

Prudence Lee
Attorney
1023 E. Country Gables Dr.
Phoenix, AZ 85022
602 758-9914

September 22, 2014

Mr. Tom Lawrence, Superintendent
Fountain Hills Unified School District #98
Administrative Center
16000 E. Palisades Blvd.
Fountain Hills, AZ 85268

RE: Hearing Officer Findings of Fact, Conclusions and Recommendation in the Appeal of
Pamela J. Aister

Dear Mr. Lawrence:

Please find the enclosed Hearing Officer Findings of Fact, Conclusions and Recommendation in
the Appeal of Pamela J. Aister.

I have also included a time record and invoice for your review and payment.

Please let me know if you require further information or action from me. Thank you for the
opportunity to serve the Fountain Hills Unified School District.

Sincerely,
Prudence Lee
Hearing Officer

FOUNTAIN HILLS UNIFIED SCHOOL DISTRICT NO.98
HEARING BEFORE PRUDENCE LEE
IN THE MATTER OF THE RECOMMENDED TERMINATION OF EMPLOYMENT
OF PAMELA J. AISTER

WRITTEN STATEMENT OF THE HEARING OFFICER:
FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION

Pursuant to the policies, rules, regulations and disciplinary hearing procedures of the Fountain Hills Unified School District No. 98 ("the District"), this matter came for hearing before the undersigned Hearing Officer, Prudence Lee, to consider the July 28, 2014, Statement of Charges to dismiss Pamela J. Aister ("Appellant") from her employment. A hearing was scheduled for Friday, September 12, 2014. The hearing was held on Friday, September 12, 2014, at 9:30 a.m. at the District's administrative offices at 16000 E. Palisades Boulevard, Fountain Hills, AZ 85068.

Present at the hearing on behalf of the District were the following:

Anita Gomez, Principal
David Pauole, Attorney for the District
Student #1
Student #2
Student #3
Student #4
Parent of Student #1
Parent of Student #2

Present on behalf of Appellant were the following:

Student #7
Student #11
Parent of Student #11
Pamela J. Aister, Appellant
Bradley Schleier, Attorney for Appellant
Cindy Anderson, Paralegal, Schleier Law Offices

Having heard the testimony of the witnesses and having read and considered all exhibits admitted into evidence, the undersigned submits the following Findings of Fact, Conclusions and Recommendation to the Fountain Hills Unified School District Governing Board.

Findings of Fact

Black ink = Lee

Red ink = Aister

Blue ink = Not true

Per the color key above, black indicates hearing officer Lee's findings of fact. It must be said that the following supposed findings of fact are not factual. My refute of these statements appear in red while misstatements appear in blue.

1. At the time of the Statement of Charges proposing to dismiss Appellant, Appellant was a fourth grade teacher at Four Peaks Elementary School and had been employed by the District for 25 years.
2. On the morning of May 8, 2014, Appellant was working cafeteria duty before school started at approximately 8:45 a.m. Appellant became aware of a student verbal altercation that had taken place outside in the school yard. District testimony continues to say the incident occurred on Thursday, May 8. This contradicts their allegation that Mrs. Aister went the entire day, Wednesday, May 7, without reporting the incident. This is just one of the District's inconsistencies and misstatements of fact in this case.
3. The altercation was between Student #11, a student in Appellant's fourth grade class, and a group of students (Students #1, 2, 3 and 4), (*there were a total of 5 boys present) all in another fourth grade class. Student #11 was taunting Students #1, 2, 3 and 4 because their fourth grade class lost a contest the day before and Student #11's class had won the contest. Student #11, in his taunting, had come so close to Student #1 that Student #1 felt Student #11's breath on his skin. Heated words were exchanged among the students about the contest and prizes. A security video showed these actions. This account of the incident is based on allegations made by Students #1, 2, 3, and 4 regarding Student #11 and not substantiated by the videos. Neither video viewed by Mrs. Aister and her counsel showed any of the above. The first video shown to Mrs. Aister and her counsel, dated May 8, showed Mrs. Aister walking across the courtyard to her duty in the multipurpose room, numerous students crossing the courtyard, Mrs. Aister walking from the multipurpose room to the school entry doors to pick up her students to walk to her classroom. No altercations were shown. The video presented at the hearing showed students standing by the cafeteria door which was not the location of the altercation. At the hearing, 4 boys, Students #1, 2, 3, and 4, nodded their heads affirmatively at the video. 1 boy, Student #11, 1 girl, Student #7 and Mrs. Aister did not. (*While five boys were present at the incident, only four testified.)
4. A few minutes after the altercation had ended and Student #11 had entered the cafeteria, Appellant left the cafeteria and summoned Students #1, 2, 3 and 4, and 5 who had passed the cafeteria door and were walking to the playground. This is not correct. Mrs. Aister and counsel heard a taped interview between Students 1-5 and Assistant Principal Galetti. The students' conflicting versions of what happened and where it happened were not consistent. Some thought it happened in the cafeteria. Some thought it happened in the courtyard. Their testimonies did not match until they had written papers, viewed and were led through the video and questioning, and coached to repeat those answers at the hearing. Student #11 had no opportunity to write what happened, view the video, and practice answers. Student #7 testified that Mrs. Aister was in the cafeteria/multipurpose room. Student #7 rushed into the cafeteria and said, "They are all around student #11. They are all over him." Mrs. Aister entered the courtyard, moved away from the door over by the trees and viewed 5 boys confronting 1 boy. She

