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- BUT I DID EVERYTHING YOU TOLD ME TO DO!

So you wrote up the teacher and gave him an official "intervention plan" or "growth plan" or whatever you want to call it. The teacher diligently carried out every task in the plan. But you are still not satisfied with the teacher's performance. Can you recommend nonrenewal of contract?

Yes. That's one of the lessons of *Kellogg v. Sinton ISD*, decided by the Commissioner in August, 2014. Mr. Kellogg appealed his nonrenewal to T.E.A. and argued that since he had satisfied every requirement of his "Teacher in Need of Assistance" (TINA) Plan, he was safe and protected from nonrenewal.

Not so. The ruling tells us that "successfully completing an intervention plan does not protect one from being notice for proposed nonrenewal."

On top of that, the Commissioner pointed out that Mr. Kellogg had not, in fact, successfully fulfilled the requirements of the TINA. Sure, he had turned in lesson plans and observed other teachers, as the TINA required. But this did not produce the required *results*. The purpose of a TINA, or any corrective communication an employee is to produce a better result. In this case, the TINA called for periodic walk-throughs to provide evidence that the teacher had improved in classroom management. The walk-throughs provided evidence alright…but not evidence of improved performance.

Kudos to Sinton ISD for writing a TINA that properly focuses on results. I learned a long time ago that the key phrase in a growth plan is "so that." For example: "the teacher will attend a training session at the local ESC on classroom management SO THAT the teacher's classroom management skills improve as evidenced by an increase in students being on task when periodic walk-throughs are conducted." There are many good examples of this in *The Texas Documentation Handbook* by Kemerer and Crain, published by Park Place Publications.

Another interesting tidbit in this case: how long does the board have to "deliberate" in a nonrenewal case? Here, the board took just 20 minutes to decide the case after four hours of hearing and 500 pages of exhibits. The Commissioner did not have a problem with that.

The case is Docket No. 077-R1-2014.

DAWG BONE: MAKE SURE YOUR GROWTH PLANS FOCUS ON RESULTS!

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- SOMETIMES YOU NEED A LITTLE HELP FROM THE JUDGE

The U.S. Supreme Court has heard only one case that involved the discipline of students with disabilities—*Honig v. Doe*, decided in 1988. The Court held that Congress had intentionally stripped school officials of the "unilateral" authority to exclude students with disabilities from school. School officials could, according to the Court, suspend kids for up to ten days (cumulatively) during the school year. But anything above that number would require another party to approve the exclusion, usually the IEP Team (ARD). If the school needed immediate assistance in dealing with a dangerous student, it could seek assistance from the local state or federal court.

The Wayne-Westland Community Schools in Michigan did just that, and the case is instructive as to what kind of evidence a school would need to justify the immediate exclusion of a student from the IEP placement. Wayne-Westland got a TRO (Temporary Restraining Order) on October 9, 2014, followed by a Temporary Injunction on October 16. The Injunction will keep the student away from any school facility until the IEP Team can meet and discuss a change of placement. Even if the parent challenges a change of placement and invokes the "stay put" rule, the Injunction will keep the student out of school for awhile.

So what kind of evidence did the school present? In a case like this, the school faces a heavy burden of proof. It must show that maintaining the current placement is substantially likely to result in injury to students or staff. To convince a judge of that, you usually need evidence that the student has already injured someone.

Wayne-Westland had that evidence. The evidence showed that the student was a big kid—6 feet tall, 250 pounds. In one month in the spring of 2014 he 1) physically attacked a student and several staff members, spitting at and kicking them; 2) "menaced" two staff members with a pen held in a stabbing position and refusing to put it down when told to do so; 3) punched a student; 4) punched the principal; 5) threatened to rape a female staff member; 6) punched another staff member in the face. Later in the semester, the student attacked a security liaison. He was told to leave the building. When he attempted to return, four staff members held the door closed to keep him out. Since the student would not leave the school grounds, the entire school was placed on lockdown.

When school resumed in the fall of 2014, the student 1) threatened to bring guns to school to kill staff members; 2) made racist comments toward African American staff members; and 3) punched the director of special education in the face.

That was enough to convince the court that maintaining the student in the current placement posed an imminent threat. The school had plans to continue the boy's education through Virtual Academy, with a staff member available to help him and answer questions by phone or email. The court found that plan to be sufficient.

Prior to 1988 a student like this one would probably have been expelled from school. That is no longer an option. The school has a continuing duty to provide a FAPE—Free Appropriate Public Education. But as this case indicates, the school can seek immediate assistance from a court to move a dangerous student off campus.

The case is *Wayne-Westland Community Schools v. V.S.*, decided by the U.S. District Court for the Eastern District of Michigan on October 16, 2014. We found it at 64 IDELR 139.

DAWG BONE: IF YOU NEED IMMEDIATE RELIEF, YOU MAY NEED TO GO TO COURT.