

BEFORE THE ILLINOIS STATE BOARD OF EDUCATION

In the Matter of Charges)
Preferred Against)
Chassappi Rain,)
Respondent)
by)
Paul G. Vallas in his official)
capacity as Chief Executive)
Officer, Chicago Public Schools)
Petitioner)

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MAY 3 2002

Legal Advisor

Opinion and Recommendation

Introduction

Pursuant to statute, the undersigned was appointed to hear, consider and make a recommendation concerning the charges preferred by the Chicago Public Schools Chief Executive (Board of Education, or "Board") against tenured teacher Chassappi Rain. Pre-hearing discovery between petitioner and respondent was allowed. This hearing was held on July 23, 2001 and reporter-transcribed. Appearing for the Board of Education was Attorney David Hemenway of the office of the General Counsel. Appearing for the Teacher was Michael J. Merrick, of Witwer, Poltrock and Giampietro.

The post hearing brief in support of Mr. Rain was not received until January 28 2002 and the Board's post hearing brief not received until February 16. 2002. The parties have waived on the record the 45 days in which this hearing officer was to issue her recommendation. I have reviewed the record testimony, exhibits and all arguments and my recommendation follows.¹

Charges

The Charges and Specifications approved by the Chief Executive officer read as follows:

¹ Pursuant to Illinois Revised Code,

**APPROVAL OF DISMISSAL CHARGES AGAINST CHASSAPPI RAIN,
A TEACHER ASSIGNED TO WADSWORTH SCHOOL**

THE CHIEF EXECUTIVE OFFICER

hereby approves the following charges against Chassappi Rain, a teacher assigned to Wadsworth School.

CHARGES

I charge Chassappi Rain with the following violations:

1. Violation of Section 1-4 of the Chicago Public Schools' Employee Discipline Code, which prohibits the use of profane gestures and threatening language.
2. Violation of Section 2-2 of the Chicago Public Schools' Employee Discipline Code, which prohibits posting or distributing unauthorized or other prohibited written materials on school grounds.
3. Violation of Section 3-15 of the Chicago Public Schools' Employee Discipline Code, which prohibits sexual harassment and/or the failure to cooperate with and truthfully answer inquiries of the Board's Title IX Officer.
4. Violation of Section 3-3 of the Chicago Public Schools' Employee Discipline Code which prohibits use of racial epithets and threatening language.
5. Violation of Section 3-23 of the Chicago Public Schools' Employee Discipline Code, which prohibits violation of School Rules, or Board Rules, policies or procedures which result in behaviors that seriously disrupt the orderly educational process in the classroom, in the school, and may occur on off school grounds or assigned work location.
6. Violation of Section 4-4 of the Chicago Public Schools' Employee Discipline Code, which prohibits conviction of an enumerated crime as defined in Section 34-18.5 of the Illinois School Code.
7. Violation of Section 4-9 of the Chicago Public Schools' Employee Discipline Code, which prohibits violation of School Rules, or Board Rules, policies or procedures which result in behaviors that grossly disrupt the orderly educational process in the classroom, in the school, and may occur on or off school grounds or assigned work location.

SPECIFICATIONS

1. In July 2000, you wrote a profanity-laced "open letter" regarding a female Wadsworth school teacher which you distributed to Wadsworth staff members and other persons. The letter contains numerous false insulting and derogatory statements about the personal sexual and religious practices of the female Wadsworth teacher, along with statements threatening the teacher. In the letter, you referred repeatedly to the female teacher as a "bitch" and a "nigger," and made derogatory references to her physical appearance. The letter also contained repeated profane references to your sexual organ. The tone and language used in the letter clearly indicate that you wrote the letter for your own, private purpose of humiliating the female teacher in the Wadsworth school community.
2. After distributing the letter, you attempted to obtain the home phone number of the female teacher discussed in the letter.
3. In 1980, you were convicted of the crime of "assault with a deadly weapon or force likely to produce great bodily harm" in the State of California in violation of Section 245 of the California Penal Code. This offense is equivalent to the offense of attempted murder under the Illinois Criminal Code, which is an enumerated offense under Section 34-18.5 of the Illinois School Code.
4. Dismissal is warranted.