called them over to her. All 6 boys were talking at once. Based on a history of negative interactions among the boys, previous reports from other students, and the fact that student #11 had been moved from another classroom into Mrs. Aister's by Mrs. Gomez due to these problems, Mrs. Aister responded as follows. "Student #11 is in my room now. He is not alone. When you pick on him you pick on me. It is not 5 to 1 anymore. It is 5 to 2. There will be no more taunting, teasing, and racial names called. That is not acceptable here. Do you understand? Fine. Go have a good day." This was said to all 6 boys. Students #1 - 5 went toward the playground, Student 11 and Mrs. Aister went into the cafeteria/multipurpose room. The video shown the day of the hearing depicted a blur of people by the cafeteria door. Mrs. Aister could not be seen. The video does not support the allegations made against Mrs. Aister and Student #11.

5. Appellant believed the students she summoned had made racist comments to Student #11 and verbally chastised the students, directing her comments at one student in particular in the group, Student #1. All students were spoken to...no one was singled out.
6. In speaking directly to Student # 1 in this group of students, Appellant stated that she had been hearing about his ugly face. She told Student # 1 that he thought that he was a hot shot but that he wasn't. She told him that if he messed with Student #11, he messed with her. She asked if he knew that Student #11 was an Ace and asked him if he knew what that meant. She said he had better watch his back. She said that he should watch what he says and what he does because she was watching him. She said that should cure his racist ways. When the students tried to explain that Student # 11 had instigated the altercation, Appellant told the students to "shut up" and told them to go away. None of these comments in blue are true. All statements were supposedly reported to the mother of Student #1 by Student #1. These misstatements resulted in a false report being made by the mother of Student #1 and Student #1 against Mrs. Aister.
7. Appellant had no factual information that anything racist was said by the students in the altercation. Appellant believed it had occurred because of her "gut feeling" and because it had happened in the past but not with Students #1, 2, 3 and 4. Student #1 had previously taunted Student #11.
8. Student #11 was a frequent visitor in the Principal's office due to the Principal inviting him in her office. The Principal had seen Student #11 often become verbally aggressive with other students, coming very close to students in an uncomfortable, threatening way. Student #11 had never reported racial comments made to him by other students to the Principal. Mrs Aister consistently contended that student #11 was reacting to the treatment he was receiving from others. Student #11's mother testified that she had reported to #11's previous Four Peak's teacher that students in her room were poking him with pencils, putting tape on the back of his head, and that he was being called the "N" word, monkey, and coon. When #11 asked for extra help in math, his former teacher told him that his mom should make more money and hire a tutor. #11's mother testified that the administrators also knew these facts. She had made many calls to Four Peaks School but received almost no response. She said that when student #11 was put into Mrs. Aister's classroom, he felt safe.
9. Student #1's mother reported the incident to the Principal the morning of May 9, 2014. Other parents sent messages to Student #1's mother via cell phone the evening of May 8, 2014, to inform her of the incident. Student #1's mother obtained the facts of the incident from her son. Mrs. Aister questions why the mother of student #1 got such a quick response and credibility of her charges when the mother of student #11 got almost no response and credibility of her charges. Could this be grounds for an EEOC and/or a FEPA complaint?

