BEFORE THE STATE OF MONTANA

SUPERINTENDENT OF PUBLIC INSTRUCTION

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ATTIE BLEVINS, Appellant, v. DANIELS COUNTY SCHOOL DISTRICT NO. 1, Respondent.	)	DECISION AND ORDER OSPI 20-82

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This is an appeal from a decision of the Daniels County Superintendent of Schools made by hearing officer Harry L. Axtmann for the Daniels County Superintendent, rendered March 26, 1982.

It arises from a set of stipulated facts surrounding Ms. Blevins' decision not to teach her class on December 21 and 22, 1981. It was stipulated by the parties that Ms. Blevins requested paid personal leave for those days but that her request was denied in writing by the District Superintendent.

The collective bargaining agreement between the School District and the Teacher's Association states:

> "Two days will be granted per year, non-cumulative. The first day will be at full pay and the second day the teacher will be paid the difference between his daily wage and daily rate of substitute pay. The date of leave shall be approved by the Superintendent. Except in unusual circumstances, this leave will not be allowed preceding or following a major school event or vacation period."

On December 17th, the District Superintendent wrote an additional letter to Ms. Blevins urging her to change her mind and not to take leave on December 21 and 22, 1981. Ms. Blevins appealed the matter on December 19, 1981, to the school board and was absent from her job on December 21 and 22, 1981.

As a result of this action, the District Superintendent recommended termination of Ms. Blevins from employment, and the board decided to suspend her from her teaching duties without pay for a two-week period beginning January 5, 1982.

The matter was appealed to the County Superintendent who upheld the right of the board to punish Ms. Blevins under Section 20-4-207, MCA.

This matter is governed by the Montana Administrative Procedures Act as set forth in 2-4-704, MCA.

That statute sets forth the following standard of review:

> "(1) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency not shown in the record, proof thereof may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs. (2) The court may not substitute its judgment for evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> (a) in violation of constitutional or statutory provisions;
> (b) in excess of the statutory authority of the agency;
> (c) made upon unlawful procedure;
> (d) affected by other error of law;
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion, or
> (g) because findings of fact, upon issues essential to the decision were not made although requested."

There is no dispute between the parties as to the factual allegations as to what occurred, only a legal dispute as to the authority and the harshness of the discipline imposed.

The State Superintendent has recently issued an order concerning the legal basis for discipline short of termination in the appeal of Noel Furlong dated April 13, 1982.

There, as specifically held that a school board may discipline under 20-4-207 for an intentional violation of board policy.

The discipline in Furlong was not upheld because there was a failure to find an intentional violation of board policy.

Here the factual background indicates otherwise:

1. The policy is very precise.
2. Ms. Blevins was given a definite decision and the decision was reaffirmed by the Superintendent on at least one occa-

sion. Despite clear policy and firm decision by the Superintendent the appellant chose to violate that policy. No emergency reasons were given prior to the date of Ms. Blevins' absence.

This clear policy and clear intentional, willful violation by the teacher in this case, distinguishes it from the Furlong matter and requires that the decision of the County Superintendent be affirmed.

DATED August 16, 1982.

BEFORE THE STATE OF MONTANA

SUPERINTENDENT OF PUBLIC INSTRUCTION

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NOEL D. FURLONG, Appellant, v. SCHOOL DISTRICT NO. 5, Respondent.	)	DECISION AND ORDER OSPI 13-81

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This is an appeal from a decision of the Flathead County Superintendent of Schools rendered November 20, 1981. The Appellant, Noel D. Furlong, timely appealed this matter. Briefs were filed and oral argument was heard on April 5, 1982 before me. The matter was deemed submitted at that time and I now render my decision.

I have adopted the standard of review set forth in Section 2-4-704, MCA, as a standard of review which I will apply to decisions of County Superintendents. That statute provides:

> (1) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency not shown in the record, proof thereof may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.
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> (2) The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> (a) in violation of constitutional or statutory provisions;
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> (b) in excess of the statutory authority of the agency;
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> (c) made upon unlawful procedure;
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> (d) affected by other error of law;
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> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;
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> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
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> (g) because findings of fact, upon issues essential to the decision, were not made although requested. (emphasis supplied)