Background and Findings of Fact

Respondent Chassappi Rain received a Bachelor of Science degree in elementary education in 1990 and since 1991 or 1992 has been a regularly classified science teacher at the Wadsworth Elementary School under long time school principal Dr. Milton Albritton. Mr. Rain has no history of prior discipline and received either excellent or superior ratings in all years at Wadsworth.

For reasons not of record, Mr. Rain stopped coming to school on or about June 8, 2000, one or two weeks before the end of the school year and without contacting the principal. Although the principal testified that he had intended to impose discipline for this, he also testified that he later learned that Mr. Rain was on medical leave for that period. The absence was not addressed further at this hearing, and no illness, psychological or otherwise, has been offered as an explanation for the conduct at issue here.

Despite his absence from his teaching duties during the last weeks of the school year, the respondent was a participant in a

five week, afternoon Institute during July 2000 at the University of Chicago: the "Web Institute Training (WIT)." A few other teachers from Wadsworth attended that Institute, along with an estimated one hundred teachers from other Chicago Public Schools. On Fridays, "plenary sessions" were held, at which the different sections of participants came together in an auditorium.

Prior to the start of the July 14, 2000 Friday plenary session there took place an exchange of remarks between Mr. Rain and Wadsworth teacher Sharon Townsend which enraged Mr. Rain to such a degree that over the following weekend he first attempted to reach Ms. Townsend by phone, and then crafted the letter which has lead to the Board charges for dismissal and this hearing.

Awaiting the start of the plenary session, Mr. Rain was seated in one row of seats; directly in front of him sat Sharon Townsend and another Wadsworth teacher, Janelle Harper. A few seats down from Mr. Rain in his row were two male teachers and a few seats down from Ms. Townsend and Ms. Harper were two other women. Mr. Rain estimates that all of these persons were within hearing distance.

Ms. Townsend, who had had a cordial in-school acquaintanceship with Mr. Rain at Wadsworth, initiated a conversation. Mr. Rain testified that it started with her question "how is your girlfriend?" to which he replied that he did not have one right then but was looking. She next asked him about two specific Wadsworth women teachers and he indicated having no interest in those teachers. As Mr. Rain further testified

Then she drops the bombshell, "well, what about your boyfriends?" My response was "don't play that shit with me." (tr 142)

After his remark "she didn't say a word. I didn't say a word." He sat through the lecture, saying nothing further to Ms. Townsend, nor she to him.²

Mr. Rain had not expected questions about his personal or sexual life. He had at first not felt uncomfortable in the exchange because

² At this hearing Sharon Townsend confirmed this exchange, although indicating that her final question was "are you gay?" and that "she didn't really see him with any reaction, and that "we were both smiling" during her several questions and that she "had no idea at that time that any of this conversation was offensive to him." She also indicated that this was not a loud exchange and others (except Janelle Harper) "would have had to strain to hear anything."

I thought we were just engaging in social conversation. But when she asked me, 'what about your boyfriends,' I knew that that conversation was not meant as a friendly social engagement. I knew that. (tr 143)³

Mr. Rain is "pretty sure" that the exchange was overheard by four persons, including Janelle Harper, and he feels there was "a pretty good chance" that this exchange was heard as well by the two additional females, names unknown to him, who were sitting down the row from Townsend and Harper.

Following this Friday exchange, Mr. Rain wanted to talk to Ms. Townsend and during the weekend he sought to obtain her phone number, without success. He did this because

I was going to call up Mrs. Townsend and tell her I didn't appreciate the slander that she had committed against me in so many words because when she asked me, "well, what about your boyfriends," the innuendo is that I have boyfriends. When a person hears something like that, when it is spoken again to someone else, many times it becomes solidified as fact. (tr 145)

After not being able to obtain the phone number, he

figured I'd just put it in writing. And I figured, if I didn't go into a certain amount of detail, it would be taken out of context. When someone drops an innuendo like that, my question is, how do you stop a rumor if there is a rumor. If it hasn't started--how do you stop a rumor. Bottom line, is when she said that, hey how was I supposed to respond... (tr 146).