10. Following the report by Student #1's mother, the Principal requested statements from the students that were summoned by Appellant on May 8, 2014, as to what happened when Appellant spoke to them outside the cafeteria before school. **Student #11 did not have this opportunity.**
11. Appellant did not report the incident to the Principal on May 8, 2014. It is in dispute as to whether Appellant reported it to the Principal mid-day on May 9, 2014. **Mrs. Aister discussed the occurrence with Mrs. Gomez in Mrs. Gomez's office at 12:45 on May 8. Mrs. Aister was doing grouping cards and discussed the 5 boys picking on Student #11 plus the spelling bee choice for her classroom who was student #11. The Principal was present when the Human Resources Director informed Appellant on May 9, 2014, that the Administration was investigating the incident of May 8, 2014. On May 9, Mrs. Aister was given no information about the accusations against her. Her classroom key was relinquished, her purse was retrieved from her classroom, she was escorted out the door and forbidden any contact with other staff members or students. She was suspended for the last two weeks of school. She was denied access to materials to complete her students' 4th quarter report cards. Report cards were sent home without a finished set of grades, no teacher note or signature, or a mark showing that the student had passed to the next grade.**
12. On May 20, 2014, the Principal held a Pre-Disciplinary Conference with Appellant, the Assistant Principal and the Director of Human Resources. **Mrs. Aister taped this meeting with the permission of all present. Mrs. Gomez stated that "student #11 often started trouble and did strange, weird things." Mrs. Aister again contended that student #11 misbehaved when he had reached his limit of tolerance for taunting.**
13. On July 28, 2014, the Superintendent presented a Statement of Charges to the Fountain Hills Unified School District Governing Board.
14. On November 6, 2013, the Principal met with Appellant regarding a classroom observation in which the Principal instructed her to "frame student feedback in a positive, nonthreatening manner and to refrain from using negative references to students such as 'silly' or 'wacky'." **Other fourth grade teachers have been heard using the words silly and wacky, not Mrs. Aister. Mrs. Gomez often complimented Mrs. Aister for the congenial, positive atmosphere in her classroom that she creates year after year. In April, Mrs. Gomez offered Mrs. Aister a job in the library for the 2014-2015 school year, stating that with Mrs. Aister's positive attitude and behavior she could make the library come alive and build rapport and camaraderie in that position. She said Mrs. Aister could make her own schedule, teach what she wanted to teach, and decorate the room as she wished. Mrs. Aister declined, choosing instead to remain with her classroom students. It seems most odd and inconsistent that Mrs. Gomez would offer this opportunity in April to a teacher accused in May of questionable ethics and conduct.**
15. In 2013, the Principal discussed with Appellant an incident in which a student had cried after Appellant moved his desk and addressed him in front of the class. The student is not one of the students involved in the May 8, 2014, incident. **All students are allowed to choose where they will sit when they first come in the classroom. If they choose to sit by friends, they know there are certain manners that we all use. After requesting that students #1 and #13 stop talking and playing around during the teacher's lesson, the students continued to talk. Due to their continued disruptive behavior the desks of Students #1 and #13 were separated and moved to other groups. Contrary to the above "finding of fact" Student #1 was involved in the May incident.**

