

While the District's evidence with respect to the reporting practice is somewhat more credible, it is weakened by the absence of two other potentially supporting pieces of evidence. First, the District has not pointed to any written policy that establishes guidelines for the submission of evaluation and billing information. Second, the District provided no evidence concerning Mr. Goodall's reporting and billing practices in prior years. Evidence showing that Mr. Goodall did not use the date of the results meeting for reporting and billing purposes, for example, would have bolstered the District's position.

Even assuming the District's version of the official policies, however, this does not necessarily mean that Mr. Goodall acted intentionally in failing to comply with these policies. Mr. Goodall may well have intended to submit his reports and billing information in a timely manner only to have encountered obstacles in the form of SpEdForms problems, missing contributions from other team members, and in particular, his son's health problems. Given Mr. Goodall's overall good work performance during his ten years of tenure with the District, it is certainly possible that, despite the best of intentions, he fell behind during the lengthy period of his son's illness and failed to catch up before the end of the 2011-12 school year.

In sum, the District has not adequately established that Mr. Goodall acted intentionally in falsifying evaluation report and MA billing information.

3. Failing to Comply with Reasonable Directives

In addition to directives relating to the submission of reports and billing information, the District alleges that Mr. Goodall failed to comply with Director Toninato's directive to use the SpEdForms software program in completing special education evaluation reports.

The record establishes that Director Toninato directed the school psychologists to complete evaluation reports in SpEdForms beginning with the 2011-12 school year. It is clear that the school psychologists experienced some technical glitches in transitioning to SpEdForms, but the testimony diverges with respect to the extent of these problems. Mr. Goodall testified that these difficulties were quite severe, resulting in frequent instances of text becoming garbled when entered into the program. He further testified that these difficulties impeded his ability to complete reports in a timely fashion such that he reverted to the former practice of preparing those reports as Word documents.

In contrast to Mr. Goodall's testimony, two other school psychologists – Jami Walth and Anna Haynes – testified that they had little difficulty in using SpEdForms to prepare their reports. Walth and Haynes acknowledged that they experienced some minor problems when they first began using SpEdForms for this purpose, but they both testified that these problems were resolved early in the school year. Both Walth and Haynes testified that they usually were able to complete their reports on time while using the SpEdForms program.

On balance, I find the District's position on this issue to have greater support in the evidence. Accordingly, I find that the District has adequately established that Mr. Goodall failed to follow the District's reasonable directive to use SpEdForms in the preparation of special education evaluation reports.

C. Statutory Grounds for Dismissal

Having addressed the matter of misconduct, the next task is to determine how that misconduct (or lack thereof) fits within the statutory grounds provided by statute for the immediate termination of a tenured teacher. The District claims that its termination decision was justified based upon the following criteria set out in Minn. Stat. § 122A.40: 1) insubordination; 2) willful neglect of duty; 3) conduct unbecoming a teacher; and 4) immoral conduct.

1. Insubordination

The Minnesota Supreme Court, in a teacher termination case, defined insubordination as a “constant or continuing intentional refusal to obey a direct or implied order, reasonable in nature, and given by the proper authority.” Ray v. Minneapolis Bd of Educ., Special School Dist. No. 1, 202 N.W.2d 375, 378 (Minn. 1972). In *Ray*, the Court ruled that a teacher was insubordinate when he refused to comply with directives to fill out forms relating to an evaluation program. *Id.* at 378.

The District argues that Mr. Goodall’s conduct is analogous to that of the teacher in *Ray*. The District maintains that, like in *Ray*, Mr. Goodall failed to comply with directives to complete evaluations in a timely manner, to use SpEdForms in completing evaluation reports, and to submit billing information only after the provision of services.

The District is correct when it comes to describing the shortcomings in Mr. Goodall’s actions. The problem with the District’s argument, however, is in the assertion that Mr. Goodall took these actions intentionally. Insubordination necessarily implicates malfeasance in behavior as opposed to mere nonfeasance. But, as summarized above, the District has not carried its burden to show that Mr. Goodall acted with a conscious intent to ignore his work

responsibilities. The District has not shown that Mr. Goodall disobeyed clearly established directives or that his method of dating reports in the 2011-12 school year meaningfully deviated from prior years. In the end, it is doubtful that Mr. Goodall approached the 2011-12 school year with a conscious intent to submit late evaluation reports and to fail to learn how to use the SpEdForms program. The District has not established that Mr. Goodall was insubordinate.