Mr. Rain then wrote a three page letter which can accurately be described as vicious, graphic, obscene and threatening. The letter starts out "open letter to anyone within ear shot of Sharon Townsend...." In it the respondent recites that "this twisted bitch" had started a conversation asking about his social life and he writes further that

The simple truth wasn't enough for this religious, snake-ass, nice-nasty, maggot-brained bitch. She and her snake-ass friends from Wadsworth Elementary knew that it was my

³ Ms. Townsend admits that she asked the grievant if he as gay, after a series of other questions in an exchange where "we were both smiling" or where she "didn't really see him with any reaction." She was "smiling like jokingly" when she asked him if he was gay. She does not know why she asked him that. She agrees it was inappropriate

50th birthday. They will deny this as they have denied the truth on past occasions...

...

These are "religious" church going bitches whose lives undoubtedly are sorry, hate-filled, unfulfilled, and pathetic.....This twisted sexually frustrated, demented freak of polite society, has never seen me with a "boyfriend"...

Needless to say, pretty, interesting women are hard for me to come by sometimes which is why I presently don't have a steady girlfriend that SHARON TOWNSEND is so interested in. But pussy is another issue. I can get that just about any day of the week including Sunday from YOUNG women who would make the likes of SHARON TOWNSEND eat her heart out with envy. By the way, I've got a long, thick dick and I know how to use every inch of it in a number of ways. Plus it's clean, pretty, and disease-free...not like one of your female friends who has herpies. I know more about you and some of your friends than I'll ever let you know....

now for the climax, sharon Townsend cream is you can (and you probably can't). On Saturday, July 15, 2000 I called two of your known acquaintances as I attempted to reach you by phone. I had thought about your nasty assed deed long enough. You had tried to wrongfully and intentionally cast doubt on my character and personality in the presence of people who don't really know me. I intended to take this shit that you dropped at my feet strait (sic) to your homefront, bitch. I don't know your "husband" but in the vernacular of a nigger like you, I aint' scared of him.....does he fuck you in your flabby ass. Cause what ever the fuck he is doing it ain't doing it right or good enough because Sharon Townsend has been interested in my attentionevery thing from leaning over and rubbing her titties on me to making periodic inquiries about the women in my life...

....

Sharon Townsend, when you are done, take this letter to the baddest black mutherfucker you know. Take it to the most powerful black entity you know. Even old black jesus (you will notice that I didn't use a capital "j") the body of christ. My co-master has assured me that if blood including my own, ever starts flowing, WE decide when it stops. From what have been revealed to me, Co-master takes care of business in a silent way over long periods of time if necessary. I aint' scared nasty-ass flunky-bitch.TRY ME.

As for a person's chosen sexual life style, to each his own. I have nothing against gays. Tell me bitch, what freak has the right to tell another human being what he or she must do sexually....

No tears, regrets, apologies explanations or excuses. when you bring shit have some idea of who you are bringing it to. Y'all don't have the where with all to tangle with me and the people I know. If you can't come by so good dick like mine, buy yourself a dildo, freak. To anyone who read this, understand that I live by the idea of mutual accommodation. What ever you bring to me is what you must eventually carry away with you----be it peace and love or discord and hate. Rain.
(spelling and grammar unchanged from original)

The undersigned has quoted about half of the letter.

On Monday, during a class session of the WIT program the respondent gave a copy of his letter to Wadsworth librarian Dolores McConnell for her to give to Sharon Townsend. He testified that he also gave a copy of his letter to teachers Rice (a male) and Norris (a female). He chose letter recipients on the basis of their proximity or ability to overhear the Townsend comments made the preceding Friday. But others saw the letter; Mr. Rain had not given the letter to the woman (Pearl W.) who was seen reading it by Sharon Townsend.

Mr. Rain testified that he did not intend to threaten Ms. Townsend with physical harm. If Ms. Townsend had not started the conversation with him that Friday, the letter would not have been written. Mr. Rain did not know whether Ms. Townsend had plans to talk further about his sexual preference but his main goal was "to stop this rumor from starting or happening." He wanted "those people who were within earshot of Ms. Townsend's statement to understand my position when it came to sex in general." It "is a fact" that gays are discriminated against.

The respondent answered "no idea" when asked "what did you do to ensure that the people you gave the letter to weren't going to show it to anyone else?" He also had the following exchange with his counsel

Q. If you could go back and change the way things have worked out, can you tell the hearing officer you would choose not to write this letter again?