16. Appellant was placed on an improvement plan in 2011. It was noted on Appellant's improvement plan that her interaction with some students was "negative, demeaning, sarcastic, or inappropriate." It was further noted that her interactions were characterized by "conflict, sarcasm or putdowns." The expectation outlined for Appellant in the future was that her interactions with students were to be friendly and demonstrate general warmth, caring and respect and that her interactions be generally polite and respectful. The series of events and actions of Principal Gomez leading up to said "improvement plan" were pernicious and eventually resulted in a tearful apology by Mrs. Gomez during the 2013/2014 school year. In August 2010 Mrs. Aister was accidentally tripped by a student dancing in the hallway, an incident witnessed by two teachers and two classrooms of students. As a result of the accident, workman's compensation covered Mrs. Aister's required knee surgery. Returning to school following surgery, Mrs. Aister found her classroom gutted of all her personal property: books, furniture, paper, supplies, grade book, notebooks, an oil painting on the wall donated by a local artist, school logo shirts, a \$100.00 floor map, and many miscellaneous supplies all purchased by Mrs. Aister. Personal teaching tools including manuals, agendas, plans, schedules were all gone. Mrs. Gomez had given the shirts to other teachers to give away as prizes. Pieces of the floor map were never recovered. Mrs. Aister's other property was locked in the 3rd grade storage room to which she had no key. When Mrs. Aister requested a key, she was told she couldn't have one and taught for weeks without her supplies and teaching tools. Her students noticed that her things had been moved to the empty room across the hall from her classroom. It was so poorly stacked that the cupboards and counter pulled completely off the wall, spilling and breaking the items stacked upon them. In the midst of this organizational chaos only one week after her return, Mrs. Aister was given one week to get quarterly report cards ready, which she did. Mrs. Gomez insisted that Mrs. Aister do outdoor duty in the new playground area on an uneven, unstable surface. When Mrs. Aister requested a different duty area due to her knee surgery and physical therapy, Mrs. Gomez threatened that if Mrs. Aister did not perform her assigned duty she would have to take further action. Mrs. Aister's surgeon, Dr. Vincent Russo and physician, Dr. Jyoti Patel quickly responded with medical documents directed to Mrs. Gomez to relieve Mrs. Aister from duties that could further jeopardize her physical recovery. Based on their findings, Workman's Compensation awarded Mrs. Aister a partial disability. It was at this point in time that the improvement plan was created. During the next school year, after daily visits to Mrs. Aister's classroom, Mrs. Gomez apologized for the situation. She stated that she had to move Mrs. Aister's property the previous year because the sub was so obese she could not move around the classroom. Mrs. Aister accepted Mrs. Gomez's apology and thought they had moved on. Reference to and use of the supposed improvement plan as evidence against Mrs. Aister's job performance was a clear distortion of the events that took place in 2011.
17. The parents of Student #1 had originally requested Appellant for a teacher when Student #1 entered fourth grade. After approximately three weeks, Student #1's parents asked that he be moved out of her class. The parent explained at the hearing that the move was requested because Student #1 missed a day of school before a three-day weekend, and Appellant embarrassed him in front of the class by stating that a three-day weekend was not good enough for Student #1's family and the entire class had to stay inside, so Student #1 could take a test he missed on the day he was absent. Parent #1 testified that the family's business required the family to travel out of town, and Student #1 had to miss class. After this incident with Appellant, the mother of Student #1 called and asked the Principal to move Student #1 to the other fourth grade class. The parent did not provide reasons for the move to the Principal. The testimony of Parent #1 stated above in blue is a fabrication and never happened. The only recess 4th grade students get is after their lunch break and Mrs. Aister has never kept students inside during that time. She is not even present at that time as it is her lunch break as well

and she goes home to tend to her 96 year old mother. This is another example of an inconsistent finding of fact.