2. Willful Neglect of Duty

The District contends that Mr. Goodall willfully neglected his duties as a school psychologist by failing to complete 22 special education reports prior to the end of the 2011-12 school year. The District also contends that Mr. Goodall's MA billing practices and his failure to use SpEdForms constitute a willful neglect of duty.

An act is "willful" if it is "deliberate." AMERICAN HERITAGE DICTIONARY 1466. As with insubordination, an act offends this statutory ground for discharge only if it is taken with deliberate intent. While Mr. Goodall's performance may not have met expectations, the District has not established that this was a result that was deliberately intended. Thus, the District also has not established a willful neglect of duty.

3. Conduct Unbecoming a Teacher

The District's third contention is that Mr. Goodall engaged in "conduct unbecoming a teacher." The key word here is "unbecoming." WEBSTERS NEW WORLD DICTIONARY defines "unbecoming" as meaning "unsuitable or inappropriate."

Unlike the two previously discussed grounds, unbecoming conduct focuses on outcomes rather than intent. Here, the fact that Mr. Goodall failed to complete 22 special education reports – one-third of his reporting workload – prior to the end of the 2011-12 school year is relevant.

This represents a significant shortfall in the work performance legitimately expected of a school psychologist. Mr. Goodall's questionable billing practices and his non-use of SpedForms also constitute conduct that is unsuitable or inappropriate. An even more significant shortcoming is the fact that Mr. Goodall did not report his difficulties to his supervisors and seek an accommodation in his performance expectations. The District, accordingly, has submitted adequate proof to establish Mr. Goodall engaged in conduct unbecoming a teacher..

4. Immoral Conduct

The plain meaning of the term "immoral conduct" is that of behavior that is contrary to "accepted principles of right or wrong in relation to human action and character." AMERICAN HERITAGE DICTIONARY 813 (second college ed.). Further guidance is provided by relevant case law. Three published Minnesota cases have upheld the immediate discharge of a teacher on the ground of immoral conduct. Two of the cases found immoral conduct in the form of inappropriate sexual contact between a teacher and a student. Fahlgren v. State Board of Teaching, 545 N.W.2d 901 (Minn. 1996) (finding that teacher engaged in immoral conduct by having nonconsensual sexual contact with a student); In re Etienne, 460 N.W.2d 109 (Minn. Ct. App. 1990) (finding that teacher engaged in immoral conduct by having an ongoing sexual relationship with a student). The third case involved criminal behavior directed at co-workers in the form of theft by swindle. In the Matter of Shelton, 408 N.W.2d 594, 598 (Minn. Ct. App. 1987). While these examples do not necessarily exhaust the universe of conduct that may be deemed to be immoral, they do illustrate that the teachers in question all engaged in behavior that very significantly deviated from generally accepted norms of conduct.

Mr. Goodall's behavior does not rise to this level. While it is true that he failed to perform the totality of his duties in an appropriate manner, this does not equate to the immoral behavior of someone engaged in sexual abuse or criminal behavior. Under the circumstances, the District has failed to establish that Mr. Goodall's actions were immoral in nature.

D. Remediability

As a final step in the process, the Minnesota Supreme Court has ruled that an immediate discharge is appropriate only for conduct that is not "remediable." The factors relevant to this issue are the following: "(1) the teacher's prior record; (2) the severity of the conduct in light of the teacher's record; (3) the threatened physical or psychological harm; and (4) whether the conduct could have been corrected had the teacher been warned by superiors." In the Matter of Discharge of Peterson, 472 N.W.2d 687 (Minn. Ct. App. 1991).

1. The Teacher's Prior Record

Mr. Goodall's record as a school psychologist in the River Bend District portrays him as an exemplary teacher, employee, and citizen. Mr. Goodall has worked for the District for ten years and for five of those years he served as the District's lead school psychologist. He has no record of any prior discipline. Although school psychologists normally rotate school districts on an annual basis, his close working relationship with GFW led that school district to request a long-running relationship that lasted over nine years. Special Education teacher Lorie Standinger described Mr. Goodall as one of the two best school psychologists she has worked with in her 20-year teaching career.

