

DOCKET NO. 127-LH-599

TEXARKANA INDEPENDENT SCHOOL DISTRICT, Petitioner	§	BEFORE THE
	§	
	§	
VS.	§	CERTIFIED HEARING EXAMINER
	§	MARTHA C. WRIGHT
	§	
JANIS MULLINAX, Respondent	§	THE STATE OF TEXAS

PROPOSAL FOR DECISION

STATEMENT OF THE CASE

Respondent, Janis Mullinax, appeals the decision of Petitioner, Texarkana Independent School District to propose the termination of her contract as a teacher for Texarkana Independent School District.

Ms. Mullinax does not substantially deny the allegations brought by the District, but contends that her actions do not constitute good cause for termination of her contract and/or that some lesser punishment may be in order.

Plaintiff, Texarkana Independent School District is represented by Jeffery C. Lewis of the firm Atchley, Russell, Waldrop & Hlavinka, L.L.P. in Texarkana, Texas. Respondent, Janis Mullinax is represented by Truman Dean of Texas State Teachers Association, Austin, Texas. Martha C. Wright is the Certified Independent Hearing Examiner appointed by the Texas Education Agency to hear this matter and submit this proposal for decision.

FINDINGS OF FACT

After due consideration of the credible evidence and matters officially noticed, in my capacity as hearing officer, I make the following findings of fact:

1. Texarkana Independent School District is a Texas Independent School District, duly existing under the laws of the State of Texas.
2. Janis Mullinax is an employee of Texarkana Independent School District.
3. At all times pertinent to this hearing, Ms. Janis Mullinax was the physical education teacher at Kennedy Elementary in the Texarkana Independent School District.
4. Dr. Larry Sullivan is the Superintendent of Texarkana Independent School District and has held that position since February, 1998.
5. Ms. Mullinax had a personality conflict with her principal, Mr. Robert Keener.
6. During the course of the 1998-1999 school year, Ms. Mullinax made several complaints about incidents at her campus, including one formal grievance.
7. The grievance was heard by Dr. Sullivan during March, 1999.
8. Dr. Sullivan ruled in Ms. Mullinax's favor with regard to the grievance.
9. Dr. Sullivan further discussed with Ms. Mullinax other concerns she had regarding her job.
10. On or about April 22, 1999, Ms. Mullinax took a group of third grade students on a nature hike.
11. During the course of the hike students were offered weeds to ingest by Ms. Mullinax.
12. Some students had adverse reactions to the items they had ingested and were sent to the nurse.
13. The nurse observed students itching and one student with stomach cramps.
14. On or about April 23, 1999, Ms. Mullinax was informed that effective April 26,

1999, she would be suspended with pay pending an investigation into the nature hike.

15. Dr. Sullivan had an investigation opened regarding the events that occurred on April 22, 1999.

16. Dr. Sullivan determined as a result of the investigation that he could no longer place students in Ms. Mullinax's care without any confidence.

17. On or about May 12, 1999, Dr. Sullivan met with Ms. Mullinax and informed her he was recommending termination to the Texarkana Independent School District Board of Trustees.

18. On May 17, 1999, the Texarkana Independent School District Board of Trustees voted to accept Dr. Sullivan's recommendation for termination.

DISCUSSION

Petitioner contends that good cause exists to terminate Respondent's contract pursuant to the Texarkana Independent School District Policy, and as outlined in Petitioner's notice letter to Respondent. Respondent contends that while she may have shown bad judgment at the time of the incident on April 22, 1999, that single incident does not arise to the level of good cause sufficient to warrant termination.

The Texas Courts have defined "good cause" as follows:

"Good cause for discharging an employee is defined as the employee's failure to perform the duties in the scope of employment that a person of ordinary prudence would have done under the same or similar circumstances. An employee's act constitutes good cause for discharge if it is inconsistent with the continued existence of the employer-employee relationship."

In the instant case, there is a further standard that can be used in order to warrant a one-

time incident being sufficient cause to terminate an otherwise excellent teacher. That standard is set out in *Pirkey v. Harmony I.S.D.*, Tex. Comm'r of Educ. Docket No. 375-R2-892 (Feb. 11, 1994). In that decision the Commissioner stated:

"Educators are charged with the responsibility of ensuring the physical and emotional safety of the students they teach. Throughout the events leading up to Bubba's actions and the events following Bubba's actions, Petitioner did not at any time take into consideration the possibility that a student's health might be placed in danger. This disregard for a student's welfare is nonremediable, and termination is appropriate."

The Commissioner has further opined on this subject more recently in *Weatherwax v. Fort Worth I.S.D.*, Tex. Comm'r of Educ. Docket No. 080-R2-1298 (Feb. 16, 1999).

In that case, the Commissioner stated that:

"Petitioner's actions placed children in danger. While Petitioner did not intend to harm any child, a teacher's first responsibility is the safety of her students. Even if it were proven that Petitioner would never neglect to a student again, Respondent would have good cause to terminate her contract. In general, placing a student in danger is an action so serious that it breaks the employer-employee relationship."


In both those cases, the teacher involved placed the students in danger of their personal safety. This is the same situation in which Janis Mullinax finds herself. Whether knowingly or not, she placed the students in a potentially dangerous situation, that could have resulted in dire circumstances. This showed very poor judgment and led the Superintendent to believe he could no longer have any confidence in her ability to be in charge of students.

CONCLUSION OF LAW

1. This appeal was brought pursuant to Texas Education Code §21.253 and timely filed with the Texas Education Agency.
2. The Certified Hearing Examiner was appointed pursuant to Texas Education Code §21.254.
3. Petitioner, Texarkana Independent School District has the burden of proof by a preponderance of the evidence pursuant to §21.256(h) of the Texas Education Code.
4. Ms. Mullinax showed poor judgment that resulted in students being placed in danger.
5. This incident is sufficient and does rise to the level of good cause for termination.
6. Ms. Mullinax's employment with the Texarkana Independent School District should be terminated.

After due consideration of the record, matters officially noticed, and the findings of fact and conclusions of law, in my capacity as a certified independent hearing examiner, IT IS HEREBY RECOMMENDED that Texarkana Independent School District Board of Trustees ADOPT the foregoing Findings of Fact and Conclusions of Law and ANNOUNCE a decision consistent therewith.

SIGNED AND ISSUED this 2nd day of July 1999.



MARTHA C. WRIGHT
Certified Independent Hearing Examiner