18. Student #1 felt nervous around Appellant when he was in her presence. He stated that Appellant told him that he didn't want to be in her class because "it was a jail." Appellant called him and other students, "snots." Student #1 reported to his mother that in serving a detention, Appellant made him feel very uncomfortable. Student #1's mother felt Appellant had something against her son and told her son to avoid Appellant. **Mrs. Aister neither gives detention nor serves in one. Student #1's mother made a false, unsubstantiated report which does not belong in a "finding of facts."** Again, the testimony is inconsistent with a 24 year career of being a "most requested" teacher with scores of satisfied students and parents.
19. Governing Board Policy GBEA, Staff Ethics, states that the "school employee makes the well-being of students the fundamental value of all decision making and maintains just, courteous, and proper relationships with students, parents, staff members and others." **Items number 19 through 24 enumerate all of the district policies that Mrs. Aister has allegedly violated. Mrs. Aister's 24 years of virtually unblemished service to the district has consistently shown adherence to these policies.**
20. Governing Board Regulation GBEB-R, Staff Conduct, provides that "no employee, while on or using school property, otherwise acting as an agent, or working in an official capacity for the District shall engage in: physical or verbal abuse of, or threat of harm, to anyone." The Regulation also provides that no employee shall use profane or abusive language, symbols, or conduct. The Regulation further provides that all staff members are expected to: ..."conduct themselves in a manner consistent with effective and orderly education and to protect the students ..." **Same as above.**
21. Governing Board Policy GBEBB, Staff Conduct with Students, states that "employees are expected to exercise general supervision over the conduct of students, not only while in the schoolroom, but also before and after school and during recess. At all times teachers and other staff members will accord students the dignity and respect that they deserve, and avoid embarrassing any student unnecessarily." The policy also states that "all personnel employed by the District are expected to relate to students of the District in a manner that maintains social and moral patterns of behavior consistent with community standards and acceptable professional conduct." **Same as above.**
22. Governing Board Policy, JICK, Student Violence/Harassment/Intimidation/Bullying, requires "a school employee who becomes aware of or suspects a student is being bullied shall immediately notify the school administrator." Failure to report may result in a disciplinary suspension without pay or dismissal pursuant to Board Policies GCQF and GDQD. **Since Student #11 was moved to Mrs. Aister's classroom in March, she had ongoing verbal communications with Mrs. Gomez regarding said student. The incident in question was reported to Mrs. Gomez in her office at 12:45 p.m. on May 8th. Previous to Student #11's move into Mrs. Aister's classroom, student #11's mother had reported similar issues to both the previous homeroom teacher and to Mrs. Gomez and Mr. Galetti.**
23. Governing Board Policy, GCQF, Discipline, Suspension, and Dismissal of Professional Staff Members, provides that "certificated staff members may be disciplined for infractions that include, but are not limited to, ...engaging in unprofessional conduct" and "exhibiting improper attitudes." **Same as #19.**

24. Arizona Administrative Code, R7-2-1308, Unprofessional and Immoral Conduct prohibits certificated personnel from engaging "in a pattern of conduct for the sole purpose or with the sole intent of embarrassing or disparaging a pupil." It further provides that individuals found to have engaged in unprofessional ... conduct shall be subject to, and may be disciplined" by the State Board of Education. **This is libelous, harassing, and injurious and not substantiated by actual events and historical data.**

Conclusions

1. Arizona Revised Statutes, §15-539, provides for the dismissal of a certificated teacher for unprofessional conduct.
2. District Policy GCQF, Discipline, Suspension, and Dismissal of Professional Staff Members, permits discipline of a certificated employee for the following conduct:
 - Engaging in unprofessional conduct
 - Exhibiting improper attitudes
3. Governing Policies GBEA, GBEBB and Governing Board Regulation GBEB-R, require that District employees treat students with dignity and respect and make the well-being of students the fundamental value of all decision making and actions. District employees are to avoid embarrassing any student unnecessarily. District employees are expected to relate to students in a manner consistent with acceptable professional conduct. District employees cannot engage in verbal abuse or threat of harm to anyone or use abusive language or conduct while on school property.
4. Governing Board Policy JICK requires that school personnel report bullying immediately. **During interviews for this case, administrators heard directly from Student #1 that he said the following to Student #11 regarding chocolate cake: "Tastes great. It's black just like your face!" What credibility does this give the witnesses who brought forth the accusations against Mrs. Aister and Student #11 as well as the hearing officer who heard this testimony and still supported the district and Mrs. Aister's accusers.**
5. On May 8, 2014, Appellant verbally intimidated, threatened and scared a group of four students whom she believed had engaged in racism toward another student. Appellant had no facts to support her belief but acted upon a gut feeling and prior experience. **Mrs. Aister intervened in a confrontational situation among six boys. The words used to describe her actions are purely subjective and not even words that boys at the fourth grade level would use. Her actions were based on 35 years of experience in successfully dealing with children.**
6. Appellant's testimony about her actions on May 8, 2014 was not consistent with the security video played at the hearing nor was it consistent with Appellant's own student witness. Examples of Appellant's inconsistencies include: **The security video dated May 8 showed no altercation. It is not a credible item to be considered as factual proof for said altercation. Student #11, Student #7, and Mrs. Aister concur.**
 - Appellant testified that Student #7 came running into the cafeteria to report that students were "all around" Student #1 and that Appellant went outside the cafeteria. Student #7

testified that she came from the playground to report an incident involving Student #11. Appellant denied that Student #7 testified at the hearing that she was reporting an incident that happened on the playground, even when confronted with Student #7's testimony. **The security video did not show any part of the incident that occurred. Student #7 testified about two separate events where she witnessed Student #11 being bullied. She clearly testified that one event occurred on the playground and one event occurred on the courtyard, the event in question. She said there were different boys at each event. Student #7's mother was present during the testimony and would concur.**