A. If Sharon Townsend had done what she did would I have not written that letter?

Q. Is there another way to handle it?

A. Yes, there's another way to handle it, but I don't know what the effectiveness would have been (tr 148-149).⁴

Chassappi Rain also described a series of events during his teaching years at Wadsworth where persons not identified had done damage to items of equipment locked in his science room laboratory or to animals from his class, or had deliberately cut open bags of cans in his school recycling project, or damaged his bulletin board. In discussing possible harassment (of himself), he described actions by some teachers of brushing their breasts against him, some of which contacts he thought could have been accidental, others not. He recalled an exchange with another teacher during a social committee meeting when she made a reference to his being a "queen." He did not date these events, nor give any names. The principal recalled some property damage complaints from respondent three or four years earlier and had taken steps to provide more security in Mr. Rain's classroom/lab.

Ms. Townsend first learned of the letter in her Tuesday WIT class when she saw one teacher (Pearl W., from a different school) call over Ms. Townsend's friend Janelle Harper and show her the letter. Ms. Harper in turn called over Ms Townsend, who "looked over her shoulder and read...pretty much the entire document." It upset her so that she "didn't really take it all in at first." The letter appalled her. "It was simply disgusting for a professional person to put something like this in writing." The comments about blood and the body of Christ upset her greatly: "I don't know where he was coming from." She didn't know how to take the comments about blood being shed and the statement "WE will decide". She testified that "it frightens me to think that some of my blood might have been shed over something that I felt was as insignificant as this, as the conversation." (tr 29) The respondent has not approached her since the letter was disseminated and she had never before had a conversation with him about his sexual life.

Ms. Townsend asked Pearl W. if she could make a copy but that woman "wouldn't release it because she said it belonged to someone else. She never said who it belonged to." That same week, on Friday, another person, a man, was showing the letter to someone in

⁴ The Board argues persuasively that this exchange proves that "neither a prior or subsequent warning would have been effective in this case" and demonstrates that Mr. Rain continues to feel that "the open letter was an appropriate response to Townsend's joking question to him about whether he was gay. Rain continues to believe that his letter was an 'effective' way to respond to his co-worker's unfortunate, but joking comment. This belies any assertion that rain's conduct is remediable." (Brief p 9-10).

the WIT program luncheon area and he gave it to Ms. Townsend at her request. Sharon Townsend herself "showed it to a few people at Wadsworth" to "get some feedback from them as to what they thought I should do." She also showed it to her husband who "was ticked off, to put it mildly." Several of her colleagues told her she should watch her back, that "something was wrong."

Ms. Townsend had telephoned Principal Albritton and after she obtained her own copy of the letter, she brought it to him and asked him "what he was going to do about it." She told Dr. Albritton that she was fearful of being back at the school in the fall along with Mr. Rain.

Principal Albritton testified that Sharon Townsend did tell him of her comments that she "had made in jest" at the plenary session and he "may have" told her that what she said had been inappropriate. His reaction to reading the letter was to feel "kind of astounded." Dr. Albritton explained that the episode involved "two teachers, both of them terrific teachers" and he "didn't know what to make of it." Ms. Townsend told him she feared for her safety back at school. The principal wrote to his Regional Education Officer, who directed him to CPS labor relations. (The principal also talked to a CPS Employee Health official who evidently offered several reasons that the Board could not mandate psychological testing.) He ultimately wrote Director of Labor Relations Margaret Kestopoulos and enclosed the Rain letter.

The school principal had not seen or talked to the Respondent "since he left school prematurely" on June 8th, which was a week or two before the school year ended, and more than a month before this incident.⁵ Nor did Principal Albritton see a need to speak to this teacher. The principal "had the letter that was allegedly written by him and I didn't know what to say to him about it. So I just knew from the very beginning that I would not make decisions myself on how to deal with this."