2. The Severity of the Conduct

Mr. Goodall's performance shortcomings are not insignificant. The fact that he failed to complete one-third of his special education reports by the end of the 2011-12 school year and that he additionally failed to seek help in completing these tasks are serious deficiencies. But, these shortcomings need to be viewed in perspective. Unlike many decisions upholding the immediate discharge of a teacher, Mr. Goodall has not engaged in intentional or immoral misconduct. His performance deficiencies pale in significance when compared to cases involving sexual abuse, criminal misconduct, or intentionally fraudulent practices. In addition, Mr. Goodall has the extenuating circumstances of his son's protracted illness and his stellar past record.

3. Threatened Physical or Psychological Harm

The District maintains that four types of significant harm have resulted from Mr. Goodall's actions. First, the District claims that Mr. Goodall's behavior has made him untrustworthy in the eyes of other District employees as well as supervisors at member schools. Second, the District contends that Mr. Goodall's fraudulent billing practices have financially harmed the District's member schools. Third, the District argues that Mr. Goodall's failure to meet statutory deadlines in completing special education evaluation reports exposes the District to the possibility of costly due process challenges filed by disgruntled parents during the two-year statute of limitations period. Finally, the District asserts that Mr. Goodall's tardy evaluations put effected students at risk of not receiving appropriate special education services.

Mr. Goodall counters that the District has introduced no evidence to show that any students have been denied needed special education services or that any parents have filed any

due process challenges. In addition, Mr. Goodall argues that the only reason that the member schools might lose some funding is due to the District's decision not to submit billing for M.A. reimbursement; a decision that is unwarranted because Mr. Goodall ultimately did provide the reported services.

After sorting through these respective arguments, I have reached the following conclusions with respect to the extent of the resulting harm. First, strictly applying the *Peterson* factors, there is no evidence that anyone has suffered physical or psychological harm as a result of Mr. Goodall's conduct. Second, Mr. Goodall is correct in alleging that there has been no showing that students have lost needed special education services because of the late reports or that any due process challenges have been filed by any unhappy parents. On the other hand, member schools have experienced some financial losses in the form of M.A. reimbursement. In sum, Mr. Goodall's conduct has resulted in a slight to moderate level of harm.

4. Whether a Warning Would Have Corrected Behavior

The Minnesota Supreme Court has stated that whether a teacher's conduct is remediable is the primary question to be determined in a proceeding for immediate discharge. Kroll v. Independent School District No. 593, 304 N.W.2d 338 (1981). Such a discharge should not be sustained if a prior warning likely would have corrected the deficient behavior. See Beranek v. Joint Independent School District No. 287, 395 N.W.2d 123 (Minn. Ct. App. 1986).

Minn Stat. ' 122A.40, subd. 13 provides a school district with emergency authority to remove a teacher whose egregious behavior can no longer be tolerated for any additional period of time. Not surprisingly, most of the published decisions upholding the immediate discharge of a teacher involve sexual improprieties, physical abuse, or criminal conduct. The District

attempts to position this matter within that sphere by arguing that it “should not have to warn its employees that fraudulent billing or fraudulent completion of legally required special education due process document is wrong.” District’s post-hearing brief at 46.

I believe that this argument falls short of the mark. As discussed above, the District has not carried its burden to establish that the deficiencies in Mr. Goodall’s work performance were the result of a fraudulent intent. Under the circumstances of this case, Mr. Goodall’s tardy work performance was linked more to external circumstances than it was to an internal intent to defraud. In short, Mr. Goodall’s conduct was not so severe or so intentional as to support his immediate removal from his teaching position without a warning and the chance to correct his behavior.

CONCLUSION

The District has established that Mr. Goodall engaged in conduct unbecoming a teacher, but not the other grounds asserted under Minn Stat. ' 122A.40, subd. 13. In addition, the record supports the conclusion that Mr. Goodall’s conduct could have been remediable. Under these circumstances, the District’s proposed immediate discharge of Mr. Goodall should be denied and reduced to a suspension of twenty days.

ORDER

The District's proposed immediate discharge of Mr. Goodall is denied and reduced to an unpaid suspension of twenty school days. The District is directed to reinstate Mr. Goodall to his former position as a school psychologist, to make him whole for any loss of pay and benefits, and to correct his personnel file to reflect this determination. The arbitrator will retain jurisdiction for 60 days to resolve any remedial issues as may be necessary.

Dated: June 27, 2013

Stephen F. Befort
Arbitrator