- Appellant testified that when Appellant came outside of the cafeteria, she saw a group of boys facing Student # 11. She stated that the students were leaning into each other. In fact, the security video played at the hearing showed that by the time Appellant came out of the cafeteria, Students #1-4 had walked pass the cafeteria door and Student #11 had entered the cafeteria. When the facts presented by the security video were pointed out to Appellant, Appellant stated that she had viewed the video but that she was telling what she saw. Appellant's testimony regarding this issue was not credible. **Viewing the two videos that Mrs. Aister and her counsel were shown should be mandatory prior to making a final decision in this case. Viewing these videos would demonstrate how totally incorrect the last accusing paragraph truly is. She would not agree to the video because it showed nothing relevant to the accusations being made against her.**
7. Appellant did not attempt to find out what had occurred between Students #1-4 and Student #11. She did not ask Students #1-4 any questions. It was clear from testimony that she had already determined, without any facts, that Students #1-4 had been racially taunting Student #11. That belief was false. **This statement is false. When six boys are agitated and all talking at once the goal is to diffuse the situation. Mrs. Aister quieted and addressed all boys, reinforcing what behaviors were not acceptable.**
 8. Appellant believed Students #1-4 were all Caucasian and didn't realize until the day of the hearing that one of the four students was the same race as Student #11. **At the time of the incident Mrs. Aister knew two of the six boys involved. She does not believe that all of the witnesses were part of the altercation.**
 9. Appellant formed her "gut feeling" by students reporting that on occasion, Student #11 was picked on and also by Student #11 saying that students in the other fourth grade didn't like him because he was different. Appellant believed Student #11's race constituted his "difference" even though neither he nor other students ever reported racial comments directed at Student #11. Appellant's explanation of why she believed the situation on May 8, 2014, involved racial remarks was not credible. **On Student 11's first day of school at Four Peaks School he sat alone at a lunch table. No one from his classroom would sit by him but students from Mrs. Aister's classroom did, making him feel welcome and accepted. Student #11's mother testified to examples of racism suffered by her son.**
 10. Although in testimony Appellant stated that Student #11 had previously identified Student #1 as a student that had teased him (non-racially), that she spoke to Student #1's teacher about the issue and that Student #1's conduct persisted, she also testified she did nothing else to resolve the issue, such as reporting this continuing problem to Administration. When asked for a reason why she didn't choose to report it, her answer strained credulity. Appellant's testimony on this point was not credible. **Mrs. Aister had no authority to direct the actions of Student #1's previous teacher. Said**

teacher and the principal had repeatedly alleged that Student #11 was the problem.

11. Appellant stated in testimony that she did not believe in randomly disciplining students when she didn't know anything, but she felt in this instance she did know what happened.
12. The District, through witness testimony and the presentation of documents admitted into evidence, proved, by a preponderance of the evidence at the hearing that Appellant violated Governing Board Policy GBEA, Staff Ethics, Governing Board Policy GBEBB, Staff Conduct with Students and Governing Board Regulation, GBEB-R, Staff Conduct when she summoned a group of students, threatened them, accused them of making racial comments, told them to shut up and told them to go away. If she truly believed that a student had been racially harassed, she was required to report it under Governing Board Policy, JICK., Student Violence, Harassment, Intimidation/Bullying immediately, which she did not do. Appellant, in her conduct with the group of students, was heavy-handed and unprofessional, and she did not make the well-being of students the fundamental value of her decision making and her actions. She did not accord the students the dignity and respect they deserved. She did not relate to the group of students in a manner that maintained social and moral patterns of behavior consistent with community standards and acceptable professional conduct. She engaged in verbally abusive and threatening conduct. **None of the above demonstrates that fair and reasonable consideration was given to the information provided by Mrs. Aister. Most of the "finding of facts" was based on hearsay, distortions and fabrications.**
13. Governing Board Policy GCQF, Discipline, Suspension, and Dismissal of Professional Staff Members affirms the ability of District Administration to recommend dismissal based on the actions of Appellant, including unprofessional conduct and exhibiting improper attitudes.
14. The District followed and observed all applicable procedures in noticing and recommending the termination of the employment of Appellant.
15. The District did not act arbitrarily or capriciously in recommending the termination of employment of Appellant.
16. The clear weight of the evidence supports the recommendation of the District to terminate employment of Appellant for good and sufficient cause in accordance with Governing Board Policy GCQF. The District recommendation is a reasonable disciplinary action given the weight and sufficiency of the evidence presented at the hearing.