One of the teachers to whom Mr. Rain initially gave the letter, Wadsworth School Librarian Dolores McConnell, has high regard for Mr. Rain, with whom she had a "very cordial" working, in-school relationship. Ms. McConnell described the respondent as "very very intelligent" and helpful to her on Web page work. She confirmed that Mr. Rain gave her the letter at the beginning of their Monday WIT session and she saw him give it to "about two more

⁵ According to the principal, this teacher some weeks before this event had missed the final weeks of the school year without contacting him. The principal had thought the respondent had been AWOL from school after June 8th, but he acknowledged that he now "has no reason to believe" that Mr. Rain did not take a medical leave. The respondent has not offered any medical or personal crisis to explain his writing or dissemination of this letter.

people" in their class section. Ms. McConnell did not read the whole letter because she "was busy with my web page, which I didn't understand how to do, and I just thought maybe he was just getting his frustrations out....just blowing off steam." She felt that "as a man, what else could he do? He'd just maybe write something down that might hurt her back. I felt like maybe she hurt him. So he was just trying to hurt her back." However, when asked to describe in what manner Mr. Rain gave her the letter, Ms. McConnell said

he walked in the classroom, he was cursing, and he said that she was a B, and that he wanted me to read this letter because she had been spreading lies about him. (tr 66)

Ms. McConnell does not believe that Chassappi Rain should be fired, "because he was provoked into writing this letter....

At school, he's very private. He doesn't really bother anyone. He has never to my knowledge ever written anything like this before. I've never heard him speak to anyone like this before verbally and I really feel in my heart that had that occasion not happened in the plenary, then he wouldn't have written this letter. (tr 61)

Charge Based On Former Criminal Conduct

Board Charge 6 and Specification 3 rely upon and claim a match between the 1978 conviction of the respondent in California, and one of the enumerated crimes for which the Illinois School Code states that the Board "shall not knowingly employ a person so convicted." (105 ILCS 5/34-18.5) Attempt Murder is one of the enumerated crimes for which Illinois school districts are not to knowingly employ persons so convicted.

In his December 1990 "Registration for Employment" (under his former name of Bobby Neal Short) respondent Rain had checked "yes" to the question "have you ever been convicted of a crime?" and he had written as explanation that "I shot 2 people at my home in 1978. One was a stranger. Both had come with ill intent to possibly do me harm. Because of mitigating circumstances I received the lower sentence, term." The respondent spent one year in jail, and is foggy upon the exact ultimate charge of which he was convicted 21 years earlier. The California court document obtained by the Board shows a reduction to a lesser charge which specifically excludes attempt murder and it does not state what the lesser charge was for.

Since the California Criminal Code Section upon which CPS was

relying as showing an equivalent conviction to attempt murder was not the section under which Mr. Rain was ultimately sentenced, the Board cannot meet its burden of proof for Charge 6 and Specification 3, even if the Illinois School Code provision relied upon has been interpreted to retroactively apply to tenured teachers. In its post-hearing brief the Board properly concedes "that there is not sufficient certainty concerning the precise crime of which Rain was convicted to allow the Hearing Officer to unequivocally rule that Rain was convicted of the equivalent of the enumerated offense of attempted murder." (Brief p. 3, fn 2). Therefore charge 6 and specification 3 are unfounded.

Discussion and Recommendation

This leaves a remaining six charges and two specifications (see above at pages 2-3). Clearly, the "open letter" was authored and given distribution to at least three persons by Mr. Rain and others obtained it. Moreover, he took no steps to prevent its dissemination on a broader basis, despite his assertion that it was intended only for "those within ear shot" of his exchange with Ms. Townsend. Ridicule, gossip, and anger reactions resulting from the potential widespread dissemination of the letter within the school community were foreseeable and predictable.

There can be no doubt but that the letter contains threatening (written) language, racial epithets, sexually demeaning descriptions and accusations. Board Charge 1 is based on an Employee Discipline Code provision 1-4 describing **verbal** misconduct. Section 1-4 prohibits "profane gestures and threatening language." The single combined description linking "gestures" and "language" is more logically interpreted to describe acted out conduct and I find that the misconduct here did not fit within the Charge 1, due to how Discipline Code 1-4 is worded.

More clearly applicable is Charge 3, based upon the Discipline Code prohibition of sexual harassment. Although the second part of that charge (failure to cooperate with a Title IX officer) is not at issue, I find that the letter and its dissemination did constitute sexual harassment. I also find proven on this record Board Charge 4 (prohibition against use of racial epithets and threatening language.) The Rain letter falls under both conduct categories.