Recommendation

This document uses carelessly constructed conclusions to formulate the following recommendations and do not include or consider the professional input provided by Mrs. Aister.

The Statement of Charges presented to the Governing Board presents a case for the dismissal of Appellant or in the alternative, a suspension longer than 10 days. The Hearing Officer considered the alternative of placing Appellant on an unpaid suspension for longer than 10 days. When considering a dismissal versus a suspension without pay, the type of conduct that resulted in District Administration presenting a Statement of Charges to the Governing Board must be analyzed in accordance with District Policy. This analysis must examine whether the conduct cited in the Statement of Charges is such conduct that can be rehabilitated by a suspension of longer than 10 days or if it is conduct that is

likely to reoccur. If an individual does not take responsibility for misconduct when it is brought to her attention, it is likely to continue to occur. Appellant provided a distorted version of the facts, even when confronted by a video that clearly refuted her account of what happened. Appellant took action against the students without possessing the facts of the situation, and her testimony at the hearing indicated she still believed she was correct in her obviously mistaken assumptions. She even stated that it was fair to accuse the students without knowing what they were doing.

This attitude in which Appellant refused to take responsibility for her actions on May 8, 2014, and make any admission of wrongdoing leads the Hearing Officer to conclude that Appellant, if returned to the classroom, will repeat the conduct described in the Statement of Charges and will repeat it at the expense of students who are powerless to defend themselves against the authority of a teacher. Appellant's improper conduct with students has previously been brought to her attention and District Administration has attempted to correct it. Although it may have been corrected temporarily, it occurred again on May 8, 2014 when Appellant's possession and use of power in an inequitable way resulted in the intimidation of students, causing them unnecessary anxiety and fear. Students are entitled to attend school in an atmosphere in which their well-being is the fundamental value of all who supervise them, in accordance with District Policy. It is clear from the evidence that Appellant placed other values ahead of that one fundamental value on May 8, 2014.

Therefore, having considered all of the evidence consisting of exhibits, witnesses' testimony and video and having judged the credibility of the witnesses, the undersigned Hearing Officer recommends that the Fountain Hills Unified School District No. 98 Governing Board adopt the District's recommendation to terminate the employment of Pamela J. Aister in accordance with Governing Board Policy, GCQF, Discipline, Suspension, and Dismissal of Professional Staff Members.

Dated this 22th day of September, 2014.



Prudence Lee, Hearing Officer

While remaining a 35 year experienced, professional, master teacher, I must say Lawyer Lee's opinions are very one sided. Her comments emphasize false points and edge on character assassination. How could so many previous principals, superintendents, parents, students, and community members have kindly praised me if the character traits that Lawyer Lee portrays in this document have any truth, any validity? The facts do not add up. How and why would so many accolades be forgotten when compared to a few vindictive voices creating false reports? One could question the impartiality of a hearing officer who is recommended by and paid for by the District.

Who will stand and deliver for all the #11 students out there? When will the testimonies of minorities be given the same consideration and credence given non-minorities? Who will stand and deliver for the honest, caring, fair and responsible teachers who are viciously attacked with innuendos and fabrications? I have been blessed, honored, and am proud to be a Fountain Hills School teacher for all the wonderful students and parents who have touched my life for the past 25 years and continue to support me to this very day. Mrs. Aister