The event occurred at the University of Chicago during a seminar. Charge 2 is based upon the Code prohibition against "posting or distributing unauthorized or other prohibited written materials on school grounds." The University of Chicago is not Chicago Public School grounds. I decline to extend the definition to a seminar location. Therefore, it is doubtful whether the posting or distribution covered in Code Section 2-2 or the concept of "posting" combined with "school grounds" was aimed at this kind of

letter and its handout to some teachers. Charge 2 is not proven.

Charge 5 is based upon the Employee Discipline Code prohibition against "violation of School Rules, or Board rules, policies or procedures which result in behaviors that seriously disrupt the orderly educational process in the classroom, in the school, and may occur on or off school grounds or assigned work location." While it is unlikely that the elementary school pupils themselves would know of or be affected in any way by the letter, clearly there has been a disruption of relationships and of professional and mutual respect between Wadsworth teachers. The letter does not only insult, castigate and humiliate Ms. Townsend, it further makes reference to her "snake ass friends from Wadsworth elementary," to her "circle of envious friends" and "pathetic friends" and to

'religious' church-going bitches whose lives undoubtedly (sic) are sorry, hate-filled, unfulfilled, and pathetic. (These are some of the exemplars who bring education to the children.)

The letter even refers to "one of your female friends who has herpies (sic)."

Thus, Mr. Rain has expressed and disseminated his rage and vicious disregard not only for Sharon Townsend, but for a group of the women "who bring education to the children," i.e. other female teachers at Wadsworth. He is a science teacher who must work with other teachers and with administrative staff at the school and I conclude that the creation of the letter, nature of its contents, the scope of its attack, and the act of the respondent to share it with several persons (who then shared it with others) has "seriously disrupted the orderly educational process in the classroom, (and) in the school." The Board has met its burden of proof as to Charge 5 and as to similarly written Charge 7.

Board Specification 2 is unfounded. The respondent did not attempt to obtain the home phone of Sharon Townsend **after** distributing his letter. He wrote the letter **because** he could not obtain her number and talk to her. To be accurate, since Respondent Rain did **not** seek to obtain her phone number after distributing the letter Specification 2 is not proven.⁶

The issue for this Hearing Officer is whether the proved charges 3, 4, 5, and 7 and Specification 1 constitute remediable

⁶ I need not address Specification 4 which as written is not a specification but only presents the Board's conclusion that "Dismissal is Warranted."

conduct, in which case lack of notice and "reasonable" written warning is jurisdictional, or whether the conduct is irremediable, in which case there can be immediate discharge without the necessity to provide an opportunity to correct conduct. (105 ILCS 5/34-85).

The Board reminds the undersigned of the two part Gilliland test 1) whether damage has been done to the students, faculty or school and 2) whether the conduct could not have been corrected had superiors warned the individual charged. Gilliland v. Bd of Educ. of Pleasant View Consolidated School District 67 Ill 2d, 143; 365 N.E. 2d 322 (1977). It further argues

in cases of immoral conduct by a teacher, however, the appropriate focus in the second part of the Gilliland test is not whether the conduct itself could have been corrected by a warning, but whether the **effects** of the conduct could have been corrected with a subsequent warning....

It is hard to see how other staff members, some of whom were given copies of the letter, could work with and respect Rain after learning of the manner in which he degraded and threatened a fellow teacher. Rain's conduct in writing and distributing the open letter damaged the Wadsworth faculty and the school as a whole.

The Board stresses that courts have recognized that certain conduct "is so obviously inappropriate that requiring a prior formal warning prior to dismissal would render the irremediability test a nullity..." citing Sparta Com. Unit School Dis. No 40; 217 Ill App 3d; 577 N.E. 2d 905. As the Board further argues

"No teacher needs to be told not to refer to a co-worker in the disgusting, degrading ways that Rain referred to Townsend in his letter. No teacher needs to be told not to threaten another teacher..."

No warning to Rain can undo the damage caused by his letter. He has already profaned and slandered Townsend's reputation among her co-workers. His own reputation among co-workers has already been irreparably harmed by his own actions.

The Board also points to the exchange (see pp 7-8 and footnote 4) between the respondent and his attorney as demonstrating that the respondent feels no remorse nor views his conduct as other than appropriate or "effective."

The Respondent argues that the Board has "failed to prove that Mr. Rain's conduct is irremediable--that a lesser penalty would not

suffice." The Respondent argues that "with respect to the 'letter' issue the Board had also failed to carry its burden of proving that good cause exists to terminate Mr. Rain." The Respondent points to the Board's "concession" that he is "a brilliant science teacher with an exemplary employment record" who was "wrongfully provoked into writing this letter by another teacher who taunted him about her perception of his sexual orientation--that he is gay."

The Respondent asserts a "history" of enduring harassment "involving others' perceptions of his sexual orientation" and argues that "he took what he believed was a measured response to Ms. Townsend's "taunting and provoking" by giving copies of his letter "only to the teachers within earshot of the provocateur's taunts." Respondent notes that "provocateur" Townsend has not been disciplined at all, whereas he "...was terminated for his first disciplinary incident in over a decade of employment."

The Respondent stresses that he had a "legitimate concern" that Ms. Townsend's remarks were overheard and "would mushroom from rumor to fact in peoples minds." He wrote the letter "before he had cooled down" and "gave copies of the letter only to the teachers who were within earshot of Ms. Townsend's taunts...he never confronted Ms. Townsend, nor did he intend his letter to be a threat against her." Finally, the Respondent

...submit(s) that it would be appropriate to chalk this matter up as an isolated dispute between two teachers and let it go at that for both teachers. But it is not appropriate to fire the provoked teacher but give no discipline whatsoever to the provocateur. Mr. Rain should not have been terminated.

The respondent also cites the Gilliland test and argues that "mere speculation as to potential damage does not satisfy the Gilliland test of irremediability....irreparable damage must already have been done." Glover v Board of Education 21 Ill App 3d, 1053, 316 N.E. 2d 534.

Findings and Recommendation

Sharon Townsend expresses fear at returning to work with Respondent Rain. Her's was a reasonable reaction to the contents of this letter, parts of which were indeed threatening. Her own inappropriate, intrusive, offensive, but on balance not clearly intended-to-be-harassing question at the Plenary session cannot be found adequate justification or "provocation" for the Respondent's reaction misconduct. In short, there is simply no defense to mitigate the nature of this communication as well as its dissemination and the scope of its attack.

Two matters are determinative for the undersigned on the core

question of irremediability and "damage already done." One is the wide ranging nature of the contents of the letter, which did not only threaten and harass Ms. Townsend but was an attack on all of the

'religious' church-going bitches whose lives undoubtedly (sic) are sorry, hate-filled, unfulfilled, and pathetic. (These are some of the exemplars who bring education to the children.)

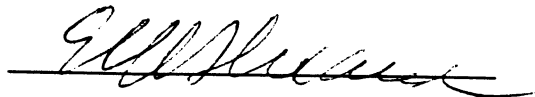
A second significant aspect--in addition to the vicious, sexist, racist tone and contents of the letter--is the Respondent's lack of any awareness of the degree of its inappropriateness as reflected in his exchange with his attorney (see above at page 7-8.) I do find significant that this respondent does not perceive\ communicate any awareness of the degree of offensiveness of his letter, or of the lack of control and professionalism shown by his dissemination of it. There is a huge disproportion between the meddling, gossipy question by Ms. Townsend, and the Rain letter's contents and dissemination.

The test for determining whether a cause for dismissal is irremediable is whether damage has been done to the students, faculty or school and whether the conduct causing the damage could have been corrected had the teacher been warned by her (his) superiors. Gilliland v. Board of Education 67 Ill 2d 143, 385 N.E. 2d 322, cited in McCutcheon v. Board of Education of City of Chicago 94 Ill App 3d 993; 419 N.E. 2d 343 (1981)

This hearing officer recognizes that this is a first time event, rather than a pattern of misconduct. But while the Respondent has no prior record, I am persuaded that real damage has been caused to the ability of Mr. Rain to work effectively with other teachers at Wadsworth. This is irremediable. I agree with the Board argument that

"No teacher needs to be told not to refer to a co-worker in the disgusting, degrading ways that Rain referred to Townsend in his letter. No teacher needs to be told not to threaten another teacher..."

The writing of such a letter was already covered by the School Discipline Code warnings as well as by common knowledge. This was not remediable conduct and I recommend discharge.



May 9